10-31-80
Vol. 45—No. 213
BOOK 1:
Pages
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BOOK 2:
Pages
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federal register

Book 1 of 2 Books
Friday, October 31, 1980

Highlights

72448 **Grant Programs—Energy** CSA decides to fund ten (10) conduit migrant and seasonal farmworker Emergency Energy Assistance Programs; effective 10-31-80

72552 **Petroleum Allocation** DOE/ERA proposes to modify the treatment of domestic crude oil under the entitlements program; comments by 12-30-80; hearings 11-18 and 12-3-80 (Part X of this issue)

72374 **Energy** United States Synthetic Fuels Corporation directs its first solicitation for proposals from concerns interested in construction or operation of synthetic fuel projects; comments by 11-14-80

72508 **1981 Action Program** Interior/HCRS seeks comments by 12-1-80, on possible recreation problems and concerns (Part VI of this issue)

72112-72117 **Hair Coloring** HHS/FDA lists lead acetate for use as a color additive in cosmetics that color the hair on the scalp and postpones effective date to 12-31-80; objections by 12-1-80 (2 documents)

72404, 72416, 72422 **Biologics** HHS/FDA proposes altering the biologics regulations by changing the proper names for certain products, by revising the labeling requirements for blood and blood components and addressing additional standards for human blood and blood products; comments by 12-30-80 (3 documents) (Part II of this issue)

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Highlights

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72524 **Health Maintenance Organizations** HHS/PHS publishes requirements for the organization and operation of federally qualified health maintenance organizations; effective 12-1-80 (Part VIII of this issue)

72582 **Prescription Drugs** HHS/FDA announces the availability of the Approved Prescription Drug Products List; effective 12-1-80 (Part XI of this issue)

72180 **Grant Programs—Health** HHS/PHS revises regulations governing grant programs for black lung clinics; effective 10-31-80

72082 **Public Assistance Programs** USDA/FNS publishes change to final administrative funding formula which distributes administrative monies to State agencies participating in the Special Supplemental Food Program for Women, Infants and Children; effective 10-1-80

72081 **School Breakfast and Lunch Programs** USDA announces a time schedule for amending categories of foods of minimal nutritional value; effective 10-31-80

72610 **Civil Rights** EEOC revises guidelines on discrimination because of religion; effective 11-1-80 (Part XII of this issue)

72312 **Grant Programs** Justice/OJARS publishes new financial and administrative guide for grants

72464 **Incorporation by Reference** OFR announces final approvals, further extensions and corrections (Part IV of this issue)

72232, 72233 **Water Pollution Control** EPA makes available additional analytical data on wastewater samples; comments by 12-1-80 (2 documents)

72308 **Privacy Act Document** Justice

72376 **Sunshine Act Meetings**

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program; Competitive Foods

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule: Amendment and correction.

SUMMARY: The Food and Nutrition Service announces a time schedule for amending Appendix B—Categories of Foods of Minimal Nutritional Value, of Part 210, National School Lunch Program, and Part 220, School Breakfast Program, to exempt an individual food from a category of foods of minimal nutritional value as listed in Appendix B or to add a particular category of foods to Appendix B as a category of foods of minimal nutritional value. The public may petition FNS to request that an exception or an addition be made to the food categories as listed in Appendix B. This final rule furnishes a schedule to petitioners regarding submission deadlines. This document also corrects a technical error in the final rule (45 FR 6758) that established Appendix B originally.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Cynthia Ford, Branch Chief, (202) 447-9067, Technical Assistance Branch, Nutrition and Technical Services Division, USDA, FNS, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION:

Administrative Procedures

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has not been classified as significant. A copy of the final impact statement can be obtained from Stanley Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, USDA, FNS, Washington, D.C. 20250, (202) 447-9069.

Sections 210.15b and 220.12 of Title VII, CFR establish procedures for amending Appendix B—Categories of Foods of Minimal Nutritional Value of Parts 210 and 220 under which public notice of any amendments resulting from such petitions will be published by May 1 and November 1 of each year. Robert Greenstein, Administrator, FNS, has determined that this final rule warrants publication without opportunity for a public comment period because a schedule for the submission and consideration of such petitions must be established immediately to permit publication of any amendments by May 1, 1981.

Background

The Food and Nutrition Service published in the Federal Register (45 FR 6759) on January 29, 1980 a final rule amending regulations for Part 210, National School Lunch Program, and Part 220, School Breakfast Program, to implement the amendment of Section 10 of the Child Nutrition Act of 1966 by Section 17 of Pub. L. 95-166 to restrict the sale of categories of foods of minimal nutritional value from the beginning of the school day until after the end of the last lunch period in schools participating in the National School Lunch and/or School Breakfast Programs (including Commodity Only Schools). In the final rule, provisions §§ 210.15b(b)(3), and 220.12(b)(3)) were made for amending Appendix B, Categories of Foods of Minimal Nutritional Value, to exclude those individual foods identified under §§ 210.15b(b)(1) and § 220.12(b)(1) and/or to include those categories of foods identified under § 210.15b(b)(2) and 220.12(b)(2). Any person may submit a petition to FNS requesting that an exception or an addition be made to the food categories as listed in Appendix B. Specific requirements for such petitions are noted in the final rule published in the Federal Register on January 29, 1980.

Petitioning Timeframes

In order to meet the publication dates of May 1 and November 1 §§ 210.15b(b)(3) and 220.12(b)(3)) for amending Appendix B, the following time schedule must be adhered to:

	May publication	November publication
Deadline for receipt of petitions by USDA.	Nov. 15	May 15.
USDA to notify petitioners of results of Departmental review and publish proposed rule (if applicable).	Feb. 1	Aug. 1.
60 day Comment Period	Feb. 1 through Apr 1.	Aug. 1 through Oct. 1.
Public Notice of Amendment of Appendix B by.	May 1	Nov. 1.

Written petitions should be sent to the above contact person on or before November 15 or May 15 of each year. Petitions must include all information specified in § 210.15b(b)(1) or (2), and § 220.12(b)(1) or (2), as appropriate. To date the Department has not received any petitions to change Appendix B as it appeared in the Federal Register along with the final competitive foods rule on January 29, 1980. The earliest possible date that the foods in Appendix B could be changed would be May 1, 1981. Anyone planning to submit a petition must do so by November 15, 1980 to meet the May 1, 1981 publication date.

1. The following technical correction is made to the document originally establishing Appendix B—Categories of Foods of Minimal Nutritional Value (45 FR 6758, January 29, 1980). A new instruction paragraph addressing both Parts 210 and 220 should be inserted on page 6772 immediately following the text of § 220.12 to read as follows:

Part 210—National School Lunch Program and Part 220—School Breakfast Program

Part 210 and 220 are amended by adding the following Appendix B—Categories of Foods of Minimal Nutritional Value to the end of each part.

2. Accordingly, Part 210, National School Lunch Program, and Part 220, School Breakfast Program, are amended as follows. Appendix B is amended by adding the following schedule as a new paragraph after paragraph (4)(g):

Schedule for Amending Appendix B

Actions for publication	Publication	
	May	November
Deadline for receipt of petitions by USDA.	Nov. 15	May 15.
USDA to notify petitioners of results of Departmental review and publish proposed rule (if applicable).	Feb. 1	Aug. 1.
60 Day Comment Period	Feb. 1 through Apr. 1.	Aug. 1 through Oct. 1
Public Notice of Amendment of Appendix B by.	May 1	Nov. 1

Written petitions should be sent to the Chief, Technical Assistance Branch, Nutrition and Technical Services Division, FNS, USDA, Washington, D.C., 20250 on or before November 15 or May 15 of each year. Petitions must include all information specified in § 210.15b(b) (1) or (2), and § 220.12(b) (1) or (2) as appropriate.

(Sec. 17, Pub. L. 95-166, 91 Stat. 1345 (42 U.S.C. 1779))

(Catalog of Federal Domestic Assistance Programs Nos. 10.553 and 10.555)

Dated: October 23, 1980.

Sydney J. Butler,

Acting Assistant Secretary for Foods and Consumer Services.

[FR Doc. 80-33932 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-30-M

7 CFR Part 246

Special Supplemental Food Program for Women, Infants, and Children; Administrative Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Administrative Funding Formula, notice of amendment.

SUMMARY: The Department is publishing an amendment to the final administrative funding formula which distributes administrative monies to State agencies participating in the Special Supplemental Food Program for Women, Infants and Children. The amendment allows the Department to negotiate increases in administrative funds to State agencies experiencing excessive administrative costs.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Darrel E. Gray, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, Room 4405, Auditors Building, 14th and Independence Avenue SW., Washington, D.C. 20250, (202) 447-8206.

SUPPLEMENTARY INFORMATION: On March 28, 1980, the Department published at 45 FR 20458 an interim amendment to the final administrative funding formula. The 90-day comment period ended June 28, 1980.

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

I. Discussion of the Comments

A total of 15 comment letters were received on the administrative funding notice amendment during the official comment period. The commenters included 12 State agencies, 1 public interest group and 2 Regional Offices.

Six of the 13 letters which supported the negotiation process specifically stated that FNS must clearly delineate the conditions under which negotiations can occur. Three of the 13 letters stated there should be some type of limit set on the amount of money used for negotiation. A considerable number of comments supported the negotiation process simply because it provided flexibility in meeting unique individual needs. Two commenters opposed the negotiation process because it reduced the already limited funding available for all State agencies. From comment letters received, the Department has developed the following guidelines for the negotiation process.

A number of commenters felt that in order to be eligible for additional funding, the State must be in "unusual need." After a review of the comments, "unusual need" is defined as: (1) Substantial warehousing expenses, such as incurred in the direct distribution system used by Mississippi; (2) unusually high salary costs in relation to caseload size as demonstrated by Alaska and several Indian State agencies; or (3) extremely high travel costs due to the geography of the State. The Department chose warehousing expenses as a factor because these expense are borne indirectly in retail purchase system as a food cost. However, in a direct distribution system, warehousing costs must be paid with administrative funds.

High salaries were chosen as a factor because of the experience of a few small State agencies. For example, Indian State agencies experience great difficulties in attracting qualified nutritionists and other professional staff to the reservation area. Although a nutritionist position is often needed only on a part-time basis, a full-time nutritionist must be hired as there are no other organizations to employ the nutritionist for non-WIC services. This results in extremely high salary costs. Alaska, due to its high cost of living, has substantially higher salaries for professional staff than the mean maximum salary of the United States. These higher salaries in relation to caseload size create a disproportionate administrative dollar per participant ratio. When high salary costs are used as a criteria, these costs must be reasonable when compared to other employee salaries of the same State agency, State, or same type of State agencies. In addition, the salaries will be compared to those contained in the current publication of the "State Salary Survey" which is compiled by the U.S. Office of Personnel Management to determine reasonableness.

Finally, travel costs were selected as a factor because remoteness, low density and sparsity among clinic sites on Indian reservations and in the State of Alaska result in extremely high travel costs. In Alaska, conventional means of travel cannot be utilized. All travel is either by water, which is extremely slow, or by air, which is extremely expensive. Where travel costs are higher due to the geographic layout of the State, trips must be limited and involve only essential Program activities and be comparable to costs experienced by other State agencies with similar geographic layouts. One or more of the criteria mentioned above must be met and documented in order to receive additional funds through the administrative negotiation process.

Some commenters suggested that 1/10 of 1 percent of the WIC administrative appropriation be the figure used to limit the funds available to State agencies determined to be in need of additional funds. FNS felt that the 1/10 of 1 percent mentioned in the comment letters would be inadequate and that maximum of 4/10 of 1 percent would be more reasonable. Preliminary reviews of expenditure reports from Alaska and Mississippi provided an estimate of the amount of additional administrative funds they would need. To allow for other State and Indian agencies which may also need additional administrative funds, 4/10 of 1 percent was determined as the total amount of administrative funds to be set aside for the negotiation fund. Therefore, FNS believes that the 4/10 of 1 percent is small enough not to create a financial hardship for the State agencies which would not participate in the negotiation process and yet help those State agencies experiencing excessive administrative costs.

Several commenters suggested that the cap for the minimum grant a State agency can receive be raised from $30,000 per year to $45,000 per year to cover basic operating expenses. If the

Department were to raise the cap, other State agencies may, in essence, forfeit more money than they would if FNS were to use the maximum figure of 9/10 of 1 percent for negotiation. Further, not all Indian State agencies (which are the only State agencies receiving a minimum grant) need more than $30,000. Currently, some State agencies are spending less. Therefore, the Department feels that negotiations for additional administrative funds should be done on an individual basis for extreme circumstances only.

One of the comment letters suggested that the Regional Offices do a management review of State agencies which request additional administrative funds. The review would examine the efficiency and economy of the State agency's WIC operations and determine how the State agency can reduce costs. The Regional Offices should not allow State agencies to negotiate for additional funds unless the review verifies that the State agency is running the Program efficiently and economically, but still needs additional funds. The Department fully supports this recommendation.

The availability of funds is also a very important determining factor. Each year, the Regional Offices will need to submit requests and justifications for additional funds by September 1. However, for Fiscal Year 1981, due to the publication date of this notice, Regional Offices have been alerted that they will have until December 1, 1980, to submit requests and justifications for additional funds. If a State agency feels it will be facing a difficult financial situation the next fiscal year, FNS will need a current detailed line item administrative budget, so that it may compare it to the administrative grant to be received by the State in the next fiscal year. If the State is in need of money, once the conditions are met, FNS will provide additional funds, if they are available. There is no guarantee that a State which request additional funds will receive any portion of the amount requested.

II. Description of Administrative Funding Formula

By September 1 of each year, the Regional Offices will submit to FNS requests for additional adminstrative funds, substantiated by a review of the State agency which confirms the State agency is operating the Program efficiently and economically, but that operations are seriously threatened without additional administrative funds. These requests must contain a current detailed line item administrative budget submitted on OMB A-102, Attachment M budget forms. However, for Fiscal Year 1981, the Regional Offices will have 30 days from the date of this publication to submit request and justifications.

A maximum of 9/10 of 1 percent of the total administrative appropriation will provide the amount of funds available for negotiation to State agencies eligible for additional administrative funds. The Department will thoroughly review and analyze each request received to determine the condition under which the request is made (i.e., high salary costs, high travel costs, or high warehousing costs), and will compare the detailed line item budget to the admimistrative grant to be received by the State agency to determine if funds in excess of the grant amount are needed. There is no guarantee that a State agency will receive any portion of the amount of additional funds requested. This negotiated procedure will become a permanent part of the formula process, so that in the future, any State agency with severe circumstances can be offered assistance if the funds are available.

Signed in Washington, D.C., on October 17, 1980.

Robert Greenstein,

Administrator, Food and Nutrition Service.

[FR Doc. 80-36784 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 276, Amdt. 1; Lemon Reg. 277]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period November 2-8, 1980, and increases the quantity of such lemons that may be so shipped during the period October 26-November 1. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective November 2, 1980, and the amendment is effective for the period October 26-November 1, 1980.

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

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are 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 available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

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

The committee met again publicly on October 28, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is easier.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), and the amendment relieves restrictions on the handling of lemons. 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 times.

1. Section 910.577 is added as follows:

§ 910.577 Lemon regulation 277.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period November 2, 1980, through November 8, 1980, is established at 205,000 cartons.

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

2. Paragraph (a) of § 910.576 Lemon Regulation 276 (45 FR 70427) is amended to read as follows:

§ 910.576 Lemon Regulation 276.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period October 26, 1980, through November 1, 1980, is established at 215,000 cartons.

* * * * *

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

Dated: October 29, 1980.

Malvin E. McGaha,

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

[FR Doc. 80-34087 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

[CCC Grain Price Support Regulations, 1980—Crop Wheat Supplement]

Grains and Similarly Handled Commodities; 1980—Crop Wheat Loan and Purchase Program

Correction

In FR Doc. 80–32780, published at page 69415, in the issue of Tuesday, October 21, 1980, please make the following corrections to the table in § 1421.490:

1. On page 69418, second column, the 8th entry under Missouri, now reading "Benton ..... 3.99" should read "Benton ..... 2.99".

2. On page 69421 (continuing the entries for Texas), the 41st entry in the first column, now reading "Callam * * *" should read "Dallam * * *".

BILLING CODE 1505-01

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7 CFR Part 1421

[CCC Grain Price Support Reg., 1980-Crop Oats Supplement]

Grains and Similarly Handled Commodities; 1980-Crop Oats Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the (1) final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and premiums and discounts under which Commodity Credit Corporation (CCC) will extend price support on 1980-crop oats. This rule will enable eligible oats producers to obtain loans and purchases on their eligible 1980-crop oats.

EFFECTIVE DATE: October 30, 1980.

ADDRESS: Price Support and Loan Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: W. W. Beesley, ASCS, (202) 447–7923.

With respect to the availability of an impact analysis, the increases in the basic county loan and purchase rates announced by this final rule were considered under the provisions of the "Notice of Determinations of the 1980 Crop Normal Crop Acreages (NCA), Established 'Target Prices', Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and ELS Cotton" published in the Federal Register (45 FR 53501), on August 12, 1980, and specifically considered in the Final Impact Statement prepared for that action. Thus, the Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Bruce R. Weber, Agricultural Program Specialist, Production Adjustment Division, ASCS–USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447–6688.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." Also for "Improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR 1421.270–.274 for need, accuracy, clarity, and effectiveness will be made within the next five years. The next review will take into consideration problems, issues, etc., which are experienced in program administration during the intervening period.

A "Notice of Determinations of 1980-Crop Normal Crop Acreages (NCA) Established 'Target' Prices, Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and Extra Long Staple (ELS) Cotton" was published in the Federal Register on August 12, 1980 (45 FR 53501), effective August 7, 1980. The notice included the Secretary's determination that the 1980 loan and purchase rate for oats was being increased to $1.16 per bushel in accordance with Section 105A of the Agricultural Act of 1949, as amended (7 U.S.C. 1444c). The announcement of this action by the Secretary had to be made immediately so that farmers could indicate their 1980 program participation. Therefore, it was and remains impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. Thus, this final rule shall become effective October 30, 1980.

This rule announces the individual basic county loan and purchase rates to conform with the increased national average loan and purchase rate of $1.16 per bushel for the 1980 crop of oats.

Producers who wish to secure loans can do so by contacting their local ASCS county office or Agricultural Service Center.

The program title and number from the "Catalog of Federal Domestic Assistance" is Commodity Loan and Purchases, 10.051. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops and any amendments thereto, and the 1978 and Subsequent Crops Oats Loan and Purchase Regulations and any amendments thereto in this Part 1421 are further supplemented for the 1980 crop of oats. Accordingly, the regulations in 7 CFR 1421.270 through 1421.274 and the title of the subpart are revised to read as provided below effective as to the 1980 crop of oats. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

PART 1421—GRAINS AND OTHER SIMILARLY HANDLED COMMODITIES

Subpart—1980-Crop Oats Loan and Purchase Program

Sec.
1421.270 Purpose.
1421.271 Availability.
1421.272 Maturity of loans.
1421.273 Warehouse charges.
1421.274 Loan and purchase rates and premiums and discounts.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 105 A, 401, 63 Stat. 1051, as amended (7 U.S.C. 1444c, 1421).

Subpart—1980-Crop Oats Loan and Purchase Program

§ 1421.270 Purpose.

This supplement contains additional program provisions which together with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crop Oats Loan and

Purchase Program regulations and any amendments thereto, apply to loans on and purchases of the 1980 crop of oats.

§ 1421.271 Availability.

(a) *Loans.* Producers desiring to participate in the program through loans must request a loan on their 1980 crop of eligible oats on or before March 31, 1981.

(b) *Purchases.* A producer desiring to offer eligible 1980-crop oats not under loan for purchase must execute and deliver to the county ASCS office on or before March 31, 1981, a Purchase Agreement (Form CCC–614) indicating the approximate quantity of 1980-crop oats the producer will sell to CCC.

§ 1421.272 Maturity of loans.

Loans mature on demand but not later than the last day of the ninth calendar month following the month the loan is disbursed.

§ 1421.273 Warehouse charges.

If storage is not provided for through loan maturity, the county ASCS office shall deduct storage charges at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received or date through which storage has been provided for to the maturity date.

§ 1421.274 Loan and purchase rates, premiums and discounts.

(a) Basis loan and purchase rates (counties). Basic rates per bushel for loan and settlement purposes for oats are established for oats grading U.S. No. 3 and containing not in excess of 14 percent moisture are as follows:

1980—Crop Oats Loan Purchase Rates

County	Rate per bushel
Alabama	
All Counties	$1.29
Alaska*	
Delta	1.01
Fairbanks	1.00
Glenallen	1.07
Homer	1.04
Kenai-Soldotna	1.09
Palmer	1.13
Talkeetna	1.13
Wght. State avg.	1.07
Arizona	
All counties	1.35
Arkansas	
All counties	1.26
California	
All counties	1.35
Colorado	
All counties	1.25
Connecticut	
All counties	1.28
Delaware	
All counties	1.28
Florida	
All counties	1.32

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Georgia	
All counties	$1.29
Idaho	
All counties	1.25
Illinois	
Adams	1.19
Alexander	1.22
Bond	1.20
Boone	1.19
Brown	1.19
Bureau	1.19
Calhoun	1.20
Carroll	1.19
Cass	1.19
Champaign	1.20
Christian	1.19
Clark	1.22
Clay	1.21
Clinton	1.21
Coles	1.20
Cook	1.23
Crawford	1.23
Cumberland	1.21
De Kalb	1.19
De Witt	1.19
Douglas	1.20
Du Page	1.20
Edgar	1.21
Edwards	1.24
Effingham	1.21
Fayette	1.20
Ford	1.20
Franklin	1.22
Fulton	1.19
Gallatin	1.24
Greene	1.20
Grundy	1.19
Hamilton	1.23
Hancock	1.19
Hardin	1.23
Henderson	1.19
Henry	1.19
Iroquois	1.21
Jackson	1.22
Jasper	1.22
Jefferson	1.22
Jersey	1.20
Jo Daviess	1.19
Johnson	1.22
Kane	1.19
Kankakee	1.21
Kendall	1.19
Knox	1.19
Lake	1.21
La Salle	1.19
Lawrence	1.24
Lee	1.19
Livingston	1.19
Logan	1.19
McDonough	1.19
McHenry	1.19
McLean	1.19
Macon	1.19
Macoupin	1.20
Madison	1.21
Marion	1.21
Marshall	1.19
Mason	1.19
Massac	1.22
Menard	1.19
Mercer	1.19
Monroe	1.22
Montgomery	1.20
Morgan	1.19
Moultrie	1.19
Ogle	1.19
Peoria	1.19
Perry	1.22
Piatt	1.19
Pike	1.19
Pope	1.23
Pulaski	1.22
Putnam	1.19
Randolph	1.22
Richland	1.22
Rock Island	1.19
St. Clair	1.22
Saline	1.23
Sangamon	1.19

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Schuyler	$1.19
Scott	1.19
Shelby	1.19
Stark	1.19
Stephenson	1.19
Tazewell	1.19
Union	1.22
Vermilion	1.21
Wabash	1.24
Warren	1.19
Washington	1.22
Wayne	1.23
White	1.24
Whiteside	1.19
Will	1.22
Williamson	1.22
Winnebago	1.19
Woodford	1.19
Wght. State avg.	1.19
Indiana	
Adams	1.28
Allen	1.28
Bartholomew	1.28
Benton	1.25
Blackford	1.27
Boone	1.26
Brown	1.28
Carroll	1.26
Cass	1.26
Clark	1.29
Clay	1.26
Clinton	1.26
Crawford	1.28
Daviess	1.28
Dearborn	1.30
Decatur	1.28
De Kalb	1.28
Delaware	1.27
Dubois	1.28
Elkhart	1.28
Fayette	1.27
Floyd	1.28
Fountain	1.25
Franklin	1.29
Fulton	1.27
Gibson	1.28
Grant	1.27
Greene	1.28
Hamilton	1.27
Hancock	1.27
Harrison	1.28
Hendricks	1.26
Henry	1.27
Howard	1.27
Huntington	1.27
Jackson	1.28
Jasper	1.25
Jay	1.28
Jefferson	1.30
Jennings	1.29
Johnson	1.26
Knox	1.28
Kosciusko	1.27
Lagrange	1.28
Lake	1.26
La Porte	1.27
Lawrence	1.28
Madison	1.27
Marion	1.26
Marshall	1.27
Martin	1.28
Miami	1.27
Monroe	1.28
Montgomery	1.26
Morgan	1.26
Newton	1.25
Noble	1.27
Ohio	1.30
Orange	1.28
Owen	1.26
Parke	1.25
Perry	1.28
Pike	1.28
Porter	1.26
Posey	1.28
Pulaski	1.26
Putnam	1.26
Randolph	1.28
Ripley	1.30

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Rush	$1.27
St. Joseph	1.27
Scott	1.29
Shelby	1.27
Spencer	1.28
Starke	1.26
Steuben	1.28
Sullivan	1.27
Switzerland	1.30
Tippecanoe	1.26
Tipton	1.27
Union	1.28
Vanderburgh	1.28
Vermillion	1.25
Vigo	1.26
Wabash	1.27
Warren	1.25
Warrick	1.28
Washington	1.28
Wayne	1.28
Wells	1.27
White	1.26
Whitley	1.27
Wgt. State avg.	1.27
Iowa	
Adair	1.17
Adams	1.17
Allamakee	1.14
Appanoose	1.17
Audubon	1.15
Benton	1.17
Black Hawk	1.16
Boone	1.15
Bremer	1.15
Buchanan	1.16
Buena Vista	1.15
Butler	1.15
Calhoun	1.15
Carroll	1.15
Cass	1.17
Cedar	1.17
Cerro Gordo	1.14
Cherokee	1.15
Chickasaw	1.15
Clarke	1.17
Clay	1.14
Clayton	1.15
Clinton	1.17
Crawford	1.14
Dallas	1.15
Davis	1.18
Decatur	1.17
Delaware	1.16
Des Moines	1.17
Dickinson	1.13
Dubuque	1.16
Emmet	1.13
Fayette	1.15
Floyd	1.14
Franklin	1.15
Fremont	1.17
Greene	1.15
Grundy	1.15
Guthrie	1.15
Hamilton	1.15
Hancock	1.14
Hardin	1.15
Harrison	1.15
Henry	1.17
Howard	1.14
Humboldt	1.15
Ida	1.14
Iowa	1.17
Jackson	1.17
Jasper	1.15
Jefferson	1.17
Johnson	1.17
Jones	1.17
Keokuk	1.17
Kossuth	1.13
Lee	1.17
Linn	1.17
Louisa	1.17
Lucas	1.17
Lyon	1.12
Madison	1.17
Mahaska	1.17
Marion	1.17
Marshall	1.15

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Mills	$1.17
Mitchell	1.13
Monona	1.14
Monroe	1.17
Montgomery	1.17
Muscatine	1.17
O'Brien	1.14
Osceola	1.12
Page	1.17
Palo Alto	1.15
Plymouth	1.13
Pocahontas	1.15
Polk	1.15
Pottawattamie	1.18
Poweshiek	1.15
Ringgold	1.17
Sac	1.15
Scott	1.17
Shelby	1.15
Sioux	1.13
Story	1.15
Tama	1.15
Taylor	1.17
Union	1.17
Van Buren	1.17
Wapello	1.17
Warren	1.17
Washington	1.17
Wayne	1.17
Webster	1.15
Winnebago	1.13
Winneshiek	1.14
Woodbury	1.13
Worth	1.13
Wright	1.15
Wght. State avg.	1.15
Kansas	
All counties	1.21
Kentucky	
All counties	1.29
Louisiana	
All counties	1.29
Maine	
All counties	1.28
Maryland	
All counties	1.29
Massachusetts	
All counties	1.28
Michigan	
Alcona	1.23
Alger	1.24
Allegan	1.25
Alpena	1.23
Antrim	1.24
Arenac	1.23
Baraga	1.23
Barry	1.25
Bay	1.23
Benzie	1.24
Berrien	1.26
Branch	1.26
Calhoun	1.25
Cass	1.26
Charlevoix	1.24
Cheboygan	1.24
Chippewa	1.24
Clare	1.24
Clinton	1.24
Crawford	1.23
Delta	1.23
Dickinson	1.23
Eaton	1.24
Emmet	1.24
Genesee	1.23
Gladwin	1.23
Gogebic	1.23
Grand Traverse	1.24
Gratiot	1.24
Hillsdale	1.26
Houghton	1.23
Huron	1.23
Ingham	1.24
Ionia	1.24
Iosco	1.23
Iron	1.23
Isabella	1.24
Jackson	1.25

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Kalamazoo	$1.25
Kalkaska	1.24
Kent	1.25
Keweenaw	1.23
Lake	1.25
Lapeer	1.23
Leelanau	1.24
Lenawee	1.26
Livingston	1.24
Luce	1.24
Mackinac	1.24
Macomb	1.24
Manistee	1.25
Marquette	1.23
Mason	1.25
Mecosta	1.24
Menominee	1.23
Midland	1.23
Missaukee	1.24
Monroe	1.26
Montcalm	1.24
Montmorency	1.23
Muskegon	1.25
Newaygo	1.25
Oakland	1.24
Oceana	1.25
Ogemaw	1.23
Ontonagon	1.23
Osceola	1.24
Oscoda	1.23
Otsego	1.24
Ottawa	1.25
Presque Isle	1.23
Roscommon	1.23
Saginaw	1.23
St. Clair	1.24
St. Joseph	1.26
Sanilac	1.23
Schoolcraft	1.24
Shiawassee	1.23
Tuscola	1.23
Van Buren	1.25
Washtenaw	1.25
Wayne	1.25
Wexford	1.25
Wght. State avg.	1.24
Minnesota	
Aitkin	1.12
Anoka	1.14
Becker	1.08
Beltrami	1.08
Benton	1.12
Big Stone	1.09
Blue Earth	1.12
Brown	1.11
Carlton	1.14
Carver	1.13
Cass	1.10
Chippewa	1.10
Chisago	1.14
Clay	1.07
Clearwater	1.08
Cook	1.14
Cottonwood	1.11
Crow Wing	1.11
Dakota	1.13
Dodge	1.12
Douglas	1.10
Faribault	1.12
Fillmore	1.13
Freeborn	1.13
Goodhue	1.12
Grant	1.09
Hennepin	1.14
Houston	1.13
Hubbard	1.09
Isanti	1.13
Itasca	1.12
Jackson	1.11
Kanabec	1.13
Kandiyohi	1.11
Kittson	1.05
Koochiching	1.09
Lac Qui Parle	1.10
Lake	1.14
Lake of the Woods	1.07
Le Sueur	1.12
Lincoln	1.10
Lyon	1.10

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
McLeod	$1.12
Mahnomen	1.07
Marshall	1.06
Martin	1.11
Meeker	1.12
Mille Lacs	1.12
Morrison	1.11
Mower	1.12
Murray	1.10
Nicollet	1.12
Nobles	1.10
Norman	1.06
Olmsted	1.12
Otter Tail	1.09
Pennington	1.06
Pine	1.13
Pipestone	1.10
Polk	1.06
Pope	1.10
Ramsey	1.14
Red Lake	1.06
Redwood	1.11
Renville	1.11
Rice	1.12
Rock	1.10
Roseau	1.06
St. Louis	1.14
Scott	1.13
Sherburne	1.13
Sibley	1.12
Stearns	1.11
Steele	1.12
Stevens	1.09
Swift	1.10
Todd	1.10
Traverse	1.08
Wabasha	1.12
Wadena	1.10
Waseca	1.12
Washington	1.14
Watowan	1.11
Wilkin	1.08
Winona	1.13
Wright	1.13
Yellow Medicine	1.10
Wght. State avg	1.10
Mississippi	
All counties	1.29
Missouri	
All counties	1.22
Montana	
Beaverhead	1.21
Big Horn	1.14
Blaine	1.11
Broadwater	1.17
Carbon	1.16
Carter	1.09
Cascade	1.16
Choputeau	1.13
Custer	1.10
Daniels	1.07
Dawson	1.06
Deer Lodge	1.19
Fallon	1.07
Fergus	1.13
Flathead	1.19
Gallatin	1.18
Garfield	1.09
Glacier	1.16
Golden Valley	1.15
Granite	1.20
Hill	1.12
Jefferson	1.18
Judith Basin	1.14
Lake	1.20
Lewis and Clark	1.18
Liberty	1.13
Lincoln	1.21
McCone	1.07
Madison	1.19
Meagher	1.16
Mineral	1.21
Missoula	1.20
Musselshell	1.14
Park	1.18
Petroleum	1.11
Phillips	1.10
Pondera	1.15

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Powder River	$1.11
Powell	1.19
Prairie	1.08
Ravalli	1.20
Richland	1.06
Roosevelt	1.06
Rosebud	1.12
Sanders	1.21
Sheridan	1.06
Silver Bow	1.19
Stillwater	1.16
Sweet Grass	1.17
Teton	1.15
Toole	1.14
Treasure	1.13
Valley	1.09
Wheatland	1.16
Wilbaux	1.06
Yellowstone	1.15
Wght. State avg	1.12
Nebraska	
Adams	1.17
Antelope	1.14
Arthur	1.15
Banner	1.15
Blaine	1.14
Boone	1.15
Box Butte	1.14
Boyd	1.12
Brown	1.13
Buffalo	1.16
Burt	1.16
Butler	1.17
Cass	1.18
Cedar	1.14
Chase	1.18
Cherry	1.13
Cheyenne	1.16
Clay	1.17
Colfax	1.16
Cuming	1.16
Custer	1.15
Dakota	1.16
Dawes	1.14
Dawson	1.16
Deuel	1.16
Dixon	1.15
Dodge	1.17
Douglas	1.18
Dundy	1.19
Fillmore	1.17
Franklin	1.18
Frontier	1.17
Furnas	1.18
Gage	1.19
Garden	1.15
Garfield	1.14
Gosper	1.17
Grant	1.14
Greeley	1.15
Hall	1.16
Hamilton	1.16
Harlan	1.18
Hayes	1.18
Hitchcock	1.19
Holt	1.13
Hooker	1.14
Howard	1.15
Jefferson	1.18
Johnson	1.19
Kearney	1.17
Keith	1.16
Keya Paha	1.12
Kimball	1.16
Knox	1.13
Lancaster	1.18
Lincoln	1.16
Logan	1.15
Loup	1.14
McPherson	1.15
Madison	1.15
Merrick	1.15
Morrill	1.15
Nance	1.15
Nemaha	1.19
Nuckolls	1.18
Otoe	1.18
Pawnee	1.19
Perkins	1.17

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Phelps	$1.17
Pierce	1.14
Platte	1.15
Polk	1.16
Red Willow	1.18
Richardson	1.19
Rock	1.13
Saline	1.18
Sarpy	1.18
Saunders	1.18
Scotts Bluff	1.15
Seward	1.17
Sheridan	1.14
Sherman	1.15
Sioux	1.14
Stanton	1.15
Thayer	1.18
Thomas	1.14
Thurston	1.16
Valley	1.15
Washington	1.17
Wayne	1.15
Webster	1.18
Wheeler	1.14
York	1.16
Wght. State avg	1.15
Nevada	
All counties	1.35
New Hampshire	
All counties	1.28
New Jersey	
All counties	1.29
New Mexico	
All counties	1.33
New York	
All counties	1.34
North Carolina	
All counties	1.29
North Dakota	
Adams	1.03
Barnes	1.04
Benson	1.02
Billings	1.01
Bottineau	1.00
Bowman	1.05
Burke	1.01
Burleigh	1.02
Cass	1.05
Cavalier	1.03
Dickey	1.04
Divide	1.03
Dunn	1.01
Eddy	1.03
Emmons	1.03
Foster	1.03
Golden Valley	1.03
Grand Forks	1.04
Grant	1.02
Griggs	1.03
Hettinger	1.02
Kidder	1.03
La Moure	1.04
Logan	1.03
McHenry	1.00
McIntosh	1.03
McKenzie	1.03
McLean	1.00
Mercer	1.00
Morton	1.01
Mountrail	1.01
Nelson	1.03
Oliver	1.01
Pembina	1.04
Pierce	1.01
Ramsey	1.03
Ransom	1.05
Renville	1.00
Richland	1.06
Rolette	1.01
Sargent	1.05
Sheridan	1.01
Sioux	1.02
Slope	1.04
Stark	1.00
Steele	1.04
Stutsman	1.04
Towner	1.02

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Traill	$ 1.04
Walsh	1.04
Ward	1.00
Wells	1.02
Williams	1.03
Wght State avg	1.03
Ohio	
Adams	1.30
Allen	1.28
Ashland	1.29
Ashtabula	1.31
Athens	1.31
Auglaize	1.28
Belmont	1.32
Brown	1.30
Butler	1.28
Carroll	1.31
Champaign	1.29
Clark	1.29
Clermont	1.30
Clinton	1.30
Columbiana	1.31
Coshocton	1.30
Crawford	1.29
Cuyahoga	1.30
Darke	1.27
Defiance	1.27
Delaware	1.29
Erie	1.29
Fairfield	1.29
Fayette	1.29
Franklin	1.29
Fulton	1.28
Gallia	1.31
Geauga	1.30
Greene	1.29
Guernsey	1.31
Hamilton	1.29
Hancock	1.28
Hardin	1.28
Harrison	1.31
Henry	1.28
Highland	1.30
Hocking	1.30
Holmes	1.30
Huron	1.29
Jackson	1.30
Jefferson	1.32
Knox	1.29
Lake	1.30
Lawrence	1.30
Licking	1.29
Logan	1.29
Lorain	1.30
Lucas	1.28
Madison	1.29
Mahoning	1.31
Marion	1.29
Medina	1.30
Meigs	1.31
Mercer	1.26
Miami	1.28
Monroe	1.32
Montgomery	1.28
Morgan	1.31
Morrow	1.29
Muskingum	1.30
Noble	1.31
Ottawa	1.29
Paulding	1.27
Perry	1.30
Pickaway	1.29
Pike	1.30
Portage	1.30
Preble	1.27
Putnam	1.28
Richland	1.29
Ross	1.30
Sandusky	1.29
Scioto	1.30
Seneca	1.29
Shelby	1.28
Stark	1.30
Summit	1.30
Trumbull	1.31
Tuscarawas	1.30
Union	1.29
Van Wert	1.27

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Vinton	$ 1.30
Warren	1.29
Washington	1.32
Wayne	1.30
Williams	1.28
Wood	1.28
Wyandot	1.29
Wght. State avg	1.29
Oklahoma	
All counties	1.28
Oregon	
All counties	1.31
Pennsylvania	
All counties	1.34
Rhode Island	
All counties	1.28
South Carolina	
All counties	1.29
South Dakota	
Aurora	1.07
Beadle	1.07
Bennett	1.08
Bon Homme	1.10
Brookings	1.08
Brown	1.05
Brule	1.07
Buffalo	1.07
Butte	1.06
Campbell	1.04
Charles Mix	1.08
Clark	1.06
Clay	1.12
Codington	1.07
Corson	1.04
Custer	1.09
Davison	1.07
Day	1.06
Deuel	1.08
Dewey	1.06
Douglas	1.08
Edmunds	1.05
Fall River	1.09
Faulk	1.06
Grant	1.08
Gregory	1.08
Haakon	1.07
Hamlin	1.07
Hand	1.07
Hanson	1.07
Harding	1.05
Hughes	1.07
Hutchinson	1.09
Hyde	1.07
Jackson	1.07
Jerauld	1.07
Jones	1.07
Kingsbury	1.07
Lake	1.07
Lawrence	1.06
Lincoln	1.10
Lyman	1.07
McCook	1.08
McPherson	1.04
Marshall	1.05
Meade	1.06
Mellette	1.08
Miner	1.07
Minnehaha	1.09
Moody	1.08
Pennington	1.07
Perkins	1.03
Potter	1.06
Roberts	1.06
Sanborn	1.07
Shannon	1.09
Spink	1.06
Stanley	1.07
Sully	1.07
Todd	1.08
Tripp	1.08
Turner	1.10
Union	1.12
Walworth	1.06
Yankton	1.11
Ziebach	1.06
Wght. State avg	1.08

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Tennessee	
All counties	$ 1.29
Texas	
All counties	1.31
Utah	
All counties	1.33
Vermont	
All counties	1.28
Virginia	
All counties	1.29
Washington	
All counties	1.27
West Virginia	
All counties	1.31
Wisconsin	
Adams	1.17
Ashland	1.17
Barron	1.15
Bayfield	1.16
Brown	1.16
Buffalo	1.14
Burnett	1.14
Calumet	1.16
Chippewa	1.16
Clark	1.16
Columbia	1.16
Crawford	1.17
Dane	1.18
Dodge	1.17
Door	1.16
Douglas	1.14
Dunn	1.15
Eau Claire	1.15
Florence	1.18
Fond du Lac	1.16
Forest	1.18
Grant	1.17
Green	1.18
Green Lake	1.17
Iowa	1.18
Iron	1.18
Jackson	1.16
Jefferson	1.18
Juneau	1.17
Kenosha	1.19
Kewaunee	1.16
La Crosse	1.15
Lafayette	1.18
Landlade	1.17
Lincoln	1.17
Manitowoc	1.16
Marathon	1.17
Marinette	1.18
Marquette	1.17
Menominee	1.17
Milwaukee	1.19
Monroe	1.16
Oconto	1.17
Oneida	1.18
Outagamie	1.16
Ozaukee	1.18
Pepin	1.14
Pierce	1.14
Polk	1.14
Portage	1.17
Price	1.17
Racine	1.19
Richland	1.16
Rock	1.18
Rusk	1.16
St. Croix	1.14
Sauk	1.18
Sawyer	1.16
Shawano	1.17
Sheboygan	1.17
Taylor	1.17
Trempealeau	1.15
Vernon	1.15
Vilas	1.18
Walworth	1.18
Washburn	1.15
Washington	1.18
Waukesha	1.19
Waupaca	1.17

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Wisconsin	
Waushara	$1 17
Winnebago	1.16
Wood	1 17
Wght. State avg.	1 16
Wyoming	
All counties	1.23

* In Alaska, loan rates are for Marketing Area.

(b) 1980—Crop Oats Schedule of Premiums and Discounts:

1. *Premiums:* [1]

Grade U.S. No. 1, cents per bushel: +2; Grade U.S. No. 2, cents per bushel: +1.

Test Weight: Heavy, cents per bushel: +1; Extra Heavy, cents per bushel: +2.

2. *Discounts:*

Grade U.S. No. 4 on the factor of test weight only but otherwise U.S. No. 3 or better, cents per bushel: −3; Slightly weathered [2], cents per bushel: −5; Materially weathered and badly stained, cents per bushel: −10; Garlicky, cents per bushel: −3; Weed control discount [where required by § 1421.24), cents per bushel: −10.

3. *Other.* Oats with quality factors exceeding limits shown in foregoing schedule or oats that (1) contains in excess of 14 percent moisture. (2) is weevily, (3) is musty, or (4) is sour, shall not be eligible for loan. In the event quantities of oats exceeding limits shown are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City Commodity Office for settlement purposes. Such discounts will be established not later than the time delivery of oats to CCC begins and will thereafter be adjusted from time to time as CCC determines appropriate to reflect changes in market conditions. Producers may obtain schedule of such factors and discounts at county ASCS offices approximately one month prior to the loan maturity date.

Signed at Washington, D.C., on October 24, 1980.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-33798 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-05-M

[1] Premiums shall not applicable to badly stained or materially weathered oats.

[2] No discount if oats are otherwise U.S. No. 2.

7 CFR Part 1421

[CCC Grain Price Support Regulations, 1979-Crop Corn Supp. Amdt.1]

1979—Crop Corn Loan and Purchase Program; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects the regulation relating to the 1979 Crop Corn Loan and Purchase Program published at 45 FR 55144, August 19, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas Fink, ASCS, telephone (202) 447-7923.

SUPPLEMENTARY INFORMATION: FR Doc. 80-25141 appearing at pages 55144-55149 in the Federal Register issue of Tuesday, August 19, 1980, was corrected by FR DOC 80-29131 at page 62788 in the issue of September 22, 1980, to add a basic county loan and purchase rate of "$1.79" for Sanborn, South Dakota. That figure should have read "$1.97". Therefore at 45 FR 55148, third column under South Dakota, insert in alphabetical order "Sanborn—1.97".

Signed at Washington, D.C., on October 24, 1980.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-33808 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-05-M

Food Safety and Quality Service

7 CFR Part 2851

United States Standards for Grades of Florida Grapefruit, Tangerines, Oranges, and Tangelos

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the U.S. grade standards for Florida grapefruit, tangerines, oranges and tangelos. These standards are being revised at the request of the Florida Citrus Packers (FCP), a nonprofit cooperative association representing nearly all of the Florida citrus growers and packers, with the support of the Florida Citrus Commission (FCC), the State-supported body which administers the Florida Citrus Marketing program. This action will provide the Florida citrus industry with standards that are in line with current cultural and marketing practices.

EFFECTIVE DATE: December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Donald T. Paradis, Fresh Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2188. The Final Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant".

Background

The last major revision of the U.S. standards for grades of Florida grapefruit, tangerines, oranges and tangelos became effective October 15, 1967, with subsequent amendment adopted on February 13, 1968, and January 31, 1973. Since these grade standards were issued, serveral changes in cultural and marketing practices have occurred. Certain cultural practices have caused the elongation of many fruit. This elongation of the fruit has made it virtually impossible for industry, with its present sizing equipment, to size fruit in accordance with the minimum or minimum and maximum diameter requirements of the current U.S. grade standards. Also, as a result of the extensive use of automated equipment in packaging fruit, as opposed to hand packing, the pack requirements of the current standards are difficult, if not impossible, to apply.

The U.S. standards for grades of Florida citrus are used as a basis for Florida's Federal Marketing Order which establishes the quality and size of fresh fruit permitted to be shipped in interstate commerce. Representatives of industry (FCP) requested that the standards be revised to accommodate recent changes in industry cultural and marketing practices.

The Department believes that this action will provide the Florida citrus industry with standards that will accommodate the recent changes in cultural and marketing practices. Also, it will fulfill USDA's responsibility to provide the industry with applicable voluntary standards that are useful in the promotion of efficient, uniform industry marketing practices as required by the Agricultural Marketing Act of 1946.

This final rule:

(1) Replaces the "Standard Pack" section with a "Size and Pack" section in each of the grade standards;

(2) Places emphasis on uniformity of size by instituting ranges in diameter for each pack size for grapefruit, tangerines, oranges and tangelos;

(3) Provides for lot variances compatible with the method of packing by establishing tolerances for containers that fail to meet the requirements of size and pack.

(4) Removes subjective description of scorable scars;

(5) Defines "Discoloration" to include smooth and fairly smooth superficial scars;

(6) Allows grapefruit to have sprouted seeds if the sprouts are not of green color; and,

(7) Adds metric equivalents to specific measurements in terms of liquid, inches, or fractions of inches in each of the standards.

The Proposal

On February 8, 1980, a proposal to amend the U.S. standards for grades of Florida grapefruit, tangerines, oranges, and tangelos was published in the Federal Register (45 FR 8637–8654). The Department received 13 comments in response to the proposal. A number of comments received stressed the need for citrus standards that are compatible and in line with current cultural and marketing practices. The principal comment was submitted by the Florida Citrus Packers (FCP), a cooperative association, representing 90 percent of Florida's fresh citrus growers and packers, requesting the following additions to the proposed revisions:

(a) Tangerines whose diameter is larger than "100 size" be assigned pack arrangements as well as a range in diameter;

(b) Expand size range for tangelos only; and,

(c) Increase the lot variance for "volume-filled" packages that fail to meet size and pack requirements.

The remaining comments supported the proposal with some specifically endorsing the FCP comments. The additions suggested by FCP were evaluated and considered to be reasonable and appropriate. Therefore, the following suggested additions are included in this action:

(a) Tangerines whose diameter is larger than 100 size (not provided for in present standards) are assigned pack arrangements as well as a range in diameter in inches. During the 1978–1979 season, a total of 200,000 4/5 bushel cartons (10% of total tangerines packed) larger than 100 size were certified for shipment. This amount justifies the establishment of pack arrangements and diameter range to ensure a reasonable degree of uniformity and control. The range in diameter for tangerine sizes 64, 66 and 80 shall be 8 1/16 of an inch, consistent with the present range in diameter for sizes 100 and 120. Appropriate pack arrangements for these three sizes are also incorporated in this action.

(b) Expand size range for tangelos only. Although all tangelos and K-Early citrus fruits are covered by the U.S. Standards for Grades of Oranges and Tangelos, the different varietal shapes of tangelos make sizing under the orange size ranges very difficult, if not impossible. In order to facilitate sizing without sacrificing reasonable consistency, providing that the pack arrangements and fill requirements are adhered to, the range in diameter for tangelos only is expanded as follows: For sizes 120 or 125 and smaller, by 2/16 of an inch, and for sizes larger than 120 to 125, by 1/16 of an inch in diameter.

(c) Increase from 5 to 10 percent the lot variance only for "volume-filled" packages that fail to meet size and pack requirements. The current trend is toward increased automation in the preparatory marketing phases of fruit sorting and packaging. However, automation has increased the incidence of container-to-container variation from established "place-packed" requirements. As this factor can only be regulated up to a point, industry has justifiably requested that the lot tolerance for variation for "volume-fill" containers, i.e., those mechanically filled as opposed to hand-packed (place-packed), be increased from the present 5 percent to 10 percent.

Copies of the proposed rule were mailed to 40 supermarket chains representing 23,000 retail outlets. No comments were received from those sources. Several industry newsletters referenced the proposed rule for Florida grapefruit, tangerines, oranges, and tangelos. Also several press releases and other supplemental materials were developed for consumer organizations and their representatives. No consumer comments were received by the Department from these sources.

Options Considered

Two options were considered in developing this final rule.

Option I—Revise the U.S. Standards for Grades of Florida Grapefruit, Tangerines, Oranges and Tangelos. The usefulness of voluntary grade standards depends, in large measure, upon whether or not quality, size, or related requirements are compatible with biological and technological developments in the industry. This option would provide the Florida citrus industry with standards that are in line with current cultural and marketing practices.

Option II—Continue the currently effective U.S. Standards for Grades of Florida Grapefruit, Tangerines, Oranges and Tangelos. Due to the citrus industry's changing cultural and sizing practices, the size requirements are no longer practical to apply. To continue to apply the current U.S. grade standards, the Department would not fulfill its responsibility to provide the industry with standards which encourage uniformity and consistency in commercial marketing practices.

Option I was selected as it will reduce the number of rules now required under the marketing order. Also, it will facilitate the use of a single basis for size and quality requirements under the marketing order, and will not impose any change in the quality or size of the citrus fruit currently being packed and marketed. The Florida citrus industry would be the principal recipient of any savings from the application of Option I, although potential savings from program cost reductions would likely benefit consumers. Option I is in line with current grading procedures and will promote uniformity in grade interpretations and application by industry and grading service personnel.

After consideration of all data, and since no unfavorable information was submitted, the United States Standards for Grades of Florida Grapefruit (7 CFR 2851.750–2851.784), United States Standards for Grades of Florida Tangerines (7 CFR 2851.1810–2851.1835), and United States Standards for Grades of Florida Oranges and Tangelos (7 CFR 2851.1140–2851.1179) are revised and the Table of Contents amended to read as follows:

PART 2851—FRESH FRUITS, VEGETABLES AND OTHER[1] [2] PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

* * * * *

Subpart—United States Standards for Grades of Florida Grapefruit

Grades

Sec.
2851.750 U.S. Fancy.
2851.751 U.S. No. 1.
2851.752 U.S. No. 1 Bright.

[1] Among such other products are the following: Raw nuts, Christmas trees and evergreens; flowers and flower bulbs; and onion sets.

[2] None of the requirements in the regulations of this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to products covered in the regulations in this part.

2851.753 U.S. No. 1 Golden.
2851.754 U.S. No. 1 Bronze.
2851.755 U.S. No. 1 Russet.
2851.756 U.S. No. 2.
2851.757 U.S. No. 2 Bright.
2851.758 U.S. No. 2 Russet.
2851.759 U.S. No. 3.

Unclassified

2851.760 Unclassified.

Tolerances

2851.761 Tolerances.

Size and Pack

2851.762 Size and pack.

Definitions

2851.763 Similar varietal characteristics.
2851.764 Well colored.
2851.765 Firm.
2851.766 Well formed.
2851.767 Mature.
2851.768 Smooth texture.
2851.769 Injury.
2851.770 Discoloration.
2851.771 Fairly well colored.
2851.772 Fairly smooth texture.
2851.773 Damage.
2851.774 Fairly firm.
2851.775 Slightly misshapen.
2851.776 Slightly rough texture.
2851.777 Serious damage.
2851.778 Slightly colored.
2851.779 Misshapen.
2851.780 Slightly spongy.
2851.781 Very serious damage.
2851.782 Diameter.
2851.783 Classification of defects.

Visual Aid

2851.784 Visual aid.

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Subpart—United States Standards for Grades of Florida Oranges and Tangelos

General

2851.1140 General.

Grades

2851.1141 U.S. Fancy.
2851.1142 U.S. No. 1 Bright.
2851.1143 U.S. No. 1.
2851.1144 U.S. No. 1 Golden.
2851.1145 U.S. No. 1 Bronze.
2851.1146 U.S. No. 1 Russet.
2851.1147 U.S. No. 2 Bright.
2851.1148 U.S. No. 2.
2851.1149 U.S. No. 2 Russet.
2851.1150 U.S. No. 3.

Unclassified

2851.1151 Unclassified.

Tolerances

2851.1152 Tolerances.

Size and Pack

2851.1153 Size and pack.

Definitions

2851.1154 Similar varietal characteristics.
2851.1155 Well colored.
2851.1156 Firm.
2851.1157 Well formed.
2851.1158 Mature.
2851.1159 Smooth texture.
2851.1160 Injury.
2851.1161 Discoloration.
2851.1162 Fairly smooth texture.
2851.1163 Damage.
2851.1164 Fairly well colored.
2851.1165 Reasonably well colored.
2851.1166 Fairly firm.
2851.1167 Slightly misshapen.
2851.1168 Slightly rough texture.
2851.1169 Serious damage.
2851.1170 Misshapen.
2851.1171 Slightly spongy.
2851.1172 Very serious damage.
2851.1173 Diameter.
2851.1174 Classification of defects.

Standards for Internal Quality of Common Sweet Oranges (Citrus Sinensis (L) Osbeck)

2851.1175 U.S. Grade AA Juice (Double A).
2851.1176 U.S. Grade A Juice.
2851.1177 Maximum anhydrous citric acid permissible for corresponding total soluble solids.
2851.1178 Methods of juice extraction.

Visual Aid

2851.1179 Visual aid.

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Subpart—United States Standards for Grades of Florida Tangerines

Grades

2851.1810 U.S. Fancy.
2851.1811 U.S. No. 1.
2851.1812 U.S. No. 1 Bronze.
2851.1813 U.S. No. 1 Russet.
2851.1814 U.S. No. 2.
2851.1815 U.S. No. 2 Russet.
2851.1816 U.S. No. 3.

Unclassified

2851.1817 Unclassified.

Tolerances

2851.1818 Tolerances.

Size and Pack

2851.1819 Size and pack.

Definitions

2851.1820 Mature.
2851.1821 Firm.
2851.1822 Well formed.
2851.1823 Damage.
2851.1824 Highly colored.
2851.1825 Discoloration.
2851.1826 Well colored.
2851.1827 Fairly well colored.
2851.1828 Fairly firm.
2851.1829 Fairly well formed.
2851.1830 Serious damage.
2851.1831 Reasonably well colored.
2851.1832 Very serious damage.
2851.1833 Diameter.
2851.1834 Classification of defects.

Visual Aid

2851.1835 Visual aid.

Subpart—United States Standards for Grades of Florida Grapefruit[1]

Grades

§ 2851.750 U.S. Fancy.

"U.S. Fancy" consists of grapefruit which meet the following requirements:

(a) Basic requirements:

(1) Discoloration;

(i) Not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 2851.770.)

(2) Firm;

(3) Mature;

(4) Similar varietal characteristics;

(5) Smooth texture;

(6) Well colored; and,

(7) Well formed.

(b) Free from:

(1) Ammoniation;

(2) Bruises;

(3) Buckskin;

(4) Caked melanose;

(5) Cuts not healed;

(6) Decay;

(7) Growth cracks;

(8) Scab;

(9) Sprayburn; and,

(10) Wormy fruit.

(c) Free from injury caused by:

(1) Green spots;

(2) Oil Spots;

(3) Scale;

(4) Scars;

(5) Skin breakdown; and,

(6) Thorn scratches.

(d) Free from damage caused by:

(1) Dirt or other foreign material;

(2) Disease;

(3) Dryness or mushy condition;

(4) Hail;

(5) Insects;

(6) Sprouting;

(7) Sunburn; and,

(8) Other means.

(e) For tolerances see § 2851.761.

§ 2851.751 U.S. No. 1

"U.S. No. 1" consists of grapefruit which meet the following requirements:

(a) Basic requirements:

(1) Discoloration;

(i) Not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 2851.770.)

(2) Fairly smooth texture;

(3) Fairly well colored;

(4) Firm;

(5) Mature;

(6) Similar varietal characteristics; and,

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act, or with applicable State Laws and regulations.

(7) Well formed.
(b) Free from:
(1) Bruises;
(2) Cuts not healed;
(3) Decay;
(4) Growth crack; and,
(5) Wormy fruit.
(c) Free from damage caused by:
(1) Ammoniation;
(2) Buckskin;
(3) Caked melanose;
(4) Dirt or other foreign material;
(5) Disease;
(6) Dryness or mushy condition;
(7) Green spots;
(8) Hail;
(9) Insects;
(10) Oil spots;
(11) Scab;
(12) Scale;
(13) Scars;
(14) Skin breakdown;
(15) Sprayburn;
(16) Sprouting;
(17) Sunburn;
(18) Thorn scratches; and,
(19) Other means.
(d) For tolerances see § 2851.761.

§ 2851.752 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.761.

§ 2851.753 U.S. No. 1 Golden.

The requirements for this grade are the same as for U.S. No. 1 except that not more than the number of fruits permitted in § 2851.761, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.761.

§ 2851.754 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except that all fruit must show some discoloration. Not less than the number of fruits required in § 2851.761, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by discoloration. The predominating discoloration on these fruits shall be of rust mite type.
(a) For tolerances see § 2851.761.

§ 2851.755 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except that not less than the number of fruits required in § 2851.761, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by any type of discoloration.
(a) For tolerances see § 2851.761.

§ 2851.756 U.S. No. 2

"U.S. No. 2" consists of grapefruit which meet the following requirements:
(a) Basic requirements:
(1) Discoloration;
(i) Not more than one-half of the surface, in the aggregate, may be affected by discoloration. (See § 2851.770.)
(2) Fairly firm;
(3) Mature;
(4) Similar varietal characteristics;
(5) Slightly colored;
(6) Not more than slightly misshapen; and,
(7) Not more than slightly rough texture.
(b) Free from:
(1) Bruises;
(2) Cuts not healed;
(3) Decay;
(4) Growth cracks; and,
(5) Wormy fruit.
(c) Free from serious damage caused by:
(1) Ammoniation;
(2) Buckskin;
(3) Caked melanose;
(4) Dirt or other foreign material;
(5) Disease;
(6) Dryness or mushy condition;
(7) Green spots;
(8) Hail;
(9) Insects;
(10) Oil spots;
(11) Scab;
(12) Scale;
(13) Scars;
(14) Skin breakdown;
(15) Sprayburn;
(16) Sprouting;
(17) Sunburn;
(18) Thorn scratches; and,
(19) Other means.
(d) For tolerances see § 2851.761.

§ 2851.757 U.S. No. 2 Bright.

The requirements for this grade are the same as for U.S. No. 2 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.761.

§ 2851.758 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that not less than the number of fruits required in § 2851.761, Tables I and II, shall have more than one-half of their surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.761.

§ 2851.759 U.S. No. 3.

"U.S. No. 3" consists of grapefruit which meet the following requirements:
(a) Basic requirements:
(1) Mature;
(2) Misshapen;
(3) Poorly colored;
(i) Not more than 25 percent of the surface may be of a solid dark green color.
(4) Rough texture, not seriously bumpy;
(5) Similar varietal characteristics; and
(6) Slightly spongy.
(b) Free from:
(1) Cuts not healed;
(2) Decay; and,
(3) Wormy fruit.
(c) Free from very serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Disease;
(6) Dryness or mushy condition;
(7) Growth cracks;
(8) Hail;
(9) Insects;
(10) Scab;
(11) Scale;
(12) Scars;
(13) Skin breakdown;
(14) Sprayburn;
(15) Sprouting;
(16) Sunburn; and,
(17) Other means.
(d) For tolerances see § 2851.761.

Unclassified

§ 2851.760 Unclassified.

"Unclassified" consists of grapefruit which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

Tolerances

§ 2851.761 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, based on sample inspection, the number of defective or off-size specimens in the individual sample, and the number of defective or off-size specimens in the lot shall be within the limitations specified in Tables I and II.

Table I.—*Shipping Point* [1] *for 1 Through 40 Samples*

Factor	Grades	AL [2]	Number of 33-count samples [3] (florida grapefruit)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [4] (Maximum permitted)																			
Decay	U.S. fancy																					
	U.S. No. 1	1	0	0	0	1	[5]1	1	2	2	2	[5]2	2	2	3	3	3	[5]3	3	4	4	4
	U.S. No. 2																					
	U.S. No. 3	1	0	1	[5]1	1	2	[5]2	2	3	3	[5]3	3	4	4	4	[5]4	5	5	5	[5]5	5
Wormy fruit	All	1	0	0	0	1	[5]1	1	2	2	2	[5]2	2	2	3	3	3	[5]3	3	4	4	4
Very serious damage including decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1	4	3	5	7	8	10	11	13	14	16	17	18	20	21	23	24	25	27	28	30	31
	U.S. No. 2																					
Total defects including decay, wormy fruit, and very serious damage.	All	5	5	9	12	16	19	22	25	28	31	34	37	40	44	46	49	52	55	58	61	64
Off-size		7	5	9	12	16	19	22	25	28	31	34	37	40	44	46	49	52	55	58	61	64
Discoloration	U.S. No. 1																					
	U.S. No. 1 bright																					
	U.S. No. 2	7	5	9	12	16	19	22	25	28	31	34	37	40	44	46	49	52	55	58	61	64
	U.S. No. 2 bright																					
	U.S. No. 1 golden	16	13	23	34	44	54	63	73	83	92	102	112	122	131	140	150	159	169	178	188	197
			Acceptance Numbers [4] (Minimum required)																			
	U.S. No. 1 bronze	6	9	20	32	44	56	68	81	93	105	118	130	142	155	168	180	193	206	218	231	244
	U.S. No. 1 russet																					
	U.S. No. 2 russet	0	2	4	8	11	14	18	21	25	28	32	36	39	43	47	50	53	57	61	64	68
			Acceptance Numbers [4] (Maximum permitted)																			
Decay	U.S. fancy																					
	U.S. No. 1	1	4	4	[5]4	4	4	5	5	5	5	5	[5]5	5	5	6	6	6	6	6	[5]6	6
	U.S. No. 2																					
	U.S. No. 3	1	5	6	6	6	6	6	7	7	7	[5]7	7	8	8	8	[5]8	8	9	9	9	9
Wormy fruit	All	1	4	4	[5]4	4	4	5	5	5	5	5	[5]5	5	5	6	6	6	6	6	[5]6	6
Very serious damage including decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1	4	32	34	35	36	38	39	40	42	43	44	45	47	48	49	51	52	53	54	56	57
	U.S. No. 2																					
Total defects including decay, wormy fruit, and very serious damage.	All	5	67	70	73	76	79	82	84	87	90	93	96	99	102	105	107	110	113	116	119	122
Off-size		7	67	70	73	76	79	82	84	87	90	93	96	99	102	105	107	110	113	116	119	122
Discoloration	U.S. No. 1																					
	U.S. No. 1 bright																					
	U.S. No. 2	7	67	70	73	76	79	82	84	87	90	93	96	99	102	105	107	110	113	116	119	122
	U.S. No. 2 bright																					
	U.S. No. 1 golden	16	206	216	225	234	247	253	264	274	281	290	300	309	318	327	337	346	355	364	374	383
			Acceptance Numbers [4] (Minimum required)																			
	U.S. No. 1 bronze	6	256	269	282	294	307	320	333	345	358	371	383	396	409	422	435	447	460	473	436	439
	U.S. No. 1 russet																					
	U.S. No. 2 russet	0	72	76	80	84	88	92	96	99	103	107	110	114	118	122	126	130	134	137	141	145

[1] Shipping point, as used in these standards, means the point of origin of the shipment in the production area or at port of loading for ship stores or overseas shipments, or in the case of shipments from outside the continental United States, the port of entry into the United States.

[2] AL—Absolute limit permitted in individual 33-count sample.

[3] Sample size—33 count.

[4] Acceptance number—Maximum or minimum number of defective or off-size fruit permitted.

[5] Preferred number of samples for this acceptance number.

Table II.—*En Route or at Destination*

Factor	Grades	AL [1]	Number of 33-count samples [2] (Florida grapefruit)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [4] (Maximum permitted)																			
Decay	All	3	2	3	4	5	6	7	8	9	10	11	12	13	[4]13	14	15	16	17	18	[4]18	19
Wormy fruit	All	1	0	0	0	1	[4]1	1	2	2	2	[4]2	2	2	3	3	3	[4]3	3	4	4	4
Very serious damage other than decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1	4	3	5	7	8	10	11	13	14	16	17	18	20	21	23	24	25	27	28	30	31
	U.S. No. 2																					
Total defects including very serious damage other than decay and wormy fruit.	All	5	5	9	12	16	19	22	25	28	31	34	37	40	44	46	49	52	55	58	61	64
Off-size		7	5	9	12	16	19	22	25	28	31	34	37	40	44	46	49	52	55	58	61	64
Discoloration	U.S. No. 1																					
	U.S. No. 1 bright																					
	U.S. No. 2	7	5	9	12	16	19	22	25	28	31	34	37	40	44	46	49	52	55	58	61	64
	U.S. No. 2 bright																					
	U.S. No. 1 golden	16	13	23	34	44	54	63	73	83	92	102	112	122	131	140	150	159	169	178	188	197
			Acceptance Numbers [3] (Minimum required)																			
	U.S. No. 1 bronze	6	9	20	32	44	56	68	81	93	105	118	130	142	155	168	180	193	206	218	231	244
	U.S. No. 1 russet																					
	U.S. No. 2 russet	0	2	4	8	11	14	18	21	25	28	32	36	39	43	47	50	53	57	61	64	68

[1] AL—Absolute limit permitted in individual 33-count sample.
[2] Sample size—33 count.
[3] Acceptance number—Maximum or minimum number of defective or off-size fruit permitted.
[4] Preferred number of samples for this acceptance number.

Size and Pack

§ 2851.762 Size and pack.

(a) When grapefruit is place-packed in approved ⅘ bushel containers,[2] the size and count, pack and diameter range of the fruit shall be as follows:

Table III

Size and Count	Pack	Rows	Layers	Diameter range in inches
14 [1]	2 x 1	3	3	9/16
18	2 x 2	3	3	9/16
23	3 x 2	3	3	9/16
27	3 x 3	3	3	9/16
32	4 x 3	3	3	9/16
36	4 x 4	3	3	9/16
40	4 x 5	3	3	9/16
48	3 x 3	4	4	7/16
56	4 x 3	4	4	7/16
64	4 x 4	4	4	7/16

[1] Size 14 may be packed in a layer pack with 6 fruit in the bottom layer, 2 fruit in the second layer, and 6 fruit in the top layer.

(b) The actual count and pack shall not deviate from that shown in the above table for each respective size except when a protective tray or similar device which displaces one or more fruit is placed in the container. In this event, both the size and actual count shall be shown on the container.

(c) When grapefruit is not place-packed, the sizes and respective diameter ranges shown in paragraph (a) of this section shall apply; and the fruit in each respective size shall, when place-packed in approved ⅘ bushel containers,[2] meet the respective pack arrangements and at point of origin meet the requirements of "Well filled" as set forth in paragraph (d) of this section.

(d) At point of origin all containers in which fruit is place-packed shall be "Well filled." [3]

(e) Not more than the number of fruits permitted in § 2851.761, Tables I and II, may fail to meet the diameter range requirements as specified in paragraph (a) or (c) of this section.

(f) In order to allow for variations incident to proper packing, not more than 5 percent of the containers, if "place-packed," or not more than 10 percent of the containers, if "volume-filled," in any lot may fail to meet the count or pack arrangements, or at point of origin the requirements of "Well filled." [3]

Definitions

§ 2851.763 Similar varietal characteristics.

"Similar varietal characteristics" means that the fruits in any container are similar in color and shape.

§ 2851.764 Well colored.

"Well colored" means that the fruit is yellow in color with practically no trace of green color.

§ 2851.765 Firm.

"Firm" means that the fruit is not soft, or noticeably wilted or flaby, and the skin is not spongy or puffy.

§ 2851.766 Well formed.

"Well formed" means that the fruit has the shape characteristic of the variety.

§ 2851.767 Mature.

"Mature" shall have the same meaning currently assigned that term in sections 601.16, 601.17, and 601.18 of the Florida Citrus Code of 1949, as amended (Chs. 28090 and 29760, Laws of Florida, 1953 and 1955), or as the definition of such term may hereafter be amended.

§ 2851.768 Smooth texture.

"Smooth texture" means that the skin is thin and smooth for the variety and size of the fruit.

§ 2851.769 Injury.

"Injury" means any specific defect described in § 2851.783, Table IV; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which

[2] Approved ⅘ bushel containers are those containers currently defined in section 20-39.03(1) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definition of such containers may hereafter be amended.

[3] "Well filled" shall have the same meaning currently assigned that term in section 20-39.11(2) of Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definition of such term may hereafter be amended.

slightly detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.770 Discoloration.

"Discoloration" means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by speck-type melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed in the grade.

§ 2851.771 Fairly well colored.

"Fairly well colored" means that, except for an aggregate area of green color which does not exceed the area of a circle 1 inch (25.4 mm) in diameter, the yellow or orange color predominates over the green color.

§ 2851.772 Fairly smooth texture.

"Fairly smooth texture" means that the skin is fairly thin and not coarse for the variety and size of the fruit.

§ 2851.773 Damage.

"Damage" means any specific defect described in § 2851.783, Table IV; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.774 Fairly firm.

"Fairly firm" means that the fruit may be slightly soft, but not bruised, and the skin is not spongy, or puffy.

§ 2851.775 Slightly misshapen.

"Slightly misshapen" means that the fruit has fairly good shape characteristic of the variety and is not more than slightly elongated or pointed or otherwise deformed.

§ 2851.776 Slightly rough texture.

"Slightly rough texture" means that the skin may be slightly thick but not excessively thick, materially ridged or grooved.

§ 2851.777 Serious damage.

"Serious damage" means any specific defect described in § 2851.783, Table IV; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.778 Slightly colored.

"Slightly colored" means that except for an aggregate area of green color which does not exceed the area of a circle 2 inches (50.8 mm) in diameter, the fruit surface shows some yellow color.

§ 2851.779 Misshapen.

"Misshapen" means that the fruit is decidedly elongated, pointed, or flatsided.

§ 2851.780 Slightly spongy.

"Slightly spongy" means that the fruit is puffy or slightly wilted but not flabby.

§ 2851.781 Very serious damage.

"Very serious damage" means any specific defect described in § 2851.783, Table IV; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which very seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.782 Diameter.

"Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end.

§ 2851.783 Classification of defects.

Table IV

Factor	Injury	Damage	Serious damage	Very serious damage
Ammoniation		Not occurring as light speck type	Scars are cracked or dark and aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface.
Buckskin		Aggregating more than a circle 1¼ inches (31.8 mm) in diameter	Aggregating more than 25 percent of the surface.	Aggregating more than 50 percent of the surface.
Caked melanose		Aggregating more than a circle ¾ inch (19.1 mm) in diameter	Aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface.
Dryness or mushy condition		Affecting all segments more than ¼ inch (6.4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ½ inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ¾ inch (19.1 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green Spots	More than slightly affecting appearance	More than 10 spots caused by scale, each spot equivalent to the area of a circle ⅛ inch (3.2 mm) in diameter	More than 25 spots caused by scale, each spot equivalent to the area of a circle ⅛ inch (3.2 mm) in diameter	
Hail	Not well healed, or aggregating more than a circle ⅜ inch (9.5 mm) in diameter.	Not well healed, or aggregating more than a circle ½ inch (12.7 mm) in diameter	Not well healed, or aggregating more than a circle ⅝ inch (15.9 mm) in diameter	Not well healed, or aggregating more than a circle 1 inch (25.4 mm) in diameter.
Oil Spots	More than slightly affecting appearance	More than 5 spots, or aggregating more than a circle ¾ inch (19.1 mm) in diameter.	More than 10 spots, or aggregating more than a circle 1 inch (25.4 mm) in diameter.	
Scab		Materially detracts from the shape or texture, or aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Seriously detracts from the shape or texture, or aggregating more than a circle ⅞ inch (22.2 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scale	More than a few adjacent to the "button" at the stem end, or more than 6 scattered on other portions of the fruit.	Blotch aggregating more than a circle ¾ inch (19.1 mm) in diameter, or occurring as a ring more than a circle 1¼ inches (31.8 mm) in diameter.	Blotch aggregating more than a circle 1 inch (25.4 mm) in diameter, or occurring as a ring more than a circle 1½ inches (38.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scars	Depressed, not smooth, or detracts from appearance more than the amount of discoloration permitted in the grade.	Very deep or very rough aggregating more than a circle ½ inch (12.7 mm) in diameter; deep or rough aggregating more than a circle 1 inch (25.4 mm) in diameter; slightly rough or of slight depth aggregating more than 10 percent of fruit surface.	Very deep or very rough aggregating more than a circle 1 inch (25.4 mm) in diameter; deep or rough aggregating more than 5 percent of fruit surface; slight depth or slightly rough aggregating more than 15 percent of fruit surface.	Very deep or very rough or unsightly that appearance is very seriously affected.

Table IV —Continued

Factor	Injury	Damage	Serious damage	Very serious damage
Skin breakdown		Aggregating more than a circle ⅜ inch (9.5 mm) in diameter.	Aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprayburn		Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Hard and aggregating more than a circle 1½ inches (38.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprouting		More than 6 seeds have green sprouts, or more than 1 green sprout is more than ¼ inch (6.4 mm) in length.	More than 6 seeds have green sprouts, or more than 1 green sprout is more than ½ inch (12.7 mm) in length.	More than 6 seeds have green sprouts, or more than 1 green sprout is more than ¾ inch (19.1 mm) in length.
Sunburn		Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface.	Skin is hard and affects more than one-third of the surface.	Aggregating more than 50 percent of the surface.
Thorn scratches	Not well healed, or more unsightly than discoloration permitted in the grade.	Not well healed, or hard concentrated thorn injury aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Not well healed, or hard concentrated thorn injury aggregating more than a circle ⅞ inch (22.2 mm) in diameter.	Aggregating more than 25 percent of the surface.

NOTE.—References to area or aggregate area, or length are based on a 36 size grapefruit.

Visual Aid

§ 2851.784 Visual Aid.

(a) USDA Visual Aid CIT-(FL)-L-1, consists of a booklet containing color reproductions of Florida grapefruit illustrating certain grade requirements, namely color, shape, varietal characteristics, discoloration, and other defects as set forth in these standards. This visual aid may be examined in the Fruit and Vegetable Quality Division, FSQS, U.S. Department of Agriculture, South Building, Washington, D.C. 20250; in any field office of the Fresh Fruit and Vegetable Inspection Service; or upon request of any authorized inspector of such service. Duplicates of this visual aid may be purchased from the John Henry Co., Post Office box 17099, Lansing, MI 48901.

Subpart—United States Standards for Grades of Florida Oranges and Tangelos [1]

General

§ 2851.1140 General.

The standards contained in this subpart apply only to the common or sweet orange group and varieties and hybrids of varieties belonging to the Mandarin group, except tangerines, and to the citrus fruit commonly known as "tangelo"—a hybrid between tangerine or mandarin orange (citrus reticulata) with either the grapefruit or pomelo (C. paradisi and C. grandis). Separate U.S. Standards apply to tangerines. The standards for internal quality contained in §§ 2851.1175 through 2851.1178 apply only to common sweet oranges (citrus sinensis (L) Osbeck).

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act, or with applicable State laws and regulations.

Grades

§ 2851.1141 U.S. Fancy.

"U.S. Fancy" consists of oranges which meet the following requirements:

(a) Basic requirements:

(1) Discoloration;

(i) Not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 2851.1161.)

(2) Firm;

(3) Mature;

(4) Similar varietal characteristics;

(5) Smooth texture;

(6) Well colored; and,

(7) Well formed.

(b) Free from:

(1) Ammoniation;

(2) Bruises;

(3) Buckskin;

(4) Caked melanose;

(5) Creasing;

(6) Cuts not healed;

(7) Decay;

(8) Growth cracks;

(9) Scab;

(10) Split navels;

(11) Sprayburn;

(12) Undeveloped segments; and,

(13) Wormy fruit.

(c) Free from injury caused by:

(1) Green spots;

(2) Oil spots;

(3) Rough, wide or protruding navels;

(4) Scale;

(5) Scars;

(6) Skin breakdown; and,

(7) Thorn scratches.

(d) Free from damage caused by:

(1) Dirt or other foreign material;

(2) Disease;

(3) Dryness on mushy condition;

(4) Hail;

(5) Insects;

(6) Riciness or woodiness;

(7) Sunburn; and,

(8) Other means.

(e) For tolerances see § 2851.1152.

(f) Internal quality:

(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1142 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration.

(a) For tolerances see § 2851.1152.

(b) Internal quality:

(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1143 U.S. No. 1.

"U.S. No. 1" consists of oranges which meet the following requirements:

(a) Basic requirements:

(1) Color;

(i) Early and midseason varieties shall be fairly well colored.

(ii) For Valencia and other late varieties, not less than 50 percent, by count, shall be fairly well colored and the remainder reasonably well colored.

(2) Discoloration:

(i) Not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 2851.1161.)

(3) Fairly smooth texture;

(4) Firm;

(5) Mature;

(6) Similar varietal characteristics; and,

(7) Well formed.

(b) Free from:

(1) Cuts not healed;

(2) Bruises;

(3) Decay;

(4) Growth cracks; and,

(5) Wormy fruit.

(c) Free from damage caused by:

(1) Ammoniation;

(2) Buckskin;

(3) Caked melanose;

(4) Creasing;

(5) Dirt or other foreign material;
(6) Disease;
(7) Dryness or mushy condition;
(8) Green spots;
(9) Hail;
(10) Insects;
(11) Oil spots;
(12) Riciness or woodiness;
(13) Scab;
(14) Scale;
(15) Scars;
(16) Skin breakdown;
(17) Split, rough or protruding navels;
(18) Sprayburn;
(19) Sunburn;
(20) Thorn scratches; and,
(21) Other means.
(d) For tolerances see § 2851.1152.
(e) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1144 U.S. No. 1 Golden.

The requirements for this grade are the same as for U.S. No. 1 except that not more than the number of fruits permitted in § 2851.1152, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.1152.
(b) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1145 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except that all fruit must show some discoloration. Not less than the number of fruits required in § 2851.1152, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by discoloration. The predominating discoloration on these fruits shall be of rust mite type.
(a) For tolerances see § 2851.1152.
(b) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1146 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except that not less than the number of fruits required in § 2851.1152, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by any type of discoloration.
(a) For tolerances see § 2851.1152.
(b) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1147 U.S. No. 2 Bright.

The requirements for this grade are the same as for U.S. No. 2 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.1152.
(b) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1148 U.S. No. 2.

"U.S. No. 2" consists of oranges which meet the following requirements:
(a) Basic requirements:
(1) Discoloration:
(i) Not more than one-half of the surface, in the aggregate, may be affected by discoloration. (See § 2851.1161.)
(2) Fairly firm;
(3) Mature;
(4) Reasonably well colored;
(5) Similar varietal characteristics;
(6) Not more than slightly misshapen; and,
(7) Not more than slightly rough texture.
(b) Free from:
(1) Bruises;
(2) Cuts not healed;
(3) Decay;
(4) Growth cracks; and,
(5) Wormy fruit.
(c) Free from serious damage caused by:
(1) Ammoniation;
(2) Buckskin;
(3) Caked melanose;
(4) Creasing;
(5) Dirt or other foreign material;
(6) Disease;
(7) Dryness or mushy condition;
(8) Green spots;
(9) Hail;
(10) Insects;
(11) Oil spots;
(12) Riciness or woodiness;
(13) Scab;
(14) Scale;
(15) Scars;
(16) Skin breakdown;
(17) Split, rough or protruding navels;
(18) Sprayburn;
(19) Sunburn;
(20) Thorn scratches; and,
(21) Other means.
(d) For tolerances see § 2851.1152.
(e) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1149 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that not less than the number of fruits required in § 2851.1152, Tables I and II, shall have more than one-half of their surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.1152.
(b) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1150 U.S. No. 3.

"U.S. No. 3" consists of oranges which meet the following requirements:
(a) Basic requirements:
(1) Mature;
(2) Misshapen;
(3) Poorly colored;
(i) Not more than 25 percent of the surface may be of a solid dark green color.
(4) Rough texture, not seriously lumpy;
(5) Similar varietal characteristics; and,
(6) Slightly spongy.
(b) Free from:
(1) Cuts not healed;
(2) Decay; and,
(3) Wormy fruit.
(c) Free from very serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Creasing;
(6) Disease;
(7) Dryness or mushy condition;
(8) Growth cracks;
(9) Hail;
(10) Insects;
(11) Riciness or woodiness;
(12) Scab;
(13) Scale;
(14) Scars;
(15) Skin breakdown;
(16) Split navels;
(17) Sprayburn;
(18) Sunburn; and,
(19) Other means.
(d) For tolerances see § 2851.1152.
(e) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

Unclassified

§ 2851.1151 Unclassified.

"Unclassified" consists of oranges or tangelos which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

Tolerances

§ 2851.1152 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, based on sample inspection, the number of defective or off-size specimens in the individual sample, and the number of defective or off-size specimens in the lot shall be within the limitations specified in Tables I and II.

Table I.—*Shipping Point [1] for 1 Through 40 Samples*

Factor	Grades	AL [2]	Number of 50-count samples [3] (Florida oranges, tangelos)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [4] (Maximum Permitted)																			
Decay	U.S. fancy																					
	U.S. No. 1	1	0	1	[5]1	1	2	[5]2	2	3	3	3	[5]3	3	4	4	[5]4	4	5	5	5	5
	U.S. No. 2																					
	U.S. No. 3	2	0	1	2	[5]2	2	[5]3	3	4	4	[5]4	5	5	[5]5	6	6	[5]6	6	7	7	[5]7
Wormy fruit	All	1	0	1	[5]1	1	2	[5]2	2	3	3	3	[5]3	3	4	4	[5]4	4	5	5	5	5
Very serious damage including decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1	6	4	6	9	11	14	16	18	20	22	24	26	28	30	33	35	37	39	41	43	45
	U.S. No. 2																					
Total defects including decay, wormy fruit, and very serious damage.	All	8	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Off-size		10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Discoloration	U.S. No. 1																					
	U.S. No. 1 bright																					
	U.S. No. 2	10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
	U.S. No. 2 bright																					
	U.S. No. 1 golden	22	18	34	49	64	80	93	109	122	138	151	166	180	194	208	222	237	251	265	279	293
			Acceptance Numbers [4] (Minimum Required)																			
	U.S. No. 1 bronze	11	15	32	51	69	88	106	125	144	162	182	201	220	240	259	278	297	317	336	355	374
	U.S. No. 1 russet																					
	U.S. No. 2 russet	1	3	8	12	18	23	29	34	40	45	51	56	62	68	74	79	85	91	97	102	108
			Acceptance Numbers [4] (Maximum Permitted)																			
Decay	U.S. fancy																					
	U.S. No. 1	1	[5]5	6	6	6	6	[5]6	6	7	7	7	7	[5]7	7	8	8	8	[5]8	8	9	9
	U.S. No. 2																					
	U.S. No. 3	2	8	8	[5]8	8	9	9	[5]9	9	10	10	[5]10	11	11	[5]11	11	12	12	[5]12	12	13
Wormy fruit	All	1	[5]5	6	6	6	6	[5]6	6	7	7	7	7	[5]7	7	8	8	8	[5]8	8	9	9
Very serious damage including decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1	6	47	49	51	53	54	56	58	60	62	64	66	68	70	72	74	76	78	80	81	83
	U.S. No. 2																					
Total defects including decay, wormy fruit, and very serious damage.	All	8	98	103	107	111	116	120	124	129	133	137	141	146	150	154	159	163	167	171	176	180
Off-size		10	98	103	107	111	116	120	124	129	133	137	141	146	150	154	159	163	167	171	176	180
Discoloration	U.S. No. 1																					
	U.S. No. 1 bright																					
	U.S. No. 2	10	98	103	107	111	116	120	124	129	133	137	141	146	150	154	159	163	167	171	176	180
	U.S. No. 2 bright																					
	U.S. No. 1 golden	22	307	321	335	349	363	377	391	405	419	433	447	461	475	489	503	517	531	545	559	573

Table I.—*Shipping Point* [1] *for 1 Through 40 Samples*—Continued

Factor	Grades	AL [2]	Number of 50-count samples [3] (Florida oranges, tangelos)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [4] (Minimum Required)																			
	U.S. No. 1 bronze																					
	U.S. No. 1 russet	11	394	413	433	452	471	491	510	530	549	569	588	608	627	647	666	686	705	725	744	764
	U.S. No. 2 russet	1	114	119	125	131	137	143	149	155	161	166	172	178	184	190	196	202	208	214	220	226

[1] Shipping point, as used in these standards, means the point of origin of the shipment in the production area or at port of loading for ship stores or overseas shipments, or in the case of shipments from outside the continental United States, the port of entry into the United States.
[2] AL—Absolute limit permitted in individual 50-count sample.
[3] Sample size—50 count.
[4] Acceptance number—Maximum or minimum number of defective or off-size fruit permitted.
[5] Preferred number of samples for this acceptance number.

Table II.—*En Route or at Destination*

Factor	Grades	AL [1]	Number of 50-count samples [2] (Florida oranges, tangelos)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [3] (Maximum Permitted)																			
Decay	All	4	3	4	6	7	9	10	11	13	14	15	16	18	19	20	21	23	24	25	26	27
Wormy fruit	All	1	0	1	[4]1	1	2	[4]2	2	3	3	3	[4]3	3	4	4	[4]4	4	5	5	5	5
Very serious damage other than decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1	6	4	6	9	11	14	16	18	20	22	24	26	28	30	33	35	37	39	41	43	45
	U.S. No. 2																					
Total defects including very serious damage other than decay and wormy fruit.	All	8	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Off-size		10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Discoloration	U.S. No. 1																					
	U.S. No. 1 bright																					
	U.S. No. 2	10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
	U.S. No. 2 bright																					
	U.S. No. 1 golden	22	18	34	49	64	80	93	109	122	138	151	166	180	194	208	222	237	251	265	279	293
			Acceptance Numbers [3] (Minimum Required)																			
	U.S. No. 1 bronze	11	15	32	51	69	88	106	125	144	162	182	201	220	240	259	278	297	317	336	355	374
	U.S. No. 1 russet																					
	U.S. No. 2 russet	1	3	8	12	18	23	29	34	40	45	51	56	62	68	74	79	85	91	97	102	108

[1] AL—Absolute limit permitted in individual 50-count sample.
[2] Sample size—50 count.
[3] Acceptance number—Maximum or minimum number of defective or off-size fruit permitted.
[4] Preferred total number of samples for this acceptance number.

Size and Pack

§ 2851.1153 Size and pack.

(a) When oranges, including Temples, Navels and Tangelos, are place-packed in approved ⅘ bushel containers,[2] except container No. 4016,[3] the size, count, pack and diameter range of the fruit shall be as follows:

Table III

Size	Pack	Rows	Layers	Count	Diameter range in inches	
					Oranges	Tangelos
36	4 x 4	3	3	36	9/16	9/16
48	3 x 3	4	4	48	7/16	9/16
56	4 x 3	4	4	56	7/16	8/16
64	4 x 4	4	4	64	6/16	7/16
80	5 x 5	4	4	80	6/16	6/16
	or 4 x 4	4	5	80	6/16	6/16
100	5 x 5	4	5	100	5/16	5/16
	or 4 x 4	5	5	100	5/16	5/16
125	5 x 5	5	5	125	5/16	5/16
163	7 x 6	5	5	163	4/16	5/16
	or 5 x 4	6	6	162	4/16	5/16

(b) When Temple oranges, Tangelos and K-Early citrus fruit are place-packed in container No. 4016,[3] the size, count, pack and diameter range of the fruit shall be as follows:

[2] Approved ⅘ bushel containers are those containers currently defined in section 20–39.03(1) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definitions of such containers may hereafter be amended.

[3] Container No. 4016 shall have the same meaning as currently assigned that term in section 20–39.03(b) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definition of such containers may be hereafter amended.

Table IV

Size and count	Pack	Rows	Layers	Diameter range in inches	
				Oranges	Tangelos
54	4 x 5	4	3	7/16	9/16
66	6 x 5	4	3	9/16	7/16
80	4 x 4	5	4	9/16	9/16
100	5 x 5	5	4	9/16	9/16
120	5 x 5	6	4	9/16	9/16
156	7 x 6	6	4	9/16	9/16

(c) When oranges, including Temples, Navels and Tangelos, are not place-packed, the sizes and respective diameter ranges shown in paragraph (a) or (b) of this section shall apply; and the fruit in each respective size shall, when place-packed in approved 4/5 bushel containers,[2] meet the respective pack arrangements, and at point of origin meet the requirements of "Well filled" [4] as set forth in paragraph (d) of this section.

(d) At point of origin all containers in which fruit is place-packed shall be "Well filled." [4]

(e) Not more than the number of fruits permitted in § 2851.1152, Tables I and II, may fail to meet the diameter range requirements as specified in paragraph (a), (b), or (c) of this section.

(f) In order to allow for variations incident to proper packing, not more than 5 percent of the containers, if "place-packed," or not more than 10 percent of the containers, if "volume-filled," in any lot may fail to meet the count or pack arrangements, or at point of origin the requirements of "Well filled." [4]

Definitions

§ 2851.1154 Similar varietal characteristics.

"Similar varietal characteristics" means that the fruits in any container are similar in color and shape.

§ 2851.1155 Well colored.

"Well colored" means that the fruit is yellow or orange in color with practically no trace of green color.

§ 2851.1156 Firm.

"Firm" as applied to common oranges and tangelos means that the fruit is not soft, or noticeably wilted or flabby; as applied to oranges of the Mandarin group (Satsumas, King, Mandarin), "firm" means that the fruit is not extremely puffy, although the skin may be slightly loose.

[4] "Well filled" shall have the same meaning currently assigned that term in section 20-39.11(2) of the Official Rules Affecting The Florida Citrus Industry; Pursuant to Chapter 601, Florida Statutes, or as the definition of such term may hereafter be amended.

§ 2851.1157 Well formed.

"Well formed" means that the fruit has the shape characteristic of the variety.

§ 2851.1158 Mature.

(a) "Mature" for other than Temple oranges shall have the same meaning currently assigned that term in sections 601.19 and 601.20 of the Florida Citrus Code of 1949, as amended (ch. 25149, Laws of Florida, 1949), or as the definition of such term may hereafter be amended;

(b) "Mature" for Temple oranges shall have the same meaning currently assigned that term in sections 601.21 and 601.22 of the Florida Citrus Code of 1949, as amended (ch. 26492, Laws of Florida, 1951), or as the definition of such term may hereafter be amended; and,

(c) "Mature" for Tangelos shall have the same meaning currently assigned that term in sections 601.231 and 601.232 of the Florida Citrus Code of 1949, as amended (ch. 29757, Laws of Florida, 1955), or as the definition of such term may hereafter be amended.

§ 2851.1159 Smooth texture.

"Smooth texture" means that the skin is thin and smooth for the variety and size of the fruit.

§ 2851.1160 Injury.

"Injury" means any specific defect described in § 2851.1174, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects which slightly detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.1161 Discoloration.

"Discoloration" means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by speck type melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed for the grade.

§ 2851.1162 Fairly smooth texture.

"Fairly smooth texture" means that the skin is fairly thin and not coarse for the variety and size of the fruit.

§ 2851.1163 Damage.

"Damage" means any specific defect described in § 2851.1174, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.1164 Fairly well colored.

"Fairly well colored" means that except for an aggregate area of green color which does not exceed the area of a circle 1 inch (25.4 mm) in diameter, the yellow or orange color predominates over the green color.

§ 2851.1165 Reasonably well colored.

"Reasonably well colored" means that the yellow or orange color predominates over the green color on at least two-thirds of the fruit surface, in the aggregate.

§ 2851.1166 Fairly firm.

"Fairly firm" as applied to common oranges and tangelos, means that the fruit may be slightly soft, but not bruised; as applied to oranges of the Mandarin group (Satsumas, King, Mandarin), means that the skin of the fruit is not extremely puffy or extremely loose.

§ 2851.1167 Slightly misshapen.

"Slightly misshapen" means that the fruit is not of the shape characteristic of the variety but is not appreciably elongated or pointed or otherwise deformed.

§ 2851.1168 Slightly rough texture.

"Slightly rough texture" means that the skin is not of smooth texture but is not materially ridged, grooved, or wrinkled.

§ 2851.1169 Serious damage.

"Serious damage" means any specific defect described in § 2851.1174, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.1170 Misshapen.

"Misshapen" means that the fruit is decidely elongated, pointed or flatsided.

§ 2851.1171 Slightly spongy.

"Slightly spongy" means that the fruit is puffy or slightly wilted but not flabby.

§ 2851.1172 Very serious damage.

"Very serious damage" means any specific defect described in § 2851.1174, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which very seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.1173 Diameter.

"Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end.

§ 2851.1174 Classification of defects.

Table V

Factor	Injury	Damage	Serious damage	Very serious damage
Ammoniation		Not occurring as light speck type	Scars are cracked or dark and aggregating more than a circle ¾ inch (19 1 MM) in diameter	Aggregating more than 25 percent of the surface.
Buckskin		Aggregating more than a circle 1 inch (25 4 mm) in diameter	Aggregating more than 25 percent of the surface.	Aggregating more than 50 percent of the surface.
Caked melanose		Aggregating more than a circle ⅝ inch (15.9 mm) in diameter	Aggregating more than a circle ¾ inch (19 1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Creasing		Materially weakens the skin, or extends over more than one-third of the surface.	Seriously weakens the skin, or extends over more than one-half of the surface.	Very seriously weakens the skin, or is distributed over practically the entire surface.
Dryness or mushy condition		Affecting all segments more than ¼ inch (6 4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ½ inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ¾ inch (19.1 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green spots	More than slightly affecting appearance	More than 10 spots caused by scale, each spot equivalent to the area of a circle ⅛ inch (3 2 mm) in diameter.	More than 25 spots caused by scale, each spot equivalent to the area of a circle ⅛ inch (3 2 mm) in diameter	
Hail	Not well healed, or aggregating more than a circle ¼ inch (6 4 mm) in diameter	Not well healed, or aggregating more than a circle ⅜ inch (9 5 mm) in diameter	Not well healed, or aggregating more than a circle ½ inch (12.7 mm) in diameter.	Not well healed, or aggregating more than a circle ¾ inch (19.1 mm) in diameter.
Oil spots	More than slightly affecting appearance	More than 5 spots, or aggregating more than a circle ¾ inch (19 1 mm) in diameter	More than 10 spots, or aggregating more than a circle 1 inch (25 4 mm) in diameter	
Scab		Materially detracts from the shape or texture, or aggregating more than a circle ⅝ inch (15 9 mm) in diameter	Seriously detracts from the shape or texture, or aggregating more than a circle ¾ inch (19 1 mm) in diameter	Aggregating more than 25 percent of the surface.
Scale	More than a few adjacent to the "button" at the stem end, or more than 6 scattered on other portions of the fruit.	Aggregating more than a circle ⅝ inch (15.9 mm) in diameter	Aggregating more than a circle ¾ inch (19 1 mm) in diameter	Aggregating more than 25 percent of the surface.
Scars	Depressed, not smooth, or detracts from appearance more than the amount of discoloration permitted in the grade	Deep or rough aggregating more than a circle ¼ inch (6 4 mm) in diameter, slightly rough with slight depth aggregating more than a circle ⅞ inch (22.2 mm) in diameter, smooth or fairly smooth with slight depth aggregating more than a circle 1¼ inches (31 8 mm) in diameter.	Deep or rough aggregating more than a circle ½ inch (12 7 mm) in diameter; slightly rough with slight depth aggregating more than a circle 1¼ inches (31 8 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than 10% of fruit surface	Deep or rough or unsightly that appearance is very seriously affected.
Skin breakdown		Aggregating more than a circle ¼ inch (6 4 mm) in diameter	Aggregating more than a circle ⅝ inch (15 9 mm) in diameter	Aggregating more than 25 percent of the surface.
Sprayburn		Aggregating more than a circle ⅝ inch (15 9 mm) in diameter	Hard and aggregating more than a circle 1½ inches (38 1 mm) in diameter	Aggregating more than 25 percent of the surface.
Sunburn		Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface	Skin is hard and affects more than one-third of the surface.	Aggregating more than 50 percent of the surface.
Split, rough, protruding navels	Split is unhealed, or more than ⅛ inch (3.2 mm) in length, or navel protrudes beyond the general contour, and opening is so wide, folded and ridged that it detracts from appearance	Split is unhealed, or more than ¼ inch (6 4 mm) in length, or more than three well healed splits, or navel protrudes beyond the general contour, and opening is so wide, folded and ridged that it detracts from appearance.	Split is unhealed, or more than ½ inch (12.7 mm) in length, or two or more splits aggregate more than 1 inch (25 4 mm) in length, or navel protrudes beyond the general contour, and opening is so wide, folded and ridged that it detracts from appearance.	Split is unhealed or fruit is seriously weakened.
Thorn scratches	Not well healed, or more unsightly than discoloration permitted in the grade	Not well healed, or hard concentrated thorn injury aggregating more than a circle ⅝ inch (15 9 mm) in diameter	Not well healed, or hard concentrated thorn injury aggregating more than a circle ¾ inch (19 1 mm) in diameter	Aggregating more than 25 percent of the surface.

NOTE.—References to area or aggregate area, or length are based on a 100 size orange or tangelo

Standards For Internal Quality of Common Sweet Oranges (Citrus Sinensis (L) Osbeck)

§ 2851.1175 U.S. Grade AA Juice (Double A).

Any lot of oranges, the juice content of which meets the following requirements, may be designated "U.S. Grade AA Juice (Double A)":

(a) Each lot of fruit shall contain an average of not less than 5 gallons (18.9 liters) of juice per standard packed box of 1⅗ bushels.

(b) The average juice content for any lot of fruit shall have not less than 10 percent total soluble solids, and not less than one-half of 1 percent anhydrous citric acid, or more than the permissible maximum acid specified in Table VI of § 2851.1177.

§ 2851.1176 U.S. Grade A Juice.

Any lot of oranges, the juice content

of which meets the following requirements, may be designated "U.S. Grade A Juice":

(a) Each lot of fruit shall contain an average of not less than 4½ gallons (17.0 liters) of juice per standard packed box of 1⅗ bushels.

(b) The average juice content for any lot of fruit shall have not less than 9 percent total soluble solids, and not less than one-half of 1 percent anhydrous citric acid, or more than the permissible maximum acid specified in Table VI of § 2851.1177.

§ 2851.1177 Maximum anhydrous citric acid permissible for corresponding total soluble solids.

For determining the grade of juice, the maximum permissible anhydrous citric acid content in relation to corresponding total soluble solids in the fruit is set forth in the following Table VI together with the minimum ratio of total soluble solids to anhydrous citric acid:

Table VI

Total soluble solids (average pct)	Maximum anhydrous citric acid (average pct)	Minimum ratio of total soluble solids to anhydrous citric acid
9.0	0.947	9.50-1
9.1	.963	9.45-1
9.2	.979	9.40-1
9.3	.995	9.35-1
9.4	1.011	9.30-1
9.5	1.027	9.25-1
9.6	1.043	9.20-1
9.7	1.060	9.15-1
9.8	1.077	9.10-1
9.9	1.094	9.05-1
10.0	1.111	9.00-1
10.1	1.128	8.95-1
10.2	1.146	8.90-1
10.3	1.164	8.85-1
10.4	1.182	8.80-1
10.5	1.200	8.75-1
10.6	1.218	8.70-1
10.7	1.237	8.65-1
10.8	1.256	8.60-1
10.9	1.275	8.55-1
11.0	1.294	8.50-1
11.1	1.306	8.50-1
11.2	1.318	8.50-1
11.3	1.329	8.50-1
11.4	1.341	8.50-1
11.5	1.353	8.50-1
11.6	1.365	8.50-1
11.7	1.376	8.50-1
11.8	1.388	8.50-1
11.9	1.400	8.50-1
12.0	1.412	8.50-1
12.1	1.424	8.50-1
12.2	1.435	8.50-1
12.3	1.447	8.50-1
12.4	1.459	8.50-1
12.5	1.471	8.50-1
12.6	1.482	8.50-1
12.7	1.494	8.50-1
12.8	1.506	8.50-1
12.9	1.517	8.50-1
13.0	1.530	8.50-1
13.1	1.541	8.50-1
13.2	1.553	8.50-1
13.3	1.565	8.50-1
13.4	1.576	8.50-1
13.5	1.588	8.50-1
13.6	1.600	8.50-1
13.7	1.612	8.50-1
13.8	1.624	8.50-1
13.9	1.635	8.50-1
14.0	1.647	8.50-1
14.1	1.659	8.50-1
14.2	1.671	8.50-1
14.3	1.682	8.50-1
14.4	1.694	8.50-1
14.5	1.705	8.50-1
14.6	1.718	8.50-1
14.7	1.729	8.50-1
14.8	1.741	8.50-1
14.9	1.753	8.50-1
15.0	1.765	8.50-1
15.1	1.776	8.50-1
15.2	1.788	8.50-1
15.3	1.800	8.50-1
15.4	1.812	8.50-1
15.5	1.824	8.50-1
15.6 or more		8.50-1

§ 2851.1178 Method of juice extraction.

The juice used in the determining of solids, acids and juice content shall be extracted from representative samples as thoroughly as possible with a hand reamer or by such mechanical extractor or extractors as may be approved. The juice shall be strained through cheese cloth or other approved straining device of extra fine mesh to prevent passage of juice cells, pulp, or seeds.

Visual Aid

§ 2851.1179 Visual Aid.

(a) USDA Visual Aid CIT-(FL)-L-1, consists of a booklet containing color reproductions of Florida oranges and tangelos illustrating certain grade requirements, namely color, texture, varietal characteristics, shape, discoloration, and other defects as set forth in these standards. This visual aid may be examined in the Fruit and Vegetable Quality Division, FSQS, U.S. Department of Agriculture, South Building, Washington, D.C. 20250; in any field office of the Fresh Fruit and Vegetable Inspection Service; or upon request of any authorized inspector of such service. Duplicates of this visual aid may be purchased from the John Henry Co., Post Office Box 17099, Lansing, MI 48901.

Subpart—United States Standards for Grades of Florida Tangerines[1]

Grades

§ 2851.1810 U.S. Fancy.

"U.S. Fancy" consists of tangerines which meet the following requirements:

(a) Basic requirements: (1) Discoloration; (i) Not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 2851.1825.) (2) Firm; (3) Highly colored; (4) Mature; and, (5) Well formed.

(b) Free from: (1) Bruises; (2) Caked melanose; (3) Decay; (4) Unhealed skin-breaks; and, (5) Wormy fruit.

(c) Free from damage caused by: (1) Ammoniation; (2) Buckskin; (3) Creasing; (4) Dirt or other foreign material; (5) Dryness or mushy condition; (6) Disease; (7) Green spots; (8) Hail; (9) Insects; (10) Oil spots; (11) Scab; (12) Scale; (13) Scars; (14) Skin breakdown; (15) Sprayburn; (16) Sunburn; (17) Unsightly discoloration; and, (18) Other means.

(d) For tolerances see § 2851.1818.

§ 2851.1811 U.S. No. 1.

"U.S. No. 1" consists of tangerines which meet the following requirements:

(a) Basic requirements: (1) Discoloration; (i) Not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 2851.1825.) (2) Fairly well colored; (3) Firm; (4) Mature; and, (5) Well formed.

(b) Free from: (1) Bruises; (2) Decay; (3) Unhealed skin-breaks; and, (4) Wormy fruit.

(c) Free from damage caused by: (1) Ammoniation; (2) Buckskin; (3) Caked melanose; (4) Creasing; (5) Dirt or other foreign material; (6) Disease; (7) Dryness or mushy condition; (8) Green spots; (9) Hail; (10) Insects; (11) Oil spots; (12) Scab; (13) Scale; (14) Scars; (15) Skin breakdown; (16) Sprayburn; (17) Sunburn; (18) Unsightly discoloration; and, (19) Other means.

(d) For tolerances see § 2851.1818.

§ 2851.1812 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except that all fruit must show some discoloration. Not less than the number of fruits required in

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act, or with applicable State laws and regulations.

§ 2851.1818, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by discoloration. The predominating discoloration on these fruits shall be of rust mite type.

(a) For tolerances see § 2851.1818.

§ 2851.1813 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except that not less than the number of fruits required in § 2851.1818, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by any type of discoloration.

(a) For tolerances see §2851.1818.

§ 2851.1814 U.S. No. 2.

"U.S. No. 2" consists of tangerines which meet the following requirements:

(a) Basic requirements: (1) Discoloration; (i) Not more than one-half of the surface, in the aggregate, may be affected by discoloration. (See § 2851.1825.)(2) Fairly firm; (3) Fairly well formed; (4) Mature; and, (5) Reasonably well colored.

(b) Free from; (1) Bruises; (2) Decay; (3) Unhealed skin-breaks; and, (4) Wormy fruit.

(c) Free from serious damage caused by:(1) Ammoniation; (2) Buckskin; (3) Caked melanose; (4) Creasing; (5) Dirt or other foreign material; (6) Disease; (7) Dryness or mushy condition; (8) Green spots; (9) Hail; (10) Insects; (11) Oil spots; (12) Scab; (13) Scale; (14) Scars; (15) Skin breakdown; (16) Sprayburn; (17) Sunburn; (18) Unsightly discoloration; and, (19) Other means.

(d) For tolerances see § 2851.1818.

§ 2851.1815 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that not less than the number of fruits required in § 2851.1818, Tables I and II, shall have more than one-half of their surface, in the aggregate, affected by discoloration.

(a) For tolerances see § 2851.1818.

§ 2851.1816 U.S. No. 3

"U.S. No. 3" consists of tangerines which meet the following requirements:(a) Basic requirements:(1) Mature; (2) Not flabby; and, (3) Not seriously lumpy.

(b) Free from:(1) Decay; (2) Unhealed skin-breaks; and, (3) Wormy fruit.

(c) Free from very serious damage caused by:(1) Ammoniation; (2) Bruises; (3) Caked melanose; (4) Creasing; (5) Dirt or other foreign material; (6) Disease; (7) Dryness or mushy condition; (8) Hail; (9) Insects; (10) Scab; (11) Scale; (12) Scars; (13) Skin breakdown; (14) Sprayburn; (15) Sunburn; (16) Unsightly discoloration; and, (17) other means.

(d) For tolerances see § 2851.1818.

Unclassified

§ 2851.1817 Unclassified.

"Unclassified" consists of tangerines which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

Tolerances

§ 2851.1818 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, based on sample inspection, the number of defective or off-size specimens in the individual sample, and the number of defective or off-size specimens in the lot, shall be within the limitations specified in Tables I and II.

Table I.—*Shipping Point [1] for 1 Through 40 Samples*

Factor	Grades	AL [2]	Number of 50-count samples [3] (Florida tangerines)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [4] (Maximum Permitted)																			
Decay	U.S. fancy																					
	U.S. No. 1	1	0	1	[5]1	1	2	[5]2	2	3	3	3	[5]3	3	4	4	[5]4	4	5	5	5	5
	U S No. 2																					
	U.S. No. 3	2	0	1	2	[5]2	2	[5]3	3	4	4	[5]4	5	5	[5]5	6	6	[5]6	6	7	7	[5]7
Wormy fruit	All	1	0	1	[5]1	1	2	[5]2	2	3	3	3	[5]3	3	4	4	[5]4	4	5	5	5	5
Very serious damage including decay and wormy fruit.	U.S. fancy																					
	U.S. No 1	6	4	6	9	11	14	16	18	20	22	24	26	28	30	33	35	37	39	41	43	45
	U.S No. 2																					
Total defects including decay, wormy fruit, and very serious damage.	All	8	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Off-size		10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Discoloration	U.S. fancy																					
	U.S. No. 1																					
	U.S. No. 2	10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
	Serious damage by unsightly discoloration.	2	1	2	2	[5]3	4	[5]4	5	[5]5	6	[5]6	7	[5]7	8	[5]8	8	[5]9	9	10	[5]10	11
			Acceptance Numbers [4] (Minimum Required)																			
	U.S. No. 1 bronze	11	15	32	51	69	88	106	125	144	162	182	201	220	240	259	278	297	317	336	355	374
	U.S. No. 1 russet																					
	U.S. No. 2 russet	1	3	8	12	18	23	29	34	40	45	51	56	62	68	74	79	85	91	97	102	108
			Acceptance Numbers [4] (Maximum Permitted)																			
Decay	U.S. fancy																					
	U.S. No. 1	1	[5]5	6	6	6	6	[5]6	6	7	7	7	7	[5]7	7	8	8	8	[5]8	8	9	9
	U.S. No. 2																					
	U.S. No. 3	2	8	8	[5]8	8	9	9	[5]9	9	10	10	[5]10	11	11	[5]11	11	12	12	[5]12	12	13
Wormy fruit	All	1	[5]5	6	6	6	6	[5]6	6	7	7	7	7	[5]7	7	8	8	8	[5]8	8	9	9

Table I.—*Shipping Point* [1] *for 1 Through 40 Samples*—Continued

Factor	Grades	AL [2]	Number of 50-count samples [3] (Florida tangerines)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [4] (Maximum Permitted)																			
Very serious damage including decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1	6	47	49	51	53	54	56	58	60	62	64	66	68	70	72	74	76	78	80	81	83
	U.S. No. 2																					
Total defects including decay, wormy fruit, and very serious damage.	All	8	98	103	107	111	116	120	124	129	133	137	141	146	150	154	159	163	167	171	176	180
Off-size		10	98	103	107	111	116	120	124	129	133	137	141	146	150	154	159	163	167	171	176	180
Discoloration	U.S. fancy																					
	U.S. No. 1																					
	U.S. No. 2	10	98	103	107	111	116	120	124	129	133	137	141	146	150	154	159	163	167	171	176	180
	Serious damage by unsightly discoloration.	2	[5] 11	12	[5] 12	12	13	[5] 13	14	[5] 14	15	15	[5] 15	16	[5] 16	17	17	[5] 17	18	[5] 18	19	19
			Acceptance Numbers [4] (Minimum Required)																			
	U.S. No. 1 bronze	11	394	413	433	452	471	491	510	530	549	569	588	608	627	647	666	686	705	725	744	764
	U.S. No. 1 russet																					
	U.S. No. 2 russet	1	114	119	125	131	137	143	149	155	161	166	172	178	184	190	196	202	208	214	220	226

[1] Shipping point, as used in these standards, means the point of origin of the shipment in the production area or at port of loading for ship stores or overseas shipments, or in the case of shipments from outside the continental United States, the port of entry into the United States.
[2] AL—Absolute limit permitted in individual 50-count sample.
[3] Sample size—50 count.
[4] Acceptance number—Maximum or minimum number of defective or off-size fruit permitted.
[5] Preferred number of samples for this acceptance number.

Table II.—*En Route or at Destination*

Factor	Grades	AL [1]	Number of 50-count samples [2] (Florida tangerines)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [3] (Maximum Permitted)																			
Decay	All	4	3	4	6	7	9	10	11	13	14	15	16	18	19	20	21	23	24	25	26	27
Wormy fruit	All	1	0	1	[4] 1	1	2	[4] 2	2	3	3	3	[4] 3	3	4	4	[4] 4	4	5	5	5	5
Very serious damage other than decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1	6	4	6	9	11	14	16	18	20	22	24	26	28	30	33	35	37	39	41	43	45
	U.S. No. 2																					
Total defects including very serious damage other than decay and wormy fruit.	All	8	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Off-size		10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Discoloration	U.S. fancy																					
	U.S. No. 1																					
	U.S. No. 2	10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
	Serious damage by unsightly discoloration.	2	1	2	2	3	4	[4] 4	5	[4] 5	6	[4] 6	7	[4] 7	8	[4] 8	8	[4] 9	9	10	[4] 10	11
			Acceptance Numbers [3] (Minimum Required)																			
	U.S. No. 1 bronze	11	15	32	51	69	88	106	125	144	162	182	201	220	240	259	278	297	317	336	355	374
	U.S. No. 1 russet																					
	U.S. No. 2 russet	1	3	8	12	18	23	29	34	40	45	51	56	62	68	74	79	85	91	97	102	108

[1] AL—Absolute limit permitted in individual 50-count sample.
[2] Sample size—50 count.
[3] Acceptance number—Maximum or minimum number of defective or off-size fruit permitted.
[4] Preferred total number of samples for this acceptance number.

Size and Pack

§ 2851.1819 Size and pack.

(a) When tangerines, including Murcott Honey Tangerines, are place-packed in approved 4/5 bushel containers,[2] except container No. 4016,[3] the size, pack, count and diameter range shall be as follows:

Table III

Size	Pack	Rows	Layers	Count	Diameter range in inches
64	4 x 4	4	4	64	[illegible]
80	5 x 5	4	4	80	[illegible]
80	4 x 4	4	5	80	[illegible]
100	5 x 5	4	5	100	[illegible]
120	4 x 4	5	6	120	[illegible]
150	5 x 5	5	6	150	[illegible]
176	6 x 6	5	6	180	[illegible]
210	5 x 5	6	7	210	[illegible]
246	6 x 6	6	7	252	[illegible]
294	7 x 7	6	7	294	[illegible]

(b) When tangerines, including Murcott Honey Tangerines, are place-packed in container No. 4016,[3] the size, count, pack and diameter range shall be as follows:

Table IV

Size	Pack	Rows	Layers	Count	Diameter range in inches
66	6 x 5	4	3	66	[illegible]
80	4 x 4	4	5	80	[illegible]
100	4 x 4	5	5	100	[illegible]
	or 5 x 5	5	4	100	[illegible]
120	6 x 6	5	4	120	[illegible]
150	5 x 5	6	5	150	[illegible]
176	6 x 6	5	6	180	[illegible]
210	6 x 6	7	5	210	[illegible]
246	6 x 6	6	7	252	[illegible]

(c) When tangerines, including Murcott Honey Tangerines, are not place-packed, the sizes and respective diameter ranges shown in paragraph (a) or (b) of this section shall apply; and the fruit in each respective size shall, when place-packed in approve 4/5 bushel containers,[2] meet the respective pack arrangements, and at point of origin meet the requirements of "Well filled" [4] as set forth in paragraph (d) of this section.

(d) At point of origin all containers in which fruit is place-packed shall be "Well filled".[4]

(e) Not more than the number of fruits permitted in § 2851.1818, Tables I and II, may fail to meet the diameter range requirements as specified in paragraph (a), (b), or (c) of this section.

(f) In order to allow for variations incident to proper packing, not more than 5 percent of the containers, if "place-packed," or not more than 10 percent of the containers, if "volume-filled," in any lot may fail to meet the count or pack arrangements, or at point of origin the requirements of "Well filled".[4]

Definitions

§ 2851.1820 Mature.

"Mature" shall have the same meaning currently assigned that term in sections 601.21 and 601.22 of the Florida Citrus Code of 1949, as amended (ch. 26492, Laws of Florida, 1951), or as the definition of such term may hereafter be amended.

§ 2851.1821 Firm.

"Firm" means that the flesh is not soft and the fruit is not badly puffy and that the skin has not become materially separated from the flesh of the tangerine.

§ 2851.1822 Well formed.

"Well formed" means that the fruit has the characteristic tangerine shape and is not deformed.

§ 2851.1823 Damage.

"Damage" means any specific defect described in § 2851.1834, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.1824 Highly colored.

"Highly colored" means that the ground color of each fruit is a deep tangerine color with practically no trace of yellow color.

§ 2851.1825 Discoloration.

"Discoloration" means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by speck type melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed in the grade.

§ 2851.1826 Well colored.

"Well colored" means that a good yellow or better ground color predominates over the green color on the entire fruit surface with no distinct green color present, and that some portion of the surface has a reddish tangerine blush.

§ 2851.1827 Fairly well colored.

"Fairly well colored" means that the surface of the fruit may have green color which does not exceed the aggregate area of a circle 1¼ inches (31.8 mm) in diameter and that the remainder of the surface has a yellow or better ground color with some portion of the surface showing reddish tangerine blush.

§ 2851.1828 Fairly firm.

"Fairly firm" means that the flesh may be slightly soft but is not bruised or badly puffy, and that the skin has not become seriously separated from the flesh of the tangerine.

§ 2851.1829 Fairly well formed.

"Fairly well formed" means that the fruit may not have the shape characteristic of the variety but that it is not badly deformed.

§ 2851.1830 Serious damage.

"Serious damage" means any specific defect described in § 2851.1834, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

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[2] Approved 4/5 bushel containers are those containers currently defined in section 20–39.03. (1) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definitions of such containers may hereafter be amended.

[3] Container No. 4016 shall have the same meaning as currently assigned that term in section 20–39.03(b) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definition of such container may be hereafter amended.

[4] "Well filled" shall have the same meaning currently assigned that term in section 20–39.11(2) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definition of such term may hereafter be amended.

§ 2851.1831 Reasonably well colored.

"Reasonably well colored" means that a good yellow or reddish tangerine color shall predominate over the green color on at least one-half of the fruit surface in the aggretate, and that each fruit shall show practically no lemon color.

§ 2851.1832 Very serious damage.

"Very serious damage" means any specific defect described in § 2851.1834, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which very seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.1833 Diameter.

"Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end.

§ 2851.1834 Classification of defects.

Table V

Factor	Damage	Serious damage	Very serious damage
Ammoniation	Not occurring as light speck type, or detracts more than discoloration permitted in the grade.	Scars are cracked or dark and aggregating more than ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Buckskin	Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface	Aggregating more than 50 percent of the surface.
Caked melanose	Aggregating more than a circle ⅜ inch (9.5 mm) in diameter.	Aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Creasing	Materially weakens the skin, or extends over more than one-third of the surface.	Seriously weakens the skin, or extends over more than one-half of the surface.	Very seriously weakens the skin, or is distributed over practically the entire surface.
Dryness or mushy condition	Affecting all segments more than ⅛ inch (3.2 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ¼ inch (6.4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ½ inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green spots	More than 10 spots caused by scale, each spot equivalent to the area of a circle ⅛ inch (3.2 mm) in diameter.	More than 25 spots caused by scale, each spot equivalent to the area of a circle ⅛ inch (3.2 mm) in diameter.	
Hail	Not well healed, or aggregating more than a circle ¼ inch (6.4 mm) in diameter.	Not well healed, or aggregating more than a circle ¾ inch (9.5 mm) in diameter.	Not well healed, or aggregating more than a circle ⅝ inch (15.9 mm) in diameter.
Oil spots	More than 5 spots, or aggregating more than a circle ½ inch (12.7 mm) in diameter.	More than 10 spots, or aggregating more than a circle ¾ inch (19.1 mm) in diameter.	
Scab	Materially detracts from the shape or texture, or aggregating more than a circle ⅜ inch (9.5 mm) in diameter.	Seriously detracts from the shape or texture, or aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scale	Aggregating more than a circle ⅜ inch (9.5 mm) in diameter.	Aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scars	Deep or rough aggregating more than a circle ¼ inch (6.4 mm) in diameter; slightly rough with slight depth aggregating more than a circle ¾ inch (19.1 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than a circle 1⅛ inches (28.6 mm) in diameter.	Deep or rough aggregating more than a circle ½ inch (12.7 mm) in diameter; slightly rough with slight depth aggregating more than a circle 1⅛ inches (28.6 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than 10% of fruit surface.	Deep or rough or unsightly that appearance is very seriously affected.
Skin breakdown	Aggregating more than a circle ¼ inch (6.4 mm) in diameter.	Aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprayburn	Skin is hard and aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Skin is hard and aggregating more than a circle 1¼ inches (31.8 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sunburn	Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface.	Skin is hard and affected more than one-third of the surface.	Aggregating more than 50 percent of the surface.
Unsightly discoloration	Color and pattern causes an unattractive appearance.	Color and pattern causes a distinctly unattractive appearance.	Very objectionable appearance caused by any means.

NOTE.—References to area or aggregate area, or length are based on a 176 size tangerine.

Visual Aid

§ 2851.1835 Visual Aid.

(a) USDA Visual Aid CIT-(FL)-L-1, consists of a booklet containing color reproductions of Florida tangerines illustrating certain grade requirements, namely shape, texture, firmness, color, varietal characteristics, and other defects as set forth in these standards. This visual aid may be examined in the Fruit and Vegetable Quality Division, FSQS, U.S. Department of Agriculture, South Building, Washington, D.C. 20250; in any field office of the Fresh Fruit and Vegetable Inspection Service; or upon request of any authorized inspector of such service. Duplicates of the visual aid may be purchased from the John Henry Co., Post Office Box 17099, Lansing, MI 48901.

(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended; 7 U.S.C. 1622, 1624)

Done at Washington, D.C., on October 27, 1980.

Thomas P. Grumbly,

Acting Administrator, Food Safety and Quality Service.

[FR Doc. 80-33843 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-DM-M

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to quarantine a portion of Douglas County in Nebraska because of the existence of exotic Newcastle disease. Exotic Newcastle disease was confirmed in such portion of Douglas County, Nebraska, on October 5, 1980. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine the affected area.

EFFECTIVE DATE: October 27, 1980.

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

SUPPLEMENTARY INFORMATION: This amendment quarantines a portion of Douglas County in Nebraska, because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement and their carcasses, and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

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

1. In § 82.3 (a)(10)(i), is added to read:

§ 82.3 Areas quarantined.

(a) * * *

* * * * *

(10) *Nebraska.* (i) The premises of The Bird Cage, 5972 North 30th Street, Omaha, Douglas County.

* * * * *

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

This amendment imposes certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

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

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

Done at Washington, D.C., this 27th day of October 1980.

J. K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-33049 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 82

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

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to release a portion of Miami County in Florida, a portion of San Francisco County in California, a portion of Jackson and Clay Counties in Missouri, a portion of Summit County in Ohio, and a portion of Sedgewick County in Kansas, from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the areas quarantined.

EFFECTIVE DATE: October 27, 1980.

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

SUPPLEMENTARY INFORMATION: These amendments exclude a portion of Miami County in Florida, a portion of San Francisco County in California, a portion of Jackson and Clay Counties in Missouri, a portion of Summit County in Ohio, and a portion of Sedgewick County in Kansas, from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded areas.

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

§ 82.3 [Amended]

1. In § 82.3(a)(1), relating to the State of Florida, paragraph (iv) relating to the premises of Animal Kingdom, 11105 N.W. 119th Street, North Miami, Miami County is deleted.

2. In § 82.3(a)(2), relating to the State of California, paragraph (i) relating to the premises of Alex Zambory, 1760 Pacific, Apt. 9, San Francisco, San Francisco County is deleted.

3. In § 82.3(a)(4), relating to the State of Missouri, paragraphs (i) and (ii) relating to the following premises are deleted.

(i) The premises of Midwest Pets, 1527 Grand, Kansas City, Jackson County.

(ii) Fin and Foliage, 6930 N. Oak, Gladstone, Clay County.

* * * * *

4. In § 82.3(a)(6), relating to the State of Ohio, paragraph (i) relating to the premises of Birds of Paradise, 1718 Adelaide, Akron, Summit County is deleted.

5. In § 82.3(a)(18), relating to the State of Kansas, paragraph (i) relating to the premises of Gupton's Tropical Aquarium, 2815 George Washington Blvd., Wichita, Sedgewick County is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

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

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

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without

opportunity for prior public comment or preparation of an impact analysis statement at this time.

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

Done at Washington, D.C., this 27th day of October 1980.

J. K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-33945 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Physical Protection of Plants and Materials Requirements for the Physical Protection of Nuclear Power Plants

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission is extending from November 1, 1980 to December 1, 1980 its current relief from pat-down searches of regular employees at nuclear power reactors in order to allow time for the Commission to consider revisions to its rules in 10 CFR § 73.55 intended to finalize requirements for entry searches at such facilities.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: L. J. Evans, Jr., Chief, Regulatory Improvements Branch, Division of Safeguards, Office of Nuclear Material Safety and Safegyards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 427-4181.

SUPPLEMENTARY INFORMATION: On July 31, 1979, the Commission changed the date from August 1, 1979, to November 1, 1979, when pat-down searches of regular employees of nuclear power plant licensees had to be implemented. The rationale for this extension was provided in the Federal Register notice on this subject, 44 FR 47758, August 15, 1979. The Commission further extended the implementation date to November 1, 1980. The rationale for that extension is contained in 44 FR 65969.

The Commission is presently considering issuing proposed revisions to 10 CFR § 73.55(d)(1) to finalize requirements for personnel searches at protected area portals of power reactors. The *thirty day* extension of the relief from physical pat-down searches of regular employees contained herein is intended to allow sufficient time for Commission consideration of the proposed revisions. Because this rule delays a requirement, and merely continues a temporary situation for a limited period of time, the Commission finds that notice and public procedure are unnecessary and that the change can be made immediate effective without the customary 30 days period of notice required by 5 U.S.C. 553.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following Amendment to Title 10 Chapter 1, Code of Federal Regulations, Part 73 is published as a document subject to codification.

1. The unnumbered prefatory paragraph of § 73.55 of 10 CFR Part 73 is amended to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

Each licensee who is authorized on February 24, 1977, to operate a nuclear power reactor pursuant to Part 50 of this Chapter shall comply with the requirements of paragraphs (b), (d), (f), (g), and (h) of this section, except for any requirement involving construction and installation of equipment not already in place expressed in paragraphs (d)(1), (d)(7), (d)(8), (f)(3) and (h)(4), by May 25, 1977. The licensee shall submit by May 25, 1977, an amended physical security plan describing how the licensee will comply with all of the requirements of this section including schedules of implementation. The licensee shall implement his plan and comply with all of the provisions of this section as soon as practicable after NRR approval of his plan but no later than February 23, 1979. Each applicant for a license to operate a nuclear power reactor pursuant to Part 50 of this chapter whose application was submitted prior to February 24, 1977 shall submit by May 25, 1977, an amended physical security plan describing how the applicant plans to comply with the requirements of this section including schedules of implementation. If such applicant receives an operating license after February 24, 1977 he shall comply with the requirements of paragraphs (b), (d), (f), (g), and (h) of this section, except for construction and installation not already in place pursuant to paragraphs (d)(1), (d)(7), (d)(8), (f)(3) and (h)(4) of this section by May 25, 1977, or on the date of receipt of the operating license, whichever is later, and implement his plan and comply with all of the requirements of this section by February 23, 1979 or on the date of receipt of the operating license whichever is later. Each applicant for a license to operate a nuclear power reactor pursuant to Part 50 of this Chapter whose application is submitted after February 24, 1977, shall include in the physical security plan required by § 50.34(c) the information identified in paragraphs (a) through (h) of this section and if such applicant receives an operating license, shall comply with the provisions of this section on receipt of the operating license. Except for individuals for whom the licensee has a well-grounded suspicion that such individuals are carrying firearms, explosives, or incendiary devices, a licensee need not implement the physical search requirement of paragraph (d)(1) of this section for individuals who are regular employees of the licensee at the site at which the licensee is authorized to operate a nuclear power reactor pursuant to Part 50 of this Chapter until December 1, 1980, unless the Commission directs otherwise prior to that date. Until that date, the Commission has determined that the search requirement of paragraph (d)(1) of this section, implemented using only equipment capable of detecting firearms, explosives and incendiary devices, satisfies the performance requirements of this section as they apply to searches of regular employees of the licensee at the site entering the protected area of the nuclear power reactor.

* * * * *

(Sec. 161i, Pub. L. 83-703, 68 Stat. 948, Pub. L. 93-377, 88 Stat. 475; Sec. 201. Pub. L. 93-438, 88 Stat. 1242-1243, (42 U.S.C. 2201, 5841))

Dated At Washington, D.C., this 30th day of October, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-34156 Filed 10-30-80; 11:08 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

Amendments Relating to the Minimum Maturities on Time Deposits and Minimum Notice Provisions for Savings Deposits

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation ("Board", "FDIC") has adopted a significant final rule redefining the term "time deposit" so that all time deposits will have a minimum maturity of 14 days rather than 30 days as provided under present regulations. The action was taken in the light of recent amendments to Regulation D (Reserve requirements) by the Board of Governors of the Federal Reserve System. These revisions define time deposits as deposits having a maturity of not less than 14 days. The Board of Governors has approved a corresponding revision to Regulation Q governing interest on deposits.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: F. Douglas Birdzell, Counsel or John F. Breyer, Jr., Attorney, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429 (202-389-4324 or 202-389-4637).

SUPPLEMENTARY INFORMATION: In connection with a revision of Regulation D by the Board of Governors of the Federal Reserve System, the definition of a time deposit, for Reserve requirement purposes, was shortened from a minimum of 30 days to a minimum of 14 days to help improve the ability of domestic depository institutions to compete with banking offices located abroad and with issuers of short-term paper in this country. Incident to its action, the Board of Governors amended Regulation Q relating to interest on deposits to provide for a corresponding 14-day minimum term on time deposits in lieu of the present 30-day minimum. Corresponding action is being taken to amend the provisions of Part 329 of FDIC's regulations governing interest on deposits in order to harmonize FDIC regulations with those of the Board of Governors. (The Federal Home Loan Bank Board may or may not take similar action.) Certain other conforming amendments to FDIC regulations will be made to reduce the minimum 30-day hold period on ordinary savings deposits to 14 days for consistency with the major amendments to the regulation and to modify the definition of time deposit open account. Since the amendment conforms FDIC regulations to those of the Board of Governors, no alternative courses of action were considered. While no economic impact analysis was done in connection with this amendment, it is not expected that the amendment will have any adverse effects on insured state nonmember banks and it is not expected that it will increase their costs. In fact, it should be beneficial in that it will probably enhance their competitive position *vis-a-vis* banking offices located abroad and issuers of short-term paper in this country. No adverse impact on small banks is foreseen. There will be no recordkeeping or reporting requirements incident to this regulation. Normal procedures with respect to notice, comment and deferred effective date were not followed in connection with these amendments because they impose no burden and immediate action is required for consistency with Federal Reserve regulations. 12 CFR Part 329 is amended as follows:

1. Section 329.1(c) and footnote 1a thereto is amended as follows:

§ 329.1 Definitions.

* * * * *

(c) *Time certificates of deposit.* The term "time certificate of deposit" means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable:

(1) On a certain date, specified in the instrument, not less than fourteen (14) days after the date of the deposit.

(2) At the expiration of a specified period not less than 14 days after the date of the instrument: or

(3) Upon written notice to be given not less than 14 days before the date of repayment.[1a]

* * * * *

2. Section 329.1(d) and footnotes 2 and 3 thereto are amended as follows:

§ 329.1 Definitions.

* * * * *

(d) *Time deposits, open account.* The term "time deposit, open account" means a deposit other than a "time certificate of deposit," with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than 14 days after the date of the deposit,[2] or prior to the expiration of the period of notice which must be given by the depositor in writing not less than 14 days in advance of withdrawals.[3]

* * * * *

3. Section 329.1(e)(1)(iii) of FDIC's regulations is amended as follows:

§ 329.1 Definitions.

* * * * *

(e) *Savings deposits.* (1) * * *

(i) * * *

(ii) * * *

(iii) In the case of both paragraphs (e)(1)(i) and (e)(1)(ii) of this section, with respect to which the depositor is not required by the deposit contract but may at any time be required to give notice in writing of an intended withdrawal not less than 14 days before such withdrawal is made [5] and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

* * * * *

4. Section 329.5(c)(2) is amended by revising the third sentence thereof as follows:

§ 329.5 Withdrawal of savings deposits.

* * * * *

(c) *Manner of payment of savings deposits.*

* * * * *

(2) * * * In accordance with Section 329.1(e)(iii) of this Part 329, the bank must reserve the right to require the depositor to give notice in writing of an intended withdrawal (transfer) not less than 14 days before such withdrawal (transfer) is made. * * *

* * * * *

5. Section 329.101 is amended by revising the first sentence of footnote 19 thereto as follows:

§ 329.101 Computation and payment of interest on time and savings deposits.

* * * * *

19. Part 329 of the Corporation's regulations prescribes certain maximum interest rates for consumer-type time deposits (*i.e.*, deposits of less than $100,000) with maturity intervals of 14 days or more and 90 days or more. * * *

The provisions of section 553(b) and 553(d) of the Administrative Procedure Act (5 U.S.C. 553(b) and 553(d)) were not followed in connection with the issuance of this regulation because the regulation is essentially non-restrictive, expands rights conferred by prior regulation and the public interest is best served by its immediate issuance with an October 30, 1980 effective date.

[1a] If the certificate of deposit provides merely that the bank reserves the right to require notice of not less than fourteen (14) days before any withdrawal is made, the bank must require such notice before permitting withdrawal.

[2] Deposits, such as Christmas club accounts and vacation club accounts, which are made under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than 3 months, constitute "time deposits, open account," even though some of the deposits are made within 14 days from the end of such period.

[3] A deposit with respect to which the bank merely reserves the right to require notice of not less than 14 days before any withdrawal is made is not a "time deposit, open account," within the meaning of the above definition.

[5] * * *

(Secs. 9 and 18, Pub. L. 81-797, 64 Stat. 881, 891, as amended 612 U.S.C. 1819 and 1828)

By order of the Board of Directors, October 27, 1980.

Alan J. Kaplan,

Acting Executive Secretary.

[FR Doc. 80-34039 Filed 10-30-80; 8:45 am]

BILLING CODE 6714-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[PS-98; Docket No. 37982; Amdt. No. 75 to Part 399]

Domestic Passenger Fare Flexibility; Interim Policy Statement; Correction

AGENCY: Civil Aeronautics Board.

ACTION: Correction to preamble of interim policy statement.

SUMMARY: This corrects an error in the preamble to the CAB's policy statement on domestic passenger fare flexibility. The policy statement amended the Board's upward flexibility zones within which airlines may set domestic passenger fares between markets in the 48 contiguous states and the District of Columbia with limited risk of suspension by the agency.

DATES: Adopted: October 21, 1980. Effective: The policy was put into effect September 24, 1980. The amendment of 14 CFR Part 399 is effective October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Julien R. Schrenk, Chief, Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5298.

SUPPLEMENTARY INFORMATION: A clerical error was made in transcribing the 2nd sentence, first full paragraph in page 3 of the mimeo copy (2nd sentence, first full paragraph, column 2, 45 FR 70431, 70432, October 24, 1980). The sentence should read: "Our goal, accordingly, has been to develop a means of *correcting* the historical understatement of short-haul costs, *while maintaining* a nonmileage-based fare policy, if practicable."

Dated: October 27, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33962 Filed 10-30-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Coverage of Employees of State and Local Governments; Interim Regulations

AGENCY: Social Security Administration, HHS.

ACTION: Interim regulations.

SUMMARY: These interim regulations change the rules governing the frequency with which States and interstate instrumentalities (which are treated as States to the extent practicable) must deposit social security contributions on wages and salaries paid to covered employees. This new rule will require States and interstate instrumentalities to deposit contributions within 30 days after the end of each calendar month in which wages are paid. These regulations reflect section 503 of the Social Security Disability Amendments of 1980, enacted on June 9, 1980.

DATES: The amendments made by paragraph No. 1 below become effective July 1, 1980, the same date the statutory change became effective. Amendments made by paragraph No 2. become effective January 1, 1981.

Comments must be received on or before December 30, 1980.

ADDRESSES: Written comments should be submitted to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments received in response to this notice will be available for public inspection and copying during regular business hours at the Washington Inquiries Section, Office of Governmental Affairs, Social Security Administration, Department of Health and Human Services, Room 1212, Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Armand Esposito, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7455.

SUPPLEMENTARY INFORMATION: Section 218 of the Social Security Act (the Act) (42 U.S.C. 418) requires the Secretary of Health and Human Services, at a State's request, to enter into an agreement to provide social security coverage of the services of employees of that State and its local government units. All States (and about 54 interstate instrumentalities which are treated as States to the extent practicable) have such agreements. Prior to July 1, 1980 (the effective date of section 503 of the Social Security Disability Amendments of 1980), section 218(e)(1) of the Act gave the Secretary of Health and Human Services discretion to promulgate regulations governing when and how often States and interstate instrumentalities were to pay contributions equivalent to the social security taxes on wages. The regulations in effect prior to July 1, 1980 (20 C.F.R. 404.1255(a)), required payment from the States by deposit in a Federal Reserve Bank, on or before the 15th day of the second month after the calendar quarter in which wages were paid. For an interstate instrumentality, the contribution payments for a calendar quarter were due and payable on or before the last day of the first month of the next calendar quarter. These depository requirements were considerably less restrictive for State and local governmental employers than for private employers and resulted in losses of interest earnings to the Social Security trust funds. Consequently, the Social Security Administration undertook, by regulations, to accelerate the schedule of deposits. These final regulations (20 C.F.R. 404.1255a) were published at 43 F.R. 54083 (November 20, 1978) with a delayed effective date of July 1, 1980. (Section 7 of Pub. L. 94-202 precluded a change in the frequency or due dates for payments and reports until at least 18 months after the change had been published in final form in the Federal Register.) These regulations provided that the State pay contributions for wages paid in a month as follows:

(a) For each of the first 2 months in a calendar quarter the payments were to be due on or before the 15th day of the following month; and

(b) For the third month in the calendar quarter, the payments were to be due on or before the 15th day of the second month of the next quarter (For interstate instrumentalities, the payments for the third month were to be due on or before the last day of the following month.).

In addition, because of the cost savings and other advantages of annual wage reporting, which Congress mandated for the private employment sector in 1978, we published final regulations prescribing annual wage reporting for State and local government employers. These regulations were published on June 28, 1979 (44 F.R. 37604), to go into effect on January 1 1981. (The delayed effective date was to comply with Pub. L. 94-202). While these

regulations did not make any change in the frequency with which deposits were to be made, we amended the regulations (20 C.F.R. 404.1255a) to require the filing of a contribution return when the contributions are paid.

On June 9, 1980, the Social Security Disability Amendments of 1980, Pub. L. 96-265, became law. Section 503 of that law amends section 218(e) of the Social Security Act to provide that States must pay their social security contributions within 30 days after the end of each calendar month in which wages are paid. That provision became effective July 1, 1980. These regulations (which supersede those on frequency of deposits which were published on November 20, 1978) reflect that statutory change.

Section 503 also ends the previously required 18 months delay in the effective date of these changes to the regulations.

Also, to carry out the clear intent of Congress, these regulations provide that contributions are to be deposited no later than the preceding workday where the last day for paying contributions falls on a Federal nonworkday.

Effect on Wage Reports and Contribution Returns

The changes in the dates contributions are due do not affect the date contribution returns and wage reports are due during the period July 1 through December 31, 1980. They will still be due quarterly rather than monthly.

Effective January 1, 1981, the annual reporting regulations (44 FR 37604, June 28, 1979) change the date contribution returns and wage reports will be due. Wage reports will be due by February 28 of each year. Contribution returns, however, are to be filed on the same date the contribution payment is due (§ 404.1255a(c)(2)(iii)). We are not changing this rule. However, due to the change in the date the contributions must be paid, there is an actual change in the date the contribution returns must be filed.

Justification for Interim Regulations

Since the amendments to the regulations reflect requirements of the statute concerning which the Secretary has no discretion, we find that publication with Notice of Proposed Rule Making is unnecessary (Administrative Procedure Act, 5 U.S.C. 553(b)(B)). Also, the statutory requirements reflected in these regulations are, by law, now in effect and the results of a Notice of Proposed Rule Making could not change the time period nor the effective date. The new rules for deposits of contributions are effective July 1, 1980.

Although we are not publishing this amendment with a Notice of Proposed Rule Making, we are soliciting public comments on this interim regulation.

Accordingly, these rules are adopted as set forth below.

(Catalog of Federal Domestic Assistance Program Nos. 13.802-13.805, Social Security Program.)

Dated: September 22, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 23, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

20 CFR Part 404 is amended as follows:

1. Effective July 1, 1980 § 404.1255a, paragraphs (a) and (c)(5) are revised to read as follows:

§ 404.1255a Place and time for filing contribution returns, and wage reports and making deposits of contributions—for months on or after July 1, 1980.

(a) *Deposits.* Contribution payments for wages paid in a month shall be made as prescribed in § 404.1223. Except as provided in paragraph (c)(2) of this section, contribution payments for wages paid in a calendar month are due and payable within the thirty-day period following the last day of that month.

* * * * *

(c) * * *

(5) *Due date is a Federal nonworkday.* If the due date for paying contributions for the wages paid in a month (as specified in paragraph (a) of this section) falls on a Federal nonworkday, the contributions shall be paid no later than the preceding Federal workday. If the last day for filing any wage report or contribution return falls on a Federal nonworkday, the contribution return or wage report may be filed on the next Federal workday.

* * * * *

2. Effective January 1, 1981, the heading and paragraphs (c)(2) and (c)(5) of § 404.1255a as published on June 28, 1979, at 44 FR 37608, are revised to read as follows:

§ 404.1255a Place and time for filing contribution returns, wage reports, and making deposits of contributions for months on or after January 1, 1981.

* * * * *

(c) *Contribution returns and wage reports*—(1) * * *

(2) *When to be filed.* (For the rules in effect during the period July 1, 1980 through December 31, 1980 see 43 FR 54087, November 20, 1978 and (insert FR citation and date this material is published)).

* * * * *

(5) *Due date is a Federal nonworkday.* If the due date for paying contributions for the wages paid in a month (as specified in paragraph (a) of this section) falls on a Federal nonworkday, the contributions shall be paid, and the contribution return shall be filed, no later than the preceding Federal workday. If the last day for filing any wage report falls on a Federal nonworkday, the wage report may be filed on the next Federal workday.

* * * * *

(Sec. 205, 218, 1102, Social Security Act; 53 Stat. 1368, as amended, 64 Stat. 514 as amended, and 49 Stat. 647, as amended; (42 U.S.C. 405, 418, 1302.))

[FR Doc. 80-33811 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-02-M

Food and Drug Administration

21 CFR Chapter I

[Docket No. 78N-0158]

Mandatory Uniform Effective Date for Food Labeling Regulations; Notice to Manufacturers, Packers, and Distributors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing July 1, 1983 as its new uniform effective date for mandatory compliance with all final FDA food labeling regulations that are published in the Federal Register after October 31, 1980.

This notice is not intended to change existing requirements. Therefore, all final FDA food labeling regulations previously published in the Federal Register that announced July 1, 1981 as their effective date will still go into effect on that date. Final regulations published in the Federal Register with effective dates earlier than July 1, 1981 (e.g., July 1, 1979) are also unaffected by this notice.

FDA periodically has announced uniform effective dates for mandatory compliance with new labeling requirements because the economic impact of requiring individual label changes on separate dates would probably be substantial. In addition, industry needs sufficient lead time to make label changes and the current uniform effective date of July 1, 1981 is less than 1 year away. Therefore, the agency has concluded that a new uniform effective date should be established.

EFFECTIVE DATE: July 1, 1983 for mandatory compliance with food labeling regulations published after October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Bob Lake, Bureau of Foods (HFF-302), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-245-1254.

SUPPLEMENTARY INFORMATION: FDA periodically issues various regulations for packaged food. If these labeling changes were individually required on separate dates, the cumulative economic impact on the food industry of frequent changes would probably be substantial. Therefore, the agency periodically has announced uniform effective dates for mandatory compliance with new food labeling requirements (e.g., the Federal Register of September 29, 1978 (43 FR 44830)). Use of a uniform effective date also provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. The agency believes that this policy serves consumers' interest as well because the increased cost of multiple short term label revisions that would otherwise occur would likely be passed on to consumers in the form of higher food prices.

The agency has decided that a new uniform effective date of July 1, 1983 should be established for future FDA regulations requiring changes in food labels where special circumstances do not justify a different effective date. Action is appropriate now because the current uniform effective date is less than 1 year away. The agency has selected July 1, 1983 to ensure adequate time for implementation of the food labeling regulations FDA is currently planning to propose and finalize in the next couple of years.

Some of the types of regulatory action that FDA plans to take were described in a notice of intent that FDA published in the Federal Register of December 21, 1979 (44 FR 75990) in conjunction with the U.S. Department of Agriculture's Food Safety and Quality Service and the Federal Trade Commission's Bureau of Consumer Protection. That notice described the three agencies' tentative positions on a number of food labeling issues. As that notice indicates, FDA is committed to regulatory action designed to provide the consumer with information concerning the ingredients and nutritional qualities of packaged food and to present the information in a uniform and understandable manner. The agency may also publish other food labeling regulations during this period.

The agency recognizes that if they become final rules, some of these regulatory initiatives may have broad application and that some food labels may be affected by a number of changes. Therefore, FDA is selecting a new uniform effective date which is sufficiently far in advance to allow ample time for industry to exhaust existing label inventories and obtain new labeling materials fully complying with new requirements no later than the new date.

The agency encourages industry, however, to comply with new labeling regulations earlier than the required date wherever this is feasible. Thus, when industry members voluntarily change their labels, FDA believes that it is appropriate that they incorporate any new requirements which have been published as final regulations up to that time.

The new mandatory uniform effective date will apply only to final FDA food labeling regulations published after October 31, 1980. Those regulations will specifically identify July 1, 1983 as their effective date for compliance. If any food labeling regulation involves special circumstances that justify an effective date other than July 1, 1983, the agency will determine for that regulation an appropriate effective date that will be specified when the regulation is published.

The current mandatory uniform effective date of July 1, 1981 for new final regulations affecting the labeling of food products was announced in the Federal Register of September 29, 1978 (43 FR 44830). Foods initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1981 are still required to comply with any final FDA regulations that identify July 1, 1981 as their effective date for compliance.

Dated: October 24, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33727 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Parts 73, 81

[Docket No. 80N-0447]

Lead Acetate; Listing As a Color Additive in Cosmetics That Color the Hair on the Scalp

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is permanently listing lead acetate for use as a color additive in cosmetics that color the hair on the scalp. FDA concludes that lead acetate is suitable and safe for that use. This rule also deletes the color additive from the provisional list.

DATES: Written objections by December 1, 1980 effective December 1, 1980. All affected products initially introduced or initially delivered for introduction into interstate commerce on or after December 1, 1981 shall fully comply with this regulation.

ADDRESS: Written objections may be sent to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Color Additive Amendments of 1960 (the Amendments) require FDA premarket clearance of any color additive [1] which is intended to be used or which is represented for use in or on food, drugs, devices, or cosmetics [2] (section 706 of the Amendments (21 U.S.C. 376).[3] Under the Amendments a

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[1] The term "color additive" is defined by section 201(t) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(t)) as follows:

(t)(1) The term "color additive" means a material which—

(A) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, and

(B) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto;

Except that such term does not include any material which the Secretary, by regulation, determines is used (or intended to be used) solely for a purpose or purposes other than coloring.

(2) The term "color" includes black, white, and intermediate grays.

[2] Hair dyes utilizing lead acetate as a colorant meet the statutory definition of "cosmetic" which is defined by section 201(i) of the act (21 U.S.C. 321(i)) as follows:

(i)(1) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap.

[3] All functions of the Secretary of the Department of Health and Human Services in administering the act have been delegated to the Commissioner of Food and Drugs (21 CFR 5.1(a)).

color additive may be approved and listed permanently if there are sufficient data establishing that it is safe for its intended use(s).

Section 203(b) of the Transitional Provisions to the Amendments, 21 U.S.C. 376 note (Transitional Provisions), provides that any color additive in commercial use prior to the enactment date of the Amendments (July 12, 1960) shall be deemed provisionally listed pending completion of scientific investigations necessary to determine the safety of the additive in accordance with the Amendments.

Section 81.1 of the color additive regulations (21 CFR 81.1) identifies those color additives that are provisionally listed along with their respective "closing dates." A closing date is the last day upon which a provisionally listed color can be used legally, absent an approval of a color additive petition and its permanent listing. (See section 203(a)(1) of the Transitional Provisions.)

The color additive lead acetate has been provisionally listed since the enactment of the Amendments. During that time, a series of toxicological and absorption studies has been performed. As discussed below, based upon the evaluation of these and other pertinent data, the agency concludes that lead acetate is safe as a hair dye. FDA is therefore permanently listing lead acetate as a color additive in cosmetics used to color hair on the scalp.

II. The Procedural History of Lead Acetate

Lead acetate is a metallic salt color additive which had been used in cosmetic hair dyes before the enactment of the Amendments. Thus, under the Amendments, lead acetate, like other metallic salt colors, and vegetable-based hair colors, was deemed provisionally listed on July 12, 1960.

In the Federal Register of December 10, 1963 (28 FR 13374), FDA issued a notice in response to industry petitions in which metallic salt and vegetable color manufacturers were advised that their products were not eligible for the coal-tar hair dye exemption to the premarket clearance requirements of the Amendments [4] and that these colorants were color additives subject to all the requirements of the Amendments. In addition, this notice requested the submission of data with respect to individual colors so that the agency could make determinations whether they should be permanently or provisionally listed color additives. The agency advised that no regulatory action would be taken against the metallic salt and vegetable colorants until that determination was made and notice of their status was published in the Federal Register. However, the only data received in response to this notice were submitted in support of a listing petition for the vegetable base color henna, which was thereafter permanently listed for use as a hair color.

A second notice was published in the Federal Register of January 31, 1973 (38 FR 2996) stating that only those metallic salts or vegetable colorants for which petitions had been filed by July 30, 1973, could continue to be marketed. Subsequently, a petition was received by FDA from the Committee of the Progressive Hair Dye Industry requesting the listing of lead acetate as a color additive in cosmetic hair dyes. Notice of filing for this petition appeared in the Federal Register of June 29, 1973 (38 FR 17260). Lead acetate was specifically added to the codified provisional list, effective January 1, 1974, by a regulation published in the Federal Register of March 13, 1974 (39 FR 9657).

The closing date for the provisional listing of lead acetate has been postponed on various occasions pending the performance, completion, and evaluation of toxicological and absorption studies. The Federal Register of March 3, 1978 (43 FR 8790) details each postponement up to that time.

By 1978, it was settled scientifically that lead acetate used as a hair dye would present no risk to the public health from the standpoint of classical lead toxicity (lead poisoning) (43 FR 8791; March 3, 1978). However, it had been established conclusively through animal feeding testing in the 1950's and 1960's that lead acetate was an animal carcinogen in two species, the mouse and the rat, *id.* Yet, because the limited human epidemiological data were considered equivocal, a definitive conclusion whether lead was a human carcinogen could not be reached, *id.*

In addition, the scientific evidence did not establish conclusively whether lead acetate hair dyes would be absorbed through the scalp. While previous percutaneous absorption studies of lead acetate indicated that lead acetate is unlikely to be absorbed under test conditions, the data did not demonstrate adequately whether or not systemic absorption occurred (42 FR 62497; December 13, 1977 and 43 FR 8790; March 3, 1978). If the color additive were not absorbed, the carcinogenicity data could be disregarded as not relevant to human exposure, and the applicable anticancer clause in the Amendments, section 706(b)(5)(B), would not become an issue. The petition to permanently list lead acetate could then be considered solely under the general safety provisions of the Amendments, section 706(b)(5)(A) (i) through (iv). To resolve these issues the agency recognized the need for the performance of a definitive absorption study:

> * * * The Commissioner agrees that present scientific evidence does not provide definitive support for a conclusion that lead is a human carcinogen; however, on the basis of the studies that show lead acetate to be a carcinogen in animals, the possibility that lead acetate may be absorbed percutaneously must be explored carefully (43 FR 8791; March 3, 1978).

Because lead is ubiquitous in the environment, the major problem inherent in determining the likelihood of percutaneous absorption of lead is the variable "background" level tht is always present in humans. Humans are exposed to lead from numerous sources, including lead found unavoidably in the food, the water, and the air. As a result of the variation of lead in these sources, human lead intakes have not been precisely defined. However, estimates based on scientific data indicate that lead intake from food sources for adults can range from 100 to 500 micrograms (μg) per day, with an average of approximately 250 μg. Current Environmental Protection Agency water standards allow a calculation of a maximum intake of approximately 100 μg/day for adults. Estimations of daily human lead intake from air sources vary among geographical locations. In the urban setting, estimations of intake range from 20 μg to 400 μg/day, whereas the nonurban areas have an estimated intake of about 2 μg/day. While it now appears that exposure to these sources of lead may be reducible in some instances, it is not possible to totally eliminate lead intake in man. Therefore, with these estimated values for human exposure to lead, it is possible to determine an average daily level of human lead absorption into the blood of approximately 35 μg with the actual amount possibly being higher. These fluctuating lead values represent the "background" (43 FR 8792; March 3, 1978). The scientific data estimating human lead intake are on file in the Dockets Management Branch under the "Lead in Food" docket, 79N-0200.

The question of percutaneous absorption of lead presented difficulties because it required a determination of what level of increase over the "background" must be detectable to

[4] Coal-tar hair dyes labeled with a warning legend advising that their use may cause skin irritation are exempt from the cosmetic adulteration provision of the Act and the premarket clearance requirements of the Amendments. See sections 601(a) and 706(a) of the act (21 U.S.C. 361(a) and 376(a)); *Toilet Goods Association* v. *Finch*, 419 F.2d 21 (2d Cir. 1969).

permit a scientific conclusion that no significant absorption would occur from the use of lead acetate as a hair dye. To determine a level of absorption which, in terms of analytical chemistry methodology, would be considered significant. FDA concluded:

> * * * that any study intended to establish that use of lead acetate as a hair color does not result in significant percutaneous absorption of lead must include a method capable of detecting approximately 1 microgram of absorbed lead above and beyond the normal background (43 FR 8793; March 3, 1978).

Combe, Inc., a member of the Committee of the Progressive Hair Dye Industry, submitted a protocol for a radioactive tracer study as a way of determining absorption of lead in which the problem of the fluctuating "background" could be eliminated. Under this study protocol, the issue of how to determine an increase over normal lead "background" does not arise because there are no endogenous levels of radioactive lead in humans (43 FR 8793; March 3, 1978). The closing date for lead acetate was extended until December 31, 1978, to allow for the completion and evaluation of the radioactive tracer study, *id.*

In the Federal Register of January 2, 1979 (44 FR 45), the closing date was further postponed until March 1, 1979, to provide FDA additional time to complete its evaluation of the radioactive tracer absorption study. In the Federal Register of March 6, 1979 (44 FR 12205), FDA proposed another postponement. In that notice, the agency announced that it had completed its evaluation of the absorption study and found that a miniscule amount, approximately 0.5 μg per application (½ of one millionth of a gram), was shown to penetrate the skin (Ref. 2). But the issue of whether lead, the toxic component in lead acetate, presented a cancer risk to humans remained unresolved. The agency expected that information bearing on this issue would be submitted in response to its planned advance notice of proposed rulemaking (ANPR) on lead in food. FDA therefore postponed the closing date to March 1, 1980 in the Federal Register of August 31, 1979 (44 FR 51233).

The ANPR on lead in food was published in the Federal Register of August 31, 1979 (44 FR 51216). The comment period on the ANPR, originally scheduled to close on November 29, was extended to February 29, 1980 (44 FR 67673; November 27, 1979). Accordingly, the closing date for lead acetate was also postponed for 90 days to June 30, 1980 (45 FR 11799; February 22, 1980). The current closing date of October 31, 1980, was established by a regulation published in the Federal Register of June 24, 1980 (45 FR 42255).

III. The Legal Standards and Their Applicability to Lead Acetate

Under section 706(b)(4) of the Amendments, a color additive cannot be permanently listed unless the evidence establishes that it is "safe." This is referred to as the "general safety clause" for color additives. In addition to passing muster under the general safety clause, a color additive must also pass the test laid down by the color additive anticancer (Delaney) clause in section 706(b)(5)(B) of the Amendments. The general safety clause will first be discussed as it applies to risks other than carcinogenicity. A discussion of carcinogenicity under the anticancer clause and the general safety clause will follow.

The term "safe" is not defined in the general safety clause, nor is it defined elsewhere in the act. However, the legislative history of the Amendments incorporates by reference the same meaning for the word "safe" that is applicable to food additives under the Food Additives Amendment of 1958. (See H.R. Rept. No. 7624, 86th Cong., 2d Sess., p. 776 (1960).) The legislative history of the Food Additives Amendment of 1958 makes clear that the term "safe" was not intended to require absolute proof of safety. The House Report states:

> * * * Safety requires proof of a *reasonable certainty that no harm will result from the proposed use of an additive.* It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance.
>
> This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance. (H.R. Rept. No. 2284, 85th Cong., 2d Sess., pp. 4–5 (1958) [Emphasis added].)

Thus, FDA's regulations provide that a color additive is "safe" if "there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." (21 CFR 70.3(i).)

The factors to be considered for determining the safety of a color additive are provided in section 706(b)(5)(A) (i) through (iv) of the Amendments; they include the probable consumption of the color additive, the cumulative effect of the color additives, if any, in the diet of man or animals, the application of safety factors, and the availability of any needed practicable methods of analysis for determining the identity, quality, and purity of the color additive.

FDA has fully reviewed all the scientific data submited in support of the lead acetate petition and the comments germane to the petition received in response to the ANPR on lead in food. On the basis of this review the agency reaffirms its conclusion, previously set forth (44 FR 12206; March 6, 1979), that lead acetate is safe from the standpoint of classical lead toxicity (lead poisoning).

This conclusion is based upon the insignificant increase of lead in normal human blood levels from lead acetate hair dyes. The average person has a steady-state blood level of approximately 17μg of lead per 100 milliliters of blood which is retained out of the 35 μg lead that is absorbed and retained per day from the normal human lead intake of 100 to 500μg from all sources. The increase in the amount of human lead absorption from the use of lead acetate hair dyes would have no discernible effect on this steady-state blood level. The Joint FAO/WHO Expert Committee on Food Additives (Rept. No. 505) (Ref. 4) has established a provisional tolerable weekly intake of lead for adults of 3 milligrams per week, or 428 μg/per day. Moreover, the population exposed to lead in hair dyes is limited to adults who, in terms of susceptibility to lead poisoning, are not a high-risk group as compared to children. Exposure to lead from hair dyes would be limited even among adults because the infrequency of their use is an inherent check on the total individual exposure. Hair dyes thus do not present a potential problem of extremely high use by particular individuals. In sum, the lead poisoning evidence, taken as a whole, shows lead acetate in hair dyes to be safe.

Thus, the only issue now before the agency is whether the petition to permanently list lead acetate for use in hair dyes can be approved in light of the evidence that the substance is an animal carcinogen and is absorbed through the skin. As noted, this evidence must be evaluated under both the anticancer clause and the general safety clause. The anticancer clause will be discussed first.

The color additive Delaney[5] anticancer clause consists of two parts: one is applicable to ingested additives, the other to non-ingested additives. The first section (section 706(b)(5)(B)(i) of the

[5] Like its food additive (section 409(c)(3)(A) of the act) and animal drug (section 512(d)(1)(H) of the act) counterparts, the color additive anticancer clause, is called a "Delaney" clause after its Congressional sponsor, Congressman James J. Delaney.

Amendments) provides that a color additive:

* * * shall be deemed unsafe, and shall not be listed, for any use which will or may result in ingestion of all or part of such additive, if the additive is found by the Secretary to induce cancer when ingested by man or animal, or if it is found by the Secretary, after tests which are appropriate for the evaluation of the safety of additives for use in food, to induce cancer in man or animal.

This provision is limited to uses that will or may result in ingestion; it does not, therefore, apply to the use of lead acetate in hair dyes.

The applicable provision is the second section of the color additive Delaney Clause (section 706(b)(5)(B)(ii) of the Amendments), which states that a color additive:

* * * shall be deemed unsafe, and shall not be listed, for any use which will not result in ingestion of any part of such additive, if, after tests which are appropriate for the evaluation of the safety of additives for such use or after other relevant exposure of man or animal to such additive, it is found by the Secretary to induce cancer in man or animal.

There is a significant difference between these two parts of the color additive Delaney Clause. The first part, the "ingestion clause," like the food additive Delaney Clause, section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), makes an animal ingestion study demonstrating carcinogenicity an absolute bar to the approval of a petition for an ingested color additive. A finding of carcinogenicity alone renders the additive "unsafe" as a matter of law.

The second part, the "non-ingestion clause," does not make an animal ingestion study demonstrating carcinogenicity an absolute bar to the approval of a petiton for a non-ingested color additive.[6] Instead, it requires the agency to make one of two additional findings:

1. That the tests relied upon to conclude that the substance is an animal or human carcinogen are "appropriate for the evaluation of the safety of additives" for the particular use under review; or,

2. That other exposure of man or animal "relevant" to the substance shows it to be a carcinogen.

In other words, by requiring an additional finding as to "appropriateness" or "relevance" of data, Congress distinguished the non-ingestion clause from the ingestion clause. Thus, to interpret the non-ingestion color additive Delaney Clause to mean that a positive animal feeding study is a per se bar to the permanent listing of a non-ingested color additive would eliminate the criteria of "appropriateness" and "relevance" from the statute itself. This would render section 706(b)(5)(B)(ii) of the Amendments indistinguishable from section 706(b)(5)(B)(i). Such a result would clearly ignore the plain words Congress chose in drafting this legislation. See *International Brotherhood of Teamsters* v. *Daniel*, 439 U.S. 551, 558 (1979). Additionally, this interpretation would not be supported by the legislative history.

In testimony on the proposed Color Additive Amendments of 1960 before the House Committee on Interstate and Foreign Commerce, Secretary Flemming of the Department of Health, Education, and Welfare, stated that the Delaney Clause applicable to ingested additives was not the same as the Delaney Clause applicable to external colorants:

The Chairman. * * * [T]hese two bills, the House and Senate bills, are identical, with the exception of page 10 in the House Bill, which has reference to the Delaney Amendment—is that identical with the amendment in the food additive law, except in that respect?

Secretary Flemming. *It is not identical because of colors that are applied to external parts.*

The Chairman. Except as to colors?

Secretary Flemming. This is right—except for the changes that have to be made in order to adapt it to the color situation—except for that, it is identical, so far as the policy issue is concerned. H.R. Rept. No. 7624, 86th Cong., 2d Sess., p. 102 (1960) (Emphasis added).

This is the first instance where the agency must decide the applicability of the Delaney Clause to a non-ingested color additive. Specifically, the agency must decide whether animal feeding studies showing lead to be carcinogenic are "appropriate" or "relevant" for the purpose of applying section 706(b)(5)(B)(ii) to lead acetate hair dyes.

It should be noted that the agency must make an affirmative finding of either "appropriateness" or "relevance" (44 FR 12206; March 6, 1979). In so doing, FDA must make a scientific judgment involving an exercise of discretion not permitted under the more traditional and absolute food additive and ingested color additive Delaney Clauses (see 21 U.S.C. 348(c)(3)(A) and 376(b)(5)(B)(i); 44 FR 12206; March 6, 1979).

As discussed below, after a thorough evaluation of all available scientific evidence relevant to the issue, the agency cannot find that the animal feeding studies are either "appropriate" or "relevant" for making the safety determination for lead acetate hair dyes under section 706(b)(5)(B)(ii) of the Amendments. This conclusion is based upon the unusual combination of scientific facts peculiar to lead acetate in hair dyes, a combination which will rarely, if ever, be presented again in this context.

The required finding of "appropriate" or "relevant" cannot be made here for the following combination of reasons:

1. The Combe, Inc. radioactive tracer skin absorption study (Ref. 2), in attempting to identify whether systemic absorption of lead occurred following the application of the hair dye, demonstrated that on an average only 0.5 μg of lead per application penetrates the skin. Conventional analytical methods could not detect so small an amount of lead. Indeed, the agency believed prior to the performance of the study that absorption would not be considered significant, in an analytical sense, unless found to be greater than 1 μg. On the basis of that study, it is estimated that frequent users of lead acetate hair dyes who might apply the hair dye as often as twice per week, could have an average daily absorption of lead from that source of 0.3 μg (3/10 of one millionth of a gram). As stated in Section II above, this compares to an average human absorption of lead from air, food, and water of approximately 35 μg/per day. Thus, the average user of lead acetate hair dye might increase his or her body lead burden by less than 1 percent. Such an increase of absorbed lead from hair dyes over the normal human "background" levels of lead does not augment the existing risk of acute or chronic lead toxicity, including cancer, in any clearly discernible, much less significant, manner.

2. The scientific data submitted to FDA concerning the issue of whether lead is a human carcinogen are not sufficient for substantiating a direct correlation between lead exposure and human carcinogenicity.[7] However, even

[6] Analogously, Congress, in enacting the Animal Drug Amendments of 1968, changed the traditional absolute Delaney language in the food additive anticancer clause. Thus, 21 U.S.C. 360(d)(1)(H) requires that any animal drug that has been shown to cause cancer in man or animal be deemed "unsafe" "*except*" where "no residue" of the drug is found in any edible portion of the animal tissue (emphasis supplied.) Like the "appropriate" and "relevant" language in the non-ingestion color additive Delaney Clause, the "no residue" language in the animal drug Delaney Clause eases the absolute prohibition of the food additive Delaney Clause. FDA has reasoned, in proposing to interpret the language of the animal drug Delaney Clause, that where an animal drug is shown to be carcinogenic, "no residue" should be defined in terms of an amount of residue that would pose a "socially accepted level of risk" of one cancer per million lifetimes. (See FDA proposed rule, "Criteria and Procedures for Evaluating Assays for Carcinogenic Residues," (44 FR 17070; March 20, 1979).)

[7] FDA has previously announced that if the issue of whether lead is or is not a human carcinogen could not be resolved, it would apply its standard cancer risk identification policy (i.e., where there exists systemic absorption of a substance and

Footnotes continued on next page

if a direct correlation could be made, the human cancer risk from the use of lead acetate hair dye would be a clearly insignificant one. In the course of the safety evaluation of this petition, FDA considered risk assessments prepared by FDA staff personnel (Ref. 3) and Dr. Richard Wilson of Harvard University on behalf of Combe, Inc., (Ref. 1). These assessments were performed independently; yet they reached very similar conclusions. Using "worst case" risk estimates extrapolated from the animal toxicity data (i.e., assuming carcinogenicity), the agency calculated that the upper limit of lifetime cancer risk from the use of lead acetate in hair dyes was approximately two in ten million lifetimes. Dr. Wilson's risk assessment calculated that the upper limit lifetime cancer risk from lead acetate in hair dyes was about one in eighteen and one half million lifetimes. The disparity in the upper limit lifetime risk derived by these assessments can be attributed to slight differences in the assumptions underlying each assessment. These very conservative risk assessments support a conclusion that any risk likely to result from use of lead acetate hair dye cannot be considered significant in terms of public health protection.

Having considered the trivial amount of lead absorption in relation to the ever present normal lead "background" in humans and recognizing that, even if a human cancer risk exists from the use of lead acetate hair dyes, such an added risk would be minute, FDA concludes that lead acetate, by any reasonable standard, is safe for use in hair dyes. Because FDA regards this use of lead acetate to be safe, the agency is unable to conclude that the studies showing lead acetate to be an animal carcinogen are "appropriate" or "relevant" for the purpose of applying the non-ingested color additive Delaney Clause.

The reasoning that leads FDA to conclude that lead acetate is safe and that the Delaney Clause cannot be invoked also justifies the conclusion that lead acetate hair dyes satisfy the general safety provisions under section 706(b)(5)(A)(i) through (iv) of the Amendments. On this issue, the petitioner has the burden of proof. *Certified Color Manufacturers Association* v. *Mathews*, 543 F. 2d 284 (D.C. Cir. 1976).

As discussed above, Congress did not intend to require that safety be proved to an absolute certainty, recognizing the limits that exist on society's ability to assure itself of a complete absence of risk. In this context and as discussed above, FDA must consider three factors peculiar to lead acetate: the significant human background exposure to lead; the almost infinitesimally low absorption of lead from lead acetate hair dyes,[8] especially when contrasted to the human background exposure; and the very low potential added risk (in a range between one in five million to one in eighteen million) presented. Based on these factors, FDA concludes that lead acetate hair dyes are safe under the "reasonable certainty of no harm" standard established by Congress.

Advances in the ability of analytical chemists to detect infinitesimally small amounts of substances—such as was seen by the Combe, Inc., radioactive absorption study on lead acetate—are forcing FDA to confront for the first time the significance of potential risks on the order of those associated with lead acetate hair dyes. As discussed in footnote 6, FDA has suggested that an increased risk of cancer of one in one million over the lifetime of the population to be "acceptable" and thus safe by the standard of reasonableness established by Congress. The potential risks from lead acetate are substantially lower than one in one million.

FDA understands that there is a Congressional expectation that the agency will be very conservative in determining whether and to what extent additives should be permitted in the Nation's foods, drugs, devices, and cosmetics. The agency recognizes also that Congress indicated that FDA should be reasonable in applying the Delaney Clause to those additives. (See H.R. Rept. No. 7624, 86th Cong., 2d Sess., pp. 214, 790, and 802–803 (1960).) Under the particular facts present here, FDA believes that approval of the color additive petition for lead acetate hair dyes to be consistent with both its mandate to protect the public health and the standard of reasonableness established by Congress.

Increasingly, the courts too are recognizing the discretion inherent even in the most rigorous public health statutes to disregard potential risks that are so trivial as to present no public health or safety concern. Cf. *Industrial Union Department, AFL–CIO* v. *Marshall*, 48 L.W. 5022, 5037 (July 2, 1980); *Volkswagenwerk, A.G.* v. *Federal Maritime Commission*, 390 U.S. 261, 276–277 (1968); *Alabama Power Company* v. *Costle*, —— *F.2d* —— (D.C. Cir. 1979) No. 78–1006, December 14, 1979); *Monsanto* v. *Kennedy*, 613 F.2d 947, 955 (D.C. Cir. 1979); *United Glass and Ceramic Workers of North America, AFL–CIO* v. *Marshall*, 584 F.2d 398, 407–408 (D.C. Cir. 1978); *District of Columbia* v. *Orleans*, 406 F.2d 957, 959 (D.C. Cir. 1968).

Conclusion

For the reasons discussed in this document, FDA finds the color additive lead acetate to be safe for use in cosmetics that color the hair on the scalp and grants the petition to permanently list lead acetate for that use.

References

The following references, and other relevant material, are on public file in the Dockets Management Branch (address above). They may be seen in that office from 9 a.m. to 4 p.m., Monday through Friday.

1. Wilson, R., "The Carcinogenic Risk of Using Hair Dyes Containing Lead Acetate," Report for Combe, Inc., August 1978, report submitted to FDA, September 1978.
2. Goldberg, A. and M. R. Moore, "Lead Absorption Study for Combe, Incorporated, August 1978," report submitted to FDA, September 1978.
3. "Risk Estimation; Hair Dyes," Food and Drug Administration Subgroup on Lead Acetate Carcinogenicity, September 8, 1980.
4. "Evaluation of Certain Food Additives and the Contaminants Mercury, Lead, Cadmium," World Health Organization Technical Report Series No. 505, FAO Nutrition Meeting Report Series No. 51, April 1972.

With permanent listing, the provisional entry for lead acetate in § 81.1(g) (21 CFR 81.1(g)) will become obsolete. That entry is being deleted from the regulation. Elsewhere in this issue of the Federal Register, the agency is extending the current provisional listing for lead acetate to December 31, 1980. This extension is necessary to accommodate the 30-day objection period and the evaluation of any objections submitted in response to this rule.

The agency has determined under 21 CFR 25.24(d)(5) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore,

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Footnotes continued from last page animal feeding studies showing carcinogenic effect, the substance is presumed to present a human cancer risk) and conclude that lead acetate hair dyes present human cancer risk (44 FR 12207; March 6, 1979). However, for all the reasons specified in this document, the agency now concludes the application of that policy to the peculiar scientific facts relative to lead acetate hair dyes is inappropriate.

[8] Absorption of lead acetate can occur in greater amounts through abraded skin. However, hair dyes containing lead acetate are labeled with directions that advise the user that the product should not be used on cut or abraded skin. The agency believes that labeling instructions of this type minimize the likelihood of absorption under actual conditions of use.

neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706(b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376(b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 73 and 81 are amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. Part 73 is amended in Subpart C by adding new § 73.2396 to read as follows:

§ 73.2396 Lead acetate.

(a) *Identity.* The color additive lead acetate is the trihydrate of lead (2+) salt of acetic acid. The color additive has the chemical formula Pb $(OOCCH_3)_2.3H_2O$).

(b) *Specifications.* Lead acetate shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Water-insoluble matter, not more than 0.02 percent.
pH (30 percent solution weight to volume at 25° C), not less than 4.7 and not more than 5.8.
Arsenic (as As), not more than 3 parts per million.
Lead acetate, not less than 99 percent.
Mercury (as Hg), not more than 1 part per million.

(c) *Uses and restrictions.* The color additive lead acetate may be safely used in cosmetics intended for coloring hair on the scalp only, subject to the following restrictions:

(1) The amount of the lead acetate in the cosmetic shall be such that the lead content, calculated as Pb, shall not be in excess of 0.6 percent (weight to volume).

(2) The cosmetic is not to be used for coloring mustaches, eyelashes, eyebrows, or hair on parts of the body other than the scalp.

(d) *Labeling requirements.* (1) The lable of the color additive lead acetate shall conform to the requirements of § 170.25 of this chapter, and bear the following statement or equivalent:

Wash thoroughly if the product comes into contact with the skin.

(2) The lable of the cosmetic containing the color additive lead acetate, in addition to other information required by the act, shall bear the following cautionary statement, conspicuously displayed thereon:

CAUTION: Contains lead acetate. For external use only. Keep this product out of children's reach. Do not use on cut or abraded scalp. If skin irritation develops, discontinue use. Do not use to color mustaches, eyelashes, eyebrows, or hair on parts of the body other than the scalp. Do not get in eyes. Follow instructions carefully and wash hands thoroughly after each use.

(e) *Exemption for certification.* Certification of this color additive for the prescribed use is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

2. Part 81 is amended in § 81.1 *Provisional lists of color additives* in paragraph (g) by deleting the entry "Lead acetate."

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 1, 1980, file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that hearing is held. Four copies of all documents shall be filed and should be identified with the docket number found in brackets in the heading of this regulation. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective December 1, 1980, except as to any provisions that may be stayed by the filing of proper objections. All affected products initially introduced or initially delivered for introduction into interstate commerce on or after December 1, 1981, shall fully comply with this regulation. Notice of the filing of objections or lack thereof will be given by publication in the Federal Register.

(Sec. 706(b), (c), (d), 74 Stat. 399–403 (21 U.S.C. 376(b), (c), and (d)); sec. 203, Pub. L. 86–618, 74 Stat. 404–407 (21 U.S.C. 376, note)).

Dated: October 28, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-34056 Filed 10-30-80; 8:45 am]
BILLING CODE 4110-03-M

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21 CFR Part 81

[Docket No. 79C–0053]

Postponement of Closing Date for Provisional Listing of Lead Acetate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of lead acetate for use as a color additive in cosmetics that color the hair on the scalp. A new closing date for lead acetate is being established to provide for receipt and evaluation of any objections received in response to the final regulation approving the petition for the permanent listing of lead acetate. The regulation that permanently lists lead acetate is published elsewhere in this issue of the Federal Register. The new closing date will be December 31, 1980.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Gerald L. McCowin, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: The current closing date of October 31, 1980, for the provisional listing of lead acetate was established by a regulation published in the Federal Register of June 24, 1980 (45 FR 42255). The October 31, 1980, closing date for lead acetate was established to provide time for publication of a regulation in the Federal Register regarding the final decision on the petition for the permanent listing of lead acetate.

After the review and evaluation of the data relevant to the color additive petition for lead acetate used in hair dyes, the agency concluded that lead acetate is safe and suitable for that use. Therefore, FDA issued a regulation that permanently lists lead acetate. The listing regulation is published elsewhere in this issue of the Federal Register.

The regulation set forth below will postpone the October 31, 1980, closing date for the provisional listing of that color additive until December 31, 1980. This postponement will provide sufficient time for receipt and the evaluation of comments or objections submitted in response to the permanent listing for lead acetate hair dyes.

Because the current closing date expires on October 31, 1980, FDA has concluded that use of a notice and public procedure on this regulation is impracticable. Moreover, good cause exists for issuing this postponement as a final rule, since the agency has previously concluded that lead acetate is safe for its intended use under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of this color additive until December 31, 1980. To prevent any interruption in the provisional listing of lead acetate, and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on October 31, 1980.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act (Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 81 is amended as follows:

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing date for "Lead acetate" in paragraph (g) to read "December 31, 1980."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing of additives,* by revising the closing date for "Lead acetate" in paragraph (b) to read "December 31, 1980."

Effective date. This regulation is effective October 31, 1980.

(Sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: October 28, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-34054 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 201

[Docket No. 78N-0320]

Requirements for Designating Manufacturer's Name on a Drug Product's Label; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: In the final rule setting forth requirements for designating the manufacturer's name on a drug product label, published in the Federal Register of April 15, 1980 (45 FR 25760), the phrase "Manufactured for ———— by ————" was inadvertently omitted as a permissible qualifying identification of a product's distributor and manufacturer. This correction adds this phrase to the list of permissible alternatives.

FOR FURTHER INFORMATION CONTACT: Steven H. Unger, Bureau of Drugs (HFD-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5220.

SUPPLEMENTARY INFORMATION: In the preamble to the final rule that amended the requirements for identifying the manufacturer, packer, or distributor on drug product labels, FDA stated (45 FR 25768) that distributors should at their option be permitted to adopt the phrase "Manufactured for ———— by ————". While the preamble stated that the rule has been revised to permit this phrase, the rule was not in fact so revised. Section 201.1(h)(5) is corrected to include this phrase as a permissible alternative and reads as follows:

§ 201.1 Drugs; name and place of business of manufacturer, packer, or distributor.

* * * * *

(h) * * *

* * * * *

(5) If the distributor is named on the label, the name shall be qualified by one of the following phrases: "Manufactured for ————", "Distributed by ————", "Manufactured by ———— for ————", "Manufactured for ———— by ————", "Distributor: ————", "Marketed by ————". The qualifying phrases may be abbreviated.

* * * * *

Dated: October 24, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33947 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 546

Tetracycline Antibiotic Drugs for Animal Use; Chlortetracycline Hydrochloride Tablets; Revocation of Certain Regulations

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The agency is revoking those regulations reflecting approval of a new animal drug application (NADA) providing for use of chlortetracycline oblong tablets with vitamins for the prevention and treatment of bacterial scours in calves. The sponsor, American Cyanamid Co., requested the withdrawal of approval.

EFFECTIVE DATE: November 10, 1980.

FOR FURTHER INFORMATION CONTACT: David Scarr, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, approval of NADA 55-026 is withdrawn. This document amends the regulations by deleting that portion which reflects approval of this NADA.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), Part 546 is amended by revising § 546.110d(c)(5) to read as follows:

§ 546.110d Chlortetracycline hydrochloride tablets.

* * * * *

(c) * * *

(5) *Conditions of use.* It is used as chlortetracycline in tablets for oral ingestion by calves as follows:

(i) *Amount.* 25 milligrams per tablet.

(ii) *Indications for use.* Aid in reduction of incidence of bacterial scours.

(iii) *Limitations.* 75 milligrams per animal per day.

* * * * *

Effective date: October 31, 1980.

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

Dated: October 23, 1980.

Gerald B. Guest,

Acting Director for Veterinary Medicine.

[FR Doc. 80-33950 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1977

Walkaround Pay

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Deletion of regulation.

SUMMARY: The OSHA walkaround pay regulation, 29 CFR 1977.21, requires employers to pay employees for the time during which they accompany OSHA compliance officers during inspections or engage in related activities. That regulation is hereby deleted in light of the decision of the U.S. Court of Appeals for the District of Columbia Circuit in "Chamber of Commerce of the United States of America v. OSHA," in which the court ordered that the regulation be vacated due to the agency's failure in promulgating the regulation to comply with the rule making procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553. The agency is issuing a proposal to require walkaround compensation shortly.

EFFECTIVE DATE: October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Lerner, Division of Occupational Safety and Health, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue N.W., Room S-4004, Washington, D.C. 20210 (Telephone No. 202-523-6569).

SUPPLEMENTARY INFORMATION: On September 20, 1977 the Assistant Secretary of Labor for Occupational Safety and Health promulgated "an interpretive rule and general statement of policy," declaring that an employer's failure to compensate employees for time spent participating in a walkaround inspection conducted pursuant to section 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) (hereinafter "the Act") constitutes discrimination under section 11(c) of the Act (29 U.S.C. 660) (42 FR 47344, 47345). Section 8(e) of the Act provides that, subject to the regulations issued by the Secretary of Labor, a representative of the employer and a representative authorized by employees have the right to accompany an Occupational Safety and Health Administration (OSHA) inspector during the physical inspection of any workplace under section 8(e) of the Act. Section 11(c)(1) of the Act proscribes any discriminatory action against an employee because the employee, *inter alia,* has exercised on behalf of himself or others any right afforded by the Act. The regulation, codified at 29 CFR 1977.21, provided that in order to assure the unimpeded flow of information to OSHA inspectors, as well as the statutory right of employees to participate in walkaround inspections, an employer's failure to pay employees for time spent in such inspections was discriminatory under section 11(c).

On October 25, 1977, the Chamber of Commerce of the United States of America ("Chamber") filed an action in the United States District Court for the District of Columbia challenging the validity of the walkaround pay provision. The district court upheld the validity of the regulation and the Chamber appealed. On July 10, 1980, the United States Court of Appeals for the District of Columbia Circuit reversed the judgment of the district court and remanded the case to the district court with instructions to vacate the walkaround pay regulation and to conduct any further proceedings not inconsistent with the opinion that it deemed necessary. "Chamber of Commerce of the United States of America v. OSHA," —— F.2d ——, Docket No. 78-2221 (D.C. Cir. July 10, 1980). The court held that since "the Act neither prohibits nor compels pay for walkaround time * * *" the walkaround pay provision was not an interpretive rule; rather, it was a legislative rule, which may only be promulgated in accordance with the notice-and-comment procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553. Because OSHA failed to comply with those procedures in promulgating the rule, the court concluded that the rule must be vacated. On August 14, 1980, the district court vacated the rule and dismissed the case.

After due consideration of the court of appeals decision in "Chamber," OSHA has decided to delete its walkaround pay regulation at 29 CFR 1977.21 (1977) and will not pursue any enforcement actions based on a *per se* theory of discrimination to require employers to compensate employees for time spent in walkaround inspections unless it has first promulgated a walkaround compensation regulation using the notice-and-comment procedures of 5 U.S.C. 553. The agency is publishing a proposed regulation dealing with the issue of walkaround pay shortly.

I find that the reasons stated above constitute good cause for making this deletion of 29 CFR 1977.21 (1977) effective October 23, 1980. This amendment, therefore, is effective October 23, 1980.

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

§ 1977.21 [Removed]

Accordingly, pursuant to sections 8(e) and 8(g)(2) of the Occupational Safety and Health Act of 1970 (84 Stat. 1600, 29 U.S.C. 657(e) and (g)(2), 5 U.S.C. 553, and Secretary of Labor's Order No. 8-76 (41 FR 25059), Part 1977 of Title 29, Code of Federal Regulations is hereby amended by removing § 1977.21 (1977).

(Secs. 8(e) and (g)(2), 11(c); 84 Stat. 1600 (2900 U.S.C. 657(e) and (g)(2), 660(c)); 5 U.S.C. 553; Secretary of Labor's Order 8-76 (41 FR 25059))

Signed at Washington, D.C. this 23rd day of October, 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 80-34031 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-26-M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1690

Determination of Availability of Members of the Standby Reserve of the Armed Forces for Order to Active Duty; Revocation

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: The Selective Service System amends its regulations by revoking 32 CFR Part 1690. Section 6, Public Law 96-357, approved September 24, 1980, repealed the provision of 10 U.S.C. 672(a) that required the Director of Selective Service to determine the availability of a member of the Standby Reserve of the Armed Forces for active duty. 32 CFR Part 1690 has no legal basis, therefore, Part 1690 Determination of Availability of Members of the Standby Reserve of the Armed Forces for Order to Active Duty is revoked.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, 600 E Street, N.W., Washington, D.C. 20435 whose telephone number is (202) 724-0895.

PART 1690 [REVOKED]

32 CFR Part 1690 is revoked.

Bernard Rostker,

Director of Selective Service.

October 27, 1980.

[FR Doc. 80-34042 Filed 10-30-80; 8:45 am]

BILLING CODE 8015-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 1647-1]

Approval and Promulgation Implementation Plans: Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA announces today final rulemaking on revisions to the New Source Review (NSR) portion of the Ohio State Implementation Plan (SIP). A notice of proposed rulemaking on these revisions was published in the August 26, 1980 Federal Register (45 FR 56845). In that notice, USEPA proposed to conditionally approve these revisions provided that, within a specified time period, the State correct specific deficiencies. Based on USEPA's review of the State's response, and the public comments received, USEPA is today conditionally approving the NSR SIP revision submitted by Ohio on July 29, 1980.

EFFECTIVE DATE: This final rulemaking becomes effective on October 23, 1980.

ADDRESSES: Copies of the SIP revision, and public comments on the notice of proposed rulemaking are available for inspection at the following addresses:

U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Richard J. Clarizio, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act, USEPA designated certain areas as not meeting the National Ambient Air Quality Standards (NAAQS) for total suspended particulates, sulfur dioxide, carbon monoxide, photochemical oxidants, and nitrogen dioxide. Part D of the Clean Air Act (Act), added in 1977, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for those areas designated as not meeting the NAAQS.

In order to satisfy the new source review requirements of the Act, the State submitted to USEPA on July 29, 1980, a revision to its SIP. On August 26, 1980, USEPA proposed to conditionally approve this SIP revision.

USEPA's criteria for an approvable Part D SIP are summarized in a Federal Register notice published on April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

A discussion of conditional approval and its practical effect appears in the July 2, 1979 Federal Register (44 FR 38583). A conditional approval requires the State to submit additional materials by the specified deadlines. USEPA will follow the procedures described below when determining if the requirements of conditional approval have been met.

1. When a State submits the required additional documentation, USEPA will publish a notice in the Federal Register announcing receipt and availability of the submission and that the conditional approval is continuing pending USEPA's final action on the submission.

2. USEPA will evaluate the State's submission and public comments on the submission to determine if the deficiencies have been fully corrected. After review is complete, a Federal Register notice will either fully approve the plan if all conditions have been met, or withdraw the conditional approval and disapprove the plan. If the plan is disapproved, the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to submit the required materials according to the negotiated schedule, USEPA will publish a Federal Register notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved, and the Section 110(a)(2)(I) restrictions on growth are in effect.

In the August 26, 1980 Federal Register USEPA proposed to approve the NSR SIP revision provided the State submit or commit to submit within a specified time period the following: (1) A description of the interim procedures which it will follow to satisfy the requirements of Section 172(b)(11) of the Act; (2) a commitment which assures that each permit it issues satisfies the requirements of section 173 of the Act; and (3) revised regulations which refine the criteria used by the Director to issue new source permits under section 173 of the Act.

Summarized below are: (1) A discussion of the conditions for approval cited in the August 26, 1980 Notice of Proposed Rulemaking (45 FR 56845) (2) the State's response to these conditions; and (3) USEPA's evaluation of the adequacy of the State's response.

Alternative Analysis Procedures

In the August 25, 1980 Federal Register, USEPA indicated that the July 29, 1980 submission did not contain a description of the interim procedures the State will follow to satisfy the requirements of Section 172(b)(11)(A) of the Act. This section requires an analysis of alternate sites, sizes, production processes and environmental control techniques for those hydrocarbon and carbon monoxide sources proposing to locate in an ozone or carbon monoxide nonattainment area which has been granted additional time to demonstrate attainment of either NAAQS.

State Response

For those areas in the State which are required to comply with Section 172(b)(11)(A) of the Act the following procedure will be utilized. The affected proposed major new facility will be required to submit alternative site data for a minimum of two locations to the regional planning agency for comments and to the Ohio EPA for review. In addition to the alternative sites, the facility will provide an analysis of alternative sizes, production processes and control techniques which demonstrates that the benefits of the construction or modification of the facility outweigh the environmental and social costs imposed. The regional planning agency will review the facility's application taking into account air quality considerations. The final decision of the permit will be made by the Ohio EPA after consideration of the complete application and any comments provided by the regional planning agency.

USEPA Evaluation

USEPA has reviewed the procedures which the State will follow to satisfy the requirements of Section 172(b)(11)(A) of the Act. USEPA has determined that they are adequate as long as these procedures are followed for each hydrocarbon and carbon monoxide source proposing to locate in an ozone or carbon monoxide nonattainment area which has been granted additional time to demonstrate attainment of either NAAQS.

Permit Issuance

In the August 26, 1980 Federal Register, USEPA requested that the State assure it that each permit which is issued under the authority of the interim procedures satisfies the requirements of Section 173 of the Act.

State Response

In its September 25, 1980 letter, the State committed to comply with applicable law and the requirements of Section 173 of the Act before issuing a permit.

USEPA Evaluation

USEPA has reviewed this commitment and has determined that as long as each permit issued by the State satisfies the requirements of Section 173 of the Act, the State will be meeting the condition noted in the August 26, 1980 Federal Register.

Submission of Revised Regulations

In the August 26, 1980 Federal Register, USEPA stated that revisions to the State regulations are necessary to specifically define how the NSR program is to be conducted and what is required of the permit applicant and the Director of the Ohio EPA before the permit is issued to a new or modified source wishing to locate within a designated nonattainment area.

In the July 29, 1980 submission, the Governor of Ohio committed to submit such regulations by October 1, 1981. Therefore, USEPA proposed to approve Ohio's NSR SIP revision on the condition that the State submit, after the completion of State rulemaking procedures, but no later than October 1, 1981, revised regulations which refine the criteria used by the Director to issue new source permits under Section 173 of the Clean Air Act.

State Response

In its September 25, 1980 letter, the State reaffirmed this commitment to submit revised regulations by October 1, 1981.

USEPA Evaluation

As stated in the August 25, 1980 Federal Register, USEPA believes that this commitment and schedule to submit the revised regulations are acceptable. It should be noted, however, that pursuant to the August 7, 1980 Federal Register (45 FR 52676) USEPA must have approved by November 7, 1981, the State's revisions to the NSR regulations, which reflect the changes required by that Federal Register. Failure to have such revised regulations by this date will necessitate imposition of the construction ban.

Summarized below are: (1) The significant issues raised by public commentors, (2) USEPA's response to these issues, and (3) USEPA's final rulemaking.

Public Comment

One commentor submitted extensive national comments and requested that the comments be considered part of the record for each State plan.

USEPA Response

Some of the issues are not relevant to provisions in Ohio's submission USEPA notified the public of its response to these comments in the February 21, 1980 Federal Register (45 FR 11472).

Public Comment

One commentor, a representative of a public interest group, presented two objections to USEPA's proposed conditional approval of the NSR SIP revision. The commentor first objected to the general use of the conditional approval mechanism and then to the specific use of it in this case.

To support the first objection, the commentor contends that there is no statutory basis for conditionally approving a SIP revision; and that the Administrator only has authority to "approve or disapprove." The commentor further states that conditional approval negates the intent of the growth and funding restrictions of sections 110(a)(2)(I), 176(a) and 316 of the Act.

Not conceding the first objection, the commentor further maintains that even if USEPA has the authority to conditionally approve, the USEPA should not conditionally approve Ohio's NSR SIP revision. The commentor claims that conditional approval is inappropriate since the deficiencies in this SIP revision are not minor. In particular, the commentor states that there are major deficiencies in OAC Section 3745-31 and in the reasonable further progress portion of the NSR SIP revision. The commentor also states that the reasonable further progress portion is deficient because it is not in final form.

USEPA Response

In response to the commentor's first objection, USEPA believes that where a SIP substantially complies with the requirements of Section 172(b), USEPA has inherent authority to approve a SIP on the condition that the State corrects the remaining, relatively minor, deficiencies in a short period of time. The only available alternative would be to disapprove the SIP and thus invoke the construction moratorium. In addition, conditional approval is consistent with Section 110(c)(1)(C). That subsection requires the Administrator to promulgate regulations for a state if "the state fails, within 60 days after notification by the Administrator or such later period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H)." When the Administrator grants conditional approval, he is essentially notifying the State that further revisions are required to make the Plan or regulations fully approvable. If the State fails to satisfy the Administrator's conditions, the Administrator will disapprove the plan or regulations and may then promulgate regulations to correct the deficiency. The State is simply offered the option of correcting the inadequacies itself.

Contrary to the commentor's claim, the construction moratorium was designed by Congress to protect air quality when the State lacks a plan that adequately assures attainment and maintenance of the ambient standards. That purpose would not be served when the State plan substantially assures attainment and when the remaining deficiencies will be prompty corrected. Moreover, USEPA is precluded from imposing funding restrictions under Section 176(a) under these circumstances, since the State clearly would have made "reasonable efforts" to submit an approvable Part D SIP.

USEPA responds to the commentor's objection to its conditional approval of the NSR SIP revision in the following manner. The commentor claims that there are major deficiencies in OAC Section 3745-31 and in the reasonable further progress (RFP) portion of the NSR SIP revision. The commentor contends that based on these deficiencies USEPA should change its proposed conditional approval to a disapproval.

OAC Section 3745-31 was submitted as part of the NSR SIP revision. It stipulates that the requirements must be satisfied when the Ohio EPA issues an installation permit to a new or modified source of air pollution. USEPA cannot change its proposed conditional approval to a disapproval without sufficient justification for such a change. The commentor has failed to specify the alleged deficiencies in OAC 3745-31, and therefore has not provided USEPA with adequate justification for the disapproval of this SIP revision.

The commentor also claims that the RFP portion of the NSR SIP revision contains a major deficiency. The commentor claims that it is deficient because it is not in final form. USEPA believes that the RFP portion of the NSR SIP revision is acceptable. The RFP portion of the NSR SIP revision, as submitted by the State on July 29, 1980, contains a description of the program which the State is using, and will continue to use, to ensure that emissions from any proposed source in a designated nonattainment area will not interfere with that area's ability to attain the applicable NAAQS by the date imposed by the Act. This approach as described by Ohio meets USEPA requirements.

USEPA Final Determination

USEPA has reviewed the comments received on its proposed conditional approval of the NSR SIP revision and has determined that none of the issues raised provide a sufficient justification for USEPA to change its proposed action. Furthermore, USEPA has reviewed the State's response and has determined that the State adequately commits itself to satisfy these three conditions. USEPA, therefore, approves the NSR SIP revision submitted by the State on July 29, 1980, provided that the State submit to USEPA after the completion of the State rulemaking procedures, but in no event later than October 1, 1981, revised regulations which refine the criteria used by the Director to issue new source permits under section 173 of the Clean Air Act.

USEPA has determined that good cause exists for making this final rulemaking immediately effective. By making this final rulemaking immediately effective, some of the restrictions on industrial growth contained in section 110(a)(2)(I) of the Act could be lifted from the State of Ohio if all other requirements are met. These restrictions are imposed for a failure to have a State Implementation Plan which meets the requirements of Part D after the final date for SIP approval specified in the Act. USEPA has determined that major portions of the revisions to the Ohio NSR SIP meet the requirements of Part D. Final action approving these revisions would satisfy many of the requirements of a Part D SIP. Until the State has a fully approved or conditionally approved Part D SIP, it is subject to the new source prohibitions of section 110(a)(2)(I) of the Clean Air Act.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant," and therefore subject to certain procedural requirements of the Order, or whether it may follow other specialized development procedures. USEPA labels these other regulations, "specialized." I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979, by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirments of Executive Order 12044.

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

This Notice of Final Rulemaking is issued under the authority of section 110(a), 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7502, 7601(a).

Dated: October 23, 1980.

Douglas Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

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

(1) Section 52.1870(c) is amended by adding subparagraph (24) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(24) On July 25, 1980 the State of Ohio submitted its Part D revision to the New Source Review portion of the State Implementation Plan. On September 25, 1980 the State submitted a response to the August 26, 1980 Federal Register notice of proposed rulemaking. The response contained information which corrects certain deficiencies and commits to correct by a specified date other deficiencies.

(2) Section 52.1987 is amended by revoking paragraphs (a) and (b) pursuant to section 110(a)(5)(A) of the Clean Air Act (42 U.S.C. 7410), by reserving these paragraphs and by adding paragraph (e) to read as follows:

§ 52.1987 Review of new sources and modifications.

* * * * *

(e) Part D—Conditional Approval—The Ohio New Source Review State Implementation Plan revision for designated nonattainment areas is approved provided that: (1) The State submits by October 1, 1981, revised regulations which have completed State rulemaking procedures and which refine the criteria used by the Director to issue new source permits under section 173 of the Clean Air Act, and (2) each permit issued by the State satisfies the requirements of sections 173 and 172(b)(11) of the Act.

[FR Doc. 80-33874 Filed 10-30-80; 8:45 am]
BILLING CODE 6560-38-M

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40 CFR Part 52

[A-5-FRL 1647-2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) announces today final rulemaking on revisions to the carbon monoxide and ozone portions of the Ohio State Implementation Plan (SIP). The State submitted these revisions to USEPA to satisfy the requirements of Part D of the Clean Air Act (Act). USEPA published a notice of availability (NOA) in the November 2, 1979 Federal Register (44 FR 63114). A notice of proposed rulemaking (NPR) on these revisions appeared in the March 10, 1980 (45 FR 15192) Federal Register. A notice correcting mistakes in the March 10, 1980 Federal Register was published in the April 4, 1980 Federal Register (45 FR 22987). The March 10, 1980 Federal Register described the nature of the SIP revisions, discussed provisions which in USEPA's judgment did not comply with the requirements of the Clean Air Act (Act) and requested comments from the State and the public. Subsequent to publication of this notice, the State of Ohio submitted additional information for inclusion in the SIP. This information was intended to satisfy the deficiencies identified in the NPRs. Additionally, numerous public comments were received during the public comment period.

Based on its review of the State's response and the public comments, USEPA is today approving, conditionally approving and disapproving specific portions of the Ohio submittal as revisions to the federally approved Ohio State Implementation Plan.

EFFECTIVE DATE: This final rulemaking becomes effective on October 23, 1980.

ADDRESSES: Copies of the SIP revision, public comments on the NPR, and USEPA's evaluation and response to comments are available for inspection at the following addresses:

U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, 401 M Street SW., Washington, D.C. 20460

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460
The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clarizio, Air Programs Branch, Regulatory Analysis Section, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act), as amended in 1977, USEPA designated certain areas in Ohio as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO), and ozone (03).

Part D of the Act, which was added by the 1977 Amendments, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary standard as expeditiously as practicable, but not later than December 31, 1982. In certain circumstances an extension is provided to no later than December 31, 1987 for ozone and/or carbon monoxide.

The requirements for an approvable SIP are described in a Federal Register notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

An adequate State Implementation Plan for ozone requires sufficient controls on the emission of volatile organic compounds (VOC) from stationary and mobile sources to provide for the attainment of the standard by December 31, 1982. Except for the Steubenville area, the State of Ohio has relied exclusively on mobile source controls to provide for attainment of the carbon monoxide NAAQS. In cases where attainment of either the ozone or carbon monoxide NAAQS cannot be demonstrated by 1982, despite application of all reasonably available control measures, extensions of the attainment date may be granted to December 31, 1987. Pursuant to section 172(b)(11) of the Act, a SIP which provides for attainment of the ozone and/or carbon monoxide standard after December 31, 1982 must contain a specific schedule for the implementation of a vehicle emissions inspection and maintenance program (I/M) and establish a program which requires an analysis of alternative sites and locations prior to the issuance of any permit for construction or modification of a major VOC or carbon monoxide emitting facility in the nonattainment area.

On July 27, 1979 and September 13, 1979 the State of Ohio submitted revisions to its SIP for the pollutants carbon monoxide and ozone. Amendments to the submittals were transmitted by the State in December of 1979 and January of 1980. The July 27, 1979 submittal consisted of transportation control plans, and attainment and reasonable further progress (RFP) demonstrations for each of the following urban carbon monoxide and/or ozone nonattainment areas: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Steubenville and Toledo. Revisions to the SIP for the Youngstown urban area were submitted separately. Final action on the Youngstown plan and for the rural ozone nonattainment areas is discussed in a separate notice appearing in today's Federal Register.

The transportation control plans (TCP) contain specific measures designed to reduce both carbon monoxide and hydrocarbon emissions from mobile sources. Some of the programs considered for implementation in the TCP are: Traffic flow improvements, transit improvements and vehicle inspection and maintenance (I/M) programs.

Along with the TCP, the State submitted attainment demonstrations for both pollutants (where necessary), for each of the urban areas. These attainment demonstrations contained inventories of the carbon monoxide and/or volatile organic compound (VOC) emissions occurring in the base year. Based on the base year emissions and on anticipated emission reductions due to the implementation of the proposed mobile and stationary source controls, an estimate was made of the effectiveness of the plan and the ability of the area to demonstrate attainment of the NAAQS for ozone and carbon monoxide by December 31, 1982.

For the urban areas of Cincinnati and Cleveland, attainment of the carbon monoxide and ozone NAAQS was not demonstrated by December 31, 1982. Therefore, the State requested an extension, and pursuant to the requirements of section 172 of the Clean Air Act (Act) submitted a vehicle I/M program.

The September 13, 1979 submittal contained revisions to Chapter 3745-21 of the Ohio Administrative Code (Chapter 3745-21). Chapter 3745-21 contains the State's regulations for controlling VOC and carbon monoxide emissions from stationary sources.

USEPA evaluated the transportation control plans and the attainment demonstrations using the requirements for an approvable nonattainment area SIP which appeared in the April 4, 1979 Federal Register (44 FR 20372), the "USEPA-USDOT Guidelines for Air-Quality Transportation Plans" and the Office of Transportation and Land Use Policy "Checklist for Transportation SIPs." USEPA evaluated the vehicle I/M program and the regulations controlling VOC and carbon monoxide emissions from stationary sources using the guidance materials referred to in the General Preamble for Proposed Rulemaking (44 FR 23072) and its supplements.

USEPA in the November 2, 1979 Federal Register (44 FR 63114) published a notice announcing receipt of the Ohio submittal. On March 10, 1980 (45 FR 15192) USEPA published a NPR with a notice of correction (NOC) published on April 4, 1979 (45 FR 22987). The NPR described the nature of the SIP revisions and specified portions of the SIP submittal which in USEPA's judgment did not comply with the requirements of the Act and needed either clarification or correction by the State.

Initially, a thirty day comment period was provided, until April 9, 1980. Upon request, this comment period was extended approximately two weeks until April 24, 1980 (45 FR 27787). Numerous individuals submitted comments on the Ohio submittal and on USEPA's proposed rulemaking action. The State of Ohio submitted comments, commitments and corrective information to USEPA on the following dates: April 7, 1980, April 15, 1980, April 24, 1980, April 28, 1980, May 27, 1980, July 23, 1980 and August 6, 1980. Significant comments and USEPA's response to them are discussed below.

In this Federal Register notice, public comments are addressed in two parts: (1) General comments on the Ohio SIP and on the criteria used by USEPA to evaluate all SIPs and (2) comments on specific portions of the Ohio submittal and/or on USEPA's evaluation of specific portions of the submittal. Comments from the second category will be discussed in one of the following three sections of this notice: (a) Transportation control plans (TCP) and attainment and reasonable further progress (RFP) demonstrations, (b) vehicle inspection and maintenance (I/M); or (c) control of Volatile Organic Compound (VOC) and carbon monoxide emissions from stationary sources. Each of these sections of the notice briefly identifies the deficiencies cited in the

NPR, discusses both the State's response and the response of other commentators, and contain USEPA's response to comments and its final determination on the particular revisions.

USEPA's final determinations take one of three forms: approval, conditional approval, or disapproval. A discussion of conditional approval and its practical effect appears in the July 2, 1979 Federal Register (44 FR 38583). A conditional approval requires the State to submit additional materials by the specified deadlines negotiated between the State and the USEPA Regional Office. Schedules submitted by Ohio will be proposed for public comment elsewhere in this Federal Register. Although public comment is solicited on the deadlines, and the deadlines may be changed in light of the comments, the State remains bound by its commitment to meet the proposed deadlines, unless they are changed. USEPA will follow the procedures described below when determining if requirements of conditional approval have been met.

1. When the State submits the required additional documentation, USEPA will publish a notice in the Federal Register announcing receipt and availability of the submission and that the conditional approval is continuing pending USEPA's final action on the submission.

2. USEPA will evaluate the State's submission and public comment on the submission to determine if noted deficiencies have been fully corrected. After review is complete, a Federal Register notice will either fully approve the plan if all conditions have been met, or withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to submit the required materials according to the negotiated schedule, USEPA will publish a Federal Register notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved, and the Section 110(a)(2)(I) restrictions on growth are in effect.

The following chart summarizes the actions taken by USEPA today on the Ohio submittal:

1. Approval

(a) Transportation Control Plan for the following areas:
(i) Akron (ozone component)
(ii) Canton
(iii) Cincinnati*
(iv) Columbus
(v) Dayton
(vi) Steubenville
(vii) Toledo (ozone component)
(viii) Cleveland*
(b) Carbon Monoxide Attainment Demonstrations for the following areas:
(i) Cincinnati*
(ii) Cleveland*
(iii) Columbus
(c) Carbon Monoxide RFP Demonstration for the following areas:
(i) Cincinnati*
(ii) Cleveland*
(iii) Columbus
(d) Ozone Attainment Demonstration for the following areas:
(i) Akron
(ii) Cincinnati*
(iii) Dayton
(iv) Toledo
(e) Ozone RFP Demonstration for the following areas:
(i) Akron
(ii) Canton
(iii) Cincinnati*
(iv) Cleveland*
(v) Columbus
(vi) Dayton
(vii) Toledo
(f) The following portions of Chapter 3745-21 (Control of VOC and carbon monoxide emissions from stationary sources) of the Ohio Administrative Code:
(i) Rule 01—Definitions
(ii) Rule 02—Ambient Air Quality Standards and Guidelines
(iii) Rule 03—Methods of Ambient Air Quality Measurement
(iv) Rule 04—Attainment Dates and Compliance Time Schedules—except for the compliance schedule contained in paragraph (C)(18) as it applies to sources covered by old rule 3745-21-04(C)(1)
(v) Rule 05—Nondegradation Policy
(vi) Rule 06—Classification of Regions
(vii) Rule 07—Control of Emissions of Organic Materials from Stationary Sources
(viii) Rule 08—Control of Carbon Monoxide Emissions from Stationary Sources
(ix) Rule 09—Control of Organic Compounds from Stationary Sources—except for paragraphs (M)(2) and (R).
(x) Rule 10—Compliance Test Methods and Procedures.

2. Conditional Approval

(a) Carbon Monoxide Attainment Demonstration for:
(i) Dayton
(ii) Steubenville
(b) Carbon Monoxide RFP Demonstration for the following areas:
(i) Dayton
(ii) Steubenville
(c) Ozone Attainment Demonstration for the following areas:
(i) Canton
(ii) Cleveland [1]
(iii) Columbus
(d) Paragraph (M)(2) and (R) of rule 09 of Chapter 3745-21 of the Ohio Administrative Code (hereinafter referred to as Chapter 3745-21).

3. Disapproval

(a) Compliance schedule in paragraph (C)(18) of new rule 04 of Chapter 3745-21 as it applies to sources covered by old rule 3745-21-04(C)(1).

4. No Action Taken [2]

(a) Carbon Monoxide Attainment and RFP Demonstrations for the following areas:
(i) Akron
(ii) Toledo
(b) Vehicle Inspection and Maintenance (I/M)

5. No Action Required

(a) Carbon Monoxide Attainment Demonstration and RFP Demonstration for:
(i) Canton
(b) Ozone Attainment Demonstration and RFP Demonstration for:
(i) Steubenville

I. National and General Comments on the Ohio SIP and USEPA Response

Comment: One commentator, a local environmental group, stated that USEPA lacked statutory authority to conditionally approve the Ohio SIP. The commentator further argued that conditional approval "negates the punitive weight" of the growth and funding restrictions of sections 110(a)(2)(I), 176(a) and 316 of the Act, 42 U.S.C. 7410 (a)(2)(I), 7506(a), 7616. The

[1] The plans submitted for these areas do not predict attainment of the carbon monoxide and/or ozone NAAQS by 1982. Therefore, to have a fully approvable nonattainment area plan for these areas the State must satisfy the requirements of sections 172(b)(11) (A), (B) and (C).

[2] The Akron, Toledo and I/M portions of this notice contain a discussion of the effects of the growth restrictions imposed by section 110(a)(2)(I) of the Act, as a result of this action.

USEPA has determined that good cause exists for making these revisions immediately effective. By making this final rulemaking immediately effective, the restrictions on industrial growth contained in section 110(a)(2)(I) of the Act could be lifted in some areas of the State of Ohio if all other requirements are met. These restrictions are imposed for a failure to have a State Implementation Plan which meets the requirements of Part D after the final date for SIP approval specified in the Act. USEPA has determined that for several areas in the State, the Ohio carbon monoxide and ozone State implementation Plan revisions meet the requirements of Part D. Therefore, it would be contrary to the public interest to continue for thirty days after the publication of this notice the restrictions on industrial growth for certain sources located within or desiring to locate within these carbon monoxide and/or ozone nonattainment areas.

commentator also asserted that by alerting the public of its conditional approval policy only on November 23, 1979, USEPA arrived at this policy after the fact and merely as a means of political and administrative convenience.

USEPA Response: USEPA first announced its conditional approval policy on July 2, 1979, 44 FR 38583. On November 23, 1979, 44 FR 67182, USEPA announced the procedures it would follow for conditional approvals. In those publications, USEPA set out its position on conditional approval. In brief, USEPA believes that where a SIP substantially complies with the requirements of Section 172(b), USEPA has inherent authority to approve a SIP on the condition that the State corrects the remaining relatively minor deficiencies in a short period of time. The only available alternative would be to disapprove the SIP and thus invoke the construction moratorium. Contrary to the commentator's claim, the construction moratorium was designed by Congress to protect air quality when the state lacks a plan that adequately assures attainment and maintenance of ambient standards. That purpose would not be served when the State plan substantially assures attainment and when the remaining deficiencies will be promptly corrected. Moreover, USEPA is precluded from imposing funding restrictions under Section 176(a) under these circumstances, since the State clearly would have made "reasonable efforts" to submit an approvable Part D SIP. USEPA therefore interprets the Act to permit a conditional approval under these circumstances. In addition, conditional approval is consistent with Section 110(c)(1)(C). That subsection requires the Administrator to promulgate regulations for a state if "the state fails, within 60 days after notification by the Administrator or such later period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H)." When the Administrator grants conditional approval, he is essentially notifying the State that further revisions are required to make the plan or regulations fully approvable. If the State fails to satisfy the Administrator's conditions, the Administrator will disapprove the plan or regulations and may then promulgate regulations to correct the deficiency. The State is simply offered the option of correcting the inadequacies itself.

Finally, the commentator is incorrect in maintaining that USEPA's conditional approval policy contradicts its notices of September 17, 1979 (44 FR 53761) and April 4, 1979 (44 FR 20372). The quoted parts of those notices referred to different issues than those raised by conditional approvals, since they concerned the final approvability of the SIP. Moreover, USEPA clearly stated its conditional approval policy on July 2, 1979 and November 23, 1979, in a manner designated to harmonize with the other Federal Register notices setting out USEPA's guidance for approving Part D SIPs.

Comment: The same environmental group submitted comments on the adequacy of the techniques utilized in demonstrating attainment in the urban areas and on the adequacy of the procedures utilized by the State when they adopted their standards.

In reference to the last point, the commentator believes that adoption of SIP elements one at at time, with separate, noncumulative comment period prevented the public's ability to utilize a holistic approach to critique the overall control strategy. In reference to the attainment demonstrations, the commentator contends that the Ohio EPA failed to provide the local planning agencies with updated emissions inventories and failed to submit a current emissions inventory with the July 27, 1979 submittal. Furthermore, the commentator objects to using the 1975 emissions inventory as the base year for formulating the SIP. Finally, the commentator strongly objected to the use of the linear rollback method which was used in certain urban areas, for determining the percent reduction of VOC emissions necessary to achieve the NAAQS.

USEPA Response: USEPA has reviewed these issues and has determined that the State and local agencies have complied with the requirements of the Act. In particular, when adopting the carbon monoxide and ozone SIP elements, the State in every case provided for adequate public notice prior to convening and hearings on all elements of the SIP revisions. USEPA has also determined that the Ohio EPA either directly or indirectly supplied the local planning agencies with an updated emissions inventory. The emissions inventory used for the base year (1975) was consistent with USEPA guidance as outlined in "Requirements for Nonattainment Area Plans," and adequately reflects the emissions corresponding to the air quality data used in the specific attainment demonstrations. Furthermore, these inventories are updated annually thereby satisfying the requirements of Section 172(b)(4) of the Act.

Finally, linear or proportional rollback is one of the four analytical techniques approved by USEPA for use in determining the amount of hydrocarbon reductions necessary to demonstrate attainment of the ozone NAAQS. It was the responsibility of the State and/or local agencies to determine which specific method was to be used. In a number of areas the local agencies utilized the linear rollback approach. USEPA review of each urban area's individual calculation has indicated that they are correct and acceptable.

Comment: One commentator submitted extensive national comments and requested that the comments be considered part of the record for each State plan.

USEPA Response: Although some of the issues are not relevant to provisions in Ohio's submission USEPA notified the public of its response to these comments at 45 FR 11472, 11474 (February 21, 1980).

II. Comments on Specific Portions of the Ohio Submittal and USEPA Response

A. TCP and Attainment and RFP Demonstrations, Akron Urban Area

Summit and Portage Counties, Ohio are designated as nonattainment areas for ozone. Summit County is also a designated carbon monoxide nonattainment area. The control strategy developed for these areas demonstrate attainment of both the ozone and carbon monoxide NAAQS by December 31, 1982.

In the March 10, 1980 Federal Register (45 FR 15195) USEPA indicated that the transportation control plan and attainment demonstrations (ozone and carbon monoxide) for the Akron urban area satisfied all of the requirements for an approvable nonattainment area SIP. USEPA did, however, identify one deficiency in both the ozone and carbon monoxide reasonable further progress demonstrations.

On March 21, 1980 the State submitted to USEPA a request to redesignate Summit County as an attainment area for carbon monoxide. This request was made pursuant to section 107 of the Act. The request was based on three years (1977–1979) of monitoring data in Summit County which indicated that during these years there were no violations of the carbon monoxide NAAQS. Under such conditions, providing the State has satisfied USEPA's carbon monoxide monitoring requirements, USEPA may approve the redesignation request. If the request is approved and this area is redesignated

as either attainment or unclassifiable, the State would no longer be required to implement the measures proposed on July 27, 1979.

USEPA has evaluated the redesignation request and has proposed rulemaking on it in the October 17, 1980 Federal Register. Since there exists the possibility that the measures for carbon monoxide attainment proposed for the Akron urban area in the plan submitted on July 27, 1979 may not be necessary, USEPA is presently postponing final rulemaking action on the carbon monoxide portions of that submittal. Additionally, public comments received in response to the carbon monoxide portion of the plan and to USEPA's proposed action on it, will not be addressed in this notice. Those public comments will be discussed along with any final rulemaking taken in the future on the carbon monoxide component of the plan.

It should be noted that for major stationary sources of carbon monoxide located within, or desiring to locate within, this carbon monoxide nonattainment area, the growth restriction imposed by section 110(a)(2)(I) will remain in effect until either (1) USEPA takes final action to redesignate the area to attainment or unclassifiable or (2) USEPA takes final action on this portion of the plan, if the area is not redesignated.

For Akron, USEPA approves the ozone component of the TCP and the ozone attainment demonstration. Discussed below is the State's response to the deficiency noted in the ozone RFP demonstration.

Ozone RFP Demonstration: The ozone RFP line developed for the Akron area used 1975 VOC emissions data as a starting point for its RFP demonstration but chose a design value based on 1976 air quality. USEPA indicated in the March 10, 1980 Federal Register (45 FR 15196) that without documentation supporting the assumption that 1975 VOC emissions were equal to 1976 VOC emissions it would be incorrect to use 1975 VOC emissions with 1976 air quality data. USEPA requested either documentation supporting the emissions assumption or adjustment of the 1975 baseline VOC emissions to coincide with the VOC emission levels in 1976.

State Response: The State responded that prior to 1976, air quality data was not available for the Akron area. Furthermore, the State indicated that the 1976 emission levels were similar to the 1975 baseline emission levels. The State indicated that the 1975 emissions baseline was chosen for the following reasons: (a) The latest VOC point source and area source inventories were for 1975, (b) VOC emissions were nearly equivalent in 1975, 1976 and 1977.

USEPA Response and Final Determination: USEPA has reviewed the information supplied by the State and has determined that the State has adequately demonstrated that the 1976 VOC emission levels were similar to the 1975 baseline emission levels. Therefore, USEPA approves the ozone RFP demonstration originally submitted for the Akron area.

Canton Urban Area

Stark County, Ohio is a designated nonattainment area for ozone. The control strategy developed for the area demonstrates attainment of the ozone NAAQS by December 31, 1982.

In the March 10, 1980 Federal Register (45 FR 15195) USEPA indicated that the transportation control plan for the Canton urban area satisfied all of the requirements for an approvable nonattainment area SIP. During the public comment period USEPA did not receive any comments on either the transportation control plan or on USEPA's proposed approval. Therefore, USEPA approves the Canton urban area transportation control plan.

USEPA did, however, identify one deficiency in the ozone attainment and RFP demonstrations. As described below, the State has committed to resolve the deficiencies by a specified date.

Emission Reduction Estimates: In the ozone attainment demonstration a 100% reduction in VOC emissions from the cutback asphalt category was predicted to occur by December 31, 1982. In the March 10, 1980 Federal Register USEPA questioned the accuracy of this prediction given the possible continued usage in certain circumstances of cutback asphalt in 1982. Therefore, USEPA requested either technical support for this emission reduction estimate or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

State Response: The State indicated that they will conduct a survey on anticipated usage of cutback asphalt for the April–October period.

In a letter dated April 24, 1980 the State indicated that the results of the survey, along with any needed adjustments for the SIP baseline and/or strategy could be submitted by August 1, 1980. In subsequent conversations with the State it was determined, however, that due to limited staff resources the study and any needed additional time to submit the study and any needed adjustments. On August 6, 1980 the State in a letter from James F. McAvoy committed itself to submit the above mentioned material by August 1, 1981.

USEPA Response and Final Determination: USEPA believes that both the State's commitment and schedule as contained in the August 6, 1980 letter, to provide the results of the survey and any needed adjustments are acceptable. Therefore, USEPA approves the Canton urban area ozone attainment demonstration provided the State submits the above mentioned material by August 1, 1981. A notice soliciting public comment on the acceptability of this date appears elsewhere in today's Federal Register.

Demonstration of Ozone RFP: The ozone RFP line developed for the Canton area used 1975 VOC emission data as a starting point for its RFP demonstration but chose a design value based on 1977 air quality. USEPA indicated in the March 10, 1980 Federal Register (45 FR 15196) that without documentation supporting the assumption that 1975 VOC emissions were equal to 1977 VOC emissions it would be incorrect to use 1975 VOC emissions with 1977 air quality data. USEPA requested either documentation supporting the emissions assumption or adjustment of the 1975 baseline VOC emissions to coincide with the VOC emission levels in 1977.

State Response: The State responded that, as in the case of Akron: (a) Prior to 1976 air quality data was not available for the Canton area, (b) the latest VOC point source and area source inventories were developed in 1975 and (c) 1975 emission levels were similar to 1977 emission levels.

However, to account for the shorter timeframe (five years from 1977–1982 as opposed to seven years from 1975–1982) for the RFP demonstration and to account for any revisions made in the attainment demonstration due to the cutback asphalt survey the State has committed itself to submitting a revised ozone RFP line by August 1, 1981.

USEPA Response and Final Determination: USEPA believes that both the State's commitment and schedule to submit the revised ozone RFP demonstration line are acceptable. Therefore, USEPA approves the ozone RFP demonstration for the Canton urban area provided that the State submit the revised ozone RFP demonstration line to USEPA by August 1, 1981. A notice soliciting public comment on the acceptability of this date appears elsewhere in today's Federal Register.

Cincinnati Urban Area

Butler, Clermont, Hamilton and Warren Counties, Ohio and Boone, Campbell and Kenton Counties,

Kentucky are designated as nonattainment areas for ozone. Hamilton County is also designated as a nonattainment area for carbon monoxide. The control strategy developed for the Ohio counties does not predict attainment of either the ozone or carbon monoxide NAAQS by December 31, 1982. Attainment is predicted, however, by 1985 for ozone and 1987 for carbon monoxide.

According to section 172(a)(2) of the Act for those nonattainment areas which cannot demonstrate attainment of either the carbon monoxide and/or ozone NAAQS by December 31, 1982, the State may request an extension to show attainment, as expeditiously as possible, but no later than December 31, 1987. When requesting such an extension, section 172(b)(11) of the Act requires that the plan developed for the area must include the implementation of certain additional measures. The additional measures required are: (1) The development, adoption and implementation of a vehicle I/M program, (2) the establishment of a program for the analysis of alternatives for those sources proposing to locate in the area, and (3) the identification of other measures necessary to provide for attainment of the NAAQS by December 31, 1987.

In the March 10, 1980 Federal Register USEPA proposed approval of the transportation control plan, the ozone and carbon monoxide attainment demonstrations and the ozone RFP demonstrations. USEPA also proposed to approve the carbon monoxide RFP demonstration provided that prior to final rulemaking the State correct or commit to correct by an acceptable date the deficiency noted.

At that time USEPA proposed to disapprove the I/M program submitted (a discussion of USEPA's action on the I/M program is contained in a separate section of this notice). USEPA also indicated that rulemaking action on the program for the analysis of alternatives sites for sources proposing to locate in the area was to be published in a separate Federal Register since the State was at that time developing the program and intended to submit it as part of their New Source Review (NSR) SIP revision. USEPA's proposed rulemaking on the NSR SIP revision is detailed in the August 26, 1980 Federal Register. Final rulemaking on the NSR SIP revision appears in a separate notice published in today's Federal Register.

In addition to the State's response to the NPR USEPA received three public comments. Summarized below are the significant issues raised by the commentors, the deficiency noted in the NPR, the State's response to USEPA's proposed action, USEPA's response to the commentors and the State, and USEPA's final rulemaking action.

Demonstration of carbon monoxide RFP: The plan developed for the Cincinnati area did not contain an RFP demonstration line for carbon monoxide.

State Response: The April 24, 1980 correspondence from James F. McAvoy contains an RFP demonstration line which graphically displays the annual incremental reductions in total carbon monoxide emissions for the area. The average reduction demonstrated is approximately 35,000 tons per year (tpy).

It should also be noted that in the April 24, 1980 correspondence the Ohio EPA indicated that the program for the development of the analysis of alternative sites and the identification of additional measures to provide for attainment of the NAAQS in the area by December 31, 1987 would be addressed in a separate communication. USEPA's proposed rulemaking action is discussed in the August 26, 1980 Federal Register.

USEPA Response: USEPA has reviewed the carbon monxide RFP demonstration line submitted and has determined that it is consistent with the attainment demonstration and, therefore, approvable.

Public Comment: One commentor indicated that, even though the plan submitted for the Cincinnati area listed the Transportation Control Measures (TCM) implemented during 1975–1978, the plan did not quantify the air quality improvements that were realized as a result of the implementation of these TCM.

USEPA Response: The plan contains a table of the TCM implemented and their associated emission reduction estimates. Some of the TCM listed have no quantifiable emission reduction estimates associated with their implementation. These TCM, however, do have a positive impact on the air quality. The plan does state in the narrative (p. 7–10 of section 7.1.2) adequate justification for the absence of any estimated emission reductions from these TCM.

Public Comment: Another commentor questioned why two deficiencies cited in the Kentucky SIP developed by Ohio-Kentucky-Indiana (OKI) Regional Counsel of Governments for Boone, Campbell and Kenton Counties, Kentucky were not cited as deficient in the Ohio submittal. The commentor noted that "* * * specifically, (1) a commitment from the proper agencies to the implementation of TCM identified in the 1979 Transportation Improvement Program Annual Element (TIP/AE) (as examples, agencies currently uncommitted are Ohio Department of Transportation (DOT) and Southeast Ohio Regional Transit Authority (SORTA), and (2) limiting the TCM submitted to those with long-term as well as short-term air quality benefits."

USEPA Response: The plan developed by OKI for the Ohio portion of the Cincinnati urban area contains a resolution adopted by OKI's Executive Committee on March 8, 1979. The resolution commits the members of the Committee to achieve specific annual emission reduction targets which will ensure attainment of the NAAQS. The concurrence of the Ohio DOT, a member of the Committee, and SORTA, an ex-officio member of the Committee, indicates their commitment to cooperate in the transportation-air quality planning process and to implement the TCM necessary to achieve the annual emission reduction targets which would ensure attainment of the NAAQS.

In response to the second issue raised by this commentor it should be noted that the submittal contains a list (table 7–4) of TCM which have been recommended for implementation during 1980–1983. Some of the measures are expected to achieve specific emission reduction goals and thus to have long-term as well as short-term air quality benefits.

Public Comment: When commenting on the I/M program for the area one commentor also raised an issue in reference to the monitoring conducted for the area. (The I/M comment will be discussed in a separate section of this notice.) The commentor believed that the monitoring data taken from two of the five monitors in the area should not be accepted. The commentor stated that one monitor is located adjacent to a parking area and the other is too close to a widely travelled highway.

USEPA Response: USEPA policy states that carbon monoxide monitors are to be located in areas that are accessible to the public. Additionally, the citing of carbon monxide monitors depends on the area's wind direction, topography and traffic patterns. Under certain circumstances the data received from monitors located near parking areas and heavily travelled roadways yield a more accurate picture of the carbon monoxide levels in the area. USEPA has checked the location of the two monitors mentioned above and has determined that they are appropriately located.

Public Comment: One commentor stated that in the plan developed for the Cincinnati area, the RFP demonstrations do not show annual incremental

reductions as required by section 172(b)(3).

USEPA Response: In the NPR USEPA noted that the carbon monoxide RFP demonstration was not submitted. As stated earlier, on April 24, 1980 the State submitted an acceptable RFP demonstration to ensure attainment of the carbon monoxide NAAQS. Additionally, in the July 27, 1979 submittal (Appendix 9) the State submitted an acceptable ozone RFP demonstration which showed annual incremental reductions in VOC emissions.

USEPA Final Determination: USEPA has reviewed the State's response to the deficiency previously noted in the Cincinnati plan and has determined that the State has adequately corrected that deficiency. Additionally, USEPA has determined that none of the public comments received has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the transportation control plan, and the carbon monoxide and ozone attainment and REP demonstrations for the Cincinnati area.

It should be noted, however, that even though USEPA has approved the above cited individual elements of the Cincinnati plan, the State must satisfy the additional requirements of section 172(b)(11) of the Act. Until such time as USEPA approves the State's program to satisfy the section 172(b)(11) requirements, the growth restrictions of section 110(a)(2)(I) of the Act will be in effect in the Cincinnati urban area. Additionally, if the State fails to adequately address the additional 172(b)(11) requirements then the funding restrictions of section 176(a) and 316 of the Act may be imposed.

Cleveland Urban Area

Cuyahoga, Geauga, Lake, Lorain and Medina Counties are designated as nonattainment areas for ozone. Cuyahoga County is also designated as a nonattainment area for carbon monoxide. The control strategy developed for these counties does not predict attainment of either the ozone or carbon monoxide NAAQS by December 31, 1982.

According to section 172(a)(2) of the Act for those nonattainment areas which cannot demonstrate attainment of either the carbon monoxide and/or ozone NAAQS by December 31, 1982, the State may request an extension to show attainment as expeditiously as possible, but no later then December 31, 1987. When requesting such an extension, section 172(b)(11) of the Act requires that the plan developed for the area must include the implementation of certain additional measures. The additional measures required are: (1) The development, adoption, and implementation of a I/M program, (2) the establishment of a program for the analysis of alternatives for those sources proposing to locate in the area, and (3) the identification of other measures necessary to provide for attainment of the NAAQS by December 31, 1987.

In the March 10, 1980 Federal Register USEPA proposed approval of the transportation control plan, attainment and RFP demonstrations (ozone and carbon monoxide) developed for the Cleveland area, provided that prior to final rulemaking the State correct or commit to correct by an acceptable date the deficiencies noted. (USEPA noted a total of six deficiencies.) At that time USEPA proposed to disapprove the I/M program submitted (a discussion of USEPA's action of the I/M program is contained in a separate section of this notice.) USEPA also indicated that rulemaking action on the program for the analysis of alternative sites for sources proposing to locate in the area was to be published in a separate Federal Register since the State was, at that time, developing the program and intended to submit it as part of their New Source Review (NSR) SIP revision. USEPA's proposed rulemaking on the NSR SIP is detailed in the August 26, 1980 Federal Register. Final rulemaking on the NSR SIP revision appears in a separate notice published in today's Federal Register.

In addition to the State's response to the NPR, USEPA received two public comments. Summarized below are the significant issues raised by the commentors, the deficiencies noted in the NPR, the State's response to USEPA's proposed action, USEPA's response to commentors and the State, and USEPA's final rulemaking action.

Public Comment: One commentor believed that the plan submitted did not contain a complete travel forecasting methodology. The commentor felt that this work should be completed as soon as possible.

USEPA Response: The air quality-transportation planning process submitted by the Northeast Ohio Areaswide Coordinating Agency (NOACA), the lead local agency responsible for developing the Cleveland plan, contains provisions for the completion of the area's long range transportation plan during fiscal years 1981–83. A crucial precursor element in the development of the long range transportation plan is the development of an accurate travel forecasting methodology. Therefore, it is expected that the revised travel forecasting methodology will be completed by the end of fiscal year 1980 to allow for completion of the long range transportation plan during fiscal year 1981–1983.

Public Comment: In the March 10, 1980 Federal Register (45 FR 15198) the State is quoted as saying that "* * * Additional hydrocarbon area source controls (for the Cleveland area) will be evaluated and selected by NOACA." In an April 8, 1980 correspondence NOACA indicated that they had "* * * been given neither the responsibility for dealing with stationary sources, nor the funding to study them * * * If, however, funds were made available to NOACA from another source for the purpose of studying area source controls, NOACA would be prepared to consider conducting such a study * * * "

USEPA Response: Representatives of USEPA, Ohio EPA and NOACA met on May 3, 1980. The purpose of that meeting was to resolve the issue raised above. As a result of that meeting and subsequent commitments, USEPA has agreed to provide NOACA with additional funds and guidance to initiate and complete the area source study. Accordingly, NOACA has agreed to conduct the study.

Carbon Monoxide RFP Demonstration: The plan submitted for the Cleveland area did not contain a carbon monoxide RFP demonstration line.

State Response: The State submitted on April 24, 1980 a carbon monoxide RFP demonstration. This line shows the annual incremental reductions in carbon monoxide necessary to ensure attainment of the NAAQS for carbon monoxide.

USEPA Response: USEPA has reviewed the carbon monoxide RFP demonstration line submitted by the State for the Cleveland area and has determined that it is acceptable.

Transportation Control Plan—Implementor Commitments: One of the requirements for an acceptable TCP is that it contain a commitment by the regional policy board to meet specific annual emission reduction goals. The Cleveland TCP contains commitments to meet annual VOC emission reduction goals. The TCP, however, does not specify what these annual goals are.

State Response: The State on April 24, 1980 indicated that if attainment of the ozone NAAQS is to be achieved by 1987, it would be necessary for the area to achieve an annual average BOC emission reduction of 9,764 tons per year.

USEPA Response: USEPA has reviewed the emission reduction

calculation and has determined that if the area annually achieves that average amount of VOC emission reductions, attainment of the ozone NAAQS will be achieved by December 31, 1987. Therefore, the above noted figure is an acceptable emission reduction commitment.

Transportation Control Plans—Strategies Demonstrating Attainment: The Act requires that the TCP contain representative Transportation Systems Management (TSM)/SIP strategies. The list should include twelve representative strategies for each pollutant in the following categories: Projects to increase vehicle speed, projects to reduce congestion, projects to increase vehicle occupancy, and projects to improve mass transit.

Additionally, for each of these four categories, the submission must indicate the: Project title, description and location, project status, responsible agency, date of implementation, funding amounts and sources, and carbon monoxide and hydrocarbon emission reductions expected. The Cleveland TCP does not contain any of the above mentioned information.

State Response: In a letter dated July 23, 1980 the State submitted a list of representative TSM/SIP strategies.

USEPA Response: One July 23, 1980 USEPA received from the State a list of representative adopted TSM/SIP strategies. USEPA has received these strategies and has determined that the following are acceptable and satisfy the condition specified in the March 10, 1980 Federal Register (45 FR 15192).

Strategy	Implementor	Emission reduction
(1) Big Creek Bikeway	Cleveland Metropolitan Park District	0 1 ton per year (tpy) hydrocarbon (HC) 1 34 tpy carbon monoxide (CO)
(2) Synchronization of traffic signals, Clifton Boulevard Lakewood, Ohio.	Ohio Department of Transportation / City of Lakewood	31 9 tpy HC 405 66 tpy CO
(3) New Bus Routes through Cuyahoga County	Greater Cleveland Regional Transit Authority	292 tpy HC 4811 tpy CO
(4) Traffic synchronization in North Olmstead and Wickliffe	City of North Olmstead and Wickliffe	64 7 tpy HC 782 8 tpy CO
(5) Areawide Car Pool Program	Northeast Ohio Areawide Coordinating Council	354 7 tpy HC 48 9 tpy CO

Ozone Attainment Demonstration—VOC Emissions Inventory: The VOC emissions inventory indicated that there were no VOC emissions in Medina County. This assumption was based on the fact that there are no stationary sources for which reasonable available control technologies apply in this county. USEPA noted that even though this assumption may be correct, there is still the possibility of VOC emissions from other sources (i.e., usage of cutback asphalt). Therefore USEPA requested either technical documentation supporting the zero emission assumption or a reevaluation and adjustment of the emissions inventory to include VOC emissions from these other sources. It was also noted that any adjustment in the inventory could possibly require an adjustment in the ozone RFP and attainment demonstrations.

State Response: The State agrees that there are likely to be VOC emissions in the County in 1982 and 1987 from the cutback asphalt and gasoline marketing categories. The State estimates that there will be approximately 307 tons of VOC emissions per year in 1982 and 96 tons of VOC emissions per year in 1987 from the two categories. To account for these increased emissions the State revised their ozone RFP demonstration for the Cleveland area. Additionally, the State indicated that the development and implementation of additional mobile stationary source measures, already committed to by the State, will account for any negative impact which these VOC emissions may have on the ozone attainment demonstration.

USEPA Response: USEPA has reviewed the State's response and concurs with the revised inventory which includes VOC emissions from the cutback asphalt and gasoline marketing categories. Furthermore, the revised RFP demonstration is acceptable.

Ozone Attainment Demonstration—Emission Reduction Estimates: In the ozone attainment demonstration a 100% reduction in VOC emissions from the cutback asphalt category was predicted to occur by December 31, 1982. In the March 10, 1980 Federal Register USEPA questioned the accuracy of this prediction given the possible continued usage, in certain circumstances, of cutback asphalt. Therefore, USEPA requested either technical support for this emission reduction estimate or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

State Response: The State indicated that they will conduct a survey on the anticipated usage of cutback asphalt for the April-October period. In a letter dated April 24, 1980 the State indicated that the results of the survey could be submitted to USEPA by August 1, 1980. In subsequent conversations with the State it was determined that due to limited staff resources additional time would be needed. On August 6, 1980 the State, in a letter from James F. McAvoy committed to submit the above mentioned material/information by August 1, 1981.

USEPA Response: USEPA believes that both the State's commitment and schedule, as contained in the August 6, 1980 letter are acceptable.

A notice soliciting public comment on the acceptability of the August 1, 1981 date for submittal of the results of the survey appears elsewhere in today's Federal Register.

Ozone Attainment Demonstrations: The plan submitted on July 27, 1979 for the Cleveland Metropolitan Area does not predict that a sufficient reduction in hydrocarbon emissions will occur to ensure attainment of the ozone NAAQS by December 31, 1987. However, in a letter dated December 28, 1979 from Mr. James F. McAvoy to Mr. John McGuire, the Ohio EPA has made a commitment to assure attainment of the ozone standard in Cleveland by 1987. Mr. McAvoy stated in the letter that "In a coordinated effort to assure attainment, additional point source hydrocarbon reductions (VOC) will be developed by Ohio EPA, and additional transportation measures will be implemented through NOACA's transportation planning process. Additional hydrocarbon (VOC) area source controls will be evaluated and selected by NOACA."

USEPA stated in the NPR that it believed that the additional reductions in hydrocarbon emissions necessary to demonstrate attainment of the ozone NAAQS in Cleveland could be achieved by December 31, 1987. Furthermore, USEPA concurred with the approach outlined in the December 28, 1979, McAvoy letter.

USEPA proposed to approve the Cleveland attainment demonstration if the State submitted the following:

a. A list of the additional TSM strategies to be implemented which, in conjunction with the additional point source regulations, will demonstrate attainment of the ozone NAAQS; and

b. A schedule which delineates the dates on which the additional point

source controls will be developed and implemented.

Alternatively, USEPA proposed to approve the attainment demonstration if the appropriate State official provided USEPA with assurances that the above noted corrective materials would be submitted to USEPA on a negotiated date.

State Response: James F. McAvoy, in his April 24, 1980 letter committed to submitting the above noted list and schedule to USEPA by November 1, 1980.

USEPA Response: USEPA believes that both the State's commitment and date for submittal of the additional information are acceptable. A notice soliciting public comment on the acceptability of the November 1, 1980 date appears elsewhere in today's Federal Register.

USEPA Final Determination: USEPA has reviewed the State's response to the deficiencies previously noted in the Cleveland plan, and has determined that the State has adequately corrected and/or committed to correct the deficiencies noted. Additionally, USEPA has reviewed the public comments received and has determined that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the ozone and carbon monoxide RFP demonstrations, the carbon monoxide attainment demonstration and the transportation control plan. USEPA approves the ozone attainment demonstration on the condition that the State submit: (1) The revised VOC emission reduction estimates by August 1, 1981 and (2) the list of additional TSM strategies and point source regulations to be implemented along with the schedule for the development of the point source regulations by November 1, 1980. A notice soliciting public comment on the acceptability of these dates appears elsewhere in today's Federal Register.

It should be noted, however, that even though USEPA has approved of and/or conditionally approved the above mentioned individual elements of the Cleveland plan, the State must satisfy the additional requirements of section 172(b)(11) of the Act. Until such time as USEPA approves or conditionally approves the State's programs to satisfy the section 172(b)(11) requirements, the growth restrictions of section 110(a)(2)(I) of the Act will be in effect in the Cleveland urban area. Additionally, if the State fails to adequately address the additional 172(b)(11) requirements then the funding restrictions of section 176(a) and 316 of the Act may be imposed.

Columbus Urban Area

Franklin County is a designated nonattainment area for ozone and carbon monoxide. The control strategy developed for the area demonstrates attainment of both the carbon monoxide and ozone NAAQS by December 31, 1982. In the March 10, 1980 Federal Register USEPA proposed approval of the transportation control plan, and the carbon monoxide attainment demonstration and the ozone and carbon monoxide RFP demonstrations developed for the Columbus urban area. Additionally, USEPA proposed to approve the ozone attainment demonstration provided that the State prior to final rulemaking correct or commit to correct by an acceptable date the deficiency noted. During the public comment period the only response received was from the State. Summarized below is the deficiency noted in the NPR, the State's response and USEPA's response and final determination.

Ozone Attainment Demonstration—Emission Reduction Estimates: In the ozone attainment demonstration a 100% reduction in VOC emissions from the cutback asphalt category was predicted to occur by December 31, 1982. In the March 10, 1980 Federal Register USEPA questioned the accuracy of this prediction given the possible continued usage, in certain circumstances, of cutback asphalt. USEPA requested either technical support for this emission reduction estimate or a re-evaluation of the baseline emissions to account for the VOC emissions resulting from this category.

State Response: The State indicated that they will conduct a survey on anticipated annual usage of cutback asphalt for the April-October period. In a letter dated April 24, 1980, the State indicated that the results of the survey could be submitted to USEPA by August 1, 1980. In subsequent conversations with the State it was determined that due to limited staff resources additional time would be needed. On August 6, 1980 the State, in a letter from James F. McAvoy committed to submit the above mentioned material and information by August 1, 1981.

USEPA Response and Final Determination: USEPA has reviewed the State's response to the deficiency previously noted in the Columbus ozone attainment demonstration, and has determined that the State has adequately committed to correct this deficiency. No public comments were received on the Columbus plan. Therefore, USEPA approves the transportation control plan, the ozone and carbon monoxide RFP demonstrations and the carbon monoxide attainment demonstration. Additionally, USEPA approves the ozone attainment demonstration on the condition that the State submit the information requested to justify the 100% VOC reduction estimate by August 1, 1981. A notice soliciting public comment on the acceptability of the scheduled date appears elsewhere in today's Federal Register.

Dayton Urban Area

Montgomery, Greene, Clark, Darke, Miami and Preble Counties are designated as nonattainment areas for ozone. Additionally, Montgomery County is designated as nonattainment for carbon monoxide. The plan developed for these areas demonstrates attainment of the ozone NAAQS by December 31, 1982 and commits to implementing additional measures to ensure attainment of the carbon monoxide NAAQS by December 31, 1982. In the March 10, 1980 Federal Register USEPA proposed approval of the transportation control plan and ozone attainment and RFP demonstrations. Additionally, USEPA proposed to approve the carbon monoxide attainment and RFP demonstrations provided that prior to final rulemaking the State corrected or commit to correct by an acceptable date the deficiencies noted. During the public comment period USEPA received comments from the metropolitan lead local planning agency and the State. Summarized below are the significant issues raised by the commentors, the deficiencies noted in the NPR, the State's response to USEPA's proposed action, USEPA's response to commentors, and USEPA's final rulemaking action.

Public Comment: The lead local planning agency stated in a letter its approval and support of the effort being made to ensure attainment of the carbon monoxide NAAQS in Dayton by December 31, 1982. The planning agency, however, expressed concern over the fact that the method being employed focused on reducing carbon monoxide emissions only at monitored "hot spot" locations. The planning agency believed that a better approach would be to model the area for the location of potential carbon monoxide hot spots. To verify the existence of these hot spots monitoring would be conducted of those areas identified in the modeling analysis as potential hot spots. Once these potential hot spots were verified, measures would be developed to eliminate them. The lead planning agency also indicated that certain portions of the table on page 15200 and 15201 of the March 10, 1980 Federal Register should be corrected as follows:

Strategy	Potential implementor	Emission reduction
Channelization of traffic	*Affected jurisdictions*	142 tons HC (also will reduce concentrations at various hot spots)
Bicycle paths and exclusive routes to Dayton CBD	Miami Conservancy District *and affected jurisdictions*	52 tons HC combined with storage facilities
Conversion of selected streets (Dayton CBD) to exclusive bus use.	City of Dayton	14 tons HC Dayton CBD *(strategy 9-12 combined)* 44 tons HC regional *(strategy 9-12 combined)*
Regulate number and price of public and private parking areas	City of Dayton *and affected jurisdictions*	Same as above
Favor short term parking rates over long term parking rates	City of Dayton *and affected jurisdictions*	Same as above
Develop parking surcharges and other forms of congestion pricing.	City of Dayton *and affected jurisdictions*	Same as above
Provide fringe and corridor parking	MVRTA, City of Dayton	10 tons HC (strategy 13-14)
Provide shuttle transit service from Dayton CBD to fringe parking	MVRTA	Same as above
Public transit improvements	*Transit operations*	318 tons HC for all transit

USEPA Response: The approach advocated by the lead planning agency goes beyond USEPA's requirements. USEPA policy for the 1979 SIP revisions requires only that an acceptable carbon monoxide attainment demonstration be based on monitored violations of the carbon monoxide NAAQS. As discussed below the State has adequately committed to remedy the monitored carbon monoxide problems and has, therefore, satisfied USEPA requirements.

In response to the planning agency's identification of errors in the table on pages 15200 and 15201 of the March 10, 1980 Federal Register, USEPA agrees with all of the corrections except for the strategy enumeration of the following:

Strategy	Potential implementor	Emission reduction
Conversion of selected streets (Dayton CBD) to exclusive bus use.	City of Dayton	14 tons HC Dayton CBD (strategy 8-11 combined) 144 tons HC regional (strategy *8-11* combined)
Provide fringe and corridor parking	MVRTA, City of Dayton	10 tons HC (strategy *12-13*)

Carbon Monoxide Attainment Demonstration: As stated earlier the original plan submitted on July 27, 1979 for the Dayton area did not predict attainment of the carbon monoxide NAAQS by December 31, 1982. However, in a letter dated January 14, 1980, the Ohio EPA stated that by remedying the carbon monoxide "hot spot" problems in the area, the appropriate reduction in carbon monoxide emissions would be achieved to assure attainment of the carbon monoxide NAAQS by 1982. Furthermore, it was stated in the letter that the Miami Valley Regional Planning Commission (MVRPC), the lead local planning agency would submit to the Ohio EPA (1) a list of the "hot spots" areas, and (2) a schedule for the study, evaluation and implementation of control measures for each "hot spot" to assure attainment of the carbon monoxide NAAQS by December 31, 1982.

The schedules (one for each "hot spot" intersection) were to be forwarded to Ohio EPA by March 1, 1980 and were to include interim milestones toward the implementation of each selected control measure along with commitments from the appropriate implementor(s).

In the March 10, 1980 Federal Register, USEPA stated its support of the efforts of the State to attain the carbon monoxide NAAQS as expeditiously as possible (in this case by 1982) and believed that through the implementation of the TSM/SIP strategies already scheduled for implementation and through the implementation of Reasonably Available Control Measures (RACM) for the "hot spot" areas, the carbon monoxide NAAQS could be attained by December 31, 1982. USEPA, however, requested the State to submit the following information:

(a) Technical monitoring and modelling data on all monitored violations.

(b) A list of the "hot spot" intersections in the Dayton area associated with the carbon monoxide nonattainment monitors.

(c) A description of each TSM measure implemented or adopted for implementation between 1979 through 1982 to eliminate the hotspot violations.

(d) A schedule developed for the study evaluation and implementation of control measures for each "hot spot" to assure attainment by 1982. The schedule is to specify the following: Submission of control plan; award of construction grants, initiation of on site construction, and final implementation of control measures (no later than 12/31/82).

(e) Evidence that MGTCC will provide priority funding to accomplish the tasks specified in item #4 above and will support the use of Federal transportation funds, if necessary.

Ohio EPA indicated that the above mentioned schedule and schedule items were to be submitted by MVPRC by July 1, 1980. In the NPR, USEPA stated that the Ohio EPA was to submit this information to USEPA within 30 days after receiving it from MVRPC. USEPA also noted that the control plan submission must include commitments from the appropriate implementor for each transportation control measure.

State Response: In a letter dated April 24, 1980 from Mr. James McAvoy, the State responded in the following manner to the information requested by the USEPA in the NPR:

(a) The modelling (proportional rollback) conducted indicated that a 56.7% reduction in carbon monoxide emission was necessary. The modelling used the design value of 23.1 mg/m/3/ which was obtained from carbon monoxide data obtained from the monitor located at 117 South Main Street.

(b) The "hot spot" intersection associated with the carbon monoxide nonattainment monitor is located at Fourth and Main Streets.

(c) A description of each TSM measure implemented or adopted for implementation between 1977 through 1982 to eliminate the "hot spot" violations are contained in Appendix 7D of Dayton's ozone/carbon monoxide SIP revision. Carbon monoxide reductions predicted through the implementation of these measures are included in the MVRPC FY 80 Transportation Improvement Program (TIP) (Section 2 and Appendix C). Also included in Appendix C of the TIP are the required

resolutions of commitment from the responsible implementors.

(d) The schedule for the study, evaluation, and implementation of control measures at the identified "hot spot" (Fourth and Main Streets) will be completed by MVRPC and submitted to the Ohio EPA by October 1, 1980 and transmitted to USEPA 30 days later, November 1, 1980.

The State indicated that MVRPC could not be expected to commence work on obtaining the information until after publication of the NPR. The NPR was not published until March (three months after the original estimate was made). Therefore, it became necessary for MVRPC to revise their original estimate by three months. Additionally, the State indicated that the October 1, 1980 date will allow the MVRPC to revise their FY 81 Overall Work Program to address the required additional carbon monoxide hot spot analysis and selection of the appropriate control measures.

(e) The State will submit USEPA by November 1, 1980, evidence of priority funding, if proven to be necessary.

SEPA Response: The State has supplied sufficient information to satisfy points a, b, and c identified in the NPR. Additionally, the commitment by the State to submit the items specified in point "d", and if necessary in point "e", by November 1, 1980 (30 days after receipt from MVRPC) is acceptable. A notice soliciting comment on the acceptability of this date appears elsewhere in today's Federal Register.

Carbon Monoxide RFP Demonstration: In the NPR USEPA requested that the State submit an acceptable carbon monoxide RFP demonstration line for the area.

State Response: The State indicated in the April 24, 1980, James F. McAvoy letter that the carbon monoxide RFP demonstration would be a schedule of transportation control measures sufficient to demonstrate attainment by December 31, 1982, and would be submitted to USEPA on November 1, 1980.

USEPA Response: USEPA believes that the schedule of transportation control measures which will be submitted on November 1, 1980, will provide an adequate demonstration of RFP. Furthermore, USEPA finds the State's commitment to submit the information on November 1, 1980 as acceptable. A notice soliciting comment on the acceptability of this date appears elsewhere in today's Federal Register.

USEPA Final Determination: USEPA has reviewed the State's response to the deficiencies previously noted in the Dayton carbon monoxide attainment and RFP demonstrations and has determined that the State has adequately corrected and/or committed to correct these deficiencies. USEPA has reviewed the public comments received and has determined that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the transportation control plan and ozone attainment and RFP demonstrations.

Additionally, USEPA approves the carbon monoxide attainment and RFP demonstration on the condition that the State submit by November 1, 1980: (a) The schedule for the study, evaluation and implementation of control measures for the "hot spot" area, (b) evidence of priority funding, if proven necessary and (c) a revised carbon monoxide RFP demonstration. A notice soliciting public comment on the acceptability of this date appears elsewhere in today's Federal Register.

Steubenville Urban Area

Jefferson County is a designated nonattainment area for both ozone and carbon monoxide. Due to the population of the area (less than 200,000) a specific plan to demonstrate attainment of the ozone NAAQS is not required by USEPA policy. A plan, however, is required to demonstrate attainment of the carbon monoxide NAAQS.

The July 27, 1979 submittal for the Steubenville urban area relied exclusively on mobile source control to achieve attainment of the carbon monoxide NAAQS. This approach to reducing the carbon monoxide levels in the area was predicated on the assumption that the high carbon monoxide violations were the result of transportation related problems. However, a reanalysis by the State of the carbon monoxide data indicated that this assumption was incorrect. Consequently, implementation of only mobile source controls was not sufficient to ensure attainment of the carbon monoxide NAAQS by December 31, 1982.

To demonstrate attainment of the carbon monoxide NAAQS by December 31, 1982 the State of Ohio in a January 8, 1980, letter from James McAvoy, director, Ohio EPA, committed to conduct additional studies of the carbon monoxide violations in the Steubenville area and to determine the specific stationary sources of the carbon monoxide violations. As a result of these studies, the State would develop, if necessary, additional RACT regulations for the control and reduction of carbon monoxide from the stationary sources causing the problem in the area.

In the March 10, 1980 Federal Register USEPA proposed to approve the carbon monoxide attainment demonstration for the Steubenville area provided that the State: (1) Submit within one year after final rulemaking action has been taken on this SIP revision, an acceptable attainment demonstration which shows that the Steubenville area will meet the carbon monoxide NAAQS by December 31, 1982; and (2) adheres to the schedule contained in the January 8, 1980, letter from Mr. James McAvoy. The schedule is as follows:

a. January 2 to June 30, 1980 Ohio EPA will conduct a study to determine the cause of the carbon monoxide violations in Steubenville.

b. Regulations will be proposed by August 31, 1980 that require a RACT level of control for carbon monoxide sources that are contributing to the violation and/or other appropriate control strategies will be proposed.

c. December 31, 1980—RACT regulations will be effective.

d. December 31, 1982—Sources will be required to comply with RACT regulations as expeditiously as practicable but no later than December 31, 1982.

State Response: In a letter dated May 27, 1980, Mr. James McAvoy committed to submit within one year after publication of this notice an acceptable carbon monoxide attainment demonstration for the Steubenville area. Additionally, in the same correspondence, Mr. McAvoy repeated the State's January 8, 1980 commitment to have all sources identified as needing additional control in compliance with the new RACT regulations by December 31, 1982. In the May 27, 1980 letter as well as in an April 24, 1980 correspondence Mr. McAvoy indicated that the carbon monoxide study could be completed by November 1, 1980 with the regulations adopted and submitted to USEPA by August 1, 1981. On August 6, 1980 Mr. McAvoy reaffirmed the State's commitment to submit any necessary regulations by August 1, 1981. However, Mr. McAvoy indicated that an additional two months, until January 1, 1981, would be needed for the Ohio EPA to complete the carbon monoxide study. The additional time was needed due to the complexity of the problem, the modelling approach proposed for the area, and limited staff resources.

USEPA Response: USEPA finds acceptable the State's commitment to submit a revised carbon monoxide attainment demonstration for the Steubenville area by August 1, 1981. USEPA, also finds acceptable the State's commitment to have all sources identified as needing additional control

in compliance by December 31, 1982. Given the complexity of the problem, USEPA recognizes the need for the State to have additional time to complete the study. Additionally, since the sources are still required to be in compliance by December 31, 1982 and since the additional time allocated to the interim increments of the schedule do not interfere with the compliance date, USEPA finds acceptable the January 1, 1981 date for completion of the carbon monoxide study and the August 1, 1981 date for the submittal of the necessary revised regulations.

Public Comment: One commentor noted some errors in the list on page 15202 of the March 10, 1980 Federal Register. This is a list of the areawide representative TSM/SIP strategies for carbon monoxide and hydrocarbon reductions to be implemented from 1979 to 1982. The commentor believes that the list should read as follows:

Improvement project	Implementor	Estimated year of completion	Estimated reduction
McLister Ave., Mingo Junction	ODOT	1975	1,856 gr/day in HC 33,408 gr/day in CO
Steubenville	ODOT	1976	16,127 gr/day in HC 226,974 gr/day in CO
Wayne Twp. Rd. 166A	*City of Mingo Junction*	1977	24 gr/day in HC 300 gr/day in CO
Ohio Route 7 Relocation	ODOT	1977	146,935 gr/day in HC 1,804,703 gr/day in CO
2nd St. Bridge, Dillonvale	Jefferson City	1978	15 gr/day in HC 209 gr/day in CO
CR 10 Harrison Co. to Adena SCL and Adena NCL to SR 152.	*ODOT*	1979	14,258 gr/day in HC 160,398 gr/day in CO
Sinclair Avenue, Steubenville	*Jefferson City*	1979	3,554 gr/day in HC 45,934 gr/day in CO
Benita Dr.-West Mingo Junction	Jefferson City	1979	2,551 gr/day in HC 21,360 gr/day in CO
Main Street, Toronto	*Jefferson County*	1979	2,557 gr/day in *CO* 30,359 gr/day in *HC*
U.S. 22 and SR 43, Wintersville	*ODOT*	1979	866,894 gr/day in *CO* 71,391 gr/day in *HC*
TR 181 CR 26 to Camp C. Ent. Road.	*ODOT*	1979	7,459 gr/day in *CO* 953 gr/day in *HC*
SR 150 .15 mi. E., TR 111	ODOT	1980	1,141 gr/day in *CO* 100 gr/day in *HC*
SR 150 .35 mi. W., CR 14	ODOT	1980	1,369 gr/day in *CO* 119 gr/day in *HC*
SR 150 at Rayland, WCL	ODOT	1980	2,578 gr/day in *CO* 226 gr/day in *HC*
Lovers Lane, Steubenville	*City of Steubenville*	1980	19,992 gr/day in *CO* 1,999 gr/day in *HC*
CR 34, SR 43 to U.S. 22	*Jefferson County*	1981	19,978 gr/day in *CO* 1,665 gr/day in *HC*
CR 69 Mingo Jct., NCL to CR 30	*Jefferson County*	1981	3,376 gr/day in *CO* 253 gr/day in *HC*
Steubenville, Weirton Bridge	*West Virginia Dept. of Hwys*	1982	802,433 gr/day in *CO* 16,644 gr/day in *HC*
SR 152 .62 mi. S. of TR 241 to .27 mi. S. of SR 213.	*ODOT*	1982	34 088 gr/day in *CO* 2,556 gr/day in *HC*
SR 152 .2 mi. S. TR 611 to 1.07 mi. N. CR 56.	*ODOT*	1982	27,584 gr/day in *CO* 1,971 gr/day in *HC*

USEPA Response: USEPA has reviewed the revised list submitted by the commentor and concurs with it.

USEPA Final Determination: USEPA has determined that the State has adequately committed to correct the deficiencies noted and that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the transportation control plan developed for the area. Additionally, USEPA also approves the carbon monoxide RFP and attainment demonstrations provided that the State: (a) Submits an acceptable carbon monoxide attainment with an acceptable RFP demonstration by August 15, 1981 and (b) submits to USEPA by January 1, 1981 the results of the carbon monoxide study and by August 1, 1981 the necessary revised regulations. A notice soliciting public comment on the acceptability of the committed dates appears elsewhere in today's Federal Register.

Toledo Urban Area

Lucas and Wood Counties are designated as nonattainment areas for ozone. Additionally, based on monitored violations of the carbon monoxide NAAQS occurring in 1975, Lucas County was designated as a nonattainment area for carbon monoxide. The plan developed for these areas and submitted to USEPA on July 27, 1979 (with an addendum submitted on January 15, 1980) predicts attainment of the ozone NAAQS by December 31, 1982 and commits to implementing additional measures necessary to ensure attainment of the carbon monoxide NAAQS by December 31, 1982.

In the March 10, 1980 Federal Register USEPA proposed approval of the transportation control plan and the ozone attainment and RFP demonstrations. Additionally, USEPA proposed to approve the carbon monoxide attainment demonstration provided that prior to final rulemaking the State correct or commit to correct by an acceptable date the deficiency noted.

On March 21, 1980 the State submitted to USEPA a request to redesignate Lucas County as an attainment area for carbon monoxide. This request was made pursuant to section 107 of the Act. The request was based on three years (1977–1979) of monitoring data in Lucas County which indicated that during these years there were no violations of the carbon monoxide NAAQS. Under such conditions, providing the State has satisfied USEPA's carbon monoxide requirements, USEPA may approve the redesignation request. If the request is approved, and the area is redesignated as either attainment or unclassifiable, the State would no longer be required to implement the measures proposed on July 27, 1979.

USEPA has evaluated the redesignation request and has proposed rulemaking on it in the October 17, 1980 Federal Register. Since there exists the possibility that the measures proposed for carbon monoxide attainment in the plan submitted on July 27, 1979 (with an addendum submitted on January 15, 1980) may not be necessary for the Toledo urban area, USEPA is presently postponing final rulemaking action on the carbon monoxide portions of that submittal. Additionally, public comments received in response to the carbon monoxide portion of the plan and to USEPA's proposed action on it, will not be addressed in this notice. Those public comments will be discussed at the time final rulemaking action, if any, is taken on the carbon monoxide component of the plan.

It should be noted that for major stationary sources of carbon monoxide located within, or desiring to locate within, this carbon monoxide nonattainment area, the growth restriction imposed by section 110(a)(2)(I) will remain in effect until either (1) USEPA takes final action to

redesignate the area to attainment or unclassifiable, or (2) USEPA takes final action on this portion of the plan, if the area is not redesignated.

For Toledo, this notice will only discuss USEPA's final rulemaking on the ozone component of the transportation control plan, the ozone attainment and RFP demonstrations and the public comments which pertain to these portions of the plan.

Public Comment: In response to the transportation control plan developed for the area, one commentor raised the following issues:

(a) The commentor believes that certain strategies (i.e., park and ride and fringe area parking lots) which were preliminarily rejected for study and implementation, should be considered at least for future study due to their possible low cost and high acceptability.

(b) The implementation of strategy 1, Improved Transit, calls for a 100% increase in bus miles to bring about a 50% increase in ridership. The commentor questions whether funding of the magnitude necessary to implement this strategy will be available during the period 1982–87. Furthermore, the commentor questions whether a local commitment of that magnitude could be made for those years, given current economic conditions in Toledo.

USEPA Response: (a) The Toledo plan states (page III–2) that the six strategies currently rejected, will be studied further, prior to July, 1980, as more information about each of them becomes available. Furthermore, it should be noted that the Toledo Metropolitan Area Council of Governments (TMACOG) has committed to study further all eighteen strategies listed in section 108(f)(1)(A) (of which park and ride and fringe area parking lots are included) of the Act. TMACOG has also committed in their FY 1981 Overall Work Program to conduct this project. (b) TMACOG is currently discussing with the local mass transit district the possible alternative methods for obtaining additional local financial resources to ensure that the 100% increase in service could be realized. Some of the options which the regional mass transit service has for raising additional funds to meet the 100% goal are (i) to increase ridership and therefore gross receipts through a more efficient and productive system; (ii) to increase fare price, or (iii) to request an additional tax levy.

Public Comment: As with the Cincinnati plan, one commentor noted that the Toledo plan does not contain RFP demonstrations which show annual incremental reduction in emissions.

USEPA Response: As discussed previously, this notice will only discuss the ozone component of the Toledo plan. Therefore, the carbon monoxide RFP demonstration will not be discussed at this time. For ozone, however, the Toledo plan does contain an acceptable RFP demonstration.

Public Comment: When reviewing the proposed action on the Toledo nonattainment area plan one commentor had a number of questions on the VOC emission reductions and ozone RFP demonstration. These questions were prompted by the March 14, 1980 Federal Register (45 FR 16503). In that Federal Register USEPA proposed to approve as a SIP revision, the commitment by the Ohio Department of Transportation (DOT) to reduce the use of cutback asphalt in Wood, Sandusky and Ottawa Counties by a sufficient amount to offset the VOC emissions expected from the new Pre-Finished Metals, Inc. metal coating plant located in Lake Township, Ohio. The commentors questions, as they apply to the Toledo urban area plan, are as follows:

(a) Was the application for the permit received prior to July 1, 1979, and was that permit fully completed (i.e., were specific trade-offs identified)?

(b) If the July 1, 1979 date was met and if the completed application was received in the period January 1–June 30, 1979, had the Governor of Ohio adopted and submitted a SIP to USEPA for which he could assess the emissions impact?

(c) Is this Pre-Finished Metals, Inc. proposal taking credit for an action proposed for approval by USEPA on March 10, 1980? Has the projected emissions decrease from the cutback asphalt prohibition been double counted in the SIP?

(d) Is there a demonstration that this action would not interfere with Reasonable Further Progress?

(e) Does the November 6, 1978 commitment for offset to Pre-Finished Metals have any SIP status and did it meet the proper procedural requirements for public comment, etc.?

(f) In April the 1978 "Workshop on Requirements for Nonattainment Area Plans" cutback asphalt was identified as an available RACT for nonattainment areas. Is an emissions offset as proposed allowable after the date that USEPA went on record as requiring RACT for all ozone nonattainment plans?

(g) In summation the commentor states that he believes the proposal for Pre-Finished Metals must be considered as part of the Toledo Urban Area SIP. As such it cannot be approved as a revision to the SIP prior until final approval of the SIP (Toledo Urban Area SIP) proper.

USEPA Response: (a & b) The fully completed permit for Pre-Finished Metals Inc. along with identifiable specific offsets was submitted to the Ohio EPA on November 13, 1978. On May 23, 1979, the Governor of Ohio submitted as a SIP revision the permit for Pre-Finished Metals to USEPA.

On July 27, 1979 (with supplements in September and December of 1979 and January of 1980) the Governor of Ohio submitted an adopted nonattainment area plan for the Toledo urban area. This plan contains an assessment of the total VOC emissions in the area.

(c) The State of Ohio has correctly accounted for the VOC emission reductions that are to occur both as a result of the permit for Pre-Finished Metals Inc. and as a result of the cutback asphalt prohibition. The projected emissions decrease from the cutback asphalt prohibition has not been counted twice nor has the Pre-Finished Metals proposal taken credit for an action proposed for approval by USEPA in the March 10, 1980 Federal Register.

(d) At the time of issuance of the permit an RFP demonstration was not required to be submitted. As stated earlier the ozone RFP demonstration submitted with the Toledo nonattainment demonstration shows annual incremental reductions in VOC emissions necessary to ensure attainment of the ozone NAAQS by 1982. Furthermore, since the decrease in VOC emissions anticipated from the Ohio DOT reduction in the usage of cutback asphalt in Wood, Sandusky and Ottawa Counties (165 tons per year) is greater than the anticipated VOC emissions from the new Pre-Finished Metals plant (138 tons per year) it is evident that the permit will not interfere with RFP but will contribute to the expeditious attainment of the ozone NAAQS.

(e) USEPA considers the Governor's submittal as a SIP revision and the November 6, 1978 letter from the Director of ODOT to the Director of OEPA to be a commitment which is sufficient to meet the requirements of Section V of the Interpretative Ruling. Additionally, the November 6, 1978 commitment was part of the overall Pre-Finished Metals permit considered at a public hearing held on March 13, 1979 in Ohio EPA's offices in Bowling Green, Ohio. This hearing was announced in local newspapers of general circulation a full thirty days prior to its occurrence. Therefore, USEPA believes that the State has met the proper procedural requirements for public comment.

(f) The Clean Air Act sets the baseline for emission offset calculations as the

SIP requirements at the time of the permit application. Since there were no SIP limitations regarding the VOC emissions from the use of cutback asphalt in Wood, Sandusky and Ottawa Counties on the date that the Pre-Finished Metals application was submitted, all reductions of VOC in the three Counties resulting from the replacement of cutback asphalt with emulsified asphalt for certain applications are available as offsets.

(g) Both the Pre-Finished Metals permit and the nonattainment area plan for the Toledo urban area are revisions to the existing ozone SIP for Ohio. Therefore, even though VOC emissions from the new Pre-Finished Metals plant must be accurately accounted for in the urban nonattainment area plan, approval of the permit as a SIP revision is not contingent on approval of the Toledo nonattainment area plan. Therefore, its approval should not be considered as part of the Toledo urban area SIP revisions.

USEPA Final Determination: USEPA has reviewed the public comments received and has determined that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the ozone attainment and RFP demonstrations and the ozone component of the transportation control plan developed for the Toledo urban area.

Vehicle Inspection and Maintenance (I/M)

In the March 10, 1980 Federal Register (45 FR 15205) USEPA outlined deficiencies in the I/M program. USEPA noted that for all the States to have a fully approvable I/M SIP the States needed to correct all the deficiencies discussed. On April 24, 1980, the State of Ohio informed USEPA of the progress being made in adopting Senate Bill #240 (S.B. #240). Because of the present status of S.B. #240, USEPA, at this time, is not taking final action on the I/M program submitted by the State. Action on the I/M program will be published in a subsequent Federal Register. Until USEPA approves or conditionally approves the State's I/M program, the growth restrictions of section 110(a)(2)(I) of the Act will be in effect in the Cleveland and Cincinnati urban areas. Additionally, if the State fails to adequately address the additional 172(b)(11) requirements then the funding restrictions of section 176(a) and 316 of the Act may be imposed.

Hydrocarbon and Carbon Monoxide Emissions from Stationary Sources

Section 172(b)(2) of the Clean Air Act requires the application of reasonably available control technology to stationary sources of VOC emissions in nonattainment areas. USEPA has developed Control Techniques Guidelines (CTGs) which provide information on available air pollution control equipment and techniques. The CTGs also contain recommendations of what USEPA calls the "presumptive norm" for RACT.

Where state regulations are not supported by the information in the CTGs, the State must provide an adequate demonstration that its regulations represent RACT, or amend the regulations to be consistent with the information in the CTGs. An explanation of CTGs and their practical effect is contained in a September 17, 1979 supplement (44 FR 52761) to the General Preamble.

As noted in the General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas, (44 FR 20376) April 4, 1979, the minimum acceptable level of stationary source control for ozone SIPs, includes RACT requirements for VOC sources covered by the CTGs USEPA issued by January 1978 and schedules to adopt and submit by each future January additional RACT requirements for sources covered by CTGs issued by the previous January. The Ohio submittal includes a commitment from the State to adopt any additional rules representing RACT on stationary sources of VOC for which USEPA issues CTGs. The Administrator approves this commitment by the State as part of the federally approved Ohio State Implementation Plan.

The submittal date for the first set of additional RACT regulations was revised from January 1, 1980 to July 1, 1980 by the Federal Register notice of August 28, 1979 (44 FR 50371). Today's approval of the ozone portion of the Ohio plan is contingent on the submittal of the additional RACT regulations which are due by July 1, 1980 for CTGs published between January 1978 and January 1979.

In addition, by each subsequent January beginning January 1, 1981, RACT requirements must be adopted and submitted to USEPA. The above requirements are set forth in the "Approval Status" section of the final rule. If RACT requirements are not adopted and submitted to USEPA according to the time frame set forth in the rule, USEPA will promptly take appropriate remedial action.

Regulations for the control of VOC and carbon monoxide emissions from stationary sources are contained in revised Chapter 3745-21 of the Ohio Administrative Code (hereinafter referred to as Chapter 3745-21). Chapter 3745-21 contains 10 sections with each section containing numerous subsections. In the March 10, 1980 Federal Register (45 FR 15205) USEPA noted two areas of Chapter 3745-21 (subsections (M)(2) and (R)(3)(a) of rule 09) which in USEPA's judgment were deficient. USEPA proposed to approve these areas if the State corrected the deficiencies prior to final rulemaking or if the State made a commitment to correct the deficiencies on a date negotiated between the State and the USEPA. Additionally, USEPA proposed to disapprove the compliance schedule in new rule 04(C)(18) of Chapter 3745-21 as it applies to facilities presently covered by the compliance schedule in old rule 04(C)(1) of Chapter 3745-21. Except for the subsections noted above USEPA proposed to approve rules 01 (Definitions), 02 (Ambient Air Quality Standards and Guidelines), 03 (Methods of Ambient Air Quality Measurement), 04 (Attainment Dates and Compliance Time Schedules), 05 (Nondegradation Policy), 06 (Classification of Regions), 07 (Control of Emissions of Organic Materials from Stationary Sources), 08 (Control of Carbon Monoxide Emissions from Stationary Sources), 09 (Control of Organic Compounds from Stationary Sources), and 10 (Compliance Test Methods and Procedures) of Chapter 3745-21.

In the March 10, 1980 Federal Register USEPA noted that the Ohio regulations include a provision which exempts methylene chloride and methyl chloroform from control. The State has chosen to retain this provision. This volatile organic compound, while not appreciably affecting ambient ozone levels, is potentially harmful. Methylene chloride has been identified as mutagenic in bacterial and mammalian cell test systems, a circumstance which raises the possibility of human mutagenicity and/or carcinogenicity. As stated in the NPR USEPA will not disapprove the State's SIP submittal based on the inclusion of this exemption. USEPA, however, does not endorse or encourage the increased use of this compound or compliance by substitution. Furthermore, State officials and sources should be advised that there is a strong possibility of future regulatory action to control these compounds. Sources which choose to comply by substitution may well be required to control these compounds as

a consequence of future regulatory actions.

It also should be noted that certain portions of the regulations allow for the Director of Ohio EPA to approve emission limitations different from the applicable limitation, to exempt certain emissions, or to approve alternate control technologies. As examples of this, rule 09(C)(3) of Chapter 3745–21 (for surface coating of automobiles and light duty trucks) and rule 09(D)(3)(a) of Chapter 3745–21 (for surface coating of cans) allow for the possibility of alternative emission limits and may even allow for a source to "bubble" its emissions. Any scheme designed to allow a source to operate under an alternate emission limitation, to exempt certain emissions or to allow an alternate control technology must be submitted to and approved by the USEPA as a SIP revision in accordance with section 110(a)(3)(A) of the Act and applicable regulations. Additionally, any scheme which allows for a source to bubble its emissions should be consistent with USEPA's bubble policy. The bubble policy is presented in the December 11, 1979 Federal Register (44 FR 71780) with a supplementary notice published on January 23, 1980 Federal Register (45 FR 5616).

The State must submit each alternate compliance scheme involving control equipment (bubble) to USEPA as a SIP revision. In those bubble situations where the emissions to be used in the bubble calculation are dependent on the capture and control efficiency of a control system, the emissions must be determined through appropriate testing procedures. The resulting overall control efficiency for each specific piece of add-on control equipment employed must be established. Establishing this limit as part of the SIP will simplify procedures required to determine compliance. Additionally, it should be noted that the critical parameters of the control system must be continuously monitored during the testing period so as to allow for the assessment of the continued performance at the established rate.

During the public comment period USEPA received comments from numerous individuals on USEPA's proposed action on specific portions of rules 04, 09 and 10 of Chapter 3745–21. No comments were received on rules 01, 02, 03, 05, 06, 07, or 08 of Chapter 3745–21. Therefore, USEPA approves rules 01, 02, 03, 05, 06, 07 and 08 of Chapter 3745–21.

Summarized below are the State's and interested individuals' response to USEPA's proposed action on rules 04, 09 and 10 of Chapter 3745–21, and USEPA's response and final determination on these rules.

Subsection (M) of Rule 09 of Chapter 3745–21. This subsection is concerned with controlling organic compound emissions from the source category petroleum refinery wastewater separators. In particular, new rule 09(M)(2) requires the owners or operators of forebay sections and any other separator section which recovers 200 gallons or more of organic compounds per day to comply with the schedules contained in new rule 04(C)(13) of Chapter 3745–21. Rule 09(M)(2), however, exempts from compliance those wastewater separators with forebay sections or any other separator section which recovers less than 200 gallons of organic compounds per day. USEPA noted in the March 10, 1980 Federal Register (45 FR 15208) that such an exemption was not supported by the CTG's as being RACT. Therefore, USEPA requested the State to submit either (a) technical support justifying the exemption as representing RACT, or (b) documentation proving that the allowable emissions from the State's proposal are within 5 percent of those emissions resulting from the adoption of the USEPA "presumptive norm." If the State was unable to do either a or b then they were requested to commit to extend the applicability of rule 09(M)(2) to cover those separator sections which recover less than 200 gallons of organics per day.

Public Comment: Two industrial representatives have commented on the provisions of this rule and on USEPA's proposed action. The contention of one commentor is that most of the volatile oil will be recovered in the forebay section and that "* * * only an insignificant amount of oil with low volatility and in globule form will be carried along to the main separator section." Further, he states that the forebay sections are easily covered, but the main separator is more difficult and impractical to cover because it is generally equipped with flight scrapers and manually adjusted skimmers which require operator observation and routine maintenance. Therefore, he believes that the intent of the regulation is met by covering only the forebay section and that the 200 gallons per day exemption is reasonable.

The second commentor believes that the need for separator covers should be related to the amount of oil contained in the wastewater flowing to that particular section of the separator. He states that the 200 gallon/day limit of recovered oil for each section is practical and reasonable. Furthermore, he contends that the cost effectiveness of covering those areas of low oil recovery is very low and not justifiable.

USEPA Response: Contrary to the issue that the first commentor raised USEPA believes that the intent of the regulation is clearly stated; namely, that "* * * all forebay sections and any other section which recovers 200 gallons or more per day of organic compounds * * *" must be equipped with covers and seals. USEPA agrees with the second commentor when he states that the need for separator covers should be related to the amount of oil contained in the water flowing to that particular separator section. However, as stated in the March 10, 1980 Federal Register, USEPA does not believe that the 200 gallons/day exemption represents RACT. USEPA therefore requested the State to justify either (1) that the proposed regulation is RACT or (2) that the allowable emissions resulting from the proposed regulation differ by no more than 5% from the VOC emissions resulting from the adoption of USEPA's presumptive norm for ACT. This judgment is based on the fact that covers are commercially available for separator sections other than just for the forebay section. These covers are designed to allow for the periodic operator observation and maintenance necessary for the correct operation of the particular separator section. Furthermore, extrapolating from the CTG's to determine the net annualized cost indicates that by installing such control equipment the company would realize a monetary credit, not a cost.

State Response: The State has submitted a study which indicates that the amount of emissions that would result from the regulation for this source category exceeds by more than five percent the VOC emissions resulting from the adoption of USEPA's presumptive norm for RACT. The State responded that they would eliminate the exemption for those wastewater separators which are used for contaminated refinery process wastewater separators but not for refinery wastewater separators which are minor sources (i.e., such as separators which are used only for uncontaminated once-through cooling water or intermittent stormwater run-off).

In a letter dated April 15, 1980 the State indicated that the revised regulation could be submitted to USEPA by January 1, 1981. In subsequent conversations with the State it was determined that due to limited staff resources additional time would be needed. On August 6, 1980 the State, in a letter from James F. McAvoy committed

to submit the revised regulations by February 15, 1981.

USEPA Response: USEPA has reviewed and finds acceptable the study submitted by the State and the February 15, 1981 date for the submittal of the revised regulation. It should be noted, however, that even though the State considers it unreasonable to control separators which are used only for uncontaminated once-through cooling water or intermittent stormwater run-off, if the revised regulation contains an exemption for those sources, the State must demonstrate that the resultant emissions differ from the CTG allowable emissions by no more than five percent.

Subsection (R) of Rule 09 of Chapter 3745–21. This subsection is concerned with controlling organic compound emissions from the source category gasoline dispensing facilities. Paragraph 3(a) of this subsection exempts from compliance with the preceding paragraphs of this rule any gasoline dispensing facility which has an annual throughput of less than 240,000 gallons of gasoline. In the March 10, 1980 Federal Register (45 FR 15208) USEPA stated that an exemption for facilities with an annual throughput of less than or equal to 120,000 gallons would represent RACT.

Any exemption for those facilities with an annual throughput of greater than 120,000 gallons would have to be either: (a) Technically supported as RACT, or (b) the State would need to demonstrate that the emissions occurring as a result of this exemption would be no more than five percent greater than emissions occurring from a regulation exempting only facilities with an annual throughput of 120,000 gallons or less. If the State was not able to supply the appropriate justification then the State was required to extend the area of applicability of rule 09(R) of Chapter 3745–21 to cover those facilities with an annual throughput of greater than 120,000 gallons.

Public Comment: One commentor, an oil company representative, has expressed concern over USEPA's action with regard to the exemption for gasoline dispensing facilities. The commentor believes that for his company the exemption proposed by the State (less than a 240,000 gallons annual throughput) is economically more feasible than the USEPA technically supported exemption (less than a 120,000 gallon annual throughput). Furthermore, he indicates that for all the stations owned by his company only a small percentage have an annual throughput of less than 240,000 gallons. Therefore, he contends that the amount of vapor controlled (VOC emissions) will not change significantly if the 240,000 gallon exemption is allowed.

USEPA Response: USEPA cannot approve an exemption, which applies universally to all sources covered by a particular source category, without the proper technical data which demonstrates that the regulation with the exemption is RACT, or which demonstrates that the total emissions that would occur as a result of the exemption will not differ by more than five percent from the amount that would occur as a result of the adoption of the USEPA recommended exemption. In the March 10, 1980 Federal Register USEPA requested the State to submit such documentation. Summarized below is the State's response.

State Response: The State is currently studying the emissions resulting from the proposed regulation and has committed to submit the results to USEPA by July 1, 1980. If it should be necessary to revise rule 09(R)(3)(a) the State could submit the State adopted revised rule to USEPA by January 1, 1981. In subsequent conversations with the State it was determined that due to limited staff resources the study would not be completed until October 1, 1980 and, consequently, the regulations could not be submitted until February 15, 1981. On August 6, 1980 the State, in a letter from James F. McAvoy committed to submit the study by October 1, 1980 and the revised regulations by February 15, 1981.

USEPA Response: USEPA has reviewed the commitments made by the State for rule 09(R) of Chapter 3745–21 and has determined that the October 1, 1980 date for submittal of the study and the February 15, 1981 date for submittal of the revised regulations are acceptable.

Section G of Rule 09 of Chapter 3745–21. This subsection established an emission limitation of 2.9 lbs. VOC per gallon of coating, excluding water, from a paper coating line.

Public Comment: One industrial representative commented that the emission limitation is technically unachievable and economically infeasible. Specifically, it is believed that the 90% capture goal utilized by Ohio is unrealistic and should be replaced by a 75% capture goal. The commentor believes the USEPA should disapprove the rule based on these facts.

USEPA Response: Section 172(b)(2) of the Clean Air Act requires the implementation of reasonably available control technology (RACT). The State may consider economic and technological feasibility when determining RACT. Additionally, the State may promulgate regulations which are more stringent than RACT. As stated in the March 10, 1980 Federal Register (45 FR 15192), USEPA received this regulation and found that at a minimum it represents RACT and is acceptable to USEPA. Therefore, USEPA has no basis for disapproving the emission limitations contained in the Ohio SIP for fabric coating.

Section O of Rule 09 of Chapter 3745–21. This subsection specifies control of VOC emissions from the following three categories of solvent metal cleaning operations; cold cleaners, open top vapor degreasers and conveyorized degreasers. This rule requires the installation of specific air pollution control equipment and the adherence to good operating procedures to achieve a reduction in the VOC emission from the three categories of solvent metal cleaning operations.

Public Comment: Two commentors expressed concern about sections 3(c) and 4(a). These sections detail alternate equipment (i.e., minimum freeboard ratio refrigerated chiller, enclosed design, or carbon adsorption) for controlling VOC emissions from open top degreasers and conveyorized degreasers, respectively. The commentors believe that the requirement that the carbon adsorber exhaust less than 25 parts per million (ppm) averaged over one complete adsorption cycle is too stringent. They feel that the emission limit for the carbon adsorbers is so stringent that the affected sources will not install carbon adsorbers but instead opt for a less efficient means of control (i.e., a refrigerated chiller).

USEPA Response: Under the provisions of the regulation it is possible for a source to choose a control device other than the carbon adsorber. It is true that for most applications a carbon adsorber is the most efficient of the four control alternatives and that a well designed and maintained adsorber will normally capture approximately 95% of the organic input into the bed. A carbon adsorption system for solvent metal cleaning systems, however, will not normally achieve this 95% level of control due to fugitive VOC emissions occurring as a result of such factors as spills, leaks, drag-out on parts and disposal of waste solvents. Therefore, in practice a solvent metal cleaning control system which employs either a carbon adsorber or a refrigerated chiller (one of the options) will be achieving approximately the same emission reduction efficiency. USEPA believes that sources choosing the refrigerated

chiller are not choosing a less efficient control device.

The 25 ppm emission standard specified for the carbon adsorption system is to ensure that the system is operating efficiently. Due to the nature of the other control mechanisms specified in this regulation emission standards would not be appropriate. The 25 ppm limit for the carbon adsorption is based on the availability of continuous monitoring devices which can detect solvent vapors at this concentration level. The limit ensures that the adsorber is operating correctly and is regenerated in a timely manner. USEPA, therefore, believes that this emission limit is appropriate for the carbon adsorption system.

USEPA Final Determination on Rule 09 of Chapter 3745-21. During the public comment period no comments were received on USEPA's proposed approval of paragraphs A through L, M(1), M(3), N, P, Q and S of Rule 09 of Chapter 3745-21. Therefore, USEPA approves these paragraphs. Additionally, since the comments received on paragraphs G and O do not change USEPA's initial findings, USEPA also approves these two paragraphs. USEPA has reviewed the comments received on paragraphs M(2) and R of Rule 09 and the State's response to USEPA's proposed action on paragraphs M(2) and R of Rule 09. USEPA has determined that the State has adequately committed to correct the minor deficiencies noted in paragraphs M(2) and R of 09 and that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves paragraphs (M)(2) and (R) of Rule 09 of Chapter 3745-21 on the condition that the State submits the material previously specified on the dates committed. This rule is conditionally approvable in the nonattainment areas. In the attainment areas RACT on major sources is not required. Consequently, in the attainment areas this rule is approvable. A notice soliciting public comment on the acceptability of those dates appears elsewhere in today's Federal Register.

3745-21-10

Section E of Rule 10 of Chapter 3745-21. This section specifies the method to be used when determining the level of VOC emissions from bulk gasoline terminals.

Public Comment: An individual expressed concern over the absence of control requirements for VOC leaks from gasoline tank trucks and vapor collection systems.

USEPA Response: In December of 1978 USEPA published a CTG for the control of VOC leaks from gasoline tank trucks and vapor collection systems. As specified in the August 28, 1979 Federal Register (44 FR 50371) USEPA requires the State to submit by July 1, 1980 revised regulations for sources covered by these new CTG requirements. The State has committed to submit these revised regulations. The review of these regulations will be addressed in a separate Federal Register notice.

Public Comment: Two commentors were concerned about the compliance test requirements for gasoline vapor recovery units presented in section E of Rule 10 of Chapter 3745-21. Specifically, they were concerned with the three eight-hour test repetitions and the annual retest. One of the commentors suggested that the rule should be revised to allow for only one-eight hour test and that the annual retest requirement should be replaced with an alternate compliance method. The second commentor suggests that the regulation should require only one two-hour test conducted during the peak loading period.

USEPA Response: USEPA believes that the three eight-hour tests specified in section E give a good representation of normal operating conditions considering the wide variation of loading conditions (number and frequency of loading), loading days, and types of processing. Therefore, USEPA believes that section E of Rule 10 should remain unchanged. It should be noted that, if at a future date, as a result of further research, information becomes available which indicates that a shorter time interval is appropriate for conducting the test, then the State may revise the regulation as necessary.

USEPA Final Determination on Rule 10 of Chapter 3745-21: USEPA has reviewed the comments submitted on this rule and has determined that none of the public comments has provided an adequate reason for USEPA to change its proposed approval. Therefore, at this time, USEPA approves in its entirety Rule 10 of Chapter 3745-21.

3745-21-04

This rule, as discussed in the March 10, 1980 Federal Register (45 FR 15206) is composed of three subsections (A, B, C). Subsection A establishes December 31, 1987 as the latest date for demonstrating attainment of the carbon monoxide and ozone NAAQS. Subsection B requires those sources regulated by rule 3745-21-09 to certify that they are in compliance with the rule by December 1, 1979. Section C establishes the dates for specific source categories to be in compliance with the provisions of rule 09. It also establishes an extension of these compliance dates for certain individual sources.

In the March 10, 1980 Federal Register USEPA stated that all the provisions of rule 04 of Chapter 3745-21 were approvable, except for the schedule contained in new rule 04(C)(18) of Chapter 3745-21 as it applies to any loading facility presently covered by the compliance schedule in old rule 04(C)(1) of Chapter 3745-21. New rule 04(C)(18) establishes the final date on which bulk gasoline terminals are to be in compliance with the provisions of new rule 09(Q) of Chapter 3745-21. This date is July 1, 1981. Old rule 04(C)(1) established the final compliance date on which bulk gasoline terminals were to be in compliance with the provisions of old rule 07(E) of Chapter 3745-21. The date, as codified in 40 CFR 52.1875 was to be no later than July, 1975 and in some cases by May 31, 1975.

USEPA noted that new rule 09(Q) and the old rule 07(E) require installation of the same control systems to achieve compliance with their VOC emission limitations. Therefore, certain facilities covered under old rule 07(E) would be granted an additional six years to be in compliance with new rule 09(Q). This extension in the compliance schedule was unacceptable. Therefore, USEPA proposed to disapprove the compliance schedule in revised new rule 04(C)(18) as it applies to facilities presently covered by the compliance schedule in old rule 04(C)(1).

Public Comment: One commentor, a representative of an oil company, believes that the date for certification of compliance (December 1, 1979) contained in new rule 04(B) of Chapter 3745-21 does not allow sufficient time for planning and that the date should be changed to "no later than 90 days after approval or final promulgation of these regulations."

USEPA Response: The date selected by the State is consistent with USEPA policy as outlined in 40 CFR 51.15 and 40 CFR 51.1(q) and therefore is approvable.

Public Comment: One commentor, a representative for numerous oil companies, submitted extensive comments on USEPA'a proposed disapproval of the compliance schedule contained in new rule 04(C)(18). The commentor raises three significant issues. A summary of these issues is presented below:

1. The commentor notes that old rule 07(E)(1)(c) allows for the installation of "other equipment or means for purposes of air pollution control as may be acceptable to and approved by the Board." On March 9, 1973, the Director of the Ohio EPA issued a Resolution, pursuant to this rule, which provides

that "[b]ottom loading or fully submerged loading is hereby approved as an acceptable means of controlling hydrocarbon emissions under rule 3745-21-04(E)(1)(c)." (The Director of Ohio EPA is the successor to the Ohio Air Pollution Control Board.) Under the authority of this resolution the State has issued Permits to Operate for bulk gasoline loading terminals which use fully submerged or bottom loading systems as a means of internal vapor control.

The commentor notes that for sources which installed this alternate control equipment, as opposed to the equipment specified in 3745-21-07(E)(1)(a) or (b), additional time is needed to meet the requirements of new rule 09(Q) of Chapter 3745-21. He states further that a fuller statement of the policy issues and law involved in this question is set forth in the oil companies' filings in two court cases that are pending in the United States District Court for the Northern District of Ohio, Eastern District. He notes that USEPA should take no action inconsistent with the decision of the court in those two cases.

2. The commentor states that even if USEPA's interpretation of old rule 3745-21-07(E) is correct, additional time would still be needed for those sources which were in compliance with the provisions of the old rule to meet the requirements of new rule 3745-21-09(Q). He contends that the additional time is necessary because these sources would have to install additional equipment to meet the more stringent emission limitations of new rule 09(Q) of Chapter 3745-21.

3. Finally, the commentor states that even if USEPA were correct that the RACT requirements of new rule 09(Q) were identical to the requirements of old rule 07(E), that is not a sufficient basis for disapproving rule 04(C)(18) of Chapter 3745-21, which establishes a compliance schedule with a final date of July 1, 1981. He contends that in the past USEPA has approved SIP revisions or variances extending a final compliance date and that a State can revise its SIP to provide a different compliance date for a particular source or class of sources.

USEPA Response: USEPA's response to each of the above mentioned issues is presented below.

1. It is USEPA's judgment that the March 9, 1973 Resolution (hereinafter referred to as the Resolution), which authorizes the use of bottom fill or submerged loading systems which do not collect or dispose of vapors as alternate control methods, constitutes a revision to the SIP. Section 110 of the Clean Air Act requires the State to submit such revisions to USEPA for review and approval. Until such a revision is approved the existing SIP is the federally enforceable SIP and all sources must adhere to its provisions. In the case under discussion the State of Ohio never officially submitted to USEPA the Resolution as a revision to the SIP. Therefore, old rule 07(E)(1)(a) and (b) of Chapter 3745-21 as approved on April 15, 1974, is the federally enforceable regulation with which the sources must be in compliance.

In response to the commentor's concern that USEPA should not take final rulemaking action prior to the U.S. District Court's decision in two cases currently pending, USEPA would like to point out that final rulemaking cannot be withheld until the court has made a decision in these cases. USEPA is mandated by the Clean Air Act to take final action on revisions to the SIP within a specified timeframe regardless of pending litigation. Using the pendancy of litigation as a basis for not acting on revisions to an SIP would potentially promote frivolous litigation to delay SIP action and jeopardize the attainment and maintenance of standards. Once a court has rendered its decisions in a case, the appropriate steps can be taken, if necessary, to have the SIP reflect the court's decisions.

2. USEPA has reviewed both the old rule and the new rule to determine if the new rule is more stringent. Under old rule 07(E) a vapor collection and disposal system is required. This system is required to process and recover from the equipment being controlled at least 90% by weight of all vapor and gases. The new rule 09(Q) specifies an allowable emission limitation of 0.67 lbs. VOC/1000 gallons of gasoline loaded into the delivery vessel. Under the new rule a vapor collection and control is also specified as the means for controlling the VOC emissions.

Tests conducted by USEPA indicate that it is possible for a vapor collection system achieving less than a ninety percent control efficiency to meet the emission limitation of 0.67 lbs. VOC/1000 gallons of gasoline. In USEPA's judgment, for those sources which met the requirements of old rule 07(E), the emissions limitations specified in new rule 09(Q) are not more stringent. Furthermore, since both old rule 07(E) and new rule 09(Q) require the same control equipment, USEPA does not believe that there is a need for additional time to demonstrate compliance with new rule 09(Q).

3. When rulemaking on regulations which apply to all sources in a particular category (i.e. bulk gasoline terminals) USEPA will not approve the extension of final compliance dates when the substantive requirements of the regulation are the same or less stringent than the requirements of an existing federally approved rule. As stated previously, USEPA believes that the substantive requirements of old rule 07(E) and new rule 09(Q) are essentially the same. Therefore on a categorical basis USEPA does not believe it is appropriate to give a blanket extension to those sources formerly covered by old rule 04(C)(1).

It should be noted however, that on a source specific basis, the State can request an extension based on the fact that the specific source, which met the requirements of old rule 07(E) needs additional time to install additional equipment to meet the requirements of the new rule 09(Q). In such a case the source must demonstrate that it was in compliance with the old regulation and needs extra time to install additional equipment that is needed for the source to comply with new rule 09(Q). Otherwise, to allow sources that were not in compliance with the old regulation, an extension, would negate the impact of section 120 of the Act and the intent of Congress.

State Response: On April 15, 1980, the State submitted objections on USEPA's proposed disapproval of the compliance date in new rule 04(C)(18). The State indicated that it believes that the requirements of new rule 09(Q) are more stringent than the requirements of old rule 07(E). Therefore, the State felt that the compliance time extension was justified. The State based its justification for an extension on the following three premises:

(a) USEPA's Enforcement Division was aware of the March 9, 1973 Resolution allowing the use of either bottom loading or submerged filling as sufficient to comply with the old regulation.

(b) The new rule specifies an emission limitation which is more stringent than the collection efficiency specified in the old rule.

(c) The method of determining compliance with the new regulation is more extensive than the method used for the old regulation (no test method was specified for determining compliance with the old regulation).

USEPA Response: Arguments a and b presented by the State are essentially identical to arguments 1 and 2 presented above by the oil company representative. For USEPA's response to these issues the reader is referred to the discussion presented above. As for the issue presented in point C, USEPA maintains that such a blanket extension is not approvable because the

requirements of new rule 09(Q) of Chapter 3745-21 are essentially the same as, and are not more stringent than the requirements of old rule 07(E) of Chapter 3745-21. USEPA does not believe that the new compliance testing methodology will prevent a source, that was in compliance with the old regulation, from complying with the requirements of new rule 09(Q).

USEPA Final Determination on Rule 3745-21-04

USEPA has reviewed the comments received from the State and private industry and has determined that adequate reasons have not been provided for USEPA to change its original proposal on new rule 04. Therefore, at this time, USEPA approves all portions of rule 04 of Chapter 3745-21 except for the following:

(1) USEPA disapproves the compliance schedule in revised rule 04(C)(18) of Chapter 3745-21 as it applies to facilities formerly covered by the compliance schedule in old rule 04(C)(1) of Chapter 3745-21.

The 1978 edition of 40 CFR Part 52 lists in the subpart for each state the applicable deadlines for the attaining ambient standards (attainment dates) required by section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides for attainment by the deadline required by section 172(a) of the Act, the new deadlines will be substituted on the attainment date charts. The earlier attainment dates under section 110(a)(2)(A) will be referenced in a footnote to the charts. Sources subject to plan requirements and deadlines established under section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new section 172 plan requirements.

Congress established new deadlines under section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. If these new deadlines were permitted to supersede the deadlines established prior to the 1977 Amendments, sources that failed to comply with pre-1977 plan requirements by the earlier deadlines would improperly receive more time to comply with those requirements. Congress, however, intended that the new deadlines apply only to new, additional control requirements and not to earlier requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

Section 110(a)(2) of the Act made clear that each source has to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D.

(123 Cong. Rec., H 11958, daily ed. November 1, 1977)

To implement fully Congress' intention that sources remain subject to pre-existing plan requirements, sources, cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. Such variances would impermissibly relax existing requirements beyond the applicable section 110(a)(2)(A) attainment date under the plan. Therefore, for requirements adopted before the 1977 Amendments, USEPA will not approve a compliance date extension beyond pre-existing 110(a)(2)(A) attainment dates, even though a section 172 plan revision with a later attainment date has been approved.

However, in certain exceptional circumstances, extensions beyond a pre-existing attainment date are permitted. For example, if a section 172 plan imposes new, more stringent control requirements that are incompatable with controls required to meet the pre-existing regulations, the pre-existing requirements and deadlines may be revised if a State makes a case-by-case demonstration that a relaxation or revocation is necessary. Any such exemption granted by a State will be reviewed and acted upon by USEPA as a SIP revision. In addition, as discussed in the April 4, 1979 Federal Register (44 FR 20373), an extension may be granted if it will not contribute to a violation of an ambient standard or a PSD increment.

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

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

This Notice of Final Rulemaking is issued under the authority of sections 110(a), 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7502, 7601(a)).

Dated: October 23, 1980.

Douglas Costle,

Administrator.

Note.—Incorporation by reference of the State implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

(1) Section 52.1870(c) is amended by adding subparagraphs (14) to (20) to read as follows:

§ 52.1870 Identification of Plan.

* * * * *

(c) * * *

(14) On July 27, 1979 the State submitted its nonattainment area plan for specific areas designated as nonattainment for ozone and carbon monoxide in the March 3, 1978 and October 5, 1978 Federal Registers (43 FR 8962 and 43 FR 45993). The submittal contained Ohio's Part D nonattainment plans for the following ozone and carbon monoxide urban nonattainment areas: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Steubenville and Toledo. The submittal contained transportation control plans and demonstrations of attainment (for carbon monoxide and/or ozone) for each of the above mentioned urban nontattainment areas. Regulations for the control of volatile organic compound emissions were not included with this submittal but were submitted separately on September 13, 1979.

(15) On September 13, 1979, the State submitted regulations for the control of volatile organic compound and carbon monoxide emissions from stationary sources.

(16) On December 28, 1979, the State amended the attainment demonstration submitted on July 27, 1979 for the Cleveland urban area.

(17) On January 8, 1980, the State amended the carbon monoxide attainment demonstration submitted on July 27, 1979 for the Steubenville urban area.

(18) On January 15, 1980, the State amended the attainment demonstrations submitted on July 27, 1979 for the urban areas of Cincinnati, Toledo and Dayton.

(19) On April 7, 1980 the State of Ohio committed to correct the deficiencies presented in the March 10, 1980 Notice of Proposed Rulemaking.

(20) On April 15, 24, 28, May 27, July 23 and August 6, 1980 the State submitted comments on, technical support for, and commitments to correct the deficiencies cited in the March 10, 1980 Notice of Proposed Rulemaking. In addition to this the May 27, 1980 letter also contained a commitment by the State to adopt and submit to USEPA by each subsequent January, reasonable available control technology requirements for sources covered by the control techniques guidelines published by USEPA the preceding January.

§ 52.1871 [Amended]

2. Section 52.1871 is amended by changing the heading "Photochemical Oxidants (hydrocarbons)" to "Ozone".

3. Section 52.1873 is revised to read as follows:

§ 52.1873 Approval Status.

With the exceptions set forth in this subpart the Administrator approves its plan Ohio's plan for the attainment and maintenance of the National Ambient Air Quality Standards under Section 110 of the Clean Air Act. Furthermore, the Administrator finds the plan satisfies all the requirements of Part D, Title 1 of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

4. Section 52.1875 is amended to delete paragraph (b) and revise paragraph (a) as follows:

§ 52.1875 Attainment Dates for National Standards.

(a) The following table presents the latest date by which the national standards are to be attained. These dates reflect the information presented in Ohio's plan, except where noted.

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon-monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Greater Metropolitan Cleveland Interstate (AOCR 174):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	e	c
b. Remainder of AOCR	b	b	b	b	b	b	b
Huntington (West Virginia)-Ashland (Kentucky)-Portsmouth-Ironton (Ohio) Interstate (AOCR 103):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	g
b. Remainder of AOCR	b	b	b	b	b	b	b
Mansfield-Marion-Interstate (AOCR 175):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	g
b. Remainder of AOCR	b	b	b	b	b	b	b
Metropolitan Cincinnati Interstate (AOCR 079):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	g	g
b. Remainder of AOCR	b	b	b	b	b	b	b
Metropolitan Columbus Interstate (AOCR 176):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	d	d
b. Remainder of AOCR	b	b	b	b	b	b	b
Metropolitan Dayton Interstate (AOCR 173):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	d	d
b. Remainder of AOCR	b	b	b	b	b	b	b
Metropolitan Toledo Interstate (AOCR 124):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	g	d
b. Remainder of AOCR	b	b	b	b	b	b	b
Northwest Ohio Interstate (AOCR 177):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	g
b. Remainder of AOCR	b	b	b	b	b	b	b
Northwest Pennsylvania Youngstown Interstate (AOCR 178):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	g
b. Remainder of AOCR	b	b	b	b	b	b	b
Parkersburg (West Virginia)-Marietta (Ohio) Interstate:							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	b
b. Remainder of AOCR	b	b	b	b	b	b	b
Sundusky Interstate (AOCR 180):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	g
b. Remainder of AOCR	b	b	b	b	b	b	b
Steubenville-Weirton-Wheeling Interstate (AOCR 181):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	d	d
b. Remainder of AOCR	b	b	b	b	b	b	b
Wilmington-Chillicothe-Logan Interstate (AOCR 182):							
a. Primary/secondary nonattainment areas	h	h	b	b	b	b	d
b. Remainder of AOCR	b	b	b	b	b	b	b
Zanesville-Cambridge Interstate (AOCR 183):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	d
b. Remainder of AOCR	b	b	b	b	b	b	b

NOTE.—Sources subject to the plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with these requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.1875 published July 1, 1979.

For actual nonattainment designations refer to 40 CFR Part 81

Dates or footnotes which are italicized are prescribed by the Administrator because the plan did not provide a specific date or the date provided was not acceptable

a. Air quality levels presently below primary standards or is unclassifiable.

b. Air quality levels presently below secondary standards or is unclassifiable.

c. For Stark, Summit and Portage Counties attainment is to be achieved by December 31, 1982. For the remaining counties the attainment date will be specified in the future.

d. December 31, 1982.

e. For Summit County attainment is to be achieved by December 31, 1982. For Cuyahoga County the attainment date will be specified in the future.

f. August 27, 1979 except for the companies listed in (1) which are subject to an attainment date of June 17, 1980, the Ashland Oil Company in Stark County which is subject to an attainment date of September 14, 1982, the companies in Summit County listed in (2) which are subject to an attainment date of January 4, 1983, and the PPG Industries, Inc. (boilers only) in Summit County, Ohio which is subject to an attainment date of August 25, 1983.

(1) Youngstown Sheet & Tube Co., PPG Industries, Inc., Wheeling-Pittsburgh Steel Corp.; Pittsburgh-Canfield Corporation; The Timken Company; The Sun Oil Co.; Sheller-Globe Corp.; The B F Goodrich Company; Phillips Petroleum Co.; Shell Oil Co.; Federal Paper Board Co.; The Firestone Tire & Rubber Co.; Republic Steel Corp.; Chase Bag Co.; White-Westinghouse Corp.; U.S. Steel Corp.; Interlake, Inc.; Austin Power Co.; Diamond Crystal Salt Co.; The Goodyear Tire & Rubber Co.; The Gulf Oil Co.; The Standard Oil Co.; Champion International Corp., Koppers Co., Inc., General Motors Corp.; E. I. du Pont de Nemours and Co.; Coulton Chemical Corp.; Allied Chemical Corp., Specialty Chemicals Division; The Hoover Co.; Aluminum Co. of America; Ohio Greenhouse Assoc.; Armco Steel Corp.; Buckeye Power, Inc.; Cincinnati Gas and Electric; Cleveland Electric Illuminating Co.; Columbus and Southern Ohio Electric; Dayton Power and Light Co.; Duquesne Light Co.; Ohio Edison Co.; Ohio Electric Co.; Pennsylvania Power Co.; Toledo Edison Co.; Ohio Edison Co.; RCA Rubber Co.

(2) In Summit County; Diamond Crystal Salt; Firestone Tire & Rubber Co.; General Tire & Rubber; B.F. Goodrich, Co.; Goodyear Aerospace Corp.; Goodyear Tire & Rubber Co.; Chrysler Corp.; PPG Industries, Inc.; Seiberling Tire & Rubber; Terex Division of General Motors Corp.; Midwest Rubber Reclaiming; Kitinger Supply Co.

g. Attainment date will be specified in the future.

h. April 15, 1977.

i. December 31, 1987.

5. Section 52.1885 is revised to read as follows:

§ 52.1885 Control Strategy: Ozone.

(a) Part D—Approval—The following portions of the Ohio plan are approved:

(1) The ozone portions of rules 01, 02, 03, 04 (except the portion disapproved below), 05, 06, 07, 08, 09 (except the portions conditionally approved below) and 10 of Chapter 3745-21 of the Ohio Administrative Code.

(2) The Attainment Demonstrations for the following urban areas: Akron, Cincinnati, Dayton and Toledo.

(3) The Reasonable Further Progress Demonstration for the following areas: Akron, Cincinnati, Cleveland, Columbus, Dayton and Toledo.

(b) Part D—Conditional Approval—The following portions of the Ohio plan are approved provided that the following conditions are satisfied:

(1) For Rule 09(M)(2) of Chapter 3745-21 of the Ohio Administrative Code the State promulgate and submit to USEPA regulations which meet the RACT requirements for waste water separators. If these regulations contain exemptions which are not supported by the CTGs then the State must demonstrate that the resultant emissions differ from the CTG allowable emissions by not more than five percent.

(2) For Rule 09(R) of Chapter 3745-21 of the Ohio Administrative Code the State either demonstrates that allowable emissions resulting from the application of its existing rule with a 240,000 gallon per year throughput exemption for gasoline dispensing facilities are less than five percent greater than the allowable emissions resulting from the application of the CTG presumptive norm or promulgates and submits to USEPA a rule with a 120,000 gallon per year throughput exemption for gasoline dispensing facilities.

(3) The attainment demonstrations for the urban areas of Canton, Cleveland and Columbus provided the deficiencies cited in § 52.1886 are corrected.

(4) The Reasonable Further Progress Demonstration for the urban areas of Canton and Steubenville provided the deficiencies cited in § 52.1886 are corrected.

(c) Disapproval—USEPA disapproves the compliance schedule in revised rule 04(c)(18) of Chapter 3745-21 of the Ohio Administrative Code as it applies to facilities formerly covered by the compliance schedule in old rule 04(c)(1) of Chapter 3745-21. This disapproval in and of itself does not result in the growth restrictions of section 110(a)(2)(I).

(d) Part D—No Action—USEPA at this time takes no action on the vehicle inspection and maintenance (I/M) program required for those non-attainment areas which have requested an extension to demonstrate ozone attainment.

6. Section 52.1886 is revised as follows:

§ 52.1886 Ozone Attainment and Reasonable Further Progress Demonstrations.

(a) Part D—Conditional Approval—The attainment demonstration for the Canton urban area is approved provided that the following conditions are satisfied.

(1) The State submit either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

(2) The State submit a revised RFP demonstration line to account for any changes made in the attainment demonstrations.

(b) Part D—Conditional Approval—The attainment demonstration for the Cleveland urban area is approved provided the following conditions are satisfied:

(1) The State submits either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

(2) The State submits a list of the additional Transportation Systems Management Strategies to be implemented with the additional point source regulations will demonstrate attainment of the ozone standard.

(3) The State submits a schedule which delineates the dates on which the additional point source controls will be developed and implemented.

(c) Part D—Conditional Approval—The attainment demonstrations for the Columbus urban area is approved provided the following conditions are satisfied:

(1) The State submits either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

(d) Part D—Conditional Approval—The reasonable further progress (RFP) demonstrations for the Canton and Steubenville urban areas are approved

provided the State submits revised RFP demonstration lines.

7. Section 52.1887 is revised to read as follows:

§ 52.1887 Control Strategy: Carbon Monoxide.

(a) Part D—Approval—The following portions of the Ohio plan are approved:

(1) The carbon monoxide portions of rules 01, 02, 03, 04 (except the portion disapproved in § 52.1877(c)), 05, 06, 07, 08, 09 (except the portions conditionally approved in § 52.1877(b)) and 10 of Chapter 3745-21 of the Ohio Administrative Code.

(2) The transportation control plans for the following urban areas: Akron (ozone component only), Canton, Cincinnati, Columbus, Dayton, Steubenville, Toledo (ozone component only), Cleveland.

(3) The carbon monoxide attainment and reasonable futher progress demonstrations for the following urban areas: Cincinnati, Cleveland and Columbus.

(b) Part D—Conditional Approval—The following portions of the Ohio plan are approved provided the following conditions are met:

(1) For the Dayton urban area carbon monoxide attainment and reasonable further progress demonstrations the State must submit the following:

(i) A schedule for the study, evaluation and implementation of control measures at the identified carbon monoxide hot spot;

(ii) Evidence of priority funding, if proven necessary; and

(iii) A revised carbon monoxide reasonable further progress demonstration.

(2) For the Steubenville urban area carbon monoxide attainment and reasonable further progress demonstrations the State must submit the following:

(i) The results of the carbon monoxide study;

(ii) Submit either regulations or additional TSMs which will provide for attainment of the standard by December 31, 1982; and

(iii) A revised attainment demonstration.

(iv) A revised carbon monoxide reasonable further progress demonstration.

(c) Part D—No Action—USEPA at this time takes no action on the carbon monoxide portions of the plan submitted for the urban areas of Akron and Toledo nor on the vehicle inspection and maintenance (I/M) program required for those nonattainment areas which have requested an extension to demonstrate carbon monoxide attainment.

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40 CFR Part 52

[A-5-FRL 1647-3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA announces today final rulemaking on revisions to the carbon monoxide and ozone portions of the Ohio State Implementation Plan (SIP) for the Youngstown urban area and Ohio's rural ozone nonattainment areas. A notice of proposed rulemaking on these revisions was published in the May 16, 1980 Federal Register (45 FR 32333). In that notice, USEPA proposed to approve these revisions provided that the State correct or commit itself to correct specific deficiencies. On June 12, 1980 and August 6, 1980, the State submitted information and commitments to correct the noted deficiencies. Based on USEPA's review of the State's response, USEPA is today approving the SIP for the rural ozone nonattainment areas and conditionally approving the SIP revisions for the Youngstown urban area.

EFFECTIVE DATE: This final rulemaking becomes effective on October 23, 1980. For further information see Supplementary Information.

ADDRESSES: Copies of the SIP revision, public comments on the NPR, and USEPA's evaluation and response to comments are available for inspection at the following addresses:

U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clarizio, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act), as amended in 1977, USEPA designated certain areas in Ohio as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO) and ozone (O_3).

Part D of the Act, which was added by the 1977 Amendments, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary standard as expeditiously as practicable, but not later than December 31, 1982. In certain circumstances an extension is provided to no later than December 31, 1987 to demonstrate attainment of the ozone or carbon monoxide NAAQS.

The requirements for an approvable SIP are described in a Federal Register notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

The Youngstown urban area plan relies on the control of the emission of volatile organic compounds (VOC) from stationary and mobile sources to provide for the attainment of the ozone standard by December 31, 1982. To provide for attainment of the carbon monoxide NAAQS by December 31, 1982, the Youngstown plan relies on mobile source control measures to reduce carbon monoxide emissions.

USEPA stated in the May 16, 1980 Federal Register that the Youngstown urban area plan which was submitted on December 28, 1979 and amended on February 12, 1980, adequately demonstrates attainment of both the carbon monoxide and ozone NAAQS by December 31, 1982. USEPA, however, identified deficiencies in the ozone attainment and reasonable further progress demonstrations and in the transportation control plan. Consequently, USEPA proposed to conditionally approve the Youngstown urban area plan, if, prior to final rulemaking, the State either adequately corrected these deficiencies or committed itself to correct these deficiencies on a negotiated schedule. Additionally, in the May 16, 1980 Federal Register USEPA proposed to

approve Ohio's rural area ozone nonattainment SIP.

A discussion of conditional approval and its practical effect appears in the July 2, 1979 Federal Register (44 FR 38583). A conditional approval requires the State to submit additional materials by the specified deadlines negotiated between the State and the USEPA Regional Office. Schedules submitted by Ohio for the Youngstown SIP revision will be proposed for public comment elsewhere in today's Federal Register. Prior to final rulemaking on the deadlines, the State is bound by its commitment to meet the proposed deadlines. USEPA will follow the procedures described below when determining if requirements of conditional approval have been met.

1. When a State submits the required additional documentation, USEPA will publish a notice in the Federal Register announcing receipt and availability of the submission and that the conditional approval is continuing pending USEPA's final action on the submission.

2. USEPA will evaluate the State's submission and public comment on the submission to determine if noted deficiencies have been fully corrected. After review is complete, a Federal Register notice will either fully approve the plan if all conditions have been met, or withdraw the conditional approval and disapprove the plan. If the plan is disapproved, the Section 110(a)(2)(I0) restrictions on construction will be in effect.

3. If the State fails to submit the required materials according to the negotiated schedule, USEPA will publish a Federal Register notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved, and the Section 110(a)(2)(I) restrictions on growth are in effect.

Only the State submitted comments on the notice of proposed rulemaking. The State submitted additional information on June 12, 1980, and a revised schedule for the submittal of the corrective material on August 6, 1980.

Summarized below are the deficiencies cited in the May 16, 1980 Federal Register, the State's response to these deficiencies, USEPA's evaluation of the adequacy of the State's response, and USEPA's final rulemaking on the Youngstown urban area plan and the rural area ozone nonattainment area SIP revision.

Ozone Attainment Demonstration—Emission Reduction Estimates: In the ozone attainment demonstration, a 100% reduction in volatile organic compounds (VOC) emissions from the cutback asphalt category is predicted to occur by December 31, 1982. In the May 16, 1980 Federal Register, USEPA questioned the accuracy of this prediction given the possible continued usage of cutback asphalt. USEPA requested either technical support for this emission reduction estimate or a re-evaluation of the baseline emissions to account for the VOC emissions resulting from this category.

State Response: The State indicated that it will conduct a survey on anticipated annual usage of cutback asphalt for the April–October period. In a letter dated June 12, 1980 the State noted that the results of the survey would be submitted to USEPA by November 3, 1980. Subsequently, the State, determined that due to limited staff resources additional time would be needed. On August 6, 1980 the State committed itself to submit the required information by August 1, 1981.

USEPA Response: USEPA believes that both the State's commitment and schedule, as contained in the August 6, 1980 letter are acceptable. A notice soliciting public comment on the acceptability of the August 1, 1981 date for the submittal of the results of the survey appears elsewhere in today's Federal Register.

Ozone Attainment Demonstration—VOC Emissions Inventory (Other Solvent Usage Category): When developing the VOC emissions inventory, the State projected that the emissions from the Other Solvent Usage Category would be identical in the years 1975, 1982 and 1987. USEPA noted in the May 16, 1980 Federal Register that emissions from this source category are dependent upon the population of the area and generally increase or decrease when the population increases or decreases. Additionally, USEPA indicated that an increase in VOC emissions from this source category should have been predicted, since the plan projects the population would increase in 1982 and 1987. USEPA stated that the State could correct this error either by revising the emissions inventory to account for the increased emissions or by re-examining and revising the population projections.

State Response: On June 12, 1980, the State submitted a revised VOC emissions inventory for the years 1982 and 1987. This revised inventory projected increases in the VOC emissions from the Other Solvent Usage Category due to projected population increases in the area.

USEPA Response: USEPA has reviewed the State's revised emissions inventory and has determined that it is adequate to correct the noted deficiency. Furthermore, USEPA has determined that the predicted increase in emissions from the Other Solvent Usage Category will not interfere with the ability of the area to attain the ozone NAAQS by December 31, 1982.

Transportation Control Plan (TCP)—Implementor Commitments: One of the requirements for an acceptable TCP is that it contains commitments from the Regional Policy Board to meet specific annual emission reduction goals. As noted in the May 16, 1980 Federal Register, the Youngstown TCP does not contain such commitments.

State Response: The State said in the June 12, 1980 letter that it would submit the necessary commitments to USEPA by November 3, 1980. The State affirmed its commitment to the November 3, 1980 date in an August 6, 1980 letter.

USEPA Response: USEPA believes that both the State's commitment and schedule, as contained in the August 6, 1980 letter, are acceptable. A notice soliciting public comment on the acceptability of the November 3, 1980 date for the submission of the Implementor Commitments appears elsewhere in today's Federal Register.

Demonstration of Reasonable Further Progress (RFP) for Ozone: In the May 16, 1980 Federal Register, USEPA pointed out that the original ozone RFP line must be revised to account for the change in the base year from 1975 to 1977 and to account for any change in the emissions inventory due to any revised VOC estimates for the Cutback Asphalt and Other Solvent Usage Categories.

State Response: In its June 12, 1980 letter, the State said that it would revise and submit the ozone RFP demonstration by November 3, 1980. In its August 6, 1980 letter, the State reported that it needed additional time, until August 1, 1981, to submit the revised ozone RFP demonstration. Therefore, the State committed itself to submit the revised ozone RFP demonstration by August 1, 1981.

USEPA Response: USEPA believes that both the State's commitment and schedule as contained in its August 6, 1980 letter are acceptable. A notice soliciting public comment on the acceptability of the August 1, 1981 date for the submission of the revised ozone RFP demonstration appears elsewhere in today's Federal Register.

USEPA Final Determination on the Youngstown Urban Area Plan: USEPA believes that the State has adequately corrected the VOC emissions inventory to account for the deficiency in the Other Solvent Usage Category. Furthermore, USEPA believes that the commitments made by the State to correct the deficiencies in the ozone

attainment and RFP demonstrations and the transportation control plan are adequate for a conditional approval. Therefore, USEPA conditionally approves these portions of the Youngstown urban area plan. Additionally, since no comments were received questioning USEPA's proposed approval of the carbon monoxide attainment and RFP demonstration portion of the youngstown urban area plan, USEPA finally approves these portions.

Rural Area Ozone Nonattainment Plan: In the May 16, 1980 Federal Register, USEPA stated that for the rural ozone nonattainment areas a specific demonstration of attainment and reasonable further progress is not necessary. The April 4, 1979 Federal Register specifies that reasonably available control technology (RACT) at major stationary sources of hydrocarbons in rural areas and a demonstration of attainment in all urban areas will assure attainment and reasonable further progress in the rural areas. Since the Ohio carbon monoxide and ozone SIP revisions satisfy these requirements, USEPA proposed to approve the ozone nonattainment area plan for the following rural ozone nonattainment counties: Lawrence, Clinton, Brown, Highland, Fayette, Ross, Pickaway, Hocking, Perry, Fairfield, Madison, Licking, Belmont, Champaign, Shelby, Logan, Union, Ottawa, Fulton, Delaware, Knox, Holmes, Tuscarawas, Harrison, Carroll, Columbiana, Ashtabula, Wayne, Ashland, Richland, Morrow, Marion, Allen, Hancock, Seneca, Huron, Erie, Sandusky, and Henry.

No comments were received during the public comment period on USEPA's proposed approval of the ozone nonattainment area plan for these rural ozone nonattainment counties. Therefore, USEPA approves the ozone nonattainment area plan in these counties.

USEPA has determined that good cause exists for making this final rulemaking immediately effective. By making this final rulemaking immediately effective, the restrictions on industrial growth contained in section 110(a)(2)(I) of the Act could be lifted in some areas of the State of Ohio if all other requirements are met. These restrictions are imposed for a failure to have a State Implementation Plan which meets the requirements of Part D after the final date for SIP approval specified in the Act. The U.S. EPA has determined that for the Youngstown urban area and the rural ozone nonattainment areas, the Ohio carbon monoxide and ozone SIP meets the requirements of Part D. Therefore, it would be contrary to public interest to continue for thirty days after the publication of this notice the restrictions on industrial growth for certain sources located within, or wishing to locate within these areas.

The 1978 edition of 40 CFR Part 52 lists in the subpart for each State, the applicable deadlines for attaining ambient standards (ambient dates) required by section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides attainment by the deadline required by section 172(a) of the Act, the new deadlines will be substituted on the attainment date charts. The earlier attainment dates under section 110(a)(2)(A) will continue to appear in a footnote to the earlier charts. Sources subject to plan requirements and deadlines established under section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new section 172 plan requirements.

Congress established new deadlines under section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. If these new deadlines were permitted to supersede the deadlines established prior to the 1977 Amendments, sources that failed to comply with pre-1977 plan requirements by the earlier deadlines would improperly receive more time to comply with those requirements. Congress, however, intended that the new deadlines apply only to new, additional control requirements and not to earlier requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

> Section (a)(2) of the Act made clear that each source has to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D.

(123 Cong. Rec., H 11958, daily, ed. November 1, 1977)

To comply fully with the intent of Congress that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. Such variances would impermissibly relax existing requirements beyond the applicable section 110(a)(2)(A) attainment date under the plan. Therefore, for requirements adopted before the 1977 Amendments, USEPA will not approve a compliance date extension beyond pre-existing 110(a)(2)(A) attainment dates, even though a section 172 plan revision with a later attainment date has been approved.

However, in certain exceptional circumstances, extensions beyond a pre-existing attainment date are permitted. For example, if a section 172 plan imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations, the pre-existing requirements and deadlines may be revised if a State makes a case-by-case demonstration that a relaxation or revocation is necessary. Any such exemption granted by a State will be reviewed and acted upon by USEPA as a SIP revision. In addition, as discussed in the April 4, 1979 Federal Register (44 FR 20373), an extension may be granted if it will not contribute to a violation of an ambient standard or a PSD increment.

Under Section 307(b)(1) of the Clean Air Act, judicial review of (this action) is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit by December 30, 1980. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by USEPA to enforce these requirements.

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

This Notice of Final Rulemaking is issued under the authority of Sections 110(a), 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7502, 7601(a)).

Dated: October 23, 1980.

Douglas Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

1. Section 52.1870(c) is amended by adding subparagraphs (21) to (22) to read as follows:

§ 52.1870 Identification of Plan.

* * * * *

(c) * * *

(21) On December 28, 1979 the State of Ohio submitted its Part D carbon monoxide and ozone nonattainment area plan for the Youngstown urban area. The submittal contained transportation control plans and demonstrations of attainment (for carbon monoxide and/or ozone). On February 12, 1980 the State amended the ozone attainment demonstration submitted on December 28, 1979.

(22) On June 12, 1980 and August 6, 1980 the State submitted comments on, technical support for, and commitments to correct the deficiencies cited in the May 16, 1980 Notice of Proposed Rulemaking.

§ 52.1871 [Amended]

2. Section 52.1871 is amended by changing the heading "Photochemical Oxidants (hydrocarbons)" to "Ozone".

3. Section 52.1873 is revised to read as follows:

§ 52.1873 Approval Status.

With the exceptions set forth in this subpart the Administrator approves Ohio's plan for the attainment and maintenance of the National Ambient Air Quality Standards under Section 110 of the Clean Air Act. Furthermore, the Administrator finds the plan satisfies all the requirements of Part D, Title 1 of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

4. Section 52.1875 is amended to delete paragraph (b) and revise paragraph (a) as follows:

§ 52.1875 Attainment Dates for National Standards.

(a) The following table presents the latest date by which the national standards are to be attained. These dates reflect the information presented in Ohio's plan, except where noted.

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Greater Metropolitan Cleveland Intrastate (AQCR 174):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	e	c
b. Remainder of AQCR	b	b	b	b	b	b	b
Huntington (West Virginia)-Ashland (Kentucky)-Portsmouth-Ironton (Ohio) Intrastate (AQCR 103):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Mansfield-Marion-Intrastate (AQCR 175):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Cincinnati Interstate (AQCR 079):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	g	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Columbus Intrastate (AQCR 176):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Dayton Intrastate (AQCR 173):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Toledo Interstate (AQCR 124):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	g	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Northwest Ohio Intrastate (AQCR 177):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Northwest Pennsylvania Youngstown Interstate (AQCR 178):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Parkersburg (West Virgina)-Manetta (Ohio) Interstate:							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	b
b. Remainder of AQCR	b	b	b	b	b	b	b
Sandusky Intrastate (AQCR 180):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Steubenville-Wierton-Wheeling Interstate (AQCR 181):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Wilmington-Chillicothe-Logan Intrastate (AQCR 182):							
a. Primary/secondary nonattainment areas	h	h	b	b	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Zanesville-Cambridge Intrastate (AQCR 183):							
a. Primary/secondary nonattainment areas	h	h	f	f	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b

NOTE.—Sources subject to the plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with these requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.1875 published July 1, 1979.

For actual nonattainment designations refer to 40 CFR Part 81

Dates or footnotes which are italiczed are prescribed by the Administrator because the plan did not provide a specific date or the date provided was not acceptable.

a. Air quality levels presently below primary standards or is unclassifiable

b. Air quality levels presently below secondary standards or is unclassifiable

c. For Stark, Summit and Portage Counties attainment is to be acheved by December 31, 1982 For the remaining counties the attainment date will be specified in the future.

d. December 31, 1982.

e. For Summit County attainment is to be acheved by December 31, 1982 For Cuyahoga County the attainment date will be specified in the future.

f. August 27, 1979 except for the companies listed in (1) which are subject to an attainment date of June 17 1980 the Ashland Oil Company in Stark County which is subject to an attainment date of September 14, 1982, the companies in Summit County listed in (2) which are subject to an attainment date of January 4, 1983, and the PPG Industries, Inc (boilers only) in Summit County, Ohio which is subject to an attainment date of August 25, 1983

(1) Youngstown Sheet & Tube Co.; PPG Industries, Inc.; Wheeling-Pittsburgh Steel Corp., Pittsburgh-Canfield Corporation, The Timken Company; The Sun Oil Co.; Sheller-Globe Corp.; The B F. Goodrich Company, Philips Petroleum Co Shell Oil Co Federal Paper Board Co.; The Firestone Tire & Rubber Co.; Republic Steel Corp., Chase Bag Co., White-Westinghouse Corp., U.S. Steel Corp.; Interlake, Inc.; Austin Power Co.; Diamond Crystal Salt Co., The Goodyear Tire & Rubber Co., The Gulf Oil Co. The Standard Oil Co.; Champion International Corp.; Koppers Co., Inc., General Motors Corp., E I du Pont de Nemours and Co.; Coulton Chemical Corp.; Allied Chemical Corp.; Specialty Chemicals Division, The Hoover Co., Aluminum Co of America, Ohio Greenhouse Assoc.; Armco Steel Corp.; Buckeye Power, Inc., Cincinnati Gas and Electric, Cleveland Electric Illuminating Co.; Columbus and Southern Ohio Electric; Dayton Power and Light Co., Duquesne Light Co., Ohio Edison Co., Ohio Electric Co.; Pennsylvania Power Co.; Toledo Edison Co., Ohio Edison Co.; RCA Rubber Co

(2) In Summit County: Diamond Crystal Salt; Firestone Tire & Rubber Co., General Tire & Rubber, B F Goodrich Co Goodyear Aerospace Corp.; Good<year Tire & Rubber Co.; Chrysler Corp., PPG Industries, Inc., Seberling Tire & Rubber, Terex Division of General Motors Corp.; Midwest Rubber Reclaiming; Kittinger Supply Co

g. Attainment date will be specified in the future.

h. April 15, 1977.

i. December 31, 1987.

5. Section 52.1885 is amended by adding new paragraphs (a)(4), (b)(3) and (b)(4) to read as follows:

§ 52.1885 Control Strategy: Ozone.

(a) * * *

(4) The ozone nonattainment area plan for the rural nonattainment areas.

(b) * * *

(3) The attainment demonstrations for the urban areas of Canton, Cleveland, Columbus and Youngstown provided the deficiencies cited are corrected.

(4) The Reasonable Further Progress Demonstration for the urban areas of Canton, Steubenville and Youngstown provided the deficiencies cited are corrected.

6. Section 52.1886 is amended by adding a new paragraph (e) to read as follows:

§ 52.1886 Ozone Attainment and Reasonable Further Progress Demonstrations.

* * * * *

(e) Part D—Conditional Approval—The attainment demonstration for the Youngstown urban area is approved provided that the following conditions are satisfied:

(1) The State submit either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

(2) The State submit a revised RFP demonstration line to account for any changes made in the attainment demonstrations.

7. Section 52.1887 is amended by adding new paragraphs (a)(3) and (b)(4) to read as follows:

§ 52.1887 Control Strategy: Carbon Monoxide.

(a) * * *

(3) The carbon monoxide attainment and reasonable further progress demonstrations for the following urban areas: Cincinnati, Cleveland, Columbus and Youngstown.

(b) * * *

(4) For the Youngstown transportation control plan, the State submits the commitments of the Regional Policy Board to meet specific annual emission reduction goals.

[FR Doc. 80-33870 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-9 FRL 1632-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision: North Coast Air Basin

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on revisions to the North Coast Air Basin portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 1, 1980.

ADDRESS: A copy of the revisions is located at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105. Attn: Douglas Grano (415) 556-2938.

SUPPLEMENTARY INFORMATION: On March 20, 1980 (45 FR 18035) EPA published a notice of proposed rulemaking for revisions to the North Coast Air Basin rules and regulations submitted on May 7 and 23, 1979 by the California Air Resources Board (ARB) for inclusion in the California SIP.

The changes contained in those submittals that are being acted upon by this notice include the following:

(A) New rules to regulate equipment breakdown, emergency variances and particulates;

(B) Amended rules for controlling open outdoor fires, including agricultural burning and visible emissions; and

(C) Changes in the annual renewal and hearing board fee schedules.

A list of the affected rules was published as part of the March 20, 1980 notice of proposed rulemaking. As described in that notice, all the rules were evaluated, found to be in conformance with the requirements of 40 CFR Part 51, and proposed to be approved, with the exception of Rule 410(c)(2) which was proposed to be disapproved and Rule 410(b) for which no action was proposed. The notice of proposed rulemakiing provided for a 60 day public comment period. One comment letter was received from the Mendocino County APCD.

Comment: The District noted that they have recently recodified certain agricultural burning rules which EPA had proposed to disapprove and that the revised rules are consistent with the State ARB Agricultural Burning Guidelines. Further the District stated that they assumed EPA had approved these Agricultural Burning Guidelines.

Response: Because the District's recodified rules have not yet been submitted to EPA to replace the rules EPA had proposed to disapprove, EPA is taking final action to disapprove these "old" rules. Upon official submittal of the recodified rules, EPA will consider them for incorporation into the SIP. The State Agricultural Burning Guidelines were officially submitted to the EPA on August 5, 1980. EPA has not yet approved or disapproved these Guidelines.

Thus, it is the purpose of this notice to approve the revisions contained in the May 7 and 23, 1979 submittals, and to incorporate them into the California SIP, with the exception of Rules 410(b) and 410(c)(2) discussed below.

Rules 410(c)(2), *Visible Emissions*, submitted May 7, 1979, allows exceptions to the provisions Rule 410(a), and therefore could result in increased emissions. This rule is being disapproved for Del Norte, Humboldt, Mendocino, Northern Sonoma and Trinity Counties because an adequate control strategy analysis has not been submitted to show that these exceptions would not interfere with attainment or maintenance of the National Ambient Air Quality Standards.

Rule 410(b), submitted May 7, 1979, is applicable only in Mendocino County. However, Rule 410(b) also appears in the submittals for Del Norte, Humboldt, Northern Sonoma and Trinity Counties. Since it pertains only to Mendocino County no action is being taken on this rule with respect to Del Norte, Humboldt, Northern Sonoma and Trinity Counties.

As described in the March 20, 1980 proposed rulemaking notice, Rule 240, *Compliance Verification*, and Appendix D to Regulation I are being approved. Since these rules contain requirements equivalent to those in 40 CFR Part 52, EPA is also rescinding 40 CFR 52.224(a)(2)(xviii), (xix), (xxii), (xxv) and (xxx) and 40 CFR 52.234(e)(5)(ii) and (e)(9) for the respective Counties.

The Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

EPA has determined that this action is "specialized" and therefore, not subject to the procedural requirements of Executive Order 12044.

(Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)))

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1980.

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

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(50) and (51) (iii)–(vi) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(50) Revised regulations for the following APCD's submitted on May 7, 1979, by the Governor's designee.

(i) Del Norte County APCD.

(A) New or amended Rules 240, 410(a) and (c), and 615.

(ii) Humboldt County APCD.

(A) New or amended rules 240, 410 (a) and (c), 615.

(iii) Mendocino County APCD.

(A) New or amended rules 240, 410, and 615.

(iv) Trinity County APCD.

(A) New or amended rules 240, 410 (a) and (c), and 615.

(v) Northern Sonoma County APCD.

(A) New or amended Rules 240, 300, 310, 320, 410 (a) and (c), 420, 540, 615.

* * * * *

(51) Revised regulations for the following APCD's submitted on May 23, 1979, by the Governor's designee.

* * * * *

(iii) Del Norte County APCD.

(A) New or amended rules 130, 300, 310, 320, 420, 540 and Regulation 1/ Appendix D.

(iv) Humboldt County APCD.

(A) New or amended rules 130, 300, 310, 320, 420, 540 and Regulation 1/ Appendix D.

(v) Mendocino County APCD.

(A) New or amended rules 130, 300, 310, 320, 420, 540 and Regulation 1/ Appendix D.

(vi) Trinity County APCD.

(A) New or amended rules 130, 300, 310, 320, 420, 540 and Regulation 1/ Appendix D.

* * * * *

2. Section 52.224 is amended by adding paragraphs (a)(1)(vi)(C), (D), (E), (F), and (G) and by rescinding and reserving paragraphs (a)(2)(xviii), (xix), (xxii), (xxv), and (xxx) as follows:

§ 52.224 General Requirements.

(a) * * *

(1) * * *

(vi) * * *

(C) Del Norte County APCD

(D) Humboldt County APCD

(E) Mendocino County APCD

(F) Northern Sonoma County APCD

(G) Trinity County APCD

* * * * *

(2) * * *

(xviii) [Reserved]

(xix) [Reserved]

* * * * *

(xxii) [Reserved]

* * * * *

(xxv) [Reserved]

* * * * *

(xxx) [Reserved]

* * * * *

3. Section 52.234 is amended by adding (a)(6)(ii) and revoking and reserving paragraphs (e)(5) (ii) and (e)(9) as follows:

§ 52.234 Source Surveillance.

* * * * *

(a) * * *

(6) * * *

(ii) Northern Sonoma County APCD

* * * * *

(e) * * *

(5) * * *

(ii) [Reserved]

* * * * *

(9) [Reserved]

* * * * *

4. Section 52.273 is amended by adding paragraphs (b)(3)(i)(B), (b)(3)(ii)(B), (b)(3)(iii)(B), (b)(3)(iv)(B), and (b)(7)(i)(B) as follows:

§ 52.273 Open burning.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.

* * * * *

(ii) * * *

(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.

* * * * *

(iii) * * *

(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.

* * * * *

(iv) * * *

(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.

* * * * *

(7) * * *

(i) * * *

(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.

* * * * *

[FR Doc. 80-33924 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 52

[A7 FRL 1643-8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The St. Louis County Air Pollution Control Appeal Board granted a variance for the Union Electric Company Meramec power plant to allow sufficient time for the company to design, construct and operate new control equipment for emissions of total suspended particulate (TSP) matter. EPA proposed to approve the variance as part of the applicable State Implementation Plan (SIP) in a Federal Register notice on July 11, 1980. One commentor responded to that proposal. In this notice, EPA is taking final action to approve this SIP revision.

EFFECTIVE DATE: This rulemaking is effective October 31, 1980.

ADDRESSES: Copies of the state submission, the comment received and the EPA prepared technical evaluation document are available at the following locations:

Air Support Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106;

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

Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65102;

St. Louis County Department of Health and Medical Care, Division of Environmental Health Care Services, Air Pollution Control Branch, 801 South Brentwood Boulevard, Clayton, Missouri 63105.

Copies of the state submission and this rulemaking are also available at the following location:

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at 816-374-3791 (FTS 758-3791).

SUPPLEMENTARY INFORMATION: The Union Electric Company Meramec plant is subject to an SO_2 emission limit of 2.3 pounds per million BTU of heat input in addition to the mass emission rate contained in Rule 10 CSR 10-5.030 and the visible emission limit of Rule 10 CSR 10-5.090. At the time the variance was requested (July 1, 1978), the allowable total suspended particulate matter rate was 0.18 lb. per million BTU and the allowable visible emission limit was 40 percent opacity. The Meramec plant is located in St. Louis County near the Mississippi River approximately 19 kilometers south-southwest of the City of St. Louis.

In order to meet the required sulfur dioxide emission limit of 2.3 lbs. per million BTU of heat input, the Union Electric Company switched to low sulfur western coal. The existing particulate matter control devices used at the Meramec plant have proven to be inadequate to meet the TSP rules.

The Missouri Air Conservation Commission (MACC) amended Rule 10 CSR 10-5.090 to require sources to meet a 20 percent opacity limit at point sources and Rule 10 CSR 10-5.030 which is applicable to indirect heating sources. These rules are applicable only in the St. Louis Air Quality Control Region. Application of amended Rule 10 CSR 10-5.030 to the Union Electric Company Meramec power plant requires an emission limit of 0.12 lb. per million BTU of heat input. EPA approved these rules at 45 FR 24140 on April 9, 1980.

The St. Louis County Air Pollution Control Appeal Board granted a variance for the Meramec plant on November 22, 1978 after a public hearing on October 20, 1978. The variance allows the plant to operate at a mass emission rate of 0.30 lb. per million BTU of heat input and a visible emission limit of 50 percent opacity during the period of the variance. Final compliance for Units 1 and 2 is May 15, 1981, and November 30, 1981, for Units 3 and 4. EPA proposed to approve the variance as part of the applicable SIP on July 11, 1980 (45 FR 46826). A further discussion of the variance is given in that notice.

EPA received one set of comments in response to the proposed rulemaking. The commentor generally concurred with EPA's conclusions and strongly urged prompt approval of the Meramec variance. The commentor disagreed with one aspect of EPA's analysis. The proposed rulemaking stated that the variance did not agree with the 60-day period for submission to EPA required by 40 CFR 51.6(d). The St. Louis County Air Pollution Control Appeal Board adopted the variance on November 22, 1978, and submitted it to the Missouri Department of Natural Resources (MDNR) on February 16, 1979. MDNR submitted it to EPA on April 25, 1979. EPA stated in the proposed rulemaking that it does not believe the delay affects the approvability of the variance submittal.

The commentor agrees that the approvability of the variance is not an issue. However, the commentor believes that the 60-day submittal requirement was met because MDNR concurrence is required and the period for submittal should be computed from the date of MDNR concurrence. The commentor is correct that the variance requires state concurrence before it can become part of the SIP. However, the local agency adopted the variance under authority granted by the MACC at which time the variance became effective and 40 CFR 51.6(d) states that a revision of this type "shall be submitted to the Administrator no later than 60 days after its adoption." If the 60-day submittal requirement were to be computed from the date of the State's concurrence, a local agency could postpone indefinitely the submittal of such actions without violating the rule. EPA disagrees with the commentor but still believes that the approvability of the variance is not affected.

One part of the analysis given in the notice of July 11 requires further explanation. The portion of the county in which the Meramec plant is located is designated attainment for TSP at 40 CFR Part 81. Because the area is attainment, the possibility of consumption of increment under the Federal regulations for prevention of significant deterioration (PSD) of air quality is a matter for consideration. In the notice of proposed rulemaking, EPA stated that the PSD regulations exempt certain activities from an air quality impact analysis if such activities result in a temporary increase in emissions and

such emissions do not impact any Class I areas or areas where the applicable PSD increment is known to be violated. EPA believed the variance granted the Union Electric Company was similar to such activities and proposed an exemption by analogy to 40 CFR 52.21(k), relating to exemption from impact analysis for temporary emission sources.

On August 7, 1980, EPA published final PSD regulations (45 FR 52676). In that action, EPA decided that the existing policy of exempting temporary emissions from the analysis of the impacts on PSD increments should be extended to those associated with certain SIP relaxations. However, to obtain the exemption from an impact analysis, the Governor must make a specific request. EPA did not receive such a request in this instance, and therefore the analysis in the July 11 proposal is inappropriate.

This activity is, however, exempt from the analysis of impact on PSD increment because the state implementation plan revision approved today would not result in an increased air quality deterioration over any baseline concentration (40 CFR 51.24(a)(2), 45 FR 52729). The baseline date was established on July 17, 1978 and there are test results which indicate that the revision approved today would result in a decrease in TSP emissions over the baseline concentration.

This action is being made effective immediately inasmuch as it provides no additional burden on any affected party.

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

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: October 23, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart AA—Missouri

1. Section 52.1320 is amended by adding paragraph (c) (22) as follows:

§ 52.1320 Identification of plan

* * * * *

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

* * * * *

(22) On April 25, 1979, the Missouri Department of Natural Resources submitted the variance for the Union Electric Company's Meramec power plant.

2. Section 52.1335 is amended by adding the following to the end of the existing list in § 52.1335(a):

§ 52.1335 Compliance schedules.

(a) * * *

Source	Location	Regulation involved	Date adopted	Effective date	Final compliance date
Union Electric Company	St. Louis County.	10 CSR 10-5.030	Nov. 22, 1978.	Immediately	
		10 CSR 10-5.090			
Meramec Power Plant:					
Units 1 and 2	do				May 15, 1981
Units 3 and 4	do				Nov. 30, 1981

[FR Doc. 80-33925 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-8-FRL 1645-6]

Approval and Promulgation of State Implementation Plans; Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: The purpose of this notice is to make minor corrections to final rulemaking actions on plans required in Colorado nonattainment areas published for Colorado on July 16, 1980, (45 FR 47682) August 1, 1980, (45 FR 51199) and August 11, 1980, (45 FR 53147).

EFFECTIVE DATE: The effective date of this rulemaking is October 31, 1980.

ADDRESSES: Copies of the SIP revisions and an EPA evaluation of the revisions will be available at the EPA Offices listed below:

Environmental Protection Agency, Air Programs Branch, Region VIII, Suite 200, 1860 Lincoln Street, Denver, Colorado 80295.

Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), Mail Code PM-213, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Eliot Cooper, Technical Advisor, Planning & Operations Section, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-3711.

SUPPLEMENTARY INFORMATION: In our August 1, 1980, final rulemaking for Colorado, Title 40, Part 52 of the Code of Federal Regulations (CFR) was amended to add in 52.320, paragraph (c)(18). This paragraph is hereby changed to (c)(19) since paragraph (c)(18) had been added previously (45 FR 77682). In our August 11, 1980, final rulemaking, the CFR was amended to add paragraph (c)(19). This paragraph is hereby changed to (c)(20).

In our July 16 and August 1, 1980, final rulemakings, §§ 52.327 and 52.328 were revised incorrectly. These sections are hereby corrected to read as follows:

1. Section 52.327 is revised as follows:

§ 52.327 Control strategy: Ozone.

(a) Part D Conditional Approval—The Denver Plan is approved provided that the following conditions are satisfied:

(1) The plan provides for implementation of reasonably available control technology on existing sources of volatile organic compounds. EPA's conditional approval of Regulation 7 is based upon the State meeting the following schedule:

January 10, 1980—Notice of public hearing and draft regulations submitted to EPA

March 13, 1980—Public Hearing

April 10, 1980—Adopt new regulation and submit to EPA

(2) Regulation 3 is revised by March 1, 1980, so that it is consistent with Section 173 of the Act.

(3) Section 172(b)(11)(A) programs are adopted by March 1, 1980.

(b) [Reserved]

2. Section 52.328 is revised as follows:

§ 52.328 Control strategy: Carbon monoxide.

Part D Conditional Approval—the Denver, Colorado Springs, and Larimer-Weld plans are approved provided that a Section 172(b)(11)(A) program is adopted by March 1, 1980.

This rulemaking action is issued under the authority of Section 110 (42 U.S.C. 7410) of the Clean Air Act as amended.

Dated: October 14, 1980.

Gene A. Lucero,

Acting Regional Administrator.

[FR Doc. 80-33881 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-4 FRL 1613-2]

Approval and Promulgation of Implementation Plans; Alabama, Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Alabama has revised its air pollution control regulations by revoking the provisions for the preconstruction review of complex sources—parking facilities, roads, and airports. These are also known as "indirect" sources since they may indirectly increase emissions by causing increased motor vehicle traffic where they are built. EPA today is approving this revision.

DATE: This rule is effective December 1, 1980.

ADDRESSES: The Alabama submittal may be examined during normal business hours at the following EPA Offices:

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

Library, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365

In addition, the Alabama revisions may be examined at the offices of the Division of Air Pollution Control, Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama 36104.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Preston, EPA Region IV, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: Pursuant to the decision by the District of Columbia Circuit Court of Appeals in *NRDC v. EPA*, 475 F. 2d 968 (D.C. Cir. 1973), the Agency on June 18, 1973 (38 FR 15834) promulgated changes in 40 CFR 51.18 requiring State Implementation Plans to provide for preconstruction review of indirect sources of air pollution. Alabama was one of the few States to respond within the deadline set by EPA for the submittal of an indirect source plan. The Alabama plan, set forth as Chapter 10 of the State's air pollution control regulations, was approved by the Administrator, except for inadequate provisions for public comments, on February 25, 1974 (39 FR 7270). Also at that time, a Federal regulation was promulgated for States which had failed to submit an acceptable indirect source plan.

These Federal regulations have never been implemented and were suspended indefinitely in 1975. See 40 CFR 52.22 (b)(16)(1978). Consequently, Alabama has never implemented its own indirect source regulations and EPA has not enforced those Alabama regulations. The State believed that these regulations of the Clean Air Act (concerning the State attainment strategy for nonattainment areas) could be met for vehicle related pollutants by more effective and reliable means. Therefore, on November 27, 1978, Alabama revoked its indirect (complex) source regulations, following public notice in conformity with 40 CFR 51.4. This change was submitted to EPA's Region IV office as a proposed implementation plan revision on December 6, 1978.

In the Federal Register of March 15, 1979 (44 FR 15741), EPA announced the revision as proposed rulemaking and solicited public comment on it. One comment was received, supporting the Agency's proposal to approve the revision. In the notice of proposed rulemaking, the Agency stated that it proposed to approve the Alabama revision on the grounds that it is authorized by Section 110 (a)(5) of the Clean Air Act; that Alabama is proceeding to revise its SIP to provide for the attainment and maintenance of the National Ambient Air Quality Standards for ozone as required by Part D of Title I of the Act; and that in all other respects the State's ozone plan meets the requirements of Section 110(a) of the Act.

On April 3, 1979, the Alabama Air Pollution Control Commission officially adopted implementation plan revisions designed to assure the attainment of the National Ambient Air Quality Standards for ozone in the five counties officially designated in 40 CFR Part 81 as nonattainment for that pollutant. An advance copy of the revisions was submitted to EPA on April 5, 1979. This contains a control strategy demonstration that the ozone standards will be met by December 1982 through the Federal Motor Vehicle Control Program (FMVCP) and newly adopted regulations representing RACT for stationary sources of volatile organic compounds. There are no nonattainment areas for CO or NO_2 (the other motor vehicle-related pollutants for which there are national ambient standards) in Alabama. Recently, the case of *Manchester Environmental Coalition v. United States Environmental Protection Agency*, 612 F. 2d 56 (2d Cir. 1979), was decided. That case involved EPA approval of a State's request to revoke its indirect source review program which was part of the State Implementation Plan (SIP). The Court held that before deciding whether to approve such a revocation EPA must consider whether revocation would render the SIP inadequate to attain and maintain the national ambient air quality standards.

EPA proposed approval of the Part D plan for attaining the ozone standard in Alabama on July 19, 1979 (44 FR 42242). The strategies for attaining the ozone standard were found to represent reasonable further progress toward attainment and to meet the other requirements under Part D. As mentioned, the only public comment submitted was in favor of EPA's proposed approval and this action was finalized on November 26, 1979 (44 FR 67375).

Since EPA has approved the Part D plan for attainment of the ozone standard, use of a additional strategy of indirect source review is not needed to meet attainment requirements of the Clean Air Act. EPA concludes that revocation would not render the SIP inadequate to attain those standards.

The second inquiry is whether revocation would render the SIP inadequate to maintain air quality standards. At the outset, it must be recognized that indirect source review is no longer one of the requisite elements of SIPs in general, under 40 CFR 51.11 (a) (1978). (See 44 FR 15741 [Mar. 15, 1979] and *Manchester Environmental Coalition*, cited earlier in this notice.) Also, the only public comment submitted was in favor of EPA's proposed approval and this action was finalized on November 26, 1979 (44 FR 67375).

Since EPA has approved the Part D plan for attainment of the ozone standard, use of an additional strategy of indirect source review is not needed to meet attainment requirements of the Clean Air Act. EPA concludes that

revocation would not render the SIP inadequate to attain those standards.

The second inquiry is whether revocation would render the SIP inadequate to maintain air quality standards. At the outset, it must be recognized that indirect source review is no longer one of the requisite elements of SIPs in general, under 40 CFR 51.11(a)(1978). (See 44 FR 15741 [Mar. 15, 1979] and *Manchester Environmental Coalition,* cited earlier in this notice.) Also, the Alabama indirect source review regulations have never been implemented, either by the State or EPA. Therefore, revocation of those regulations cannot adversely affect present maintenance of air quality standards. Moreover, the prevention of significant deterioration (PSD) requirements of Part C of the 1977 Amendments to the Clean Air Act will help maintain air quality standards through review of new direct sources. For the foregoing reasons, EPA concludes that revocation of the indirect source regulations would not render the Alabama SIP inadequate to maintain national ambient air quality standards.

In the Federal Register of April 1, 1980 (45 FR 21290), EPA announced the revision as reproposed rulemaking and solicited public comment on it. No additional comments were received. From the previous explanation, EPA concludes that revocation of the indirect source review would not render the Alabama SIP inadequate to attain and maintain national ambient standards. On this basis, EPA approves the revocation.

(Sec. 110(a), Clean Air Act (42 U.S.C. 7410(a))

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

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

Subpart B—Alabama

1. In § 52.50, paragraph (c) is amended by adding subparagraph (24) as follows:

§ 52.50 Identification of plan.

* * * * *

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

* * * * *

(24) Revision to the State Implementation Plan to delete the indirect source regulations submitted by the Alabama Air Pollution Control Commission on December 12, 1978.

§ 52.56 [Revoked]

[FR Doc. 80-33989 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-2 FRL 1626-2]

Approval and Promulgation of Implementation Plans; Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 11, 1980 (45 FR 15531), the Environmental Protection Agency (EPA) promulgated conditional approval of the New Jersey State Implementation Plan (SIP) with regard to its ability to meet the requirements of Part D of the Clean Air Act, as amended. This conditional approval identified, among other corrective actions necessary, the need to submit to EPA: (1) an acceptable description of the State's transportation planning process highlighting those changes addressing air quality planning concerns and applicable SIP commitments, (2) a summary of the manpower and financial resources at the State, local and regional levels which are being committed to ensure a coordinated effort in transportation-air quality planning, and (3) a description of the comprehensive and systematic program which will be used for the selection of needed transportation control measures.

This notice advises the public that these conditions have been fulfilled through submission of the required documentation under cover of an April 22, 1980 letter from the State. EPA proposed approval of this submission on June 24, 1980 (45 FR 42335) and is now taking action to finalize this proposal. EPA is also incorporating the provisions of the State's submission into the approved SIP, and is revoking the applicable conditions on its approval of the plan. Until all conditions are met conditional approval of the SIP will continue.

EFFECTIVE DATE: This action is made effective October 31, 1980, inasmuch as it provides no additional burden upon any affected party. Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition of review in the United States Court of Appeals for the appropriate circuit on or before December 30, 1980. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: Copies of the State's submission are available for inspection at the following addresses:

Environmental Protection Agency, Air Programs Branch, Region II Office, 26 Federal Plaza—Room 1005, New York, New York 10278.

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

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza—Room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

On March 11, 1980, at 45 FR 15531, the Environmental Protection Agency (EPA) promulgated conditional approval of the New Jersey State Implementation Plan (SIP) with regard to its ability to meet the requirements of Part D of the Clean Air Act, as amended. Today's notice discusses three conditions of EPA's approval of the plan. These required the State to submit to EPA by April 1, 1980:

1. An acceptable description of its transportation planning process which highlights those changes made to the existing process to integrate air quality planning concerns and address applicable SIP commitments.

2. A summary of manpower and financial resources at the State, local and regional levels which are being devoted to ensure a coordinated effort in transportation-air quality planning.

3. A description of the comprehensive and systematic program which will be used for the selection of needed transportation control measures.

In response to these requirements, on April 22, 1980, the Commissioners of the New Jersey Department of Transportation and Environmental Protection jointly submitted to EPA documents entitled, "The Transportation Planning Process in New Jersey," "Summary of Financial Resources For Transportation-Air Quality Planning," and "Program for Selection of Needed Transportation Control Measures, April 1980."

EPA promulgated proposed approval of this submission in the June 24, 1980, Federal Register at 45 FR 42335. The reader is referred to this Federal Register notice for a detailed discussion of EPA's findings.

During the 60-day comment period following publication of its June 24, 1980,

notice, EPA received one formal comment concerning the State's submission. In an August 18, 1980, letter the Region I Office of the Federal Highway Administration indicated that the criteria ultimately developed for determining consistency and conformity with the SIP should be guided by a June 12, 1980, United States Department of Transportation-EPA agreement entitled, "Procedures for Conformance of Transportation Plans, Programs and Projects with Clean Air Act State Implementation Plans." This agreement states the principles used by the United States Department of Transportation for determining conformance of transportation plans and programs with the SIP. EPA concurs with this comment and will encourage the metropolitan planning organizations in New Jersey to consult the guidelines in their development of consistency and conformity criteria.

Based on its review of the submitted documents, the comment received, and discussions with affected agencies EPA finds that the subject conditions on its approval of the New Jersey SIP have been fully met. Therefore, EPA is incorporating the State's submission into the SIP and revoking the applicable conditions. Furthermore, this action serves to continue EPA's conditional approval since two unfulfilled conditions remain.

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

Dated: October 23, 1980.

(Sections 110, 172, and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601))

Note.—Incorporation by reference of the State Implementation Plan for the State of New Jersey was approved by the Director of the Federal Register on July 1, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

Title 40, Chapter I, Subchapter C, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. Section 52.1570 is amended by adding a new paragraph (c)(26) as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(26) A supplementary submittal, dated April 22, 1980, from the New Jersey Department of Environmental Protection and the New Jersey Department of Transportation consisting of three documents entitled "The Transportation Planning Process in New Jersey," "Summary of Financial Resources for Transportation-Air Quality Planning," and "Program for Selection of Needed Transportation Control Measures, April 1980."

§ 52.1581 [Amended]

2. Section 52.1581 is amended by revoking and reserving paragraph (b) in its entirety.

[FR Doc. 8-34032 Filed 10-30-80; 8:45 am]
BILLING CODE 6560-38-M

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40 CFR Part 52

[A-4-FRL 1649-2]

Approval and Promulgation of Implementation Plans; Kentucky: Approval of 1979 Sulfur Dioxide Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today announces its approval of the State Implementation Plan (SIP) revisions which the Kentucky Department for Natural Resources and Environmental Protection submitted pursuant to the requirements of Part D of Title I of the Clean Air Act, as amended in 1977, for sulfur dioxide (SO_2) nonattainment areas. EPA's approval is given on condition that certain deficiencies be corrected by July 1, 1981. If the deficiencies are not corrected by July 1, 1981, EPA will then disapprove the affected portions of the revisions. Other deficiencies in the SIP are removed through EPA disapproval action.

DATE: These actions are effective October 31, 1980.

ADDRESSES: Copies of the materials submitted by Kentucky and comments received in response to the proposal notice of November 15, 1979 (44 FR 65781), may be examined during normal business hours at the following locations:

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

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

FOR FURTHER INFORMATION CONTACT: Barry Gilbert, EPA, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTAL INFORMATION:

Background

In the March 3, 1978, Federal Register (43 FR 8962 at 8997) the areas listed below were designated as not attaining the national primary (P) or secondary (S) ambient air quality standards (NAAQS) for sulfur dioxide. The designation of the Boyd County area was revised on November 2, 1979 (44 FR 63104).

A. That portion of Boyd County south of UTM northing line 4251 km (P).

B. That portion of Daviess Co. in Owensboro (P&S).

C. Greenup County (P&S).

D. That portion of Henderson Co. in Henderson (P).

E. Jefferson County (P&S).

F. McCracken County (P).

G. Muhlenberg County (P&S).

H. Webster County (P&S).

Greenup County was designated nonattainment for the primary and secondary sulfur dioxide NAAQS because of the noncompliance of a sulfuric acid plant belonging to E. I. du Pont de Nemours and Co. On August 31, 1978, the source was certified to be in compliance. The Commonwealth of Kentucky requested that the area be redesignated attainment and this was done on July 18, 1979 (44 FR 41782). Also, the State recently submitted air quality data showing the Owensboro and Henderson areas to be attainment and requested redesignation to attainment; this will be dealt with in a separate Federal Register notice.

The Kentucky revisions have been reviewed by EPA in light of the Clean Air Act (CAA), EPA regulations, and additional guidance materials. The criteria utilized in this review were detailed in the Federal Register on April 4, 1979 (44 FR 20372), and need not be repeated in detail here. Supplements to the April 4 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53716), and November 23, 1979 (44 FR 67182); these involve, among other things, conditional approval. EPA is conditionally approving the revisions since the deficiencies are minor and the Commonwealth has provided assurance that it will submit corrections by the July 1981 deadline specified.

A discussion of conditional approval and its practical effect appears in

supplements to the General Preamble, 44 FR 38583 (July 2, 1979) and November 23, 1979 (44 FR 67182). The conditional approval requires the Commonwealth to submit additional materials by the deadline specified in today's notice. EPA will follow the procedures described below when determining if the Commonwealth has satisfied the conditions.

1. If the Commonwealth submits the required additional documentation according to schedule, EPA will publish a notice in the Federal Register announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the Commonwealth's submission to determine if the condition is fully met. After review is complete, a Federal Register notice will be published proposing or taking final action either to find the condition has been met and approve the plan, or to find the condition has not been met, withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the Commonwealth fails to submit in a timely manner the required materials needed to meet a condition, EPA will publish a Federal Register notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and Section 110(a)(2)(I) restrictions on growth are in effect.

A conditional approval will mean that the restrictions on new major source construction will not apply unless the Commonwealth fails to submit the necessary SIP revisions by the scheduled dates, or unless the revisions are not approved by EPA.

In addition to the implementation plan revisions for the nonattainment areas required under Part D of Title I of the Clean Air Act (CAA), the Commonwealth's submittal contains changes related to other portions of the CAA, including changes in the New Source Performance Standard (NSPS) regulations, regulations concerning prevention of significant deterioration, and other emission standards. These topics will be dealt with in a separate Federal Register notice.

General Discussion

Section 172(b) of the Clean Air Act (CAA) contains the requirements for nonattainment State Implementation Plans. These were listed in the proposal notice together with a discussion of the contents and adequacies of the Kentucky submittals. The reader may consult that notice (44 FR 65781, November 15, 1979) for any details not provided in the present notice as to how the Kentucky submittal satisfies the requirements of Section 172. Also, the notice of January 25, 1980 (45 FR 6092), conditionally approving the Kentucky 1979 ozone plan, approved regulations which apply to all air pollution sources and thus involve the sulfur oxide control strategy as well.

The plan provides for reasonable further progress (RFP) towards attaining and maintaining the NAAQS. RFP for sulfur dioxide nonattainment areas includes reductions in emissions to attain the primary and secondary NAAQS on or before December 31, 1982, except for Jefferson County, which has an attainment date of January 1, 1985 (see the discussion of Sulfur Dioxide-Jefferson County included below).

Sulfur Dioxide

Boyd County: The entire county was originally designated nonattainment for the primary sulfur dioxide NAAQS. Pursuant to the Commonwealth's request, EPA on November 2, 1979 (44 FR 63104), modified the geographic area to include as nonattainment only the area around the Ashland Oil Plant (Boyd County south of UTM Northing Line 4251 km). Recent ambient monitoring indicates the area is also not attaining the secondary NAAQS. The control strategy demonstrates that the short term and annual emission limitations recently adopted for Class VA counties will attain the primary and secondary NAAQS. An ambient and meteorological monitoring study was conducted to evaluate the diffusion model's validity in the complex terrain around the Ashland Oil facility. The contractor's report for the study is the basis of the control strategy demonstration. A major portion of the emission reductions will come from Ashland Oil while the remainder will come from other major sources in southern Boyd County. All sources subject to more stringent or new emission limits shall demonstrate compliance as expeditiously as practicable but in no case later than December 31, 1982.

EPA conditionally approves this portion of the SIP because of the deficiencies listed below:

1. Regulation 401 KAR 61:015, Existing Indirect Heat Exchangers, states in Section 5(4), Standard for Sulfur Dioxide, "In counties classified as VA with respect to sulfur dioxide, for sources having total heat input greater than fifteen hundred million BTU per hour (1500 MMBTU/hr.) as determined by Section 3(1) of this regulation, no owner or operator shall allow the annual average sulfur dioxide emission rate from all existing and new affected facilities combined at the source to exceed 0.60 pounds per million BTU." This regulation (applicable to Ashland Oil) is unenforceable because there is no method specified for continually determining compliance with this annual average emission limit. The usual method of determining compliance by stack test may not be practical since there are over 50 affected emission points at Ashland Oil and since it is an annual, not a short-term, limit. Therefore, the method of determining the compliance status of the oil/gas-fired units must be clearly specified and should address the frequency of oil sample collections and analyses, the locations of sample collection points, the analytical techniques which are acceptable, the acceptable method for monitoring fuel consumption, and the reporting frequency.

The regulation implies that compliance determination will be made on the basis of a single annual averaging period. If the time averaging basis is consecutive blocks of 365-day periods, there is no way of knowing whether the plant is continually in compliance with this annual average limit.

A moving 365 day averaging period which is recalculated each day would enable the plant to demonstrate on a daily basis its compliance status in regard to this annual limit.

2. A legally enforceable compliance schedule with increments of progress must be a part of the SIP (See General Sulfur Dioxide Conclusions).

3. The plan's provisions for ambient monitoring around the Ashland Oil complex must include a starting date, specify the duration of the program and require the use of the Federal equivalent method. EPA considers the monitoring to be an essential feature of the control strategy and thus an enforceable obligation upon the State.

This conditional approval of the Boyd County SO_2 control strategy is in effect a revocation of the disapproval action of May 10, 1976 (41 FR 19105).

City of Owensboro: This nonattainment area is located within Daviess County and is designated nonattainment for the primary and secondary sulfur dioxide NAAQS. The control strategy demonstrates through modeling that the existing emission limitations will assure attainment of the NAAQS. The nonattainment designation is based upon the noncompliance of Owensboro Municipal Utility Elmer Smith power plant. The source was

following Federal Administrative Order #AO-77-235(a) and the plant demonstrated compliance with the applicable SO_2 emission limit on March 1, 1978. Recent air quality data shows attainment, and the Commonwealth has requested redesignation. EPA will propose redesignation to attainment in a separate notice.

City of Henderson: This nonattainment area is located within Henderson County and is designated nonattainment for the primary NAAQS for sulfur dioxide. Measured violations due to noncompliance of Henderson Municipal Power and Light were previously recorded.

Since the plant came into compliance during 1977, the ambient monitor has measured acceptable levels. No revision to the control strategy was necessary. The Commonwealth has requested this area be redesignated attainment and EPA is preparing a separate Federal Register proposal notice to address this issue.

Jefferson County: The Louisville area is nonattainment for the primary and secondary sulfur dioxide NAAQS. Ambient monitoring has shown and diffusion modeling predicts violations of the NAAQS due to emissions from power plants and to a lesser degree from area sources. The control strategy demonstration shows that when all sources are in compliance with the present emission limits the NAAQS will be attained.

The three power plants owned by Louisville Gas and Electric Company in Jefferson County are subject to Federal Administrative/Agreed Orders 75-138(a), issued on November 5, 1975, and 76-21(a), issued on February 26, 1976, which specify final compliance for all units prior to December 31, 1982, except for Paddy's Run Unit 5 and Cane Run Units 1, 2, and 3, which must achieve final compliance by July 1, 1983, and January 1, 1985, respectively.

The Clean Air Act specifies December 31, 1982, as the date for attainment of the primary NAAQS. However, Section 113(d)(12) specifically provides that orders of the type issued to Louisville Gas and Electric, remain in effect beyond this date. Since attainment for Jefferson County requires compliance with these orfers by Louisville Gas and Electric attainment will not be reached in Jefferson County until January 1, 1985. EPA has determined that no source other than Louisville Gas and Electric is subject to this provision of Section 113(d)(12). Therefore, there should be no other attainment extensions on this basis. The existence of the Louisville Gas and Electric orders does not extend the required attainment date for all of Jefferson County. All other sources in the County are required to be in compliance with the SIP at the present time and are expected to remain in compliance. The 1985 date relates only to the Section 113(d)(12) orders issued to Louisville Gas and Electric.

McCracken County: This area is designated nonattainment for the primary sulfur dioxide NAAQS. The control strategy demonstrates that the Shawnee TVA power plant caused the recorded ambient violations. The NAAQS will be attained when the source comes into compliance with the existing emission limitation which the control strategy shows to be adequate. Section 8(2)(a) of regulation 401 KAR 61:015 allows the TVA Shawnee power plant until October 1, 1981, to achieve compliance. The source was previously required to be in compliance by July 1, 1977, with the emission limits in the presently approved SIP. Since the source is not being made subject to stricter emission limits, this portion of the regulation is disapproved. This disapproval, in effect, removes Section 8(2)(a) from the SIP, thereby enabling the part of the SIP applicable to McCracken County to be approved. As a result, Section 110(a)(2)(I) of the CAA will not apply. The Commonwealth may correct this deficiency by removing Section 8(2)(a) from regulation 401 KAR 61:015.

Muhlenberg County: This area is designated nonattainment for the primary and secondary sulfur dioxide NAAQS due to noncompliance of two power plants. The control strategy demonstrates by diffusion modeling that the proposed more stringent emission limits for the power plants are adequate to assure attainment of the NAAQS. TVA's Paradise power plant is scheduled to achieve compliance by September 1, 1982. Kentucky Utilities' Green River power plant was also subject to an established compliance schedule for achieving final compliance on March 1, 1980, and is now in compliance. EPA approves the compliance schedules for these two plants, contained in regulation 401 KAR 61:015, Section 8.

Webster County: This area is designated nonattainment for the primary and secondary sulfur dioxide NAAQS. The control strategy demonstrates through modeling that the existing emission limitations (which were not revised) are adequate. The area was designated nonattainment because the Big Rivers Electric Corporation-Reid Station power plant was out of compliance. The source is following Federal Administrative/Agreed Orders AO 77-251(a) and 77-252(a) and AO 77-1580-003 and 77-4020-0001 which specify final compliance by January 1, 1980. This compliance schedule was not submitted as part of the plan, but is enforceable by EPA. It cannot be approved as part of the SIP since the source is not being made subject to stricter emission limits.

General Sulfur Dioxide Conclusions

EPA disapproves a portion of the plan for all SO_2 nonattainment areas due to the following deficiency. Regulation 401 KAR 61:015, Existing Indirect Heat Exchangers, at paragraph (2)(d) of Section 8, Compliance Timetable, requires sources in nonattainment areas to demonstrate compliance . . . "as expeditiously as practicable but in no case later than December 31, 1982".

However, only sources which are subject to a more stringent emission limit due to this SIP revision may be allowed time to attain compliance. Section 8(2)(d), as now written allows sources which are not subject to more strict emission limits to have additional time to achieve compliance. EPA disapproves this portion of the plan as it relates to compliance schedules for sources in the latter category. This disapproval, in effect, removes that unapprovable portion of Section 8(2)(d) from the SIP, thereby enabling the affected part of the SIP to be approved. As a result, Section 110(a)(2)(I) of the CAA will not apply. The Commonwealth may remove this deficiency by modifying Section 8(2)(d) so that it applies only to sources being made subject to stricter emission limits.

EPA conditionally approves the portion of the SIP relating to regulation 401 KAR 61:015, Section 8(2)(d), as it applies to any SO_2 source in a nonattainment area which is subject to a more stringent emission limit. The approval is conditional since there are no increments of progress in the compliance schedule. The Commonwealth may correct the deficiency by modifying the regulation so that sources being made subject to stricter emission limits have compliance schedules which include increments of progress.

Public Comments

Numerous comments have been received in response to the notice of proposed rulemaking on the Kentucky revisions which appeared in the Federal Register on November 15, 1979 (44 FR 65781). EPA responded to comments related to the ozone control strategy in the notice of conditional approval which appeared on January 25, 1980 (45 FR 6092); a response was also given in this

notice to a number of comments which were applicable to all the 1979 State implementation revisions. Comments on the particulate revisions are being dealt with in a separate notice which is being prepared for the purpose of reproposing action on these portions of the Kentucky Part D submittal; this notice will also respond to a number of comments which apply to the Kentucky revisions generally. Today's notice will respond only to comments which relate solely to the sulfur dioxide revisions.

Comment: A commenter has expressed the opinion that the compliance schedule for meeting the new SO_2 emission limit of 3.1 lbs./10^6 BTU for the Tennessee Valley Authority's Paradise plant is in violation of the previous 5.2 lbs./10^6 BTU limit. In other words, the objection is that Paradise should not be given an extension of the original July 1, 1977 compliance deadline for taking steps necessary to comply with the previous 5.2 lb. limit.

Response: This commenter misconstrues the nature of this agency's approval action for the Paradise SO_2 compliance schedule. This approval of the new Paradise schedule does not supplant the compliance schedule designed to meet the original 5.2 lbs. limit but is rather an appendage to it. It should also be emphasized that the new Paradise SO_2 compliance schedule as submitted by Kentucky reflects the schedule incorporated into a proposed consent decree in a pending civil action in United States District Court in Nashville, Tennessee. This proposed consent decree was negotiated in good faith by EPA, TVA, the Commonwealth of Kentucky and various public interest organizations in order to bring TVA into compliance with the Clean Air Act. The resultant 3.1 lbs. limit was based on a modeling effort conducted during the course of that litigation which demonstrated that the then existing 5.2 lbs. limit was insufficient to protect National Ambient Air Quality Standards. Failure by TVA to adhere to the new compliance schedule designed to meet that new 3.1 lbs. limit would constitute violation of not only the consent decree but also the state implementation plan itself as modified by the new appended compliance schedule.

Comment: Conversely, several commenters have objected to the disapproval of the compliance schedule extending the final compliance date for the extant 1.2 lbs./10^6 BTU SO_2 limit for TVA's Shawnee Steam Plant.

Response: Nothing in the Clean Air Act authorizes the extension of a final compliance date for a source in violation of a previous SIP emission limit except the delayed compliance order provisions of Section 113(d), 42 U.S.C. § 7413(d). Those provisions were not applicable in this case because no such delayed compliance order was ever issued. In this case, the 1.2 lbs. emission limit has been in effect since 1972 and has not been made more stringent by this plan revision. Therefore, there is no legal basis for extending the time for compliance for this unchanged emission limit. Disapproval of the compliance schedule for Shawnee as part of the Kentucky implementation plan in no way detracts from the legal efficacy of that schedule as incorporated into the proposed consent decree now pending in United States District Court in Nashville, Tennessee. Failure to adhere to that compliance schedule would nonetheless constitute violation of that consent decree.

Comment: One commenter objects to the disapproval of the Shawnee SO_2 compliance schedule on the specific ground that it could result in the payment by TVA of large noncompliance penalties under Section 120 of the CAA.

Response: Such penalties could be imposed under the regulations promulgated by the Agency to implement Section 120 (45 FR 50086, July 28, 1980). The Shawnee facility is not being subjected to any new or more stringent SO_2 emission limitations than were contained in the original SIP. The General Preamble of April 4, 1979 makes it clear that existing SIP requirements cannot be set aside by Part D revisions (44 FR 20374, note 12).

Comment: Another commenter has objected to the 3.1 lbs/10^6 BTU SO_2 limit for TVA's Paradise Plant as being more stringent than necessary to protect National Ambient Air Quality Standards.

Response: Section 116 of the Clean Air Act, 42 U.S.C. § 7416, does not permit EPA to disapprove a state-submitted plan revision on the basis of excessive stringency. This was affirmed by the United States Supreme Court in *Union Electric Company* v. *EPA*, 427 U.S. 246 (1976), which held that EPA could not disapprove a state implementation plan as long as the plan was adequate to attain and maintain National Ambient Air Quality Standards.

Comment: That same commenter contended that there should have been notice to the public by the Commonwealth of Kentucky that such limit was overly stringent.

Response: EPA's evaluation of available dispersion modeling indicated that this emission limit is not overly stringent. TVA voluntarily agreed to meet such limit as part of the settlement of the civil enforcement litigation in United States District Court in Nashville, Tennessee. These proceedings were a matter of public record. Irrespective of these facts, nothing in the Clean Air Act requires such a notice.

Comment: Another commenter feels the use of continuous ambient SO_2 monitors is technically impractical.

Response: Since most State and local air pollution control agencies and many existing industries have been using continuous ambient SO_2 monitors for several years, EPA believes a source can practicably and reliably monitor continuously for SO_2.

Comment: The commenter feels that "ambient monitoring is more appropriately a government function, especially where previous monitoring revealed large contributions from other sources and the sites in question are not only in another State but another U.S. EPA Region."

Response: Because of discrepancies between modeled and measured values, and because of uncertainties as to what actual emissions were during the previous monitoring study, ambient monitoring is needed around the Ashland Oil plan to assure that standards are met. EPA considers the monitoring requirement in the control strategy to be an obligaiton enforceable against the State. The requirement for ambient monitoring is based on Section 110(a)(2)(B), (C), and (F) of the Clean Air Act. While it is the State's obligation to ensure that the monitoring program is carried out, the State may require the source to do the monitoring under State regulation 401 KAR 50:050.

Response: EPA's evaluation of available dispersion modeling indicated that this emission limit is not overly stringent. TVA voluntarily agreed to meet such limit as part of the settlement of the civil enforcement litigation in United States District Court in Nashville, Tennessee. These proceedings were a matter of public record. Irrespective of these facts, nothing in the Clean Air Act requires such a notice.

Comment: The commenter also feels the use of continuous ambient SO_2 monitors is technically impractical.

Response: Since most State and local air pollution control agencies, many existing industries, and numerous industries desiring PSD permits have been using continuous SO_2 monitors for several years, EPA believes a source can practicably and reliably monitor continuously for SO_2.

Comment: The commenter feels that "ambient monitoring is more

appropriately a government function, especially where previous monitoring revealed large contributions from other sources and the sites in question are not only in another State but another U.S. EPA Region."

Response: The previous monitoring program by the source, as discussed in the SIP control strategy, circled the Ashland Oil refinery with monitors which measured 3 and 24-hour violations due to the refinery. Ambient monitoring is a government function, but can also be a responsibility of the source, as in the case of application for a PSD permit or a bubble revision. Nevertheless, EPA is dropping the requirement for continuous ambient monitoring contained in the November 15, 1979, proposal. It is strongly recommended, however, that such monitoring be done in the vicinity of the Ashland Oil complex.

Comment: The commenter (Ashland Oil) felt that regulation 401 KAR 61:015, Section 5(4) is enforceable and that there are demonstrated methods available for determining emission rates within the refinery.

Response: EPA's position is that this regulation (applicable to Ashland Oil) is unenforceable because there is no method specified for continually determining compliance with this annual average emission limit. The usual method of determining compliance by stack test may not be practical since there are over 50 affected emission sources at Ashland Oil and since it is an annual, not a short-term, limit. Therefore, the method of determining the compliance status of the oil/gas-fired units must be clearly specified and should address the frequency of oil sample collections and analyses, the locations of sample collection points, the analytical techniques which are acceptable, the acceptable method for monitoring fuel consumption, and the reporting frequency.

The regulation implies that compliance determination will be made on the basis of a single annual averaging period. If the time averaging basis is consecutive blocks of 365-day periods, it is not possible to determine whether the plant is continually in compliance with this annual average limit. A moving 365-day averaging period which is recalculated each day would enable the plant to demonstrate on a daily basis its compliance status in regard to this annual limit.

Attainment Dates

For a general discussion of this topic, the reader may consult the notice giving conditional approval to the ozone plan (January 25, 1980, 45 FR 6092). The present notice affects only the attainment dates for SO_2 nonattainment areas; these are adjusted to reflect the actions taken here.

Reference should be made to the 1979 edition of Title 40 of the Code of Federal Regulations (40 CFR 52.926) to determine the applicable deadline for attainment under Section 110(a)(2)(A) of the CAA.

Actions

The Administrator conditionally approves Kentucky's 1979 revision, for sulfur dioxide nonattainment areas on the condition that deficiencies noted be corrected by July 1, 1981. It is EPA's intent to fully approve these revisions when the Commonwealth corrects the deficiencies discussed in this notice. If these corrections are not forthcoming by July 1, 1981, EPA will act to disapprove the related plan revisions. This action is effective immediately. EPA finds good cause to make this conditional approval immediately effective, because the Clean Air Act restricts new construction where plans are not approved after June 30, 1979. Making the conditional approval immediately effective will terminate the restriction as soon as possible; moreover, the revision imposes no requirement that is not already in effect at the State level. EPA disapproves (removes from the plan) compliance schedules for sources which are not being made subject to stricter emission limits. This disapproval, in effect, removes the unapprovable portion from the SIP, thereby enabling the affected part of the SIP to be approved. As a result, Section 110(a)(2)(I) of the CAA will not apply.

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

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

(Secs. 110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1980.

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

Subpart S—Kentucky

1. Section 52.920 is amended by adding a subparagraph (13) to paragraph (c) as follows:

§ 52.920 Identification of plan.

* * * * *

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

(13) 1979 revisions for Part D requirements for sulfur dioxide nonattainment areas (Boyd, Jefferson, McCracken, Muhlenberg, and Webster Counties), submitted on June 29, 1979, by the Kentucky Department for Natural Resources and Environmental Protection.

2. Section 52.923 is revised to read as follows:

§ 52.923 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Kentucky's plans for the attainment and maintenance of the national standards under § 110 of the Clean Air Act. Furthermore, the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs issued between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

(b) New Source review permits issued pursuant to Section 173 of the Clean Air Act will not be deemed valid by EPA unless the provisions of Section V of Appendix S of 40 CFR Part 51 are met.

3. Section 52.926 is revised to read as follows:

§ 52.926 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. The dates reflect the information presented in Kentucky's plan, except where noted.

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxide		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Appalachian Intrastate	c	c	b	b	b	b	b
Bluegrass Intrastate:							
a. Fayette Co. [1]	a	c	b	b	b	b	g
b. Rest of AQCR	a	c	b	b	b	b	b
Evansville (Indiana Owensboreo Henderson (Kentucky) Interstate:							
a. Henderson Co. [1]	c	c	a	e	b	b	g
b. Webster Co. [1]	c	c	g	g	b	b	b
c. Rest of AQCR	c	c	a	e	b	b	b
Huntington (W. Virginia)-Ashland (Kentucky)-Portsmouth-Ironton (Ohio) Interstate:							
a. Boyd Co. [1]	c	c	g	g	b	b	g
b. Rest of AQCR	c	c	b	b	b	b	b
Louisville Interstate [1]	c	c	j	j	b	d	h
Metropolitan Cincinnati Intersfate:							
a. Boone Co. [1]	c	c	a	d	b	d	h
b. Campbell Co. [1]	c	c	a	d	b	d	h
c. Kenton Co. [1]	c	c	a	d	b	d	h
d. Rest of AQCR	c	c	a	d	b	d	c
North Central Kentucky Intrastate	a	c	b	b	b	b	b
Paducah (Kentucky)-Cairo (Illinois) Interstate:							
a. McCracken Co. [1]	c	c	g	f	b	b	b
b. Muhlenberg Co. [1]	c	c	g	g	b	b	b
c. Rest of AQCR	c	c	a	f	b	b	b
South Central Kentucky Intrastate	b	b	b	b	b	b	b

[1] See § 81.318 of this chapter to identify the specific nonattainment area.

NOTE.—Dates or footnotes in italics are prescribed by the Administrator because the plan did not provide a specific date or the dates provided were not acceptable. Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.926 (1979 edition).

a. Air quality levels presently below primary standards or area is unclassifiable.
b. Air quality levels presently below secondary standards or area is unclassifiable.
c. April 1975.
d. July 1975.
e. July 1977.
f. July 1978.
g. December 31, 1982.
h. December 31, 1987.
i. To be determined later.
j. January 1, 1985.

4. Section 52.928 is revised to read as follows:

§ 52.928 Control strategy: Sulfur oxides.

(a) Part D—Conditional approval.

(1) Boyd County nonattainment area. The 1979 sulfur dioxide revisions for this area are approved on condition that the following be submitted by July 1, 1981:

(i) An enforceable regulation for continually determining compliance with Kentucky regulation 401 KAR 61:015 Section 5(4).

(ii) A revision of regulation 401 KAR 61:015 providing increments of progress in compliance schedules applicable to sources which are being made subject to more stringent emission limits.

(iii) A commitment, with regard to ambient monitoring around the Ashland Oil complex, that the monitoring will begin by a certain date, will be conducted for a specific length of time, and will be done with a Federal equivalent method.

(2) Jefferson, McCracken, Muhlenberg, and Webster Counties. The 1979 sulfur dioxide revisions for these nonattainment areas are approved on condition that the State submit by July 1, 1981, a revision of regulation 401 KAR 61:015 providing increments of progress in compliance schedules applicable to sources which are being made subject to more stringent emission limits.

5. A new § 52.936 is added as follows:

§ 52.936 Rules and regulations.

(a) Section 8(2)(a) of regulation 401 KAR 61:015 is disapproved in that it allows the Tennessee Valley Authority's Shawnee power plant until October 1, 1981, to achieve compliance with emissions limits which are not made more stringent by the 1979 Part D revisions, and which the source was previously required to meet by July 1, 1977.

(b) Section 8(2)(d) of regulation 401 KAR 61:015 is disapproved in that it allows sources until December 31, 1982, to achieve compliance with emission limits which are not made more stringent by the 1979 Part D revisions, and which the sources were previously required to meet prior to 1979.

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40 CFR Part 81

[A-3-FRL 1649-1]

Approval of Revision to Section 107 Air Quality Designations for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Commonwealth of Pennsylvania has revised its list of air quality attainment status designations for nine areas within the Southeast Pennsylvania Air Basin, with respect to particulate matter (TSP). In this notice, the Administrator is approving the reclassification of six municipalities adjacent to Lansdale Borough from unclassified to attainment. In addition, the Administrator is approving the reclassification of three other municipalities from attainment to unclassified.

DATE: These revisions become effective on or before December 1, 1980.

ADDRESSES: Copies of the associated support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: Harold A. Frankford (3AH12)

Pennsylvania Department of Environmental Resources, Bureau of Air Quality and Noise Control, Fulton Building, 18th Floor, 200 North Third Street, Harrisburg, PA 17120, Attn: James Salvaggio

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Mr. Harold A. Frankford (3AH12), U.S. Environmental Protection Agency, Region III, Curtis Building, 10th floor, Philadelphia, PA 19106, Phone: 215/597-8392.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1978 and August 26, 1979, the Commonwealth of Pennsylvania submitted a request for redesignation of attainment status with respect to total suspended particulates for nine municipalities located in the

Southeast Pennsylvania Air Basin (this area corresponds to the Pennsylvania portion of the Metropolitan Philadelphia Interstate Air Quality Control Region). The specific reclassifications are described as follows:

A. Unclassified to Attainment

The Commonwealth has requested reclassification for six municipalities (Montgomery Township, Towamencin Township, Upper Gwynedd Township, Hatfield Township, Hatfield Borough and North Wales Borough) adjacent to Lansdale Borough, which had originally been designated a nonattainment area for secondary TSP standards. Lansdale has since been redesignated as an attainment area for TSP, 45 FR 9262 (1980). The most recently available air quality data provided by the Commonwealth show no violations of TSP standards in this area.

B. Attainment to Unclassified

The Commonwealth has requested reclassification for the municipalities of Doylestown Township, Upper Moreland Township, and Downingtown Borough. During 1977, all three municipalities recorded violations of the secondary TSP standard, whereas prior historical data had not shown an incidence of air quality violations for TSP. During 1979, the monitor in Downingtown was discontinued, and the Doylestown monitor did not record any further TSP violations. The Willow-Grove (Upper Moreland) monitor has recorded violations of the secondary TSP standards, but EPA has judged that the monitor is improperly located such that the violations represent undue localized influences, rather than ambient air. In view of the above, an "unclassified" designation is appropriate for all three municipalities.

Proposed Rulemaking Actions/ Summary of Public Comments

On July 2, 1979, 44 FR 38585, EPA proposed redesignation of the Doylestown, Downingtown, and Upper Moreland areas. Similarly, on November 21, 1979, 44 FR 66850, EPA proposed redesignation of the six municipalities surrounding Lansdale Borough. During the respective comment periods following publication of these notices, no comments were received.

EPA Actions

In view of the above evaluation, the Administrator approves the redesignation of attainment status for the nine municipalities discussed in this notice. In conjunction with the Administrator's approval actions, the charts contained in 40 CFR 81.339 are revised accordingly.

All other Section 107 designations for the Commonwealth of Pennsylvania not discussed in this notice remain intact.

Although this action is being taken as a final rule, EPA will consider comments at any time and make appropriate changes in attainment designations. Comments should be sent to Mr. Robert Blanco, Acting Chief Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 10th floor, 6th & Walnut Streets, Philadelphia, PA 19106.

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

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

(Secs. 107(d), 171(2), 301(a), Clean Air Act, as amended (42 U.S.C. 7407(d), 7501(2), 7601(a)))

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended by revising the table entitled "Pennsylvania-TSP" in § 81.339 to read as follows:

Subpart C—Section 107 Attainment Status Designations

§ 81.339 Pennsylvania.

* * * * *

Section 81.339

Pennsylvania—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
I. Metropolitan Philadelphia Interstate AQCR				
(A) City of Philadelphia:				
Census tracts 1-12, 125-142, 144-157, 162-177, 190-205, 293, 294, 298-302, 315-321, 323, 325, 326, 329-332		X		
Census tracts 13-75, 143, 158-161, 178-189, 295-297, 322, 324, 327			X	
Balance of City				X
(B) Montgomery County:				
Conshohocken Boro		X		
West Conshohocken Boro			X	
Lower Merion Boro			X	
Narberth Boro			X	
Upper Merion Twp			X	
Bridgeport Boro			X	
Norristown Boro			X	
Plymouth Twp			X	
Whitemarsh Twp			X	
Lansdale Boro				X
Pottstown Boro		X		
West Pottsgrove Twp			X	
Upper Pottsgrove Twp			X	
Lower Pottsgrove Twp			X	
Upper Providence Twp			X	
(C) Chester County				
South Coatesville Boro		X		
City of Coatesville			X	
Caln Twp			X	
East Fallowfield Twp			X	
Modena Boro			X	
Valley Twp			X	
North Coventry Twp			X	
East Coventry Twp			X	
Phoenixville Boro		X		
Schuylkill Twp			X	
Downingtown Boro			X	
(D) Bucks County				
Doylestown Twp			X	
(E) Remaining Pennsylvania Portion of AQCR				X

[FR Doc. 80-33443 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-3-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 55a

Program Grants for Black Lung Clinics

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The Public Health Service revises the regulations governing the grants program for black lung clinics established under section 427(a) of the Federal Mine Safety and Health Act of 1977. The new regulations reflect recent changes, both in the way health services are delivered and in specific diagnostic and treatment procedures required in the management of black lung.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Beacham, Director, Regional Commissions Health Programs, Bureau of Community Health Services, Room 7A-55, 5600 Fishers Lane, Rockville, Maryland 20857 (301-443-5033).

SUPPLEMENTARY INFORMATION: On February 12, 1980 the Public Health Service published a Notice of Proposed Rulemaking (NPRM) to revise the regulations (42 CFR Part 55a) governing the Black Lung Clinics Program established by section 427(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 927(a)) (45 FR 9298). This program assists public and private nonprofit entities in constructing, purchasing and operating clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in coal miners. The major functions of these clinics are to provide services to minimize the effects of respiratory and pulmonary impairments in coal miners and to perform examinations in connection with black lung disability benefits claims filed with the Department of Labor.

Representatives of six organizations commented on the proposed rules. The Department's response to these comments and the actions taken are set forth below. The comments and responses have been arranged to correspond to the order of the regulation.

1. Eligibility requirements for Black Lung Clinics Program grants

Four of those commenting were concerned about deletion of the provision limiting entities which may apply for grants to organizations which are designated by State Governors. They each suggested adding a new section to provide that the Governor may retain the authority for designating the agency or agencies to administer a Black Lung Clinics Program in those States having an existing statewide program.

The Department maintains its position that the broadened eligibility criteria will allow existing mechanisms, such as the Health Systems Agencies and State Health Planning and Development Agencies, to play a greater role in coordinating and developing black lung services. This will increase the voice of consumers in the earliest stage of program development and encourage consistency with existing health services delivery programs. There also will be a wider range of prospective applicants. At the same time, Governors will continue to have the flexibility to participate as fully as they wish in the administration of this program within their States. The application procedure established under Office of Management and Budget Circular A-95, which provides Governors an opportunity to participate in program development, is required of all HHS grantees. Nevertheless, the Department is sensitive to State concerns that existing statewide programs be neither fragmented or duplicated. Therefore, the criteria for deciding which applications to fund have been amended to include whether proposed services are complementary to and nonduplicative of existing services (see § 55a.6(a)(5)).

2. Sliding fee schedule

One comment contended that a sliding fee schedule tied to the Community Services Administration *Income Poverty Guidelines* for persons unable to pay the full cost of care would require a means test, and that such a test would pose a barrier to miners who need the services. It was recommended that third-party payments be accepted as full payment for services rendered. The regulation does not require a means test. Most projects have a method for determining what portion of charges a patient should pay which is circumspect and maintains the patient's dignity. It is the intent of the regulation to require grantees to provide services to all, regardless of ability to pay, in a manner that preserves the dignity of patients. Most potential grantees already have arrangements for discounts for all indigent persons, and the Department does not want to disrupt those arrangements insofar as black lung patients are concerned. Therefore, no substantive changes in § 55a.4(b) have been made, but the requirement to provide services without regard for ability to pay for them has been given greater prominence in this section.

3. Role of third-party payors.

One comment favored sending medical treatment plans to third-party payors for comment, if not approval. Third-party payors do have an opportunity to negotiate with the clinics regarding treatment protocols under which individuals would receive treatment paid for by the third-party payors. This is implicit in § 55a.4(b)(3)(iii) which requires clinics to both bill for and make every reasonable effort to obtain payment for services reimbursable by third-party payors. The Department feels that this provides third-party payors an appropriate role in the treatment process without infringing on the confidentiality of individual patient information.

4. Role of the medical specialist in pulmonary diseases.

One comment expressed concern that the requirements for the involvement of a specialist in lung disease were inadequate. No change has been made in the regulations. It is the Department's view that the provision requiring medical services to be performed in consultation with a physician with special training or experience in the diagnosis and treatment of respiratory diseases is sufficient (§ 55a.4(b)(5)). The regulation allows grantees the flexibility to be responsive to the local availability of consultation from specialists in lung disease.

5. The policy board or advisory committee to the policy board.

In response to the comment that representatives of the coal industry should be included in the membership of the policy board or advisory committee, § 55a.4(c) has been revised to note this representation. In addition, the Department has made some technical changes to this provision, some of which are in response to a suggestion that the intended relationship between the grantee's policy board and the required consumer advisory committee may become confused.

6. Outreach.

One comment objected to the requirement for outreach, apparently construing it to be for claimant location. The outreach services required of a black lung clinic (§ 55a.5(a)(3)) are to increase access to clinic services. Under

§ 55a.7, it is stated that project funds may be used for outreach programs to inform coal miners of clinic services. These provisions have not been altered.

7. Use of grant funds.

In the proposed rule, § 55a.7 listed the specific uses that may be made of project funds (e.g., construction, purchase and operation of clinical facilities). As revised in this final rule, § 55a.7 states that "A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and the regulations of this part." Section § 55a.7 has been revised as part of the Department's "Operation Common Sense" to delete duplication of the Department's grant administration regulations (45 CFR Part 74). Subpart Q identifies the principles to be used in determining costs applicable to all Departmental grants and sets standards for allowable costs. Although not specified in the revised § 55a.7, project funds may be used for construction, purchase, and operation of clinical facilities; renovation or modernization of existing space; purchase of medical equipment; salaries of additional personnel; home treatment service; transportation of patients; training of personnel; outreach programs to inform coal miners of the services provided by the clinics; and actual expenses of public participants in program development or oversight; but may not be used for salaries of persons in positions previously supported from other sources.

As noted in the preamble to the proposal, however, capital expenditure authorities will be used only under unusual circumstances. Applicants who request funds to operate a Black Lung Clinic will generally be expected to possess suitable space. Only in cases where no applicant with access to space through current ownership or ability to rent proposes to serve miners needing services will applications for construction, acquisition, or modernization be considered. Such applications will be required to demonstrate that no existing space is adequate and available to serve a particular population of miners. It is expected that the capital spending authority will be only sparingly invoked.

Finally, several additional Department regulations which apply to grants made under this part have been specified in § 55a.8.

Accordingly, Part 55a of Title 42, Code of Federal Regulations, is revised as set forth below.

(Catalog of Federal Domestic Assistance Program No. 13.965 (Coal Miners, Respiratory Impairment Treatment, Clinic and Services (Black Lung Clinic)) The reporting requirements contained in these regulations have been reviewed and approved by the Office of Management and Budget (OMB Approval No. 68R-1734).

Dated: October 22, 1980.

Approved: October 28, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Patricia Roberts Harris,

Secretary.

PART 55a—PROGRAM GRANTS FOR BLACK LUNG CLINICS

Sec.

55a.1 To whom do these regulations apply?
55a.2 Definitions.
55a.3 Who is eligible to apply for a Black Lung Clinics grant?
55a.4 What must an application for a Black Lung Clinics grant contain?
55a.5 What requirements must a Black Lung Clinic meet?
55a.6 What criteria has HHS established for deciding which grant applications to fund?
55a.7 How may project funds be used?
55a.8 What other HHS regulations apply?
55a.9 What confidentiality requirements must be met?

Authority: Sec. 508, 83 Stat. 803; 30 U.S.C. 937.

§ 55a.1 To whom do these regulations apply?

This part applies to the award of grants pursuant to section 427(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 937(a)). These grants support the operation of clinical facilities known as Black Lung Clinics, for analysis, examination and treatment of respiratory and pulmonary impairments in coal miners.

§ 55a.2 Definitions.

Any term not defined here shall have the meaning given it in the Act. As used in this part:

"Act" means the Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 801 et seq.).

"Applicant" means any public or nonprofit private agency or institution which files an application for a grant under this part.

"Miner" or "coal miner" means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. The term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent that the individual was exposed to coal dust as a result of employment.

"Nonprofit," as applied to an agency or institution, means that no part of the net earnings of such agency or institution benefits, or may lawfully benefit, any private shareholder or individual.

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

§ 55a.3 Who is eligible to apply for a Black Lung Clinics grant?

(a) Any public or private nonprofit entity may apply for a grant under this part.

(b) Eligible projects: grants pursuant to section 427(a) of the Act and this part may be made to eligible applicants for carrying out area or statewide clinical services for the analysis, examination, and treatment of occupational respiratory and pulmonary impairments in coal miners.

§ 55a.4 What must an application for a Black Lung Clinics grant contain?

An approvable application must contain each of the following:

(a) A plan for the provision of the services required by this part containing at least the following elements:

(1) A description of the target population to whom services are to be provided, including a statement of the need for services;

(2) A description of the area in which the target population resides, including descriptions of geographical barriers to service, availability of transportation, and each of the health service providers in the area which provide any of the services required under this part;

(3) A statement of the goals and objectives of the program, how the program intends to achieve them, and how progress toward their achievement will be measured;

(4) A description of how existing resources in the community will be utilized to maximize the effectiveness and efficiency of the use of grant funds; and

(5) Letters of intent from each entity which is expected to provide any service under the Black Lung Clinics Program, including a statement that, contingent upon a grant award, services will be provided in accordance with the requirements under this part.

(b) An assurance that, should an award be made, the grantee will enter

into binding agreements with each of the listed clinics providing letters of intent which shall include provisions that:

(1) No person will be denied services because of inability to pay;

(2) Services will be made available regardless of how long the miner has lived in the service area or whether anyone referred the miner to the clinic;

(3) Services will be made available in a manner calculated to preserve human dignity and to maximize acceptability and utilization of services;

(4) Charges shall be made for services rendered as follows:

(i) a schedule shall be maintained listing fees or payments for the provision of services, designed to cover reasonable costs of operation;

(ii) a schedule of discounts adjusted on the basis of a patient's ability to pay shall be maintained. The schedule of discounts must provide for a full discount to individuals and families with annual incomes at or below the levels set forth in the most recent Community Services Administration *Income Poverty Guidelines* at 42 CFR 1060.2 (except that nominal fees for service may be collected from individuals and families with annual incomes at or below those levels if imposition of the fees is consistent with project goals). No discounts shall be provided to individuals and families with annual incomes greater than twice those set forth in the Guidelines;

(iii) where third-party payors (including Government agencies) are authorized or under a legal obligation to pay all or a portion of such charges, all services covered by that reimbursement plan will be billed and every reasonable effort will be made to obtain payment; and

(iv) where the cost of care and services furnished under the program is to be reimbursed under Title XIX of the Social Security Act, a written agreement with the Title XIX agency will be obtained by the clinic unless the Title XIX agency refuses to enter into the agreement and the clinic provides evidence of the refusal to the grantee.

(5) Grant funds will be used to supplement and not supplant existing services.

(6) Medical services will be performed in consultation with a physician with special training or experience in the diagnosis and treatment of respiratory diseases.

(c) A description of how each clinic or group of clinics will assure consumer participation in the development of policy applicable to the administration and delivery of black lung clinic services through a policy board or an advisory committee to the policy board. If the policy board consists of a majority of miners or miner-selected representatives, this requirement is satisfied. If this is not the case, an advisory committee to the policy board with a majority of miners or miner-selected representatives, but also including interested parties, such as health care providers, coal industry employers, representatives of third-party payors, and the general public, must be established. Procedures for the functioning of the advisory committee must be adopted which assure continued ability to represent the varied points of view, including that of consumers, and that committee recommendations are promptly referred to the policy board for consideration.

(d) Evidence that a copy of the application was forwarded to each of the affected health systems agencies designated under Title XV of the Public Health Service Act with a request that the agency review and approve the application and forward its comments to the Secretary. Regulations applying to health systems agencies appear in 42 CFR Part 122.

(e) Evidence that the application was sent to the appropriate A-95 Clearinghouse(s) for review and comment, in compliance with Office of Management and Budget Circular No. A-95, Revised.

§ 55a.5 What requirements must a Black Lung Clinic meet?

For inclusion in an applicant's plan, clinics must now, or with grant assistance be able to:

(a) Provide for the following services:

(1) Primary care;

(2) Patient and family education and counseling;

(3) Outreach;

(4) Patient care coordination, including individual patient care plans for all patients;

(5) Antismoking advice; and

(6) Other symptomatic treatments.

(b) Meet all criteria for approval and designation by the Department of Labor under 20 CFR Part 725 to perform disability examinations and provide treatment under the Act.

§ 55a.6 What criteria has HHS established for deciding which grant applications to fund?

(a) Within the limits of funds available for these purposes, the Secretary may award grants to assist in the carrying out of those programs which will in the Secretary's judgment best promote the purposes of section 427(a) of the Act, taking into account:

(1) The number of miners to be served and their needs;

(2) The quality and breadth of services to be provided;

(3) The degree to which other resources are committed to the program;

(4) The applicant's ability to manage the proposed program, including its experience with the delivery of medical services by clinical facilities and its ability to make rapid and effective use of the grant funds; and

(5) Whether proposed services are complementary to and nonduplicative of existing services, particularly in States or Regions where there are existing programs which are determined to be meeting or making satisfactory progress toward meeting identified needs.

(b) The notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 3 to 5 years.

(c) Generally the grant initially will be for 1 year and subsequent continuation awards also will be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(d) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 55a.7 How may project funds be used?

A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and the regulations of this part.

§ 55a.8 What other HHS regulations apply?

Several other HHS regulations apply to grants under this part. These include, but are not limited to:

42 CFR Part 50—Policies of general applicability

42 CFR Part 122—Health systems agency reviews of certain proposed uses of Federal health funds

45 CFR Part 16—Department grant appeals process
45 CFR Part 19—Limitation on payments or reimbursements for drugs
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health, Education, and Welfare—Effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedures for hearings under Part 80 of this title
45 CFR Part 84—Nondiscrimination on the basis of handicap in federally assisted programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91 [1]—Nondiscrimination on the basis of age in Department programs or activities receiving Federal financial assistance

§ 55a.9 What confidentiality requirements must be met?

All information as to personal facts and circumstances obtained by the grantee's staff about recipients of services shall be held confidential, and shall not be disclosed without the individual's consent except as may be required by law or as may be necessary to provide service to the individual or to provide for medical audits by the Secretary with appropriate safeguards for confidentiality of patient records. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

[FR Doc 80-34040 Filed 10-30-80; 8.45 am]
BILLING CODE 4110-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

Simultaneous Oil and Gas Leasing System; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

SUMMARY: The final rulemaking published in the Federal Register of May 23, 1980 (45 FR 35156), contained an error in the amendatory language as it referred to section 3102.2. This notice is being published to correct that error.

EFFECTIVE DATE: October 31, 1980.

ADDRESS: Any suggestions or inquiries should be sent to: Director (530), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Robert C. Bruce, 202-343-8735, or Charles E. Weller, 202-343-7753.

On page 35161, the amendatory language in item 6. is corrected to read as follows:

6. Sections 3102.1, 3102.1-1 and 3102.1-2 are deleted and replaced by a revised § 3102.1 as follows:

Daniel P. Beard,
Deputy Assistant Secretary of the Interior.
October 29, 1980.

[FR Doc. 80-34121 Filed 10-30-80; 8 45 am]
BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA 5940]

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

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

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

EFFECTIVE DATES: The effective date shown at the top right of the table or December 1, 1980, whichever is later.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line 800-424-8872, Room 5150, 451 Seventh Street, SW., Washington, DC 20410.

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

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

This 30 day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin on or before December 1, 1980, or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the Federal Register or the effective date of the Flood Hazard Boundary Map, whichever is later.

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

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

BILLING CODE 6718-03-M

[1] When issued.

§ 65 3 List of communities with special hazard areas (FHBM's in effect)

EFFECTIVE DATE November 4, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF		10 PREVIOUS MAP DATES		11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
								FHBM	FIRM	FHBM	FIRM				
UT	490177	City of St George (Washington County)	0001C 0002C	I	FL	B	1	3	1	8-16-74 6-11-76 11-22-77	N/A	8 9 10	N/A	N/A	The Honorable James G Larkin Mayor, City of St George 237 North Bluff St. George, UT 84770 (801) 673-3593

EFFECTIVE DATE November 7, 1980

1 State	2 Ident Number	3 Community Name County Name	4 Panels Printed (Y and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
IL	171005A	Village of Hainesville (Lake Co)	Index 01	I	FL	B	4	2	1	N/A	N/A	6	N/A	N/A	George Benjamin, Mayor P O Box 271 Grayslake, IL 60030 Phone: (312) 223-7379
PA	421461	Twp. of Burnside (Centre Co)	Index 0001A 0002A 0003A 0005A	I	FL	B	1	3	1	11/ 8/74	N/A	9 10 16	N/A	N/A	Arthur McCullough, Chairman Twp Board of Supervisors R D Karthaus, PA 16845 Phone: (814) 387-6324
PA	421174	Twp of Clymer (Tioga Co)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	1	1/17/75	N/A	9 10 16	N/A	N/A	Carl King, Chairman Twp Board of Supervisors Sabinsville, PA 16943 Phone: (814) 628-2724
PA	421856	Twp. of Hamilton (McKean Co.)	Index 0001A 0002A 0003A 0004A 0005A	I	FL	B	1	3	1	2/14/75	N/A	9 10 16	N/A	N/A	Joseph Kasaback, Chairman Twp. Board of Supervisors Ludlow, PA 16333 Phone: (814) 945-6540
PA	422102	Twp. of Hartley (Union Co)	Index 0001A 0003A 0004A 0005A	I	FL	B	1	3	1	12/20/74	N/A	9 10 16	N/A	N/A	John Bohn, Chairman Twp Board of Supervisors Laurelton, PA 17835 Phone: (717) 922-1009

EFFECTIVE DATE November 12, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF		10 PREVIOUS MAP DATES		11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
								FHBM	FIRM	FHBM	FIRM				
ND	380264	Township of Normanna (Cass County)	0001A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr Harold Thrane, Chairman Normanna Township Commissioners Kindred, ND 58051 (701) 428-3385
WA	530038	City of East Wenatchee (Douglas County)	0001B	I	FL	B	1	3	1	4-29-77	N/A	8 9	N/A	N/A	The Honorable Forrest Lannoye Mayor, City of East Wenatchee P O Box 0159 East Wenatchee, WA 98801 (509) 884-4858

EFFECTIVE DATE November 12, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF		10 PREVIOUS MAP DATES		11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
								FHBM	FIRM	FHBM	FIRM				
ID	160213	Idaho County (Unincorporated Areas)	0009A 0010A 0017A 0018A 0024A 0025A 0026A 0027A 0033A 0034A 0035A 0036A 0038A 0043A 0044A 0045A 0046A 0048A 0053A 0054A 0063A 0070A 0071A 0072A 0079A 0086A	I	FL	B	6	2	1	N/A	N/A	N/A	N/A	N/A	Mr Douglas Higgins County Commissioner Idaho County Courthouse Grangeville, ID 83530 (208) 983-2390

EFFECTIVE DATE 11/14/80

1 State	2 Ident Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code (#)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
NY	360266	V. Keeseville (Essex & Clinton)	0001A	I	FL	B	4	3	1	5/31/74 5/21/76	N/A	8 10	N/A	N/A	Wilfred Blaise, Mayor Village Office Box 426 Keeseville, NY 12944
TN	470335	C. Dickson (Dickson Co.)	0001A 0002A 0003A	I	FL	B	4	3	1	7/9/76	N/A	8 9 10	N/A	N/A	The Honorable J Dan Bukner, Mayor 202 South Main Street Dickson, TN 37055
MS	280319	T. Quitman (Clarke Co)	0005A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Franklin Stay, Mayor P O Box 16 Quitman, MS 39355
NJ	340256	Twp West Windsor (Mercer Co)	0005B 0010B	I	FL	B	1	3	1	7/19/74 9/24/76	N/A	8 9	N/A	N/A	The Honorable Carol Beske, 4 Berkshire Drive, Princeton Junction, NJ 08550
TN	470169	T. Smyrna (Rutherford Co)	0005C 0010C	I	FL	B	1	3	1	5/31/74 7/30/76 5/20/77	N/A	8 9 10	N/A	N/A	John Sam Ridley, Mayor P O Box 128 Smyrna, TN 37167

EFFECTIVE DATE November 14, 1980

1 State	2 Ident Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	421519	Township of Chest (Clearfield Co)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	1	11/15/74	N/A	9 10 16	N/A	N/A	Irvan Holes, Chairman Twp Board of Supervisors R D 1 La Jose, PA 15753 Phone (814) 277-9929
PA	421885	Township of Chestnut Hill (Monroe Co)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	1	11/15/74	N/A	9 10 16	N/A	N/A	Albert Frantz, Chairman Twp Board of Supervisors Brodheadsville, PA 18322 Phone: (717) 992-4987
PA	421526	Township of Karthaus (Clearfield Co.)	Index 0002A 0003A 0004A	I	FL	B	1	3	1	11/29/74	N/A	9 10 16	N/A	N/A	Eugene Shadeck, Chairman Twp. Board of Supervisors Karthaus, PA 16845 Phone: (814) 263-4565
PA	421614	Township of Spring Creek (Elk Co)	Index 0001A 0002A 0003A 0004A 0005A	I	FL	B	1	3	1	12/ 6/74	N/A	9 10 16	N/A	N/A	Ronald Shick, Chairman Twp Board of Supervisors Portland Mills, PA 15850 Phone: None
PA	421470	Township of Union (Centre Co.)	Index 0002A 0003A 0004A	I	FL	B	1	3	1	11/ 8/74	N/A	9 10 16	N/A	N/A	Ernest Ammerman, Chairman Twp. Board of Supervisors R.D 1 Julian, PA 16844 Phone: (814) 355-0238

EFFECTIVE DATE November 18, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF		10 PREVIOUS MAP DATES		11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
								FHBM	FIRM	FHBM	FIRM				
TX	481565	Fayette County Water Control & Improvement District, Monument Hill (Fayette County)	0001A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr Warren Kubecka President of Water Control Board P O Box 793 Lagrange, TX 78945 (713) 968-6461

EFFECTIVE DATE 11/20/80

1 STATE	2 IDENT NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (NO. AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
NY	361374	Town of Erin (Chemung Co)	0005 A 0015 A 0020 A 0025 A 0030 A	I	FL	B	1	3	1	1/10/75	N/A	10	N/A	N/A	Merton Schanbacher, Supervisor Town of Erin Erin, New York 14838 (607) 739-1068
NY	361602	T. of Hartsville (Steuben Co)	0005 A 0010 A 0015 A 0020 A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Deyo Mayo, Supervisor 5159 Purdy Creek Road Hornell, New York 14843 (607) 698-4378
KY	210292	Morgan County	0025 A 0050 A 0075 A 0100 A 0125 A 0150 A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr Gene Allen, Co Judge Executive Morgan Co Courthouse West Liberty, KY 41472 (606) 743-3026
VT	500004	Town of Goshen (Addison Co)	0005 B 0010 B	I	FL	B	1	3	1	12/20/75	N/A	9 10	N/A	N/A	J Douglas Graham, Selectman R D 3 Brandon, VT 05733

EFFECTIVE DATE November 28, 1980

1 State	2 Ident Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
IL	170508	City of Keithsburg (Mercer Co)	0001D	I	FL	B	1	3	1	2/15/74 8/01/75 2/13/76 7/27/79	N/A	9 10 16	N/A	N/A	Benjamin Munson Acting Mayor City Hall 4th & Main Street Keithsburg, IL 61442 Phone: 309-374-2369
PA	420826	Boro of Roseville (Tioga Co)	0001A	I	FL	B	4	3	1	12/13/74	N/A	9	N/A	N/A	Roland Smith, Mayor R.D 2 Mansfield, PA 16933 Phone: 717-549-4642

BILLING CODE 6718-03-C

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 20, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33794 Filed 10-30-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 12

Federal Property Assistance Program; Disposal and Utilization of Surplus Real Property for Public Health Purposes

AGENCY: Office of the Secretary, HHS.

ACTION: Final regulation.

SUMMARY: The Department of Health, Education, and Welfare conveyed Federal surplus real property for educational and public health purposes under the authority of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) (Catalog of Federal Domestic Assistance Program Number 13.676 Surplus Property Utilization.) The Department of Education Organization Act (Pub. L. 96–88, enacted October 17, 1979) establishes the Department of Education and transfers to the new executive Department the authority of the Secretary of Health, Education, and Welfare to dispose of surplus real property for educational purposes. Therefore, this publication deletes from the regulations of the former Department of Health, Education, and Welfare all reference to disposal and utilization of surplus real property for educational purposes and redesignates the Department of Health, Education, and Welfare as the Department of Health and Human Services.

EFFECTIVE DATE: May 4, 1980.

FOR FURTHER INFORMATION CONTACT: C. A. Patterson, Director, Office of Real Property, Department of Health and Human Services, Room 4715, 330 Independence Avenue, S.W., Washington, D.C. 20201. Telephone: (202) 245–1926.

SUPPLEMENTARY INFORMATION: Publication of this rule as a proposal for public comment is unnecessary as it deals only with the removal of reference to education from the regulations published in the Federal Register, Vol. 42, No. 225, on November 22, 1977.

Dated: August 20, 1980.

Wilford J. Forbush,

Acting Assistant Secretary for Management and Budget.

Approved: October 23, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS REAL PROPERTY FOR PUBLIC HEALTH PURPOSES

Sec.
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Authority: The provisions of this part 12 issued under sec. 203, 63 Stat. 385, as amended; 40 U.S.C. 484.

§ 12.1 Definitions.

(a) "Act" means the Federal Property and Administrative Services Act of 1949, 63 Stat. 377 (40 U.S.C. 471 et seq.). Terms defined in the Act and not defined in this section have the meanings given to them in the Act.

(b) "Accredited" means having the approval of a recognized accreditation board or association on a regional, State, or national level, such as a State Board of Health. "Approval" as used above describes the formal process carried out by State Agencies and institutions in determining that health organizations or programs meet minimum acceptance standards.

(c) "Administrator" means the Administrator of General Services.

(d) "Assigned property" means real and related personal property which, in the discretion of the Administrator or his designee, has been made available to the Department for transfer for public health purposes.

(e) "Department" means the U.S. Department of Health and Human Services.

(f) "Disposal agency" means the executive agency of the Government which has authority to assign property to the Department for transfer for public health purposes.

(g) "Excess" means any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

(h) "Fair market value" means the highest price which the property will bring by sale in the open market by a willing seller to a willing buyer.

(i) "Holding agency" means the Federal agency which has control over and accountability for the property involved.

(j) "Nonprofit institution" means any institution, organization, or association, whether incorporated or unincorporated, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held to be tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(k) "Off-site property" means surplus buildings, utilities and all other removable improvements, including related personal property, to be transferred by the Department for removal and use away from the site for public health purposes.

(l) "On-site" means surplus real property, including related personal property, to be transferred by the Department for use in place for public health purposes.

(m) "Public benefit allowance" means a discount on the sale or lease price of real property transferred for public health purposes, representing any benefit determined by the Secretary which has accrued or may accrue to the United States thereby.

(n) "Related personal property" means any personal property: (1) Which is located on and is (i) an integral part of, or (ii) useful in the operation of real property; or (2) which is determined by the Administrator to be otherwise related to the real property.

(o) "Secretary" means the Secretary of Health and Human Services.

(p) "State" means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(q) "Surplus" when used with respect to real property means any excess real property not required for the needs and the discharge of the responsibilities of all Federal agencies as determined by the Administrator.

§ 12.2 Scope.

This part is applicable to surplus real property located within any State which is appropriate for assignment to, or which has been assigned to, the Department for transfer for public health

purposes, as provided for in section 203(k) of the Act.

§ 12.3 General Policies.

(a) It is the policy of the Department to foster and assure maximum utilization of surplus real property for public health purposes, including research.

(b) Transfers may be made only to States, their political subdivisions and instrumentalities, tax-supported public health institutions, and nonprofit public health institutions which have been held tax exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(c) Real property will be requested for assignment only when the Department has determined that the property is suitable and needed for public health purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for public health purposes or will be so needed within the immediate or foreseeable future. Where construction or major renovation is not required or proposed, the property must be placed into use within twelve (12) months from the date of transfer. When construction or major renovation is contemplated at the time of transfer, the property must be placed in use within 36 months from the date of transfer. If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Department for each month thereafter during which the proposed use has not been implemented or take such other action as set forth in § 12.12 as is deemed appropriate by the Department. Such monthly payments shall be computed on the basis of the current fair market value of the property at the time of the first payment by subtracting therefrom any portion of the purchase price paid in cash at the time of transfer, and by dividing the balance by the total number of months in the period of restriction. If the facility has not been placed into use within eight (8) years of the date of the deed, title to the property will be revested in the United States, or, at the discretion of the Department, the restrictions and conditions may be abrogated in accordance with § 12.9

(d) Transfers will be made only after the applicant has certified that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations.

(e) Organizations which may be eligible include those which provide care and training for the physically and mentally ill, including medical care of the aged and infirm, clinical services, other public health services (including water and sewer), or similar services devoted primarily to the promotion and protection of public health. Services which have as their principal purpose the providing of custodial or domiciliary care are not eligible. The property applied for must be for a purpose which the eligible organization is authorized to carry out.

(f) An applicant's plan of operation will not be approved unless it provides that the applicant will not discriminate because of race, color, sex, handicap, or national origin in the use of the property.

§ 12.4 Limitations.

(a) Surplus property transferred pursuant to this part will be disposed of on an "as is, where is," basis without warranty of any kind.

(b) Unless excepted by the General Services Administrator in his assignment, mineral rights will be conveyed together with the surface rights.

§ 12.5 Awards.

Where there is more than one applicant for the same property, it will be awarded to the applicant having a program of utilization which provides, in the opinion of the Department, the greatest public benefit. Where the property will serve more than one program, it will be apportioned to fit the needs of as many programs as is practicable.

§ 12.6 Notice of available property.

Reasonable publicity will be given to the availability of surplus real property which is suitable for assignment to the Department for transfer for public health uses. The Department will establish procedures reasonably calculated to afford all eligible users having a legitimate interest in acquiring the property for such uses an opportunity to make an application therefor. However, publicity need not be given to the availability of surplus real property which is occupied and being used for eligible public health purposes at the time the property is declared surplus, the occupant expresses interest in the property, and the Department determines that it has a continuing need therefor.

§ 12.7 Applications for surplus real property.

Applications for surplus real property for public health purposes shall be made to the Department through the Regional Office specified in the notice of availability.

§ 12.8 Assignment of surplus real property.

(a) Notice of interest in a specific property for public health purposes will be furnished the General Services Administrator by the Department at the earliest possible date.

(b) Requests to the Administrator for assignment of surplus real property to the Department for transfer for public health purposes will be based on the following conditions:

(1) The Department has an acceptable application for the property.

(2) The applicant is willing, authorized, and in a position to assume immediate care, custody, and maintenance of the property.

(3) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer.

(4) The applicant has the necessary funds, or the ability to obtain such funds, to carry out the approved program of use of the property.

§ 12.9 General disposal terms and conditions.

(a) Surplus real property transfers under this part will be limited to public health purposes. Transferees shall be entitled to a public benefit allowance in terms of a percentage which will be applied against the value of the property to be conveyed. Such an allowance will be computed on the basis of benefits to the United States from the use of such property for public health purposes. The computation of such public benefit allowances will be in accordance with Exhibit A attached hereto and made a part hereof.

(b) A transfer of surplus real property for public health purposes is subject to the disapproval of the Administrator within 30 days after notice is given to him of the proposed transfer.

(c) Transfers will be on the following terms and conditions:

(1) The transferee will be obligated to utilize the property continuously in accordance with an approved plan of operation.

(2) The transferee will not be permitted to sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of the property, or any part thereof, without the prior written authorization of the Department.

(3) The transferee will file with the Department such reports covering the utilization of the property as may be required.

(4) In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in the approved plan without the consent of the Department, all revenues or the

reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by the Department, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of the Department. The provisions of this paragraph shall not impair or affect the rights reserved to the United States in paragraph (c)(6) of this section, or the right of the Department to impose conditions to its consent.

(5) Lessees will be required to carry all perils and liability insurance to protect the Government and the Government's residual interest in the property. Transferees will be required to carry such flood insurance as may be required by the Department pursuant to Pub. L. 93-234. Where the transferee elects to carry insurance against damages to or loss of on-site property due to fire or other hazards, and where loss or damage to transferred Federal surplus real property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition, or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed in the case of leases, attributable to the fair market value of the leased facilities.

(6) With respect to on-site property, in the event of noncompliance with any of the conditions of the transfer as determined by the Department, title to the property transferred and the right to immediate possession shall, at the option of the Department, revert to the Government. In the event title is reverted to the United States for noncompliance or voluntarily reconveyed, the transferee shall, at the option of the Department, be required to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the transferee to adapt the property to the public health use for which the property was transferred. With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by the Department, the right of occupancy and possession shall, at the option of the Department, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required at the option of the Department to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the lessee to adapt the property to the public health use for which the property was leased. With respect to any reverter of title or termination of leasehold resulting from noncompliance, the Government shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering title to or possession of the property.

Any payments of cash made by the transferee against the purchase price of property transferred shall, upon a forfeiture of title to the property for breach of condition, be forfeited.

(7) With respect to off-site property, in the event of noncompliance with any of the terms and conditions of the transfer, the unearned public benefit allowance shall, at the option of the Department, become immediately due and payable or, if the property or any portion thereof is sold, leased, or otherwise disposed of without authorization from the Department, such sale, lease or sublease, or other disposal shall be for the benefit and account of the United States and the United States shall be entitled to the proceeds. In the event the transferee fails to remove the property or any portion thereof within the time specified, then in addition to the rights reserved above, at the option of the Department, all right, title, and interest in and to such unremoved property shall be retransferred to other eligible applicants or shall be forfeited to the United States.

(8) With respect only to on-site property which has been declared excess by the Department of Defense, such declaration having included a statement indicating the property has a known potential for use during a national emergency, the Department shall reserve the right during any period of emergency declared by the President of the United States or by the Congress of the United States to the full and unrestricted use by the Government of the surplus real property, or of any portion thereof, disposed of in accordance with the provisions of this part. Such use may be either exclusive or nonexclusive. Prior to the expiration or termination of the period of restricted use by the transferee, the Government will not be obligated to pay rent or any other fees or charges during the period of emergency, except that the Government will:

(i) Bear the entire cost of maintenance of such portion of the property used by it exclusively or over which it may have exclusive possession or control;

(ii) Pay the fair share, commensurate with the use of the cost of maintenance of such surplus real property as it may use nonexclusively or over which it may have nonexclusive possession or control;

(iii) Pay a fair rental for the use of improvements or additions to the surplus real property made by the purchaser or lessee without Government aid; and

(iv) Be responsible for any damage to the surplus real property caused by its use, reasonable wear and tear, the common enemy and acts of God excepted. Subsequent to the expiration or termination of the period of restricted use, the obligations of the Government will be as set forth in the preceding sentence and, in addition, the Government shall be obligated to pay a fair rental for all or any portion of the conveyed premises which it uses.

(9) The restrictions set forth in subparagraphs (1) through (7) will extend for thirty (30) years for land with or without improvements; and for facilities being acquired separately from land whether they are for use on-site or off-site, the period of limitations on the use of the structures will be equal to their estimated economic life. The restrictions set forth in subparagraphs (1) through (7) will extend for the entire initial lease period and for any renewal periods for property leased from the Department.

(d) Transferees, by obtaining the consent of the Department, may abrogate the restrictions set forth in paragraph (c) for all or any portion of the property upon payment in cash to the Department of an amount equal to the then current fair market value of the property to be released, multiplied by the public benefit allowance granted at the time of conveyance, divided by the total number of months of the period of restriction set forth in the conveyance document and multiplied by the number of months that remain in the period of restriction as determined by the Department. For purposes of abrogation payment computation, the current fair market value shall not include the value of any improvements placed on the property by the transferee.

(e) Related personal property will be transferred or leased as a part of the realty and in accordance with real property procedures. It will be subject to the same public benefit allowance granted for the real property. Where related personal property is involved in an on-site transfer, the related personal property may be transferred by a bill of sale imposing restrictions for a period

not to exceed five years from the date of transfer, other terms and conditions to be the same as, and made a part of, the real property transaction.

§ 12.10 Compliance with the National Environmental Policy Act of 1969 and other related acts (environmental impact).

(a) The Department will, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus real property for public health purposes, complete an environmental assessment of the proposed transaction in keeping with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No permit to use surplus real property shall allow the permittee to make, or cause to be made, any irreversible change in the condition of said property, and no use permit shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts.

(b) Applicants shall be required to provide such information as the Department deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by the Director of the Office of Federal Property Assistance, as well as other relevant information, will be used by the Department in making said assessment.

(c) If the assessment reveals (1) That the proposed Federal action involves properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places, or (2) that a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action, or (3) that the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, the Department will, except as provided for in paragraph (d) below, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the above cited Acts.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, the Department may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the above cited Acts. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between the Department and another Federal agency, the Department will reserve the right to abrogate its lead agency agreement with the other Federal Agency.

§ 12.11 Special terms and conditions.

(a) Applicants will be required to pay all external administrative costs which will include, but not be limited to, taxes, surveys, appraisals, inventory costs, legal fees, title search, certificate or abstract expenses, decontamination costs, moving costs, closing fees in connection with the transaction and service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(b) In the case of off-site property, applicants will be required to post performance bonds, make performance guarantee deposits, or give such other assurances as may be required by the Department or the holding agency to insure adequate site clearance and to pay service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(c) Whenever negotiations are undertaken for disposal to private nonprofit public health organizations of any surplus real property which cost the Government $1 million or more, the Department will give notice to the Attorney General of the United States of the proposed disposal and the terms and conditions thereof. The applicant shall furnish to the Department such information and documents as the Attorney General may determine to be appropriate or necessary to enable him to give the advice as provided for by section 207 of the Act.

(d) Where an applicant proposes to acquire or lease and use in place improvements located on land which the Government does not own, he shall be required, before the transfer is consummated, to obtain a right to use the land commensurate with the duration of the restrictions applicable to the improvements, or the term of the lease. The applicant will be required to assume, or obtain release of, the Government's obligations respecting the land including but not limited to obligations relating to restoration, waste, and rent. At the option of the Department, the applicant may be required to post a bond to indemnify the Government against such obligations.

(e) The Department may require the inclusion in the transfer or lease document of any other provision deemed desirable or necessary.

(f) Where an eligible applicant for an on-site transfer proposes to construct new, or rehabilitate old, facilities, the financing of which must be accomplished through issuance of revenue bonds having terms inconsistent with the terms and conditions of transfer prescribed in § 12.9 (c), (d), and (e) of this chapter, the Department may, in its discretion, impose such alternate terms and conditions of transfer in lieu thereof as may be appropriate to assure utilization of the property for public health purposes.

§ 12.12 Utilization.

(a) Where property or any portion thereof is not being used for the purposes for which transferred, the transferee will be required at the direction of the Department:

(1) To place the property into immediate use for an approved purpose;

(2) To retransfer such property to such other public health user as the Department may direct;

(3) To sell such property for the benefit and account of the United States;

(4) To return title to such property to the United States or to relinquish any leasehold interest therein;

(5) To abrogate the conditions and restrictions of the transfer, as set forth in § 12.9(d) of this chapter, except that, where property has never been placed in use for the purposes for which transferred, abrogation will not be permitted except under extenuating circumstances; or

(6) To make payments as provided for in § 12.3(c) of this chapter.

(b) Where the transferee or lessee desires to place the property in temporary use for a purpose other than that for which the property was transferred or leased, approval from the Department must be obtained, and will be conditioned upon such terms as the Department may impose.

§ 12.13 Form of conveyance.

(a) Transfers or leases of surplus real property will be on forms approved by the Office of General Counsel of the Department and will include such of the

disposal or lease terms and conditions set forth in this part and such other terms and conditions as the Office of General Counsel may deem appropriate or necessary.

(b) Transfers of on-site property will normally be by quitclaim deed without warranty of title.

§ 12.14 Compliance inspections and reports.

The Department will make or have made such compliance inspections as are necessary and will require of the transferee or lessee such compliance reports and actions as are deemed necessary.

§ 12.15 Reports to Congress.

The Secretary will make such reports of real property disposal activities as are required by section 203 of the Act and such other reports as may be required by law.

Exhibit A.—*Public Benefit Allowance for Transfer of Real Property for Health Purposes* [1]

Classification	Percent allowed											
			Organization allowances					Utilization allowances				
					Unmet needs							
	Basic public benefit allowance	Tax support	Accreditation	Hardship	10 to 25%	26 to 50%	51 to 100%	Integrated Research program	Outpatient Services	Public Services	Training Program	Maximum public Benefit allowance
Hospitals	50	20	20	10	10	20	30	10	10	10	10	100
Clinics	50	20	20	10	10	20	30					100
Nursing Homes	50	20	20	10	10	20	30				10	100
Public Health Administration	[2] 100											[2] 100
Public Refuse Disposal and Wates Systems.	[2] 100											[2] 100
Research	[2] 100											[2] 100
Rehabilitation Facility	50	20	20	10	10	20	30	10	10	10	10	100
Special Services	50	20	20	10	10	20	30			10		100

[1] This public benefit allowance applies only to surplus real property being sold for on-site use. When surplus real property is to be moved from the site, a basic public benefit allowance of 100% will be granted.

[2] Applicable when this is the primary use to be made of the property. the public benefit allowance for the overall health program is applicable when such facilities are conveyed as a minor component of other facilities.

[FR Doc. 80-33813 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-12-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1056

[Ex Parte MC 19 (Sub-34)]

Household Goods Transportation (Storage-in-Transit Charges)

AGENCY: Interstate Commerce Commission.

ACTION: Affirmation of final rules.

SUMMARY: By this notice the Commission affirms its jurisdiction to prescribe a rule published at 45 FR 55465, August 20, 1980, requiring that storage-in-transit (SIT) charges for household goods moving in interstate or foreign commerce be assessed in amounts per day or a fraction thereof.

DATE: The rule adopted at 45 FR 55465, 55466 will become effective as scheduled on November 18, 1980.

FOR FURTHER INFORMATION CONTACT: Martin E. Foley, (202) 275-7348.

SUPPLEMENTARY INFORMATION: In our decision of July 17, 1980, (see 45 FR 55465), in this proceeding, we indicated that it was the contention of Household Goods Carriers' Bureau, Inc., (HGCB) that our notice of proposed rule (NPR) in this proceeding (44 FR 30387) and its revision (44 FR 75194) failed to give proper reference to the legal authority under which the rule was proposed. We also indicated that HGCB had submitted that the Commission does not have the legal authority to adopt the rule. HGCB has not provided us with an argument supporting the latter submission.

In our July 17 decision we concluded that it should have been obvious that we were proceeding under 49 U.S.C 10102(23)(B), 10701(a) and 10704(a)(1) in conducting our investigation of the practice of assessing SIT charges in 30-day increments. These sections were not specifically referred to in our NPR or its revision; however, we felt that this failure should not have precluded petitioners from challenging our exercise of jurisdiction. Since the sections had not been previously referred to and out of an abundance of caution we allowed an additional 30-day period for the filing of comments addressed solely to our jurisdiction to prescribe the SIT regulation adopted in this proceeding.

Two comments were filed within the additional comment period which support our position that the Commission does have jurisdiction to prescribe the rule and that adequate notice of the legal authorities under which the rule was proposed was provided. These comments were filed by the Commission's Office of Special Counsel and Miller Brewing Company. No comments were received which argue against our position. Therefore, in the absence of any compelling reason why the adoption of the rule in this proceeding was improper, we conclude that the adopted rule be allowed to become effective as scheduled on November 18, 1980.

Dated: October 17, 1980.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-34058 Filed 10-30-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking of Marine Mammals Incidental to Commercial Fishing Operations—Permits, etc.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final decision and final rule.

SUMMARY: This final decision establishes regulations to govern the taking of marine mammals incidental to commercial tuna purse seine fishing in the eastern tropical Pacific Ocean (ETP). The regulations provide for a general permit to be issued allowing the taking of a maximum of 20,500 porpoises, as apportioned into individual species and stock quotas, for each of the five years 1981–1985. The National Marine Fisheries Service (NMFS) will monitor the affected fishery and will take appropriate action to reduce the maximum number of porpoises that may be taken consistent with the economic and technological feasibility of industry compliance with such reductions. The regulations also set requirements for the use of specific equipment and procedures that NOAA believes will continue to reduce the incidental mortality and serious injury of porpoises due to commercial tuna seining in the ETP.

DATES: The decision and revised § 216.24 become effective November 28, 1980. Applications for certificates of inclusion will not be considered until December 8, 1980. The agency anticipates that a general permit will be issued if appropriate on December 1, 1980. A Final Environmental Impact Statement (FEIS) has been filed with the Environmental Protection Agency simultaneously with this decision and can be reviewed by contacting Richard B. Roe at the address below.

ADDRESSES: Administrator, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235. Telephone: 202–634–7287. Office Location: Room 410, Page Building 2, 3300 Whitehaven Street, NW., Washington, D.C.

SUPPLEMENTARY INFORMATION: On February 15, 1980, NOAA published proposed amendments to the regulations governing the incidental taking of marine mammals in the ETP yellowfin tuna fishery (45 FR 10556). The proposal and other relevant available information were reviewed in a formal hearing before Administrative law Judge (ALJ) Hugh J. Dolan held in San Diego, California, from March 31 through April 5, 1980, and in Washington, D.C., on April 14, 15, and 18, and May 19, 1980. The following parties participated in the hearing: The Committee for Humane Legislation and Friends of Animals (CHL); The Marine Mammal Commission (MMC); The Environmental Defense Fund representing the Animal Protection Institute, Animal Welfare Institute, Center for Environmental Education, Defenders of Wildlife, Friends of the Earth, Fund for Animals, Humane Society of the United States, Sierra Club, and The Whale Center (EDF); the United States Tuna Foundation and American Tunaboat Association (ATA); the Assistant Administrator for Fisheries of NOAA; and the Commonwealth of Puerto Rico. The recommended decision of the ALJ was issued on July 18, 1980. A notice of availability was published on July 29, 1980 (45 FR 50375), and exceptions to the recommended decision were filed on August 8, 1980. In accordance with Rule 15 of the procedural rules published on February 15, 1980 (45 FR 10562), I am now publishing the final decision and regulations governing the taking of marine mammals incidental to commercial fishing operations.

Decision of the Administrator

Background

This decision is the latest in a series of decisions concerning the interaction of commercial yellowfin tuna fishing and the incidental take of marine mammals in the ETP. Prior to 1960, the most common method of fishing for yellowfin tuna was use of a pole and line. With the introduction of purse seines in the 1960's came an unwanted catch of dolphins that generally were found in close association with the tuna. Mortalities of dolphins increased significantly from 1960 and prompted the Congress to enact the Marine Mammal Protection Act in 1972 (the Act). 16 U.S.C. 1361 et seq.

The Act was based on a concern that certain species of marine mammals were in danger of depletion [1] and the belief that those animals should not be allowed to diminish below their optimum sustainable population. [2] The Act established a moratorium on the taking and importation of marine mammals (16 U.S.C. 1371), which can be waived by the Secretary only if takings would not be to the disadvantage of those species or population stocks. (16 U.S.C. 1373(a)) This determination must be based on the best scientific evidence available and must be consistent with the purposes and policies of the Act. The Act further requires that the Secretary must publish and make available to the public certain information on the stocks and the impact of takings on the OSP of the stocks on which takings are allowed. (16 U.S.C. 1373(d)) These procedural requirements have been complied with (45 FR 10556) and are republished here for clarity (Table I). If takings are allowed, the Act directs that "[i]n any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate" 16 U.S.C. 1371(a)(2). The authority of the Secretary of Commerce to administer the Act and make these determinations has been delegated to me. (DOO 25–5A Section 301 V. June 3, 1977)

[1] The term "depletion" or "depleted" means any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under sub-chapter II of this chapter determines that the number of individuals within a species or population stock—

(A) has declined to a significant degree over a period of years;

(B) has otherwise declined and that if such decline continues, or is likely to resume, such species would be subject to the provisions of the Endangered Species Act of 1973; or

(C) is below the optimum carrying capacity for the species or stock within its environment. Section (3)(1).

[2] The Act defines optimum sustainable population as:

. . . with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. Section (3)(9).

A working definition of this term was published in 50 C.F.R. Section 216.3 (1977) by the National Marine Fisheries Service.

. . . "Optimum sustainable population" is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth losses due to natural mortality.

Table I.—*Impact of quotas for 1981-85 on the Status of Porpoise Stocks*

Species/stock (management unit)	Estimated current population in 1979	Current status of population [1]	Expected status of population at close of 1985 [2]
Spotted dolphin (northern offshore)	3,150 000	0 63	0 72
Spotted dolphin (southern offshore)	638,700	95	97
Spotted dolphin (coastal)	193,200	42	53
Spinner dolphin (eastern) [3]	418,700	27	34
Spinner dolphin (northern whitebelly)	486 600	78	83
Spinner dolphin (southern whitebelly)	264 900	90	94
Common dolphin (northern tropical) [4]	216 900	97	92
Common dolphin (central tropical)	848,400	89	92
Common dolphin (southern tropical)	477,100	1 00	96
Striped dolphin (northern tropical)	50,600	1 00	97
Striped dolphin (central tropical)	213,300	99	99
Striped dolphin (southern tropical)	483,000	1 00	1 00

[1] Proportion of pre-exploited stock size.
[2] Includes assessments for non-U.S. porpoise mortality
[3] Includes non-target Costa Rican stock.
[4] Includes Baja neritic.

On December 27, 1977, the National Marine Fisheries Service (NMFS) issued a general permit to the American Tunaboat Association (ATA). This general permit is subject to regulations promulgated on December 23, 1977 (42 FR 64548), codified at 50 CFR 216.24. The existing permit and regulations expire at 2400 hours, December 31, 1980, unless amended.

In anticipation of an industry request for a general permit and regulations to be applicable beyond 1980, NMFS announced a scoping-planning meeting and its intent to prepare a draft environmental impact statement on August 9, 1979 (44 FR 46903). At the scoping meeting, the agency also made known its intent to convene a workshop in La Jolla, California, August 27–31, 1979, to consider the current population status of eastern tropical Pacific porpoise stocks. The workshop was intended to be similar to the one held in 1976, the results of which formed the scientific basis for the existing general permit and regulations. The 1979 workshop was expected to form the scientific basis for any general permit and regulations to be proposed for 1981 and beyond.

The 1979 Status of Porpoise Stocks (SOPS) Workshop of scientific experts took place as scheduled. The availability of the report of the workshop (the Report) was announced on November 7, 1979 (44 FR 64480).

The Report contained important new information, some of which suggested that the northern offshore spotted porpoise stock was depleted. Because of its obligation to review new information periodically and modify existing regulations as necessary to carry out the purposes of the Act, NMFS published an Advance Notice of Proposed Rulemaking on November 23, 1979 (44 FR 67194). In the Advance Notice, the agency announced that it intended to hold a formal hearing before an Administrative Law Judge to address the remainder of the 1980 season and the 1981 season. Although the Act does not require a formal hearing to address adjustments for the 1980 season, NMFS determined that this was the best means of reviewing the Report and other relevant information.

On February 15, 1980, proposed regulations were published that included statements required by Section 103(d) of the Act. These proposed regulations would amend the current regulations. Simultaneously a Draft Environmental Impact Statement (DEIS), filed with the Environmental Protection Agency on February 5, 1980, was made available to other Federal agencies and the general public for comment. The February 15, 1980, proposal contemplated the designation of northern offshore spotted porpoise as a depleted stock in addition to eastern spinner porpoises which are currently designated as depleted. In summary the proposed regulations would amend the existing regulatory regime to: (1) authorize the reissuance of a general permit for the remainder of 1980 and 1981; (2) establish a revised allowable take schedule for non-prohibited species only for the remainder of 1980 and 1981; (3) restate the enforcement policy for accidental takings of depleted species/stocks; and, (4) amend gear, fishing procedure, and other requirements.

In accordance with Section 103(d) of the Act and the procedural rules published coincident with the proposal on February 15, 1980, the proposed regulations and all relevant available information were reviewed on the record in a hearing held pursuant to 5 U.S.C. 556 and 557 by an ALJ. The hearing was conducted in San Diego, California, from March 31 through April 5, 1980, and in Washington, D.C. on April 14, 15, and 18, and May 19, 1980.

The hearing focussed on the following issues: (a) estimates of existing levels of the species and population stocks of the marine mammals involved in purse seining yellowfin tuna; (b) the expected impact of the proposed regulations on the optimum sustainable populations of the species or population stocks involved; (c) the economic feasibility of implementing the proposed regulations; (d) the technological feasibility of implementing the proposed regulations; and (e) the impact of implementing the proposed regulations on the tuna stocks.

The ALJ, Hugh J. Dolan, issued his recommended decision on July 18, 1980. The recommended decision addresses all of the issues raised by the parties at the hearing, but does not reach a conclusion as to the status of northern offshore spotted porpoise stock or other stocks in the ETP. Despite the lack of a specific finding regarding depletion of any stock, the findings in the recommended decision strongly suggest a finding of non-depletion for the northern offshore spotted stock with an OSP in the range of 50–70% of the pre-exploitation population. Exceptions to the ALJ's findings were submitted to the Assistant Administrator for Fisheries by EDF, MMC, CHL, and ATA on August 8, 1980.

Summary of the Decision

I find, based on the record of the hearing, the ALJ's recommended decision, the exceptions filed thereto and the Environmental Impact Statement, that the northern offshore spotted porpoise stock is not depleted and that an allowable take of these animals will not be to the disadvantage of the stock or population as a whole. I find that the eastern spinner and the coastal spotted porpoise are depleted and no taking, other than that allowed under the accidental take policy, will be allowed. As to the remainder of the target stocks of porpoise in the ETP, I find that they are not depleted and that allowable takes will not be to the disadvantage of those stocks or populations as a whole. I further find that an annual quota of 20,500 is economically and technologically feasible and should be set for five years (1981 through 1985). I am directing the NMFS to monitor the activities of the tuna industry to determine whether it is technologically feasible to reduce further this quota during the next five years.

The record before me indicates that allowable incidental taking over the next five years will allow growth in

most non-depleted porpoise stocks in the ETP (See Table I). The 20,500 quota is a significant reduction as compared to quotas for the last three years. It is reflective of the industry's continued improvement in release of porpoises and demonstrates the industry's commitment to reduce mortalities. The quota of 20,500 for each of the next five years does not assume that the industry will not reduce mortalities further but rather is based on the record before me which demonstrates that the quotas will not be to the disadvantage of the affected stocks and are currently both technologically and economically feasible.

The record indicates that the northern offshore spotted stock will increase in size even if all of the mortalities in any given year were to be from this stock. Northern offshore spotted is the largest population in the ETP and the maximum replacement yield is over 100,000 animals per year. The maximum replacement yields for other stocks in the ETP for which takings will be allowed are also well in excess of the maximum take allowed for those stocks. There is no evidence which suggests that this growth trend will change. However, in the event that new evidence is discovered or that the continuing refinement of the NMFS resource assessment data suggests that takings may disadvantage any of these stocks, I am prepared to propose further amendments to the regulations, as was done in 1980. To insure that there will be no disadvantage to the stocks I am directing NMFS to continue to monitor and assess the status of all stocks in the ETP and to make a complete assessment of these stocks no later than 1984. If the evidence from that workshop or evidence developed prior to that workshop suggests that the takings of any stock may be to the disadvantage of the animals, NMFS will propose modifications to the regulations further to protect the populations.

In reaching my decision I have only adopted parts of the ALJ's recommended decision. Those parts of the recommended decision adopted are specifically referred to in my decision. Those parts that are not specifically adopted are rejected.

To make the disadvantage determination I have followed the approach used by the 1976 and 1979 workshops which requires an assessment of: (1) present abundance; (2) pre-exploitation stock size; (3) Optimum Sustainable Population (OSP); and (4) projected impact of takings. In summary, I find that the ratio of present population of northern offshore spotted (3.15 million to their pre-exploitation population (5.03 million) is above the lower end of OSP (60%). I find further that an allowable annual take of 20,500 animals in the aggregate will not disadvantage the stocks and is technologically and economically feasible. The application of my findings to other stocks under consideration, results in the eastern spinner and coastal spotted stocks being depleted, and the other ten not being depleted. Each of these parameters and the evidence supporting my conclusions are discussed below.

Detailed Findings

A. *Present Abundance.* There is no dispute that it is proper to calculate the present abundance of each porpoise stock by a computer model that combines the following factors:

(1) the mean size of porpoise schools;

(2) the density of porpoise schools in the inhabited area;

(3) area inhabited by stocks in the ETP;

(4) the proportion of schools that are "target" schools (i.e., spinner or spotted porpoise); and

(5) the proportion of target species within target schools.

All of the factors of the formula to compute present abundance were at issue in the hearing.

The Basic Data

The critical evidence for all of these factors is the data used to make the estimates. The four data sources in the record are—observers, tuna vessel records, aerial surveys, and research vessel surveys.

The observer data are recorded by Federal observers on tuna vessels. Those data are recorded on observer logs, which are sent to the Southwest Fisheries Center (F/SWC) for analysis.

Tuna vessel data are recorded by vessel employees who are required by the existing regulations (50 CFR 216.24(d)(3)(v)) to record the number, location and the size of the schools they encounter. These data are recorded on fishing logs which are forwarded to F/SWC for analysis.

Aerial survey data are collected by NMFS spotters from fixed wing aircraft. Aerial surveys were conducted in 1977 and 1979. Three spotters in each airplane collectively observed all porpoise schools and the size of the schools they encountered on a predetermined flight track. Due to the planes' limited range, only the eastern ETP was surveyed.

The research vessel surveys were conducted by the NOAA vessels *Cromwell* and the *Jordan* in 1977, 1979 and 1980. Porpoise school observations are collected from the bridge of the research vessels and like the aerial survey record, the data reflect the number and size of the schools encountered on a predetermined track line.

All these data are important as indicators of the present population size of the porpoise stocks in the ETP. Their use and the weight to be given to each data set were the subject of considerable controversy at the hearing. Each data set will be discussed in connection with the different elements that comprise the formula to estimate present abundance.

1. *Mean School Size.* The average school size in the population area may be determined by using any or all of the four data sources just described. The mean school size derived from each of these sources varies greatly. As the present population estimate and the pre-exploitation size depend to a great extent on mean school size estimates, their accurate calculation is crucial in determining disadvantage.

Each of the data sets that can be used to estimate mean school size has some bias. However, it is my judgment that the NMFS aerial survey data represents the best available scientific estimate of mean school size. This results in a mean school size of 201 animals. The basis for this judgment is set forth in the following paragraphs.

(a) *Observer Data.* There is record evidence that the observer data are biased, but there is no record evidence to establish how to correct for the bias in that data. Evidence indicates that tuna vessels selectively search for larger porpoise schools and, although observers record the schools accurately, they do not have the opportunity to see as many smaller schools, thereby biasing mean school size estimates upwards. (NOAA 29)[3] The 1979 workshop concluded that observer data were not statistically valid because they result in mean school size estimates that are 2 to 4 times higher than the mean school size derived from the aerial and vessel survey data (419–857); and therefore should not be used to compute mean school size. (NOAA 52) I have concluded on the basis of the record that the 1979 workshop was correct in excluding the observer data in view of its inability to correct for the bias in it.

[3] Citations in this decision are to exhibits introduced at the hearing. Citations to the transcript are made by the location of the hearing (San Diego or Washington) and the page number. Citations to the recommended decision are by findings or page number. Citations to the briefs of the parties are by name of the party and reference to the opening or reply brief.

While I have considered the arguments of the industry, accepted by the ALJ, that the data should be used, I cannot, on the basis of the record before me, quantify the bias, nor can I conclude that giving the average of observer data equal weight with the averages of the data from the aerial and vessel surveys is scientifically supportable.

(b) *Tuna Vessel Employees.* In addition to those biases noted for the observer data, there is substantial evidence that the tuna vessel employees do not record accurately the number of porpoises in the schools that they see. (NOAA 29) In addition, there is evidence suggesting that tuna vessel employees often do not count smaller schools at all. (NOAA 29) The effect of this is to introduce a bias into the data identical to that described in the preceding section on observer data. These data were also rejected by the workshop and in fact were not supported as useable data for school size estimates by any party to the proceeding. I find that these data are not the best scientific information available and therefore should not be used.

(c) *Research Vessel Data.* There were a total of four research vessel surveys which produced school size estimates in the record. In 1977, two cruises by the *Cromwell* and *Jordan* produced estimates of 137 and 186 respectively. The *Cromwell* cruise spent some time in the southern extreme of the ETP which is an area of lower density for porpoises. The *Cromwell* and *Jordan* data for 1979 were collected in the so-called inshore area (the area covered by the aerial survey) and the outside area. The cruises resulted in estimates of mean school size of 115 for the *Jordan* and 151 for the *Cromwell.* Two biases for these data are suggested by the record. The first is that the two vessels have bridges at different heights from the water and therefore the data may not be compatible. I find that there is substantial evidence in the record to show that this bias was accounted for. (SD 446–7, EDF/RB 5–6, NOAA/OB 25, NOAA 29: 37) The second is that the research vessels are slower than the tuna vessels and porpoise, particularly ones that have already been captured, may avoid any vessel. There is no evidence in the record to quantify this bias. These data were not used by the workshop for estimating mean school size, although they reinforce the accuracy of the aerial survey data. The workshop excluded the use of these data because they were not as reliable as the aerial survey data. I find that their exclusion, because of the uncertainty resulting from the speed of the research vessels, is supported by the record and that they are not the best available scientific evidence to estimate school size.

(d) *Aerial Surveys.* As indicated above, I have concluded that these data, which result in an estimate of 201, are the best data to derive mean school size. These data could be biased by adverse weather conditions causing lower estimates, and the inability of the aerial spotters to count submerged porpoises. There is evidence in the record on each of these potential biases.

The 1979 aerial survey was conducted by flying a plane on a predetermined trackline. If a school was seen off the trackline the plane would fly over the school and count the number of animals. Photographs were taken of some of the schools in order to validate aerial observers' ability to count accurately. Photos were taken in a time sequence so that all of the animals would be out of the water in one or more photos. This evidence demonstrates that the aerial observers can accurately count what they and the camera see independently. A second study (the so-called *Gina Anne* cruise in 1980) was conducted to determine if the camera recorded all of the porpoises in the school. (NOAA 76) After taking photos of the school from a helicopter and making visual estimates of school size, the school was set on and captured by the *Gina Anne.* The porpoises were released from the net during an extended backdown procedure and counted. This study demonstrates a high correlation between the photographic evidence and the actual number of porpoises in the school. It is my conclusion that the 1979 aerial survey data has a high degree of accuracy, and is the best available scientific evidence to determine mean school size.

2. *Density of Schools.* Density is the average number of schools found in a grid of 1,000 square nautical miles (nm^2). It is used as a multiplier of mean school size and is of equal importance with it. Even small errors in density can have a significant impact on present population size.

The 1979 workshop divided the ETP into an "inside" and an "outside" area, finding the former to have a density of 12.02 schools/1,000nm^2 and the latter a density of 6.26 schools/1,000nm^2. These densities were derived by calibrating the results of the 1979 aerial survey on the inside area to the results of research vessel surveys of both areas by the vessels *Jordan* and *Cromwell.* (NOAA 60: 13–15; NOAA 52: 17–19; NOAA/OB 11–25; EDF/OB 4–33; EDF/RB 3–8; EDF/EX 3–9) I conclude that the density estimate of the inside area in the 1979 workshop (12.02) is the best scientific evidence in the record. For the outside area, further refinement of an analysis introduced at the hearing results in the outside density estimate of 7.97. This is consistent with the ALJ's finding that the outside density was "underestimated" by NMFS. (Finding 116) As the arguments for the inside and outside densities differ, the remainder of this section will treat each separately.

(a) *Inside.* The inside area is determined by the range of an airplane capable of flying at slow speeds. It has no biological or ecological significance. The basic assumption of the aerial survey is that all large porpoise schools (those of more than 15 porpoises) on the airplane trackline are seen. (NOAA 60: 314, NOAA 29: 57–60, SD 366, 369) This assumption was the focus of most of the testimony on density.

The agency presented scientific opinion to show the correctness of its assumptions that schools do not move in response to the aircraft prior to being spotted and that the aerial sightings are independent events and are not biased by prior sightings. In addition, the agency submitted evidence to show that no biases could be demonstrated that were due to weather (sea state) or sunglare and that sighting conditions were similar in all statistical areas. (NOAA 52: 18–19, NOAA 29: 9–11) Factual and opinion evidence was submitted by Lt. Cmdr. Wayne Perryman to show that all large schools directly on the trackline were spotted. (SD 766–821) To counter this evidence, Gordon Broadhead, the industry expert and a former PBY pilot, argued that schools were missed on the trackline and that this did have a biasing effect and that the inside density should be raised from 12.02 to 23.4 schools/1,000 nm^2. (SD 921–922, ATA 39: 7, 15–16, SD 766–821)

NMFS's witness, Dr. Tim Smith, examined sea states by dividing the inside area into two areas, a "coastal band" and "offshore band." He noted that Beaufort 2, 3, and 4 conditions were more or less evenly distributed within the coastal band. This testimony shows that estimates of density for Beaufort 2, 3, and 4 sea states are approximately equal and, therefore, sea state does not have an effect. I conclude that Dr. Smith's analysis of weather effect is uncontroverted and is the best evidence in the record. (See also NOAA/OB 18–20; EDF/OB 5–15).

With respect to sun position, Dr. Smith analyzed densities for the four sun positions recorded by the observers in the 1979 aerial survey. The estimated densities by sun position do not show a consistent trend as might have been

expected if sun position had an effect. The ALJ found that sun glare does not have an effect. (Finding 15) His finding is supported by the record.

Finally, it is my judgment that the suggested bias for aerial observer differences is not substantial and that the proferred correction for it will not significantly affect the data.

(b) *Outside.* The outside density was computed by the 1979 workshop using the *Cromwell, Jordan* and the aerial survey data. NMFS showed that the vessel data which were collected in the inside and outside areas indicated a density gradient of approximately 2 to 1, inside to outside. It then applied this gradient to the aerial survey estimate of the inside density to arrive at the outside density.

The industry countered this approach by arguing that a gradient based on a ratio of outside and inside research vessel data tended to bias the outside density downward. The industry argued that the 1979 *Cromwell* cruise spent too much time in areas of known low density around the Equator. It suggested on brief that these data should be excluded as biased, and as a result, the outside density should be increased to 10.60. (ATA/OB 40–45) Its testimony on this point attempted to correct the *Cromwell* data mathematically, resulting in a density of 9.48. (ATA/OB 48)

When Dr. Tim Smith's analysis of "offshore" and "coastal bands" is applied to the inshore/offshore gradient, it changes the 1979 workshop estimate of an approximately 2 to 1 density ratio (inside to outside) to 3 to 2. Both the methodology and the data on which to apply it are in the record, although the actual analysis on research vessel data is not. This methodology represents a significant refinement to the outside density determination and results in an increase in the outside density to 7.97.

Two potential biases remain to be addressed. The ALJ found that a bias resulted in the research vessel surveys because the two vessels were not identical. I find that the evidence in the record indicates that the calibration exercise accounted for this potential bias by keeping data from the two boats separate. As to the remaining potential bias, I find that the industry's argument that in 1979 the *Cromwell* spent too much time along the Equator, which is a low porpoise density area, does not have merit. In order to determine density, the research survey had to take a representative sample of the entire area inhabited.

3. *Area Inhabited.* In the population estimation model that all parties used, the estimate of the total number of porpoise is obtained by multiplying density times the mean school size times the total area inhabited by the stocks. I have concluded that an area of 3.6 million nm^2 is the best available scientific estimate of the area inhabited by all stocks.

In the 1976 workshop, this area was taken to be the known historical range inhabited by each stock and was estimated from plots of locations where schools had been sighted from a variety of platforms. (NOAA 1) The 1979 workshop took the same basic approach, using accumulated sightings from research vessels to eliminate regions where porpoise were suspected but where none was revealed in the survey. (NOAA 60:18) Tuna vessel data from 1977 to 1979 were not used because they had not been analyzed and edited prior to the 1979 workshop. (SD 272–274)

The industry made two arguments: (1) the area of each stock was larger within the ETP and (2) the overall range was larger than recognized by the workshop. The industry introduced evidence of porpoise sightings by research vessels beyond the range used by the 1979 workshop. (ATA 41) the agency countered this argument with the explanation that the gradient theory suggested that if the ETP were further stratified the density of porpoises in the far western range would decrease and hence the impact of these far western sightings would be insignificant.

The industry also argued that the stock ranges within the total range were greater than those used by the 1979 workshop. It argued that the 1977, 1978, and 1979 observer data showed greater ranges of individual stocks. (ATA/OB 22) The agency admitted that these data had not been used by the workshop (NOAA/85:4a), but introduced an analysis of those data at the hearing (NOAA 71, 72 and 73) and argued that the data did not support extended stock ranges.

It is my judgment that the basic assumption that density increases nearshore and decreases offshore is supported by the evidence. As there is an inverse relationship between the western extension of the area inhabited and the number of porpoise schools sighted, far western sightings would only decrease the outside density if they were properly computed. Therefore, the net effect would be an insignificant increase in population size.

4. *Proportions of Stocks.* The three elements just discussed will only provide the number of porpoises in the aggregate. In order to determine the proportion of the aggregate that are attributable to each stock the 1979 workshop employed a two step process: (a) calculation of the proportion of all schools that are target schools (i.e, those that are fished on); (b) apportionment of target shools into component target stocks.

(a) *Proportion of all Schools that are Target Schools.* I conclude that the 1979 workshop approach to the proportion of all schools that are target schools is the best available scientific evidence. The 1979 workshop utilized data from the aerial and the research vessel surveys to determine the proportions of all schools which were target schools. (NOAA 29:48) The industry challenged NMFS' failure to use the observer data in determining the proportions of all schools which were target schools. (SD 929) The agency introuced evidence indicating that this calculation depends on an assumption that vessels from which the data are collected search for all species in a random manner. (SD 460–461) Tuna vessel observer data were not used because NMFS belived that the tuna vessels selectively search for target schools and ignored non-target schools. (NOAA 29, pp. 72–73; SD 460–461) I find this approach is proper.

(b) *Apportionment of Target Schools.* I conclude that the 1979 workshop approach to apportioning stocks within target schools is the best available scientific evidence. To determine the specific stocks in target schools, the 1979 workshop relied on the research vessel data in 1977 and 1979 and the tuna vessel observer data from 1977 to 1979. (NOAA 29) Aerial survey data were not used for the more detailed proportions because of difficulties in identification from the air. (Id.)

The industry did not counter the use of observer data to determine specific stocks and populations in target schools. EDF did not submit evidence but argued that if the observer data biases were correct, the use of such data in determining apportionment of stocks within target schools overestimates the current population of northern offshore spotted porpoise stock. (EDF/OB 43) EDF pointed to the 1979 workshop alternative approach to consider species proportions in target schools and the Inter-American Tropical Tuna Commission (IATTC) calculation of the same parameter, arguing that they are similar and are the best scientific evidence in the record. Despite EDF's contention that two calculation are better than one, the 1979 workshop chose to use observer data in combination with the research vessel data in making its calculation. It did this fully apprised of the deficiencies in the observer data. I have concluded that there is no strong evidence contrary to the workshop's scientific judgment and

that it is the best scientific evidence available.

5. *Summary of Present Abundance.* The findings in the preceding section result in a present population for northern offshore spotted porpoise of approximately 3.15 million animals. Though this is somewhat higher than the 1979 workshop estimate of 2.7 million, the findings above are generally consistent with the workshop conclusions, with the exception of the outside density. There are a number of uncertainties in predicting accurately the present abundance of the porpoise populations in the ETP. The model used and the data applied have, for the most part, resolved those uncertainties in favor of the porpoise populations. This inherent conservatism is important in order to ensure that takings will not be to the disadvantage of the stocks as a whole.

B. *Pre-exploitation Abundance.* Once present abundance for each stock is estimated, there must be a "back calculation" in order to determine the abundance of each stock in the first year the stock was exploited to a significant extent. 1959 is the year that the industry began using purse seines on a large scale, and most of the porpoise stocks are assumed to have been at their maximum size (by number and area) in that year. Back calculation involves a theoretical addition to present abundance of all porpoises incidentally killed since 1959 and a subtraction of the number of net recruits added to the stock in the interim years. The addition of historically killed porpoise involved three areas of controversy: number of sets in the early years of the fishery; kill per set; and, the species composition of the porpoises incidentally killed. The subtraction is determined solely by reference to an estimated maximum net reproductive rate for ETP porpoises, known as "Rmax".

1. *Additions.* a. *Number of Sets.* An estimate of the number of sets by the the tuna fleet between 1959 and 1979 is used to establish the total number of fishing mortalities to be added to the present population. This is derived using historical records from IATTC Logbooks.

For the 1971 season and beyond, the 1979 workshop used data that NMFS had collected. These data are for the most part uncontested. The data for 1959–70 from the Inter-American Tropical Tuna Commission show 3 types of sets—on porpoise, not on porpoise, and unknown. (NOAA 27 and NOAA 52) The workshop used a proportion of the number of sets from 1959 to 1970 that were either on porpoise or not on porpoise. It then applied this proportion to the unknown sets. The industry introduced evidence from Dr. Allen of the IATTC to show that this assumption was incorrect and that by using IATTC data, a more accurate estimate of the unknown sets could be made. (ATA 42)

The industry argued that NMFS overestimated the number of sets in the early years by 6500. It based this argument on evidence submitted by Dr. Allen. These data were not available to NMFS prior to the hearing. (ATA 2) In an attempt to resolve the matter, Drs. Smith and Allen and Mr. Alverson convened a scientific working session after the hearing. Their report to the ALJ was inconclusive and reiterated the original positions of the parties. (Letter to Dolan May 16, 1980; See also NOAA 85:7–8; NOAA/0B 37–39; ATA/0B 51–53; EDF/0B 53–58; MMC/0B 21–23)

On the state of the record, Dr. Allen's analysis is a better analysis of the early sets than the methodology applied by the workshop. This analysis is based on historical data not previously available and reflects with greater accuracy than the NMFS estimate the actual fishing effort in the 1960's. From this analysis, I have concluded that the workshop overestimated the additions to the stock by 6500 sets. These data should be further refined in the future but the analysis as it was introduced in the record is superior to the arbitrary apportionment applied by the workshop. In addition, it is based on data, which before the hearing had not been made available to NMFS to assist in its estimation of historic kills. I conclude that it is the best available scientific information.

b. *Number of porpoises killed in each set.* In order to estimate the total number of additions, it is also necessary to determine the number of porpoises killed in each set. Like the estimate of number of sets, good data exist for the 1971–79 period. However, little or no data exist for the 1959–70 period. Three factors are important—the data used to derive the estimate of kill per set; when and to what extent backdown was introduced in the fleet; and the treatment of serious injuries, unobserved injuries and cryptic kill.

i. *Data.* The 1979 workshop used data points from 1972, 1971, 1968, 1966 and 1964 to estimate the kill per set of sets for two vessel sizes, for successful and unsuccessful sets, and for sets with and without backdown. Because the workshop had substantially more data from 1971 and 1972 than from the other years and treated all the data equally, the data are skewed toward the 1971 and 1972 data. During the course of the hearing differences in those data were resolved and presented in a document proposed jointly by NMFS and the industry. (NOAA 87) Therefore, I have concluded that the best available scientific evidence is the kill per set figure in this exhibit.

ii. *Introduction of Backdown.* Since the kill per set estimates have a higher number of mortalities for sets without backdown than with, it is important to assess which sets used backdown and which did not.

The workshop concluded that the fleet used the backdown technique on 80% of the sets in 1964 and that the 80% was achieved linearly over these six fishing years from 1959. (NOAA 27) This conclusion differs from the 1976 workshop which concluded 100% in 3 years. This change was a result of the discovery of one letter (the Lopes letter, ATA 14), which establishes 80% use of backdown by one vessel on 110 sets in 1964. The industry did not present evidence to conclude otherwise but argued that the 1976 workshop was a more reasonable approach.

The 1976 workshop assumed 100% in three years based on interviews with people familiar with the fleet. (NOAA 27: 4–5) The industry presented evidence (Alverson SD 569 Lines 15–23) that the fleet did adopt the backdown procedure between 1959–62 and that the calculation should be amended to take this into consideration.

The issue here requires a factual determination. The competing views are the opinion of the industry's expert, Mr. Alverson, that there was an exponential rather than linear introduction of backdown reaching the 80% mark in 1964, versus the written and oral testimony of an agency scientist that a straight line drawn between two data points, zero in 1959 and 80% in 1964, is reasonable. Neither Mr. Alverson nor the agency witness on this point had any extensive experience on tuna vessels during the period, and the industry did not put a skipper on the stand to argue that there was a rapid introduction of backdown over the period 1959–1964. The existence of the Lopes letter is meager evidence on which to base the agency's assumption. Lopes saw only 110 sets on one vessel. He did not appear at the hearing, but there is no evidence in the record challenging the authenticity of the letter.

The evidence in the record suggests that the industry did go to 80% earlier than the linear approach used by the workshop. Therefore I have concluded that the industry employed backdown in 80% of all sets by 1962 and introduced backdown linearly from 1959 to 1962. Thereafter, it used backdown 80% of the time for 1962, 1963 and 1964.

iii. *Serious Injury.* In calculating kill, the basic assumption is that some or all of the injured animals die, resulting in an increase in overall mortality. This parameter is of minor significance to the formula, but can be used to accommodate for cryptic kill (i.e., unobserved mortalities resulting from the stress from chase and capture not occurring until after the animals are released from the net).

NMFS argued that the proper assumption was to include as mortalities all seriously injured animals, as this took into account cryptic kills and unobserved injuries. The industry argued that the assumption was incorrect and offered an alternative calculation to show how serious injuries could be taken into account. (ATA 37)

The ALJ found that it was reasonable to assume that not all animals seriously injured died, but was unable to apportion serious injuries as mortalities or survivals. (Finding 65) He went on to find that there was no evidence to quantify cryptic kill. (Finding 66) He concluded that the workshop approach of considering all serious injuries as mortalities was correct, because this took into account cryptic kill and unobserved injury. I adopt the conclusions of the ALJ on this point.

(c) *Apportioning Historic Kill.* Once there is a determination of how many animals were killed, it is still necessary to apportion the kill by species. The 1979 workshop used a species proportion based on the 1971 and 1972 kill figures and applied that proportion to the number of kills in the 1959–70 period. The industry argued that data from 1959–70 should be used to make the apportionment.

The industry submitted an analysis covering the period 1959–70 based on Dr. Allen's data in which there were 6,500 fewer sets on porpoise. (ATA 42, Appendix 4) The industry's witness testified that the fleet had expanded its geographical range to the west from near shore areas throughout the 60's. (ATA 42) It then went on to argue that the species mix inshore and offshore varies and would result in different mortality figures for given stocks depending on the area fished. There was no cross examination of the industry's witness on this point.

The NMFS approach to apportionment is not consistent with the westward progression of the fleet. It assumes that the stocks fished on in 1970 and 1971 were the same as for the prior 10 years. This would be true if the early fishery (1959–69) was in the same area as the 1970 and 1971 fishing areas or if the stocks were evenly distributed in all areas. Neither assumption is consistent with the evidence.

ATA 42 provides an analysis of the western movement of the fleet and the gradually increasing involvement of the northern offshore spotted stock in the fishery. From the charts presented I have concluded that the fleet could not have taken this stock in the numbers derived from the 1970–71 ratio. ATA 42 also provides an alternative estimate of this impact. (ATA 42:83) These data admittedly are not as precise as they could be given further refinements in the calculation, but they are substantially bettter evidence than that used in the 1979 workshop report and are the best available scientific evidence. ATA 42 indicates that 1,348,814 fewer northern offshore spotted porpoises were killed than the 1979 workshop indicates. This is a result of the 6500 set overestimation discussed above and a comparison of the fleet's activity in the early years in relation to the nearshore range of the northern offshore spotted porpoise. The workshop in making its analysis of the spotted data concluded that all spotted were northern offshore spotted porpoise. ATA 42 concludes that the majority were coastal spotted because the fishing effort was in their range and not the range of the northern offshore spotted. The effect of this is that 670,000 coastal spotteds were caught in the early years of the fishery.

These data can only be used for the apportionment of kills of northern offshore and coastal spotted porpoise. Since this information provides a specific number of coastal and northern offshore spotted porpoise killed, it is unnecessary to make findings for those stocks on number of sets and on kills per set. Number of sets and kills per set are only necessary for those stocks that do not have specific evidence. There is no other evidence in the record regarding historical apportionment of kills for the other stocks in the ETP. Therefore the apportionment used by the 1979 workshop is the best evidence in the record to apportion stocks other than coastal and northern offshore spotted.

2. *Subtractions.* Once the number of historic kills is determined, it is necessary to estimate the number of animals added to the population annually. This is computed by determining the maximum rate of reproduction for the stock. This number is subtracted from historic kills to arrive at the overall number to be added to the present population.

(a) *Rmax.* Rmax is the maximum rate of net reproduction by ETP porpoises on an annual basis. Rmax is derived by subtracting natural mortality from the gross annual reproductive rate. As noted above, this figure is used in the back calculation to determine pre-exploitation stock size. In the event a stock is not depleted, Rmax is also used to determine the replacement yield from which the applicable quota is determined. (NOAA 56)

The 1979 workshop determined that every Rmax in the 0–4% range was equally likely. This conclusion is based on the workshop's rejection of the 1976 workshop comparison to dolphin stocks near Japan and adoption of the view that no cetaceans have a known Rmax in excess of 4%. (NOAA 52) The industry pointed out several deficiencies in the data used in the 1979 workshop, specifically the statement with respect to no record of cetacean Rmax's above 4%. (ATA 38)

The industry argued that there was no evidence to suggest a change from the range of 2–6% adopted by the 1976 workshop and that the appropriate level could be as high as 6–10%. (ATA 38) The industry's witness pointed to several data sources to support his conclusion that Rmax's for other cetaceans were higher than the workshop estimate. NMFS countered this by presenting and analyzing life history data for marine mammals. (NOAA 52: 37–43) Other submissions pointed out difficulties in the way industry had relied on data showing higher Rmax estimates for other cetaceans. (MMC/OB)

The ALJ found that the Rmax was 4% and based his finding on the 1976 workshop report (NOAA 1) which concluded that Rmax could be from 2–6%. (Findings 137–143)

The 1979 workshop based its estimate on comparisons to known data for terrestrial mammals and some data for large whales. The lower end of the range, 0%–2%, reflects a concern over the effects of cryptic kill. The workshop took this into account in the serious injury mortality figures and its addition here would be overly conservative. The remaining portion of the range, 2–4%, is a more accurate estimate. The workshop concluded that scientifically any Rmax from 0–4% is equally likely. The ALJ's judgment was that 4% was the correct point estimate because he saw no reason to deviate from the 2–6% in the 1976 workshop. Which level of Rmax is appropriate requires an assessment of the expert opinions of the witnesses at the hearing. I conclude that the ALJ's assessment of the evidence is correct in that the evidence does not convince me that an Rmax of 2% has greater support than the midpoint of the range (4%) used in my 1977 decision. (Findings 136–143) Therefore, I find that an Rmax of 4%, as supported by the scientific conclusion of

the workshop, is the best available scientific point estimate.

3. *Summary of pre-exploitation stock size.* A computation of the findings above results in a pre-exploitation stock size for northern offshore spotted porpoise of approximately 5.03 million animals.

C. *OSP.* Optimum Sustainable Population is the standard by which a determination of disadvantage to a porpoise stock is made. The standard has been expressed as a range, which is a measure of the health of the various porpoise stocks relative to their environment. (NOAA 52 and NOAA 56)

When a population is below OSP, it is depleted. The upper end of the range of OSP is a stock size in relation to the original unexploited stock, that is, the maximum number of animals that the ecosystem can support. This is expressed by a percentage of original stock size.

The significant issue at the 1980 hearing involved determining the lower end of OSP. The lower end has been expressed as a range, so that the focus is on a range within a range. The lower end is determined theoretically by estimating what size stock in relation to the original stock size will produce the maximum net increase in population. Every population of animals has a size at which it will increase at a maximum rate. That level, known as the Maximum Net Productivity Level (MNPL), is the lower end of OSP. MNPL is expressed as a range to reflect uncertainties in the data. However, in 1977, the midpoint (60%) of this range (50–70%) was used to determine if the stock was depleted (42 F.R. 64548, Dec. 27, 1977).

At this year's hearing NMFS argued that a range of 65–80% was appropriate based on the 1979 workshop report. The report compares porpoises to other mammals and abandons the 1976 workshop approach of the linear relationship between stock growth and reproductive rates. This more conservative approach is based on the observation that large mammals are longer lived and reproduce later in life and, therefore, require a larger population to achieve MNPL, than smaller animals such as rodents.

The industry argued that the 1976 workshop's theoretical approach to MNPL was correct, and that no new evidence was available to suggest 65–80%, other than the shift in the approach of the workshop. In its cross-examination of the agency's lead witness, the industry pointed out that an MNPL of 60% is used by the International Whaling Commission. (SD 225–6)

The ALJ found that the lower bound of OSP was between 50–70% of original stock size. He found that the 50–70% range was already conservative and that a change to 65–80% range based on a change in population dynamics theory, rather than new data, was unwarranted. (Findings 144–50)

The empirical data for calculating OSP are admittedly scant. The agency put forward a new theoretical approach to OSP (NOAA 15) which results in a more conservative estimate of MNPL. The workshop found that biologically any number between 65–80% was equally likely. The industry testimony (ATA 36) shows that the MNPL levels for seven mammals with a low of 56 (for deer) and a high of 86 (for elephants). The industry's witness, Mr. Fredin, described these as "the best available evidence" on MNPL for seven populations of large mammals. (TR 188) By averaging these data using each point estimate, Mr. Fredin arrived at MNPL of 66.5.

The record reflects that there is dispute as to which concept should be used to find MNPL for porpoises, and that, under either concept, there is a scarcity of data to provide certainty for any MNPL calculation. I have concluded that the theoretical approach used by the 1979 workshop, that is, that there is a curvilinear density dependent relationship, is the best available scientific approach despite its narrow exposure in the scientific community. It seems more than plausible that porpoises, like other large mammals, are relatively long-lived and reproduce late in life.

Despite my agreement with the workshop's theoretical approach, I cannot conclude that the range used by the workshop (65–80%) is the best. There is no direct evidence that porpoise populations fit the theoretical model. Further, while the 1979 workshop concluded that MNPL is ". . . significantly higher than 50%. . . ." (NOAA 52:7), this does not ineluctably lead to a choice of a range of 65–80. The International Whaling Commission uses an MNPL of 60 for populations of longer lived and larger animals than those in question here. Although some persons before the IWC have questioned that level, as the level is being questioned here, the IWC, which includes experts from the world over, has not changed the MNPL for larger marine mammals. In addition, the ALJ was not persuaded by the selection of the range of 65–80. Like the ALJ, I do not believe that a departure from the prior point estimate of MNPL is warranted from the population comparisons used by the workshop. Therefore, I conclude that the best scientific evidence in the record is that 60 is the point where the lower range of OSP should be set.

D. *Impacts of Takings.* There are two issues that must be resolved in the event a species is not depleted. The first is to determine the level of take that will satisfy the Act's immediate goal objective. It is satisfied by establishing quotas that are economically and technologically feasible and that will not be to the disadvantage of the stocks. I have concluded that an aggregate take of 20,500 animals is technologically and economically feasible and will not be to the disadvantage of stocks from which takings are allowed. In this regard I have taken into account the lengthy discussion of the industry and its activities in both the DEIS and the FEIS. In particular, I incorporate by reference in this decision the discussion of the industry at pages 39–43 of the FEIS. The aggregate quota is apportioned as set out in Table II. The second issue is to determine the length of the regulatory regime and permit. I have concluded that the regulations should be in place indefinitely and that a five year permit can be issued.

1. *Quotas.* In the event of a determination of non depletion, the Act reuires a finding that the stocks will not be disadvantaged by allowing any takings. This determination is made by estimating the maximum replacement yield of each stock. (Rmax times present stock size). The replacement yield for each stock is then divided between anticipated foreign and domestic takes.

Once this aggregate number is established, there can be an apportionment of the total quota to obtain allowable takes for each stock. After apportionment it can be determined what take is economically and technologically feasible in order to meet the MMPA's immediate goal test. The application of this test results in the actual quotas.

The kill of porpoises per ton of tuna caught has been used in the past as an indicator of economic and technological feasibility. The DEIS used the period of 1977–79 as representative of the expected tuna catch for future projections. (NOAA 56) The industry argued that the period from 1970–79 was more appropriate. (ATA 43) The average catch in the 1977–79 period was 69,000 tons of tuna, while the average for the 1970–79 period was 98,000 tons of tuna. I have concluded that fishing during the 1970–79 period does not reflect fishing patterns projected for the next five years. There was no regulation of the incidental take of marine mammals for a significant portion of the period. In addition, the ban to be adopted on sundown sets and the previous ban on the take of eastern spinners alter the fishing pattern over this period.

Table II.—*Quotas for Each Calendar Year 1981–85*

Species/stock (management unit)	Maximum replacement yield	U.S. allowable mortality [1]	Encirclement	Take
Spotted dolphin (northern offshore)	85,335	11,890	5,993,000	9,606,000
Spotted dolphin (southern offshore)	11,395	410	206,000	331,000
Spinner dolphin (northern whitebelly)	10,643	3,075	403,000	695,000
Spinner dolphin (southern whitebelly)	4,970	205	27,000	46,000
Common dolphin (northern tropical) [2]	3,781	1,230	293,000	471,000
Common dolphin (central tropical)	16,225	2,870	298,000	927,000
Common dolphin (southern tropical)	8,091	615	64,000	198,000
Striped dolphin (northern tropical)	858	62	3,000	4,000
Striped dolphin (central tropical)	3,644	103	5,000	7,000
Striped dolphin (southern tropical)	8,190	40	2,000	3,000
Total		20,500		

[1] The U.S. allowable mortality in any of the years 1981–85 shall next exceed 20,500.
[2] Includes Baja neritic dolphin stock.

I am cognizant of the concern that the quota should accommodate for a good fishing year. Therefore, I find that the highest annual catch (93,000) during the 1977–79 period is the best indicator of the projected catch of tuna. In addition, I find that the 1977–79 period is the best period from which to apportion the modified replacement yield to arrive at individual stock quotas. This figure multiplied by a kill/ton rate of .24 results in a quota of 22,320. This quota is further modified by 8.5% to reflect the lost catch due to my adoption of the ban on sundown sets. This results in a quota of 20,500.

2. *Length of the Regulatory Regime and Permit.* The disadvantage test is a continuing obligation of the agency. It requires that the agency must assure itself that takings over the period of the permit will not disadvantage the stocks. Historically, the length of the regulatory regime has coincided with the length of the permit, but this is not required by the Act.

At the hearing, NMFS argued that northern offshore spotted porpoise were depleted and therefore did not address the length of the regulatory regime or permit if they were not depleted. The industry asked for a five year permit. On brief, it argued for a multi year permit because of the costs to the agency and the industry in preparing for the hearing. (ATA OB 105–6)

The length of the regime and permit requires a policy, as well as a scientific judgment. I am concerned that the effort to compile a record in proceedings like this one, places a significant burden on the agency and the parties. However, this burden must be subservient to the Act's requirement that the health of animals be considered prior to the effects of the regulations on the industry. So long as there is an assurance that the populations will not be disadvantaged by the proposed takings, there is no need to adjust the taking regulations except for modifications to the existing quotas to achieve the Act's immediate goal objective. If the stocks are not now depleted (with the exception of the eastern spinner and coastal spotted stocks), the record reflects that most of the stocks should grow. Therefore, I have made a determination that the level of takes allowed in Table II will not disadvantage the stocks in any subsequent years. This finding is made until there is evidence to the contrary. In order to ensure that there is a mechanism in place within which to review the quota, I have concluded that a five year permit is appropriate.

Regulations

NMFS proposed 24 separate regulatory amendments to the existing regulations. The recommended decision of the ALJ in this proceeding contains recommendations pertaining to each of the 24 proposed amendments and, additionally, to the regulations governing this proceeding and to Section 216.24(d)(2)(iv) (numbered 25 and 26 on pages 92 and 93, respectively).

Of the proposed amendments to the regulations, the ALJ recommended adoption of 1, 2, 4, 8, 10, 11, 12, 13, 15, 16, 18, 22, 23, and 24. For the reasons stated by the ALJ, I adopt those amendments.

The ALJ also recommended adoption of the following modified proposed amendments to the regulations: (ALJ Recommended Decision pp. 64–69, 70–71, and 75–79) those numbered 6 and 7, assuming that the northern offshore spotted stock of porpoises is not depleted; that numbered 9 with the retention of the words "threat of"; and that numbered 14 with the provision of some discretion to the Regional Director, Southwest Region, in determining the necessity for an additional trial set(s). I hereby adopt those modifications to the amendments to the regulations.

The ALJ did not recommend adoption of the proposed amendments numbered 3, 20, and 21 because of lack of record support. All of these proposals were included in the notice of proposed regulations and ample opportunity for comment was provided during this proceeding. In the absence of any comments, these proposals are uncontested and I therefore adopt them according to the identical test employed by the ALJ in recommending adoption of the proposed amendments number 11, 16, and 23. Proposed amendment number 21 has been rewritten to reflect that countries of origin that do not have current findings may submit information and request a finding at any time of the year and not be bound to a September 1 deadline for filing. Countries of origin for which there is a finding must submit information for review by September 1, that pertains to the preceding calendar year.

Proposed amendment 17 contained two substantive changes to Section 216.24(d)(2)(vii), marine mammal release requirements. First, the ALJ recommended a modified amendment to the required use of speedboats which I hereby adopt. Secondly, the ALJ recommended adoption of the proposed prohibition on setting at sundown only if there is concurrently adopted a program of observer placement on all purse seining tuna fishing vessels. Such a condition is no more appropriately applied to this particular procedural requirement than it is to other such requirements and is inconsistent with the industry's sustained and successful efforts to reduce porpoise mortalities. I therefore adopt the proposed prohibition on setting at sundown without modification.

Proposed amendment numbered 19 contained the additional requirement for certain non-yellowfin tuna imports to be accompanied by a bill of lading. I have concluded that this additional requirement is unnecessary at this time because it would apply to very few cases and provide information that is available by other means. Therefore, the existing language in Section 216.24(e)(3) will remain, with the following

exception. The reference to pilchards from South Africa has become obsolete as this country has sought and been granted an import finding referred to under 50 CFR 216.24(e)(1) for such imports. Reference to pilchards from South Africa is deleted from 50 CFR 216.24(e)(3) and consequently from Section 216.24(e)(2)(i).

It is unnecessary to address ALJ recommendation 25 which dealt with the expedited procedures under which these regulations were developed, since the regulations in Part 216 Appendix terminate with the issuance of this decision.

The recommended amendment to Section 216.24(d)(2)(iv) numbered 26 (page 93 of the ALJ's recommended decision) is not adopted. The methodology for monitoring the incidental mortality of marine mammals referred to in Section 216.24(d)(2)(B) relies on fishing gear and procedural requirements that are standardized for the entire U.S. fleet. To compromise this standardization in any substantial manner would remove the existing basis for extrapolating known incidental porpoise takings reported by observers to those fishing trips that are not assigned an observer.

I have made certain additional editorial amendments to Section 216.24 for purposes of further simplification and clarification. They are non-substantive in nature. Many portions of Section 216.24 have not been amended. However, for ease of understanding, the entire section is republished herein.

In addition to the alternative I have adopted, I have considered those regulatory alternatives contained in the FEIS and the DEIS. I have concluded as a result of the review of all of the alternatives, that the regulatory regime adopted is the environmentally preferred alternative and represents the best approach under the Act. I concur in the analysis of the alternatives at pages 11–14 of the FEIS and incorporate it by reference in this final decision. The evidence simply does not support the first alternative. The quota in the second alternative far exceeds the quota that the fleet can technologically achieve. The third alternative is inconsistent with my finding that the northern offshore spotted stock is not depleted. The fourth alternative is impractical at this time, although efforts to achieve this objective will continue. Lastly, the fifth alternative, like the first, is not supported by the evidence.

Consultation

The Act requires that I consult with the Marine Mammal Commission (MMC) in promulgating regulations. The MMC was consulted prior to publication of the proposal and was a party to the proceedings. The MMC filed briefs with the ALJ and has filed exceptions to the ALJ decision with me.

Dated: October 21, 1980.

Richard A. Frank,

Administrator, NOAA.

50 CFR § 216.24 is revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

(a) (1) No marine mammals may be taken in the course of a commercial fishing operation unless: The taking constitutes an incidential catch as defined in § 216.3, a general permit and certificate(s) of inclusion have been obtained in accordance with these regulations and such taking is not in violation of such permit, certificate(s), and regulations.

(2) A vessel engaged in commercial fishing operation involving the utilization of purse seines to capture yellowfin tuna and which does not operate under a general permit and certificates of inclusion shall not carry more than two speedboats.

(b) *General Permits.*—(1) General permits to allow the taking of marine mammals, except those for which taking is prohibited under the Endangered Species Act of 1973, in connection with commercial fishing operations will be issued to persons using fishing gear in any one of the following categories:

(i) *Category 1: Towed Or Dragged Gear.* Commercial fishing operations utilizing towed or dragged gear such as bottom otter trawls, bottom pair trawls, multi-rig trawls, and dredging gear.

(ii) *Category 2: Encircling Gear, Pursue Seining Involving the Intentional Taking of Marine Mammals.* Commercial fishing operations utilizing purse seines to capture tuna by international encircling marine mammals. Only vessels that meet the fishing gear and equipment requirements contained in § 216.24(d)(2)(iv) of these regulations may be included in this category.

(iii) *Category 3: Encircling Gear, Pursue Seining not Involving the International Taking of Marine Mammals.* Commercial fishing operations utilizing pursue seining, which do not intentionally encircle marine mammals.

(iv) *Category 4: Stationary Gear.* Commercial fishing operations utilizing stationary gear such as traps, pots, weirs, and pound nets; and

(v) *Category 5: Other Gear.* Commercial fishing operations utilizing trolling, gill nets, hooks and line gear, and any gear not classified under paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section.

(2) Permits shall be issued as general permits to a class of fishermen using one of the general categories of gear set out above. Any member of such class may apply for a general permit on behalf of any members of the class. Subsequent to the granting of general permit, vessel owners, managing owners, or operators (as required) may make application to be included under the terms of a general permit by obtaining a certificate of inclusion. Applications for a general, permit shall contain:

(i) Name, address, and telephone number of the applicant. If the applicant is an organization or corporate entity, a copy of the corporate or organizational charter which sets forth the basis for application on behalf of a group of class of commercial fishermen must be included;

(ii) A description of permit for which application is being made;

(iii) A description of the fishing operations by which marine mammals are taken; and a statement explaining why the applicant cannot avoid taking marine mammals incidentally to commercial fishing operations;

(iv) The date when the general permit is requested to become effective;

(v) A list of the fish sought by persons requesting certificates under the general permit and the general areas of operations of their vessels.

(vi) A statement identifying the marine mammals and numbers of marine mammals which are expected to be taken under the general permit;

(vii) A statement by the applicant demonstrating that the requested taking of marine mammal species or stocks during commercial fishing operations is consistent with the purposes of the act, and the applicable regulations established under Sec. 103 of the act.

(viii) A description of the procedures and techniques that will be utilized in order that takings under the permit will be consistent with the purposes and policies of the act and these regulations; and

(ix) A certification, signed by the applicant, in the following language: I certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a general permit under the Marine Mammal Protection Act of 1972 and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or the penalties provided under the Marine Mammal Protection Act of 1972.

(3) The original and four copies of the application for general permit shall be submitted to the Assistant Administrator for Fisheries (hereinafter, the Assistant Administrator), National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. Applications should be received not less than 180 days prior to the date upon which the permit is to become effective. Assistance may be obtained by writing the Assistant Administrator or by calling the Office of Marine Mammals and Endangered Species, telephone number 202-634-7461.

(4) A general permit shall be valid for the time period indicated on the face of the permit. General permits shall be subject to modification, suspension or revocation and may contain terms and conditions prescribed in accordance with Sec. 104(b) (2) of the act, 16 U.S.C. 1374(b) (2).

(5) The Assistant Administrator shall determine the adequacy and completeness of an application, and if found to be adequate and complete will promptly publish a notice of receipt of such application in the Federal Register. Interested parties will have thirty days from the date of publication in which to submit written comments with respect to the granting of such permit.

(6) If within thirty days after the date of publication of the Federal Register notice concerning receipt of an application for a general permit, any interested party or parties request a hearing on the application, the Assistant Administrator may within sixty days following the date of publication of the Federal Register notice afford such party or parties an opportunity for such a hearing. Any hearing held in connection with an application for a general permit shall be conducted in the same manner as hearings convened in connection with a scientific research or a public display permit application under Sec. 216.33.

(7) There is no fee for filing an application for a general permit.

(c) *Certificates of inclusion.*—(1) *Vessel Certificates of Inclusion.* The owner or managing owner of a vessel that participates in commercial fishing operations for which a general permit is required under this subpart shall be the holder of a valid vessel certificate of inclusion under that general permit. Such certificates shall not be transferable and shall be renewed annually. Provided five (5) days advance written notice is given, a vessel certificate holder may surrender his certificate to the Regional Office from which the certificate was issued. However, once surrendered the certificate shall not be returned nor shall a new certificate be issued before the end of the calendar year. This provision shall not apply when a change of vessel ownership occurs.

(2) *Operator's Certificate of Inclusion.* The person in charge of and actually conducting fishing operations (hereinafter referred to as the operator) on any vessel engaged in commercial fishing operations for which a Category 2 general permit is required under this subpart, shall be the holder of a valid operator's certificate of inclusion. These certificates are not transferable and will be valid only on any purse seine vessel having a valid vessel certificate of inclusion for Category 2. In order to receive a certificate of inclusion, the operator shall have satisfactorily completed required training. An operator's certificate of inclusion shall be renewed annually.

(3) A vessel certificate issued pursuant to paragraph (c)(1) of this section shall be aboard the vessel while it is engaged in fishing operations and the operator's certificate issued pursuant to paragraph (c)(2) of this section shall be in the possession of the operator to whom it was issued. Certificates shall be shown upon request to an enforcement agent or other designated agent of the National Marine Fisheries Service. However, vessels and operators at sea on a fishing trip on the expiration date of their certificate of inclusion, to whom or to which a certificate of inclusion for the next year has been issued, may take marine mammals under the terms of the new certificate.

The vessel owners or operators are obligated to obtain physically or to place the new certificate aboard, as appropriate, when the vessel next returns to port.

(4) Application(s) for certificates of inclusion under paragraph (c)(1) of this section should be addressed as follows:

(i) Category 1, 3, 4, and 5 applications:

(A) Owners or managing owners of vessels registered in Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, should make application to the Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue, Seattle, Washington 98102.

(B) Owners or managing owners of vessels registered in Arizona, California, Hawaii, Nevada, and the territories of American Samoa, Guam, and the Trust Territory of the Pacific Islands should make application to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(C) Owners or managing owners of vessels registered in Alaska should make application to the Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

(D) Owners or managing owners of vessels registered in Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin should make application to the Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

(E) Owners or managing owners of vessels registered in Alabama, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and Virgin Islands, should make application to the Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Gandy Boulevard North, Duval Building, St. Petersburg, Florida 33702.

(ii) Category 2 applications: Owners or managing owners of purse seine vessels in this category shall make application to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101.

(5) Applications for vessel certificates of inclusion under paragraph (c)(1) of this section shall contain:

(i) The name of the vessel which is to appear on the certificate(s) of inclusion;

(ii) The category of the general permit under which the applicant wishes to be included;

(iii) The species of fish sought and general area of operations;

(iv) The identity of State and local commercial fishing licenses, if applicable, under which vessel operations are conducted, and dates of expiration;

(v) The name of the operator and date of training, if applicable; and

(vi) The name and signature of the applicant, whether owner or managing owner, address, and if applicable, the organization acting on behalf of the vessel.

(6) Fees. (i) Applications for certificates of inclusion under paragraph (c)(1) of this section shall contain a payment for each vessel named in the application in accordance with the following schedule:

(A) Categories 1: Towed Or Dragged Gear; 3: Encircling Gear, Purse Seining not Involving the Intentional Taking of Marine Mammals; 4: Stationary Gear; and 5: Other Gear—$10.00.

(B) Category 2: Encircling Gear, Purse Seining Involving the Intentional Taking of Marine Mammals—$200.00.

(ii) Except as provided herein, vessel owners or managing owners desiring a vessel certificate of inclusion under more than one category of the general permit will not be required to pay a full fee for each certificate. After the initial fee for a certificate is paid for each vessel, additional certificates will be issued for a fee of $.50 (fifty cents) each. However, every application for a vessel certificate under Category 2 shall contain the full fee.

(iii) Notwithstanding the provisions of subparagraph (c)(6)(i) of this section, an applicant whose income is below Federal poverty guidelines may, upon showing in his application that his income is below such guidelines, be issued a certificate under the following schedule of fee payment:

(A) Categories 1: Towed Or Dragged Gear; 3: Encircling Gear, Purse Seining not Involving the Intentional Taking of Marine Mammals; 4: Stationary Gear; and 5: Other Gear—$1.00.

(B) Category 2: Encircling Gear, Purse Seining Involving the Intentional Taking of Marine Mammals—$20.00.

(iv) A fee is not required for an operator's certificate of inclusion.

(v) The Assistant Administrator may change the amount of these required fees at any time he determines a different payment to be reasonable, and said change shall be accomplished by publication in the Federal Register of the new fee schedule.

(7) The Regional Office receiving applications for certificates of inclusion from vessel owners, managing owners, or operators shall determine the adequacy and completeness of such applications, and upon its determination that such applications are adequate and complete, it shall approve such applications and issue the certificate(s).

(d) Terms and conditions of certificates under general permits shall include, but are not limited to the following:

(1) *Towed or dragged gear.*—(i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage, or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(1)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to fully report and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(1)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of Section 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director to whom the certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity, but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence then it shall be reported within 48 hours after arrival in any port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit the vessel, including required marine mammals logs and gear, to an inspection upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel, or master to the penalties provided for under the act.

(2) *Encircling gear, purse seining involving the intentional taking of marine mammals.*—(i) *Quotas:*

(A) A certificated vessel may take marine mammals so long as the taking is an incidental occurrence in the course of normal commercial tuna purse seine fishing operations, and the fishing operations are under the immediate direction of a person who is the holder of a valid operator's certificate of inclusion; except that a vessel shall not encircle either:

(*1*) Pure schools of the coastal spotted dolphin (*Stenella attenuata*) stock, the Costa Rican spinner, and the eastern spinner dolphin (*Stenella longirostris*) stocks, or mixed schools including these stocks;

(*2*) Pure schools of any species of dolphin except the offshore spotted dolphin (*Stenella attenuata*) stock, the striped dolphin (*Stenella coeruleoalba*) species, and the common dolphin (*Dephinus delphis*) species; or

(*3*) Any other species or stock of marine mammals that do not have an allowable take as listed below or whose allowable take has been exceeded. The numbers of marine mammals that may be taken during each of the calendar years 1981–1985 by U.S. vessels in the course of commercial fishing operations will be limited as follows:

Quotas for Each Calendar Year 1981–85

Species/stock (management unit)	Take	Encirclement	Mortality [1]
Spotted dolphin (northern offshore)	9,606,000	5,693,000	11,890
Spotted dolphin (southern offshore)	331,000	206,000	410
Spinner dolphin (northern whitebelly)	635,000	403,000	3,075
Spinner dolphin (southern whitebelly)	49,000	27,000	205
Common dolphin (northern tropical) [2]	471,000	293,000	1,230
Common dolphin (central tropical)	927,000	298,000	2,870

Quotas for Each Calendar Year 1981-85—Continued

Species/stock (management unit)	Take	Encirclement	Mortality [1]
Common dolphin (southern tropical)	198,000	64,000	615
Striped dolphin (northern tropical)	4,000	3,000	62
Striped dolphin (central tropical)	7,000	5,000	103
Striped dolphin (southern tropical)	3,000	2,000	40

[1] The U.S. allowable mortality in any of the years 1981-85 shall not exceed 20,500.
[2] Includes Baja neritic dolphin stock.

(B) The incidental mortality of marine mammals permitted under the general permit for each category will be monitored according to the methodology published in the Federal Register. The Assistant Administrator shall determine on the basis of the evidence available to him the date upon which the allowable quotas will be reached or exceeded. Notice of the Assistant Administrator's determination shall be published in the Federal Register not less than seven days prior to the effective date.

(C) If at the time the net skiff attached to the net is released from the vessel at the start of a set, and species or stocks that are prohibited from being taken are not reasonably observable, the fact that individuals of that species or stock are subsequently taken will not be cause for issuance of a notice of violation provided that all procedures required by the applicable regulations have been followed.

(D) The general permit will be valid for a period not to exceed five years. The Assistant Administrator may, upon receipt of new information which in his opinion is sufficient to require modification of the general permit or regulations, propose to modify such after consultation with the Marine Mammal Commission. These modifications shall be consistent with and necessary to carry out the purposes of the act. Any modifications proposed by the Assistant Administrator involving changes in the quotas shall include the statements required by section 103(d) of the act. Modifications shall be proposed in the Federal Register and a public comment period shall be allowed. At the request of any interested person within 15 days after publication of the proposed modification in the Federal Register, the Assistant Administrator may hold a public hearing to receive and evaluate evidence in those circumstances where he has determined it to be consistent with and necessary to carry out the purposes of the act. Such request may be for a formal hearing on the record before an Administrative Law Judge. Within 10 days after receipt of the request for a public hearing, the Assistant Administrator shall provide the requesting party or parties with his decision. If a request is denied the Assistant Administrator shall state the reasons for the denial. Within 10 days after receipt of a decision denying a request for a formal hearing, the requesting person may file a written notice of appeal with the Administrator. Based upon the evidence presented in the notice, the Administrator shall render a decision within 20 days from receipt of the notice.

(ii) *General Conditions:* (A) Marine mammals incidentally taken shall be immediately returned to the environment where captured without further injury. In addition to the specific porpoise rescue requirements established in Sec. 216.24(d)(2), the operators of purse seine vessels shall take every possible precaution to refrain from causing or permitting incidental mortality and serious injury of marine mammals. Operators shall not set on marine mammals when conditions of wind, sea state, visibility, or the number of marine mammals and/or fish prevent the effective use of backdown and other required porpoise rescue procedures.

(B) Operators may take such steps as are necessary to protect their gear or person from damage or threat of personal injury. However, all marine mammals taken in the course of commercial fishing operations shall be subject to the definition of "Incidental catch" in Sec. 216.3 above and may not be retained except where a specific permit has been obtained authorizing the retention.

(C) Operators of all certificated vessels shall maintain daily marine mammal logs provided by the Regional Director, Southwest Region, National Marine Fisheries Service. Such logs shall be subject to inspection at the discretion of the Southwest Regional Director, or his designated personnel. Certified copies of completed marine mammal logs shall be mailed or delivered at the conclusion of each fishing voyage to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, within 48 hours after arrival in any port. If no sets involving marine mammals were made during a voyage, a marine mammal log stating such shall be submitted.

(D) The vessel certificate holder shall notify the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540, of any change of vessel operator within at least 48 hours prior to departing on the next scheduled trip.

(iii) *Reporting Requirements:* In accordance with Sec. 216.24(f) of these regulations, the following specific reporting procedures shall be required:

(A) The vessel certificate holder of each certificated vessel, who has been notified via certified letter from the National Marine Fisheries Service that his vessel is required to carry an observer, shall notify the field office, Southwest Region, National Marine Fisheries Service, San Diego, California, telephone 714-293-6540 at least five (5) days in advance of the vessel's departure on a fishing voyage to allow for observer placement. After a fishing voyage is initiated, the vessel is obligated to carry an observer until the vessel returns to port and one of the following conditions is met: (*1*) Unloads more than 400 tons of any species of tuna; or (*2*) unloads any amount of any species of tuna equivalent to one half of the vessel's carrying capacity; or (*3*) unloads its tuna catch after 40 days or more at sea from the date of departure. Further, the Regional Director, Southwest Region, may consider special circumstances for exemptions to this definition, provided written requests clearly describing the circumstances are received at leat ten (10) days prior to the termination or the initiation of a fishing voyage. A response to the written request will be made by the Regional Director within five (5) days after receipt of the request. A vessel whose vessel certificate holder has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(B) Masters of all certificated vessels carrying National Marine Fisheries Service observers shall allow observers to report, in coded form, information by radio concerning the accumulated take of marine mammals and other observer collected data at such times as specified by the Regional Director, Southwest Region. Individual vessel names and coded information reported by radio by the National Marine Fisheries Service observers shall remain confidential unless their release is authorized in writing by the operator of the vessel.

(C) The vessel certificate holder of each certificated vessel without an observer onboard, and fishing inside the Inter-American Tropical Tuna Commission's Yellowfin Regulatory Area is required to report within 48 hours prior to departure from port and within 48 hours after arrival in port, of the vessel's actual departure or arrival

date, including any changes in schedules that may occur after the original notification. The report shall include the name of the vessel and the location of the port of the scheduled departure or arrival, and shall be telephoned to 714–233–5511, the Southwest Regional Office's 24-hour answering service.

(D) The Regional Director, Southwest Region, will provide to the public, periodic quota status reports summarizing the estimated incidental porpoise mortality by U.S. vessels of individual species and stock.

(iv) *Vessel Gear and Equipment Requirements:* A vessel certificate issued pursuant to paragraph (c)(i) of this section will be valid only for a vessel equipped with a porpoise safety panel in its purse seine, and which uses the other gear, equipment, and procedures described herein. The vessel certificate holder shall be held responsible for providing and maintaining, in a functional and seaworthy condition, the required porpoise safety panels and all other required gear and equipment used in the course of catching and landing tuna. The requirement for the porpoise safety panel and other gear and equipment are as follows:

(A) Porpoise Safety Panel—Class I and II Vessels: For Class I purse seiners (400 short tons carrying capacity or less) and for Class II purse seiners (greater than 400 short tons carrying capacity, built before 1961), the porpoise safety panel shall be a minimum of 100 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 10 strips shall be determined at a ratio of 10 fathoms in length for each strip that the net is deep. It shall be installed beginning 75 to 100 fathoms from the bow ortza, and shall extend toward the stern of the net protecting the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel shall consist of small mesh webbing not to exceed 1¼" stretch mesh, extending from the corkline downward to a minimum depth equivalent to one strip of 100 meshes of 4¼" stretch mesh webbing.

(B) Porpoise Safety Panel—Class III Vessels: For Class III purse seiners (greater than 400 short tons carrying capacity, built after 1960), the porpoise safety panel shall be a minimum of 180 fathoms in length (as measured before installation). It shall be installed beginning 60 to 100 fathoms from the bow ortza and shall extend toward the stern of the net protecting the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel shall consist of small mesh webbing not to exceed 1¼" stretch mesh extending downward from the corkline and the base of the porpoise apron to a minimum depth equivalent to two strips of 100 meshes of 4¼" stretch mesh webbing.

(C) Porpoise Apron: Each Class III vessel shall have installed in its purse seine net, a triangular-shaped porpoise apron consisteing of small mesh not to exceed 1¼" stretch mesh, 85 to 95 fathoms in length, laced between the corkline and the porpoise safety panel. The bow end of the porpoise apron shall begin approximately 10 to 15 fathoms (depending on the depth of the net) outboard of the end of the third bunchline and extend toward the stern of the net such that the peak of the porpoise apron triangle shall coincide with the apex of the backdown channel in the net. The base of the porpoise apron shall be laced to the upper edge of the porpoise safety panel. The upper edges of the porpoise apron shall be tapered at a 5 mesh, 2 bar rate from each end such that the tapers intersect at the center of the porpoise apron. The depth of the porpoise apron at its center shall be 443 to 463 meshes.

(D) Porpoise Apron Approval: The porpoise apron shall be installed under the supervision of a National Marine Fisheries Service designated representative: A trial set(s) shall be conducted under supervision of a National Marine Fisheries Service designated representative after installation of the porpoise apron to insure proper installation and operation of the apron. During the trial set(s), the stern tiedown point and outboard bow bunchline mark shall be determined and permanently marked so as to be clearly visible from the vessel. Each time a super apron is reinstalled after removal from a net or the net depth is altered, the vessel and gear shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region, who may require that another trial set(s) be made for proper apron alignment and adjustment. The vessel certificate holder shall provide at least five (5) days advance notification to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714–293–6540, of the time and place of installation of the porpoise apron system. The certificate of inclusion for any vessel whose certificate holder has failed to notify the National Marine Fisheries Service of the date of installation shall be invalid until completion of the apron inspection and trial set(s).

(E) Porpoise Safety Panel Markers: Each end of the porpoise safety panel and porpoise apron shall be identified with an easily distinguishable marker.

(F) Porpoise Safety Panel Hand Holds: Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, hand hold openings are to be secured so that the insertion of a 1⅜" diameter cylindrical-shaped object meets resistance.

(G) Porpoise Safety Panel Corkline Hangings: Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, corkline hangings shall be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1⅜" diameter will not meet resistance when inserted between the cork and corkline hangings, must be tightened so that a cylindrical object with a 1⅜" diameter cannot be inserted.

(H) Bunchlines: Bunchlines, other than bow bunchlines, shall be arranged around the perimeter of the net to allow at least three towing points to be established near one-quarter, one-half, and three-quarter net from the bow ortza. A towing point must be established between two adjacent bunchlines; one bunchline reversed or unattached at both ends. Six bunchlines other than bow bunchlines are necessary to establish three towing points. The towing ends of all bunchlines which can be utilized as towing points shall be marked so as to be clearly visible to speedboat drivers. At least a 20-fathom length of corkline shall be free from bunchlines at the apex of the backdown channel.

(I) Speedboats: Certificated vessels engaged in fishing operations involving setting on marine mammals shall carry a minimum of two speedboats in operating condition. All speedboats carried aboard purse seine vessels and in operating condition shall be rigged with towing bridles and towlines. Speedboat hoisting bridles shall not be substituted for towing bridles.

(J) Rubber Raft: An inflatable rubber raft suitable to be used as a porpoise observation-and-rescue platform, shall be carried on all certificated vessels.

(K) Facemask and Snorkel: At least two facemasks and snorkels shall be carried on all certificated vessels.

(L) Floodlights and Spotlight: All certificated vessels shall be equipped with adequate floodlights suitable for use in darkness to attract fish toward the main vessel and spotlight to intermittently illuminate the backdown channel and apex.

(M) Vessel certificate holders may petition for an exemption from the regulations regarding vessel gear and equipment for the purpose of experimenting with alternate gear or procedures designed to reduce incidental serious injury and mortalities of marine mammals in the course of commercial fishing. The petition shall be made in writing to the Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, and shall include detailed specifications of the proposed gear and procedure modifications. Modifications may be granted upon review and approval, on a trip by trip basis, only if a National Marine Fisheries Service designated representative is available and accompanies the vessel on the approved trip.

(v) *Vessel Inspection:* (A) Annual: At least once during each calendar year, purse seine nets and other gear and equipment required by these regulations shall be made available for inspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region.

(B) Reinspection: Purse seine nets and other gear and equipment required by these regulations shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region. The vessel certificate holder shall notify the Fleet Assistance Section, Southwest Region, National Marine Fisheries Service, 1140 N. Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540 of any net modification at least five (5) days prior to departure of the vessel on its next scheduled trip in order to determine whether a reinspection or trial set would be required.

(C) Failure to Pass Inspection: A certificate of inclusion for a vessel with gear which is not in compliance with these regulations or maintained in a functional and seaworthy condition, shall be invalid until such deficiencies in gear or conditions are corrected and approved by an authorized National Marine Fisheries Service Inspector.

(vi) *Operator Training Requirements.* All operators shall maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session conducted under the auspices of the National Marine Fisheries Service in order to obtain their certificate of inclusion. At the training session an attendee shall be instructed concerning the provisions of the Marine Mammal Protection Act of 1972, the regulations promulgated pursuant to the Act, and the fishing gear and techniques which are required or will contribute to reducing serious injury and mortality of porpoise incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year certificate of inclusion will not be required to attend additional formal training sessions unless there are substantial changes in the Act, the regulations, or the required fishing gear and techniques. Additional training may be required for any operator who is found by the Regional Director, Southwest Region, to lack proficiency in the procedures required.

(vii) *Marine Mammal Release Requirements:* All operators shall use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(A) Use of Speedboats: On every set involving marine mammals, two speedboats equipped for towing shall be immediately available. At least one shall be manned and in the water. The second one, may be manned or unmanned, and may remain either in the water or in the davits. Both shall be ready for use until backdown commences. Speedboats shall tow on bunchlines whenever net collapse begins or on the corkline if canopies of loose webbing form whenever necessary to prevent marine mammal entrapment.

(B) Backdown Procedure: Backdown shall be performed following a purse seine set in which marine mammals are captured in the course of catching and landing tuna, and shall be continued until it is no longer possible to remove live marine mammals from the net by this procedure. Thereafter, other release procedures required shall be continued until all live animals have been released from the net.

(C) Hand Rescue: During backdown, a minimum of two rescuers shall aid with the release of marine mammals. If live marine mammals remain in the net after backdown, a minimum of two rescuers shall hand release them.

(D) Prohibited Use of Sharp or Pointed Instrument: The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(E) Use of Rubber Raft, Facemask, and Snorkel: A rubber raft suitable as a porpoise observation and rescue platform shall be launched inside the net near the time of tying down for the backdown maneuver. The raft shall be used by a crewman to assist the other rescuer(s) in disentangling and releasing live marine mammals from the net. The crewman in the raft shall use the facemask and snorkel to determine whether all live marine mammals are out of the net and, if they are not, make every effort to remove them before backdown is terminated. Taking into consideration the safety of all personnel, all live marine mammals that remain in the net after backdown shall be herded to areas where they can be easily released.

(F) Prohibited Brailing of Live Marine Mammals: All release procedures shall continue until all live marine mammals are removed from the net prior to initiating the brailing operation. Brailing live marine mammals from the net is prohibited.

(G) Prohibited Setting at Sundown: On every set involving marine mammals, the net skiff shall be released at least one and one-half hours before sunset; release of the net skiff after this time is prohibited.

(H) Use of Lights: If the backdown maneuver or other required release procedures continue past one-half hour after sunset, lights shall be used to insure that release procedures are properly performed and that all live marine mammals are removed from the net. Floodlights shall be used to attract fish toward the main vessel. A spotlight shall be intermittently used to illuminate the backdown channel and apex until all live marine mammals are removed from the net.

(viii) *Penalties:* Failure to comply with the provisions of the general permit or these regulations, including but not limited to: failure to submit upon demand to vessel, gear, equipment, or proficiency inspection or examination by authorized National Marine Fisheries Service personnel; falsification of any required logs and reports; or failure to satisfy the requirements of any provisions of these regulations will subject vessel owners, managing owners, masters, or operators to revocation of the vessel certificate of inclusion and/or to the right to be included under a general permit, and further subject vessel owners, managing owners, masters, and operators to penalties provided for under the Act, including revoking the right to be an operator as defined in Sec. 216.24(c)(1).

(3) *Encircling Gear, Purse Seining Not Involving the Intentional Taking of Marine Mammals.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(3)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus,* under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(3)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of Sec. 216.3 with respect to "Incidental catch," and may be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) the location, time, and date of the death or injury;

(B) the identity and number of marine mammals killed or injured; and

(C) a description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with the provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit to an inspection of the vessel, marine mammal logs and required gear, upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel owner or master to the penalties provided for under the Act.

(4) *Stationary Gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(4)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus,* under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (ii) were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of Sec. 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) the location time, and date of the death or injury;

(B) the identity and number of marine mammals killed or injured; and

(C) a description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with the provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit to an inspection of the vessel, marine mammal logs and required gear, upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel, owner or master to the penalties provided for under the Act.

(5) *Other Gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(5)(ii) of this section have

been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(5)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of Sec. 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent, or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) the location, time, and date of the death or injury;

(B) the identity and number of marine mammals killed or injured; and

(C) a description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with the provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit to an inspection of the vessel, marine mammal logs and required gear, upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel, or master to the penalties provided for under the Act.

(e) *Importation:* (1) It shall be illegal to import into the United States any fish, whether fresh, frozen or otherwise prepared, if such fish were caught in a manner prohibited by these regulations or in a manner that would not be allowed in circumstances where a person subject to the jurisdiction of the United States would be required to have a certificate of inclusion in a general permit hereunder, whether or not any marine mammals were in fact taken incidental to the catching of the fish, unless the Assistant Administrator makes a finding and publishes such finding in the Federal Register, that such fishing, although not in conformity with the specific requirements of these regulations, is accomplished in a manner which does not result in an incidental mortality and serious injury rate in excess of that which results from fishing operations under these regulations.

(2) The following fish and categories of fish, which the Assistant Administrator has determined are involved with commercial fishing operations which cause the death or injury of marine mammals, are subject to the prohibitions and documentation requirements of this section:

(i) Salmon and halibut. The following U.S. Tariff Schedule Item Numbers identify these categories of salmon and halibut products which are imported into the United States and are to be covered by the documentation and certification regulations of § 216.24(e)(3):

110.20–25 Halibut, fresh or chilled.
110.20–30 Halibut, frozen.
110.20–45 Salmon, fresh or chilled.
110.10–50 Salmon, frozen.
110.70–40 Halibut, other—except portion controlled steaks.
111.48–00 Salmon, salted.
111.88–00 Salmon, smoked or kippered.
112.18–00 Salmon, preserved, not in oil.

(ii) Yellowfin tuna. The following U.S. Tariff Schedule Item Numbers identify the categories of tuna and tuna products under which yellowfin tuna is imported into the United States, and are subject to the importation restrictions of paragraph (e)(4) of this section after December 31, 1977:

110.10–20 Tuna; yellowfin, whole fish.
110.10–25 Tuna; yellowfin, eviscerated, head on.
110.10–30 Tuna; yellowfin, eviscerated, head off.
110.10–37 Tuna; yellowfin, other.
112.30–40 Tuna; canned, other than white meat, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.
112.34–00 Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.
112.90–00 Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.

(3) Salmon and Halibut. All fish and categories of fish listed in paragraph (e)(2)(i) of this section shall be denied entry into the United States unless accompanied by a separate Fisheries Certificate of Origin (Standard Form 369–1) from each country whose flag vessels caught fish involved in the importation. The Fisheries Certificate of Origin should include the following information:

(i) The country of origin; and

(ii) The identity and quantity of fish; and, either

(iii) After the Assistant Administrator has published the finding referred to in paragraph (e)(1) of this section, a statement from a responsible official of the country of origin that the fishing technology permitted by the country of origin with respect to the species of fish presented for importation into the United States does not result in a rate of serious injury or death to marine mammals in excess of that which results from U.S. commercial fishing operations as prescribed by these regulations. Country of origin for the purposes of this section shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments; or

(iv) A statement by a responsible official of the country of origin or the master of the vessel which caught the fish that such fish were not caught in a manner prohibited for U.S. fishermen by these regulations. The statement shall identify the species, quantity, and exporter of the fish to which the statement refers; or

(v) Any nation may certify to the Assistant Administrator either (A) that all of its vessels fishing under its flag are fishing in conformance with these regulations; or (B) a list of the vessels, by name and official number, fishing under such nation's flag which are fishing in conformance with these regulations; or (C) that all of the vessels fishing under such nation's flag, with the exception of any vessels specifically listed by name and official number, are fishing in conformance with these regulations. If methods (B) or (C) are

used, the shipping documentation must also show the name and official number of the vessel which caught the fish presented for importation. The Assistant Administrator may then make a finding, and publish such finding in the Federal Register, that fish imports listed in paragraphs (e)(2)(i) from a nation or from an identified segment of a nation's fishing fleet, are exempted from the documentation provisions of this section.

(4)(i) Yellowfin tuna: All shipments of fish and products listed in paragraph (e)(2)(ii) of this section, from any nation, shall not be entered into the United States for consumption or withdrawn from warehouse for consumption unless a finding has been made pursuant to paragraph (e)(5)(i) of this section, and unless accompanied by the following documentation: (A) A separate Yellowfin Tuna Certificate of Origin (Standard Form 370-1) and (B) a bill of lading from each country whose flag vessels caught yellowfin tuna involved in the importation. (ii) The Yellowfin Tuna Certificate of Origin must include the following information: (A) Country of origin of the fishing vessel(s) involved; (B) Exporter (name and address); (C) Consignee (name and address); (D) Identity and quantity of the yellowfin tuna to be imported, listed by U.S. Tariff Schedule Number; (E) Name of vessel(s) which caught the yellowfin tuna; (F) Fishing method used (i.e., purse seine, longline, pole and line, etc.); (G) Other documentation as may be required by the Assistant Administrator, subsequent to granting a finding in paragraph (e)(5) of this section; (H) Must be signed by either a responsible government official of the country whose flag vessel caught the fish or the vessel master, below the following certification statements:

I certify that the yellowfin tuna described in (D) above was caught by flag vessels of a country either, (1) not required to obtain a finding from the United States Department of Commerce (National Marine Fisheries Service) under 50 CFR 216.24(e)(5), and the fish was not caught in a manner prohibited for United States fishermen by the United States Marine Mammal Regulations 50 CFR 216.24(d)(2), or (2) which has been found by the United States Department of Commerce (National Marine Fisheries Service) to be in conformance with the United States Marine Mammal Regulations 50 CFR 216.24(e)(5).

I certify that the above information is complete, true and correct to the best of my knowledge and belief. I understand that my making a false statement may subject me to the criminal penalties under the Marine Mammal Protection Act of 1972.

(I) Must also be signed by the exporter, under the following declaration:

The undersigned hereby declares that, based on the above statements, the yellowfin tuna herein offered for importation into the United States, was caught by flag vessels of (country) in conformance with the United States Marine Mammal Regulations 50 CFR 216.24.

(5)(i) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(ii) of this section from countries of origin (as documented under (e)(4) above) whose vessels operate in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean, as determined by the Assistant Administrator; shall not be entered into the United States for consumption or subsequently withdrawn from warehouse for consumption unless the Assistant Administrator makes a finding in consultation with the U.S. Department of State, and publishes such finding in the Federal Register that fishing operations in the country of origin are conducted in conformance with U.S. regulations and standards as stated in paragraph (d)(2) of this section. The Assistant Administrator may make a finding that, although not in conformity with these regulations, such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which result from U.S. fishing operations under these regulations. Upon such a finding unloading may be allowed. Country of origin for the purposes of this section (Sec. 216.24(e)) shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments.

(ii) Countries of origin desiring to obtain a finding which will allow the importation of products listed in paragraph (e)(2)(ii) of this section must submit, by appropriate government official, to the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235, the following information: (A) A statement of the quantity and type (identified by U.S. Tariff Schedule Item Numbers listed in paragraph (e)(2)(i) of this section) of fish or fish products expected to be imported into the U.S.; (B) A detailed description of the fishing technology and procedures utilized in tuna purse seine fishing to protect marine mammals so that a determination of conformance with Sec. 216.24(d)(2) of these regulations can be made, or the effectiveness of any other equivalent technology or procedures can be assessed; (C) A statement of the number of marine mammals killed or seriously injured (by species) incidental to the yellowfin tuna purse seine operations on porpoise for the previous year, and the manner in which the information was obtained (logbooks, observers, interviews, or other procedures); (D) A statement of the number of marine mammals which will be allowed to be killed or seriously injured annually incidental to yellowfin tuna purse seine operations; (E) A statement of the procedures to be required, including quotas and other controls which will meet the U.S. requirements to limit the level of mortality with specific reference to any species or stock designated as depleted; and (F) A list of vessels which may be involved in the taking of marine mammals incidental to yellowfin tuna purse seining.

(iii) The Assistant Administrator will review each nation's findings annually upon receipt of information required under paragraph (e)(5)(ii) which pertains to a preceeding calendar year, and a request of a continuation of a finding by the country of origin. This information should be submitted by September 1 preceding the calendar year for which the exportation is requested. The Assistant Administrator may require verification of statements made in connection with requests to allow importations. The Assistant Administrator will reconsider a finding upon a request from, and the submission of additional information from, the country of origin.

(6) *Fish refused entry.* If fish is denied entry under the provisions of Sec. 216.24(e)(3) or Sec. 216.24(e)(4), the District Director of Customs shall refuse to release the fish for entry into the United States and shall issue a notice of such refusal to the importer or consignee.

(7) *Release under bond. Provided however,* that fish not accompanied or covered by the required documentation or certification when offered for entry may be entered into the United States if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required documentation or certification. The bond shall be in the amount required under 19 CFR 25.4(a). Within 90 days after such Customs entry, or such additional period as the District Director of Customs may allow for good cause shown, the importer or consignee shall deliver a copy of the required documentation or certification to the District Director of Customs, and an original of the required documentation or a copy of the certification to the Regional Director of the National

Marine Fisheries Service, unless the District Director of Customs has received notification from the National Marine Fisheries Service that the fish is covered by a certification. If such documentation, certification, or notification is not delivered to the District Director of Customs for the port of entry of such fish within 90 days of the date of Customs entry or such additional period as may have been allowed by the District Director of Customs for good cause shown, the importer or consignee shall redeliver or cause to be redelivered to the District Director of Customs those fish which were released in accordance with this paragraph. In the event that any such fish is not redelivered within 30 days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence under a bond given on Form 7551. Fish released for entry into the United States through use of the bonding procedure provided in this paragraph shall be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act if (i) the required documentation or certification is not delivered to the Regional Director of the National Marine Fisheries Service within 90 days of the date of Customs entry, or such additional period as may have been allowed by the District Director of Customs for good cause shown, or (ii), the required certification is not on file in the office of the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atomspheric Administration, Department of Commerce, Washington, D.C. 20235, within this 90 day period or such additional period as may have been allowed by the District Director of Customs for good cause shown. Fish refused entry into the United States shall also be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act.

(8) *Disposition of fish refused entry into the United States; redelivered fish.* Fish which is denied entery under Sec. 216.24(e)(3) or Sec. 216.24(e)(4) or which is redelivered in accordance with Sec. 216.24(e)(7) and which is not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations. *Provided however,* that any disposition shall not result in an introduction into the United States of fish caught in violation of the Marine Mammal Protection Act of 1972.

(f) *Observers.*—(1) The vessel certificate holder of any certificated vessel shall, upon the proper notification by the National Marine Fisheries Service, allow an observer duly authorized by the Secretary to accompany the vessel on any or all regular fishing trips for the purpose of conducting research and observing operations, including collecting information which may be used in civil or criminal penalty proceedings, forfeiture actions, or permit or certificate sanctions.

(2) Research and observation duties shall be carried out in such a manner as to minimize interference with commercial fishing operations. The navigator shall provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. No owner, master, operator, or crew member of a certificated vessel shall impair or in any way interfere with the research or observations being carried out.

(3) Marine mammals killed during fishing operations which are accessible to crewmen and requested from the certificate holder or master by the observer shall be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals designated as biological specimens by the observer shall be retained in cold storage aboard the vessel until retrieved by authorized personnel of the National Marine Fisheries Service when the vessel returns to port for unloading.

(4) The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such observers on board such vessels. A vessel certificate holder who has been notified that the vessel is required to carry an observer, via certified letter from the National Marine Fisheries Service, shall notify the office from which the letter was received at least five days in advance of the fishing voyage to facilitate observer placement. A vessel certificate holder who has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(5) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, influence or attempt to influence an observer placed aboard a vessel.

(g) *Penalties and rewards:* Any person or vessel subject to the jurisdiction of the United States shall be subject to the penalties provided for under the Act for the conduct of fishing operations in violation of these regulations. The Secretary shall recommend to the Secretary of the Treasury that an amount equal to one-half of the fine incurred but not to exceed $2,500 be paid to any person who furnishes information which leads to a conviction for a violation of these regulations. Any officer, employee, or designated agent of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

[FR Doc. 80-33529 Filed 10-30-80; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries; Clarification to Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/Commerce.

ACTION: Notice of clarification to regulations.

SUMMARY: On January 3, 1980 (45 FR 786), final regulations were published implementing an amendment to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries. In those regulations three Appendices (A, B, and C) were published on pages 794–97. References to those Appendices occurred at three places in § 652.23 on page 793.

Those regulations are being codified in the Code of Federal Regulations (the Code). The three Appendices will not be published in the Code. In addition, the three references to the Appendices which occur on page 793 are deleted.

EFFECTIVE DATE: This clarification is effective on September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Denton R. Moore, Chief, Permits and Regulations Division, National Marine Fisheries Service, Washington, D.C. 20235. Telephone: (202) 634-7432.

(16 U.S.C. 1801 *et seq.*)

Signed at Washington, D.C. this 29th day of October, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-34178 Filed 10-30-80; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 45, No. 213
Friday, October 31, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

7 CFR Part 2852

U.S. Standards for Grades of Frozen Strawberries

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 25, 1980, the Food Safety and Quality Service published in the Federal Register a document proposing to amend the U.S. Standards for Grades of Frozen Strawberries. The proposed rule would (1) provide a definition for halves style; (2) convert to statistical sampling; (3) replace dual grade nomenclature with single letter designations; (4) establish standards similar to those of the Food and Drug Administration and the Codex Alimentarius; and (5) assign "A" or "B" grades to all sizes of containers while limiting other quality levels to nonretail size containers over 2.7 kg (6 lbs.). In response to a request for additional time to study the proposal and gather data, the Department is extending the comment period to September 30, 1981.

DATE: Comments must be received by September 30, 1981.

ADDRESS: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, Food Safety and Quality Service, Compliance Program, U.S. Department of Agriculture, Room 2637, South Agriculture Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Howard W. Schutz, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6247. The Draft Impact Analysis describing the proposed rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

The proposal was reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant".

Background

On April 25, 1980, the Food Safety and Quality Service published a proposed rule (45 FR 27944-27948) to amend the United States grade standards for frozen strawberries which would (1) provide for a definition of halves style of frozen strawberries; (2) follow the USDA policy of replacing a dual grade nomenclature with single grade designations (Grades "A" and "B"); (3) convert to statistical (attributes) sampling for inspection of frozen strawberries; and (4) assign the grades of "A" or "B" to all sizes of containers while limiting the quality level, "Strawberries for Remanufacture", to nonretail size containers over 2.7 kg (6 lbs.). Interested persons were given until October 31, 1980, to comment.

The Department has been requested by the American Frozen Food Institute to extend the period of time within which data, views, or arguments may be submitted to September 30, 1981. The request stated that additional time was needed in order to gather data during the actual frozen strawberry processing season.

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 to September 30, 1981.

Done at Washington, D.C. on October 27, 1980.

Thomas P. Grumbly,

Acting Administrator, Food Safety and Quality Service.

[FR Doc. 80-33944 Filed 10-30-80; 8:45 am]
BILLING CODE 3410-DM-M

9 CFR Parts 317 and 381

Advance Notice of Proposed Rulemaking; Prior Labeling Approval Pilot Program

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food Safety and Quality Service (FSQS) in an effort to streamline regulatory procedures is considering amending the meat and poultry inspection regulations to include the delegation of certain labeling approval authority to Inspectors-in-Charge in the field. To test the feasibility of such delegation, a 120-day pilot program will begin December 1, 1980, in three selected meat and poultry inspection areas. The three selected areas include: Missouri (Southwestern Region), Kentucky (Southeastern Region), and the Hyattsville area which includes Maryland, Delaware, and the District of Columbia (Northeastern Region).

DATES: Pilot program to begin December 1, 1980. Comments must be received on or before December 31, 1980.

ADDRESSES: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, Food Safety and Quality Service, Compliance Program, Room 2637, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250. Oral comments to Ms. Joan Moyer Schwing, (202) 447-4293. (For additional information on comments, see Supplementary Information).

FOR FURTHER INFORMATION CONTACT: Ms. Joan Moyer Schwing, Deputy Director, Meat and Poultry Standards and Labeling Division, Compliance Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250. The Task Force Report referred to in this Notice is available for review by the public in the regulations Coordination Division.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments and information concerning this Notice. Written comments must be sent in duplicate to the Regulations Coordination Division. Comments should bear a reference to the date and page number of this issue of the Federal Register. Any person desiring opportunity for oral presentation of views concerning this Notice must make such request to Ms. Schwing so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this Notice will be

made available for public inspection in the Regulations Coordination Division during regular business hours.

Background

Pursuant to the authority contained in the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), FSQS maintains a prior approval program for labels and other labeling operated exclusively within Agency headquarters in Washington, DC, in order to assure that federally inspected meat and poultry products are properly marked, labeled, and packaged and not misbranded. Under current procedures, the Washington staff reviews approximately 100,000 labeling applications per year, and the approved labels and other labeling are returned to the applicant for use under the supervision of local inspection personnel. For several months, the Agency has been conducting a comprehensive review of these prior labeling approval procedures in an effort to streamline the prior approval process. As a result, the Agency has considered delegating certain labeling approval authority to Agency field offices. While inspection personnel are presently vested with some authority in this regard (see 9 CFR 317.4(c) and (d), 317.5, 381.134, and 381.135), this authority is rather limited, and in many instances, is frequently not exercised.

Recommendations

A joint Compliance/Meat and Poultry Inspection Program (MPI) Task Force was recently established to explore the possibility of field delegation in concert with this overall objective of streamlining the labeling approval process. The Task Force first met on July 1 and 2, 1980, in Washington, DC, to identify and discuss the various options available.

The Task Force considered the following three options:

1. Inspector-in-Charge Proposal
2. Area Office Proposal
3. Combination Inspector-in-Charge/Area Office Proposal

The first two options involved delegating authority to MPI field levels to approve "simple" labels (both sketches and finals) and all final labels that are consistent with sketches previously approved by the Washington label review staff. In the first option, the Inspector-in-Charge would approve the label while in the second option, specialists in the Area offices would approve the labels specified. The third option discussed built upon the Inspector-in-Charge proposal by adding authority for the Area office to approve labels of "medium" complexity. After lengthy discussion of the pros and cons to each option, the Task Force recommended that a pilot program be initiated to test the feasibility and effectiveness of the first and third options prior to any regulatory change. The Task Force's recmmendations are available for review by the public in the Regulations Coordination Division. The Agency is soliciting comments on the Task Force's recommendations and each of the three options considered by the Task Force.

Proposed Regulatory Changes

The Agency as part of this Notice is also seeking public comment on its intent to propose several regulatory changes that would modify its present labeling approval process as contained in 9 CFR 317.4 (for meat food products) and 381.115 (for poultry products).

Briefly, the regulatory changes under consideration would:

1. Allow the Inspector-in-Charge to approve final labeling which is identical to a sketch previously approved by the Washington Office;
2. Separate labeling into two distinct classes—"simple" labeling as described later in this Notice under Pilot Program, and "nonsimple" labeling; and
3. Delegate the labeling approval authority for simple labeling to the Inspector-in-Charge at the field level.

The Agency is particularly interested in learning whether such field delegation will adequately serve industry's needs for prompt review and approval of labeling modifications, and suggestions as to how the labeling approval procedure can otherwise by improved.

Pilot Program

The Administrator has considered the Task Force's recommendations and has decided, while seeking public comment under the prenotice procedure, to test initially the first option through a 120-day pilot program. Three areas have been selected for the pilot program. These areas include: Missouri (Southwestern Region), Kentucky (Southeastern Region), and the Hyattsville area which includes Maryland, Delaware, and the District of Columbia (Northeastern Region). In selecting these areas, the Agency attempted to evaluate the labeling expertise of inspection personnel within the area and also sought a representative cross-section of establishments in order to encompass a full variety of labeling issues. Beginning December 1, 1980, Inspectors-in-Charge in these areas will approve any "simple" labeling (sketches and finals) and any final labeling which have previously had a sketch approved by the Washington label review staff. For the purposes of the pilot study, "simple" labels or other labeling that the Inspectors-in-Charge in these three areas can approve include the following:

1. Previously approved labels or labeling where the modifications fall into one of the following categories:
   a. Those labels and other labeling identified in 9 CFR 317.4(c), 317.4(d), 317.5, 381.134, and 381.135.
   b. Meat and poultry inspection legends.
   c. Meat carcass and meat food product brands.
2. Labels or other labeling not previously approved for products containing a single ingredient and which do not contain information, statements or claims, such as:
   a. Quality claims including but not limited to such things as: Blue Ribbon, Choice, Prime, etc.;
   b. Negative claims;
   c. Geographical claims;
   d. Nutritional claims;
   e. Guarantees; or
   f. Foreign language.

In addition to these "simple" labels or other labeling, the Inspectors-in-Charge in these three areas may approve all final labels or other labeling having a sketch approval by the Washington label review staff when the final labeling exactly matches the approved sketch.

Participation in the pilot program is voluntary. The Agency encourages industry located in these three areas to participate in the pilot program. When a company has determined that the labels or other labeling for which it seeks approval can be approved by the Inspector-in-Charge based on the criteria specified in this Notice, the application may be submitted to the inspector. The Inspector-in-Charge will then review the label or other labeling and determine if action can be taken. If the Inspector-in-Charge determines that the label or other labeling does not meet the criteria specified in this Notice, the label or other labeling will be returned to the company to be transmitted to the Washington label review staff. All appeals of labeling review decisions must still be made to the Washington label review staff. An applicant seeking review of a decision made by the Inspector-in-Charge in this regard should, therefore, transmit the label or other labeling in the usual manner to the Washington office, specifying the basis for the appeal.

The Agency will evaluate the results of the pilot program and the comments received to this Notice prior to deciding whether to make a proposal.

Done at Washington, DC, on: October 24, 1980.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 80-33839 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

High-Cost Gas Produced From Tight Formations

AGENCY: Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendation of the Colorado Oil and Gas Conservation Commission that the Lower Mesaverde formation (consisting of the Rolling, Cozzette and Corcoran Sandstone members) be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on November 26, 1980.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 11, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8299 or Victor Zabel (202) 357-8559.

October 27, 1980.

I. Background

On October 3, 1980, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980) that the Rollins, Cozzette and Corcoran sandstones underlying specified lands in Mesa County, Colorado be designated in the Commission's regulations as tight formations. On October 20, 1980, Colorado submitted a corrected recommendation redefining the recommended formation as the Lower Mesaverde formation (consisting of the Rollins, Cozzette and Corcoran Sandstone members). Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Lower Mesaverde formation be designated a tight formation should be adopted. The United States Geological Survey concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

The recommended formation is located approximately 30 miles east-northeast of Grand Junction, Colorado and lies in the Plateau Creek Field area in Mesa County, Colorado. The average depth to the top of the producing interval is approximately 3,850 feet.

II. Discussion of the Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG-7 convened by Colorado on this matter demonstrates that;

(1) The average *in-situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the Lower Mesaverde formation (as defined), without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of crude oil per day.

Colorado further asserts that the typical casing design of wells drilled in the recommended formation, as required by Colorado's rules and regulations, will protect fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, Issued August 1, 1980, in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Lower Mesaverde formation (consisting of the Rollins, Cozzette, and Corcoran Sandstone members), as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

III. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 26, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Colorado-5), and should give reasons including any supporting data for any recommendations. Comments should also indicate any supporting data for any recommendations. Comments should also indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during business hours.

Any persons wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Commission no later than November 11, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is amended by adding a new subparagraph (17) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designatd as tight formations. A more detailed description of the geographical extent

and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, as subindexed below, and is also located in the official files of the jurisdicational agency that submitted the recommendation.

(1) * * *

(2) through (16) [Reserved].

(17) *The Lower Mesaverde Formation in Colorado*—(i) *Delineation of formation.* The Lower Mesaverde Formation consisting of the Rollins, Cozzette and Corcoran Sandstone members, is located in the Plateau Creek Field area in Mesa County, Colorado. It is approximately 30 miles east northeast of Grand Junction, Colorado, and lies in the southern part of the Piceance Creek Basin. (Colorado-5).

(ii) *Depth.* The average depth to the Lower Mesaverde Formation is 3,850 feet.

[FR Doc. 80-34049 Filed 10-30-80; 8:45 am]
BILLING CODE 6450-85-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 320

[Docket No. 80N-0315]

Quinidine; Bioequivalence Requirements

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to establish bioequivalence requirements for certain immediate-release quinidine oral solid dosage form drug products used to treat cardiac arrhythmias. This action is being taken because of evidence that drug products subject to this proposal can present bioequivalence problems and thereby should be the subject of a bioequivalence requirement. The proposed regulation would ensure the bioequivalence of different brands of quinidine drug products and batch-to-batch uniformity of the same drug product by each manufacturer.

DATES: Comments by December 30, 1980. It is proposed that the final regulation based on this proposal be effective 30 days after its date of publication in the Federal Register.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

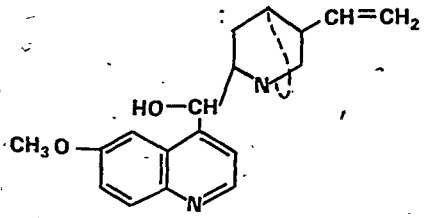
FOR FURTHER INFORMATION CONTACT: Henry J. Malinowski, Bureau of Drugs (HFD-525), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1640.

SUPPLEMENTARY INFORMATION: Under Subpart C of 21 CFR Part 320, the Commissioner of Food and Drugs, on his own initiative or in response to a petition from an interested person, may propose and establish a bioequivalence requirement for drug products containing identical amounts of the same active ingredient and in the same dosage form that are intended to be used interchangeably for the same therapeutic effect if there is a known or potential bioequivalence problem with the drug product. This authority to issue bioequivalence regulations for drug products for human use is delegated to the Director and Deputy Director of the Bureau of Drugs by § 5.79 (21 CFR 5.79).

Data available to FDA show that, based on the criteria in § 320.52 (21 CFR 320.52), there is well-documented evidence that drug products subject to this proposal can present bioequivalence problems and thereby should be the subject of a bioequivalence requirement. Therefore, the Director of the Bureau of Drugs, on his own initiative, tentatively concludes that a bioequivalence requirement involving in vivo testing in humans and in vitro dissolution testing should be established for certain oral quinidine drug products. The evidence on which the Director bases his tentative conclusion and the proposed bioequivalence requirements are discussed below.

Background

Quinidine sulfate, quinidine polygalacturonate, and quinidine gluconate are the sulfate, polygalacturonate, and gluconate salts of 6 methoxy-alpha-(5 vinyl-2-quinuclidinyl-4-quinoline-methanol). The base has the following structural formula:



The commercially available salts of quinidine, the dextrorotatory optical isomers of quinine, are used for treatment of cardiac arrhythmias such as atrial fibrillation, atrial flutter, paroxysmal superventricular and ventricular tachycardia and premature systoles (Ref. 2).

When quinidine is administered on an empty stomach peak plasma levels are reached in 1 to 3 hours (Ref. 2). Its elimination half life varies between 5 to 7 hours with about 10 to 35 percent of the administered dose being excreted unchanged (Refs. 3, 4, and 5). It has a total body clearance of from 4 to 6 mL/min/kg (Refs. 4 and 5).

Although most patients with congestive heart failure and poor renal function have normal, expected elimination half lives, pharmacokinetic parameters in these patients vary with the state of disease (Refs. 6 and 7). Patients with congestive heart failure and renal insufficiency absorb about one half the quinidine dose compared to normal patients (Ref. 8). These patients have lower absorption rates but higher plasma levels because they have a considerably smaller volume of distribution and a concomitant decrease in drug urinary excretion (caused by a decrease in the glomerular filtration rate) (Refs. 8 and 9). Clinical studies have shown that administration of quinidine is associated more frequently with toxic reactions and fatal arrhythmias in patients with congestive heart failure and renal insufficiency (Refs. 10 and 11).

While quinidine is generally administered orally in the form of its salts (sulfate, polygalacturonate or gluconate), the free base is the active species and is absorbed across the gastrointestinal tract. Because quinidine sulfate, quinidine gluconate, and quinidine polygalacturonate are pharmaceutical alternatives which have the same pharmacological effect and which produce identical changes in an electrocardiogram, they are considered together for purposes of establishing a bioequivalence requirement (Refs. 12 and 13).

Evidence To Establish a Bioequivalence Requirement

The Director considered the following criteria as set forth in § 320.52 *Criteria and evidence to establish a bioequivalence requirement* (21 CFR 320.52) in tentatively concluding that a bioequivalence requirement should be established for certain quinidine oral drug products.

1. *Evidence from well-controlled bioequivalence studies that such products are not bioequivalent drug products.* The results of a comparative bioavailability study using four commercially available brands of quinidine sulfate tablets revealed significant differences in the rate of absorption of quinidine sulfate among the different brands of tablets as measured by time to peak concentration (Tmax) (Ref. 14).

2. *Evidence that the drug products exhibit a narrow therapeutic ratio, e.g., there is less than a 2-fold difference in median lethal dose (LD_{50}) and median effective dose (ED_{50}) values, or have less that a 2-fold difference in the minimum toxic concentrations and minimum effective concentrations in the blood, and safe and effective use of the drug products requires careful dosage titration and patient monitoring.* For the double extraction technique of Cramer and Isaksson, a normal therapeutic plasma concentration range for quinidine is between 2.3 and 5.0 micrograms per milliliter (mcg/mL) (Ref. 6). Plasma concentrations of 8 mcg/mL or more result in conduction block in the sinoatrial node, atrioventricular node, and Purkinje system, and ventricular tachycardia or ventricular filibration may occur. Toxic reactions are almost certain to occur at levels above 10 mcg/mL (Ref. 2).

3. *Competent medical determination that a lack of bioequivalence would have a serious adverse effect in the treatment or prevention of a serious disease or condition.* Because of the marked variation in quinidine plasma levels and factors, e.g., absorption rate, first-pass metabolism, and disease state, which alter those levels, the dosage regimen of quinidine administered to each patient must be individualized (Refs. 3, 6, 7, and 14). Failure to achieve a therapeutic effect could result from failure to achieve a therapeutic concentration because a poorly bioavailable product was selected (Ref. 1). On the other hand, quinidine exhibits a narrow therapeutic ratio (Refs. 1 and 2). Substitution of a more bioavailable product that produces levels that exceed the therapeutic range may result in significant toxicity (Ref. 2).

4. *Physicochemical evidence that: The dissolution rate of one or more such products is slow, e.g., less than 50 percent in 30 minutes when tested using either a general method specified in an official compendium or a paddle method at 50 revolutions per minute in 900 milliliters of distilled or deionized water at 37° C, or differs significantly from that of an appropriate reference material such as an identical drug product that is the subject of an approved full new drug application.* FDA studied the dissolution of 200 milligrams (mg) quinidine sulfate products in 1975 by using the FDA paddle method in 900 mL of water at 37° C. and 50 rpm (Ref. 17).

Table 1.—*Quinidine Sulfate Products Percent of Labeled Amount Dissolved*

Product	Time, minutes			
	10	30	60	90
Mfr. A*	0.0	10.7	21.7	29.7
Mfr. A	100	100	100	.....
Mfr. B	8.4	33.9	70.9	91.2
Mfr. C	12.2	34.4	58.3	77.0
Mfr. D	80.3	96.3	100	100
Mfr. E	10.4	38.6	80.4	94.3
Mfr. F	22.9	54.8	73.7	84.4
Mfr. G	13.7	76.2	90.6	93.1

*Capsule formulation, all other products tested were tablets.

The results in Table 1 show a wide variation in the dissolution profile of quinidine sulfate tablets produced by different manufacturers, and even between two products, i.e., tablets and capsules, produced by the same manufacturer.

5. *Pharmacokinetic evidence that: There is rapid metabolism of the therapeutic moiety in the intestinal wall or liver during the process of absorption (first-pass metabolism) so the therapeutic effect and/or toxicity of such drug product is determined by the rate as well as the degree of absorption.* When the absolute bioavailability of quinidine was examined, results showed that only about 70 percent of the drug reaches systemic circulation following oral administration (Refs. 3, 15, and 16). The results indicate that the reduction in quinidine bioavailability is due to first-pass metabolism in the liver (Ref. 3).

The Bioequivalence Requirement

On the basis of this data, the Director tentatively concludes that the evidence meets one or more of the criteria in § 320.52. He therefore proposes to establish a bioequivalence requirement for all oral dosage immediate-release form drug products containing quinidine sulfate, quinidine gluconate, and polygalacturonate.

The proposed bioequivalence requirement would apply to all manufacturers of these drug products. Each manufacturer, except the manufacturer of the reference material or a manufacturer who has previously conducted in vivo bioavailability/bioequivalence studies fulfilling the requirements of this section, would be required to (1) conduct an in vitro dissolution test comparing its drug product to a specified reference material, and (2) conduct an in vivo bioavailability study comparing the same lot of its drug product to a specified reference material.

The Director advises that, whenever possible, the reference material is a drug product subject to an approved full new drug application (NDA) which contains in vivo data demonstrating the bioavailability of the drug product and in vitro dissolution data indicating that the drug product meets the proposed in vitro bioequivalence requirement. In exceptional cases, for example, where no approved full NDA holder has conducted an acceptable bioavailability study, other factors may be considered appropriate by the agency. The selection of a drug product as the reference material does not imply superiority in any way but is intended only to provide a common standard for the determination of bioequivalence. The reference material to be used in conducting the in vivo and in vitro tests of each drug product subject to this proposed section is named in the "Guidelines for In Vivo Bioavailability Studies for Quinidine Drug Products."

Under this proposed requirement, the test drug product and reference material would meet the in vitro portion of the bioequivalence requirement if each capsule/tablet has a dissolution of not less than 85 percent in 30 minutes. The test is to be conducted in 900 mL of 0.1*N* HCl using U.S.P. apparatus 1 with the basket rotating at 100 rpm. The number of dosage units to be tested is to be determined by reference to the official U.S.P. dissolution acceptance table.

This in vitro dissolution test is the same as that required for quinidine sulfate tablets and quinidine sulfate capsules in the official compendium. Currently, there are no monographs for quinidine gluconate and quinidine polygalacturonate tablets or capsules in the official compendium.

Samples of the reference material run in comparison to a test drug product are to be tested in the same manner as the test drug product. If the samples from one lot of the reference material do not meet the applicable dissolution specifications for the product, test additional lots of reference material, up to a total of three lots until a lot of reference material which meets the applicable dissolution specification is tested. If none of the three lots of reference material tested meets the applicable dissolution specification, notify the Director, Division of Biopharmaceutics, Bureau of Drugs, Food and Drug Administration before conducting any in vivo studies. Because of the manner of selecting the reference material, it is not expected that manufacturers would normally have to test more than one lot of the reference material.

The in vivo data for all drug products subject to these requirements must show that the test drug product meets the following conditions:

1. The test drug product and the reference material do not differ by more

than 20 percent as determined by comparing the mean values for measured parameters, e.g., concentration of the active drug ingredient in the plasma, peak plasma levels (Cmax), area under the plasma concentration-time curves (AUC), rate of absorption (measured by time to obtain peak plasma levels (Tmax) or the absorption constant (Ka)).

2. In at least 75 percent of the subjects the test drug product is at least 75 percent as bioavailable as the reference material, using each subject as his or her own control, that is, administering both the reference material and the test drug product to each subject using a crossover procedure.

In addition, the analytical and statistical techniques used must be sensitive enough to detect differences in rate and extent of absorption that are not attributable to subject variability.

Methodology specifications are set forth both in the text of the proposed bioequivalence requirements that appear later in this document, and in guidelines on file in the office of the Hearing Clerk.

The Director also proposed that a manufacturer of a drug product selected by FDA as the reference material would be required to conduct an in vitro test on one batch of the reference material to demonstrate consistent dissolution performance. In addition, a manufacturer who has not conducted in vivo bioavailability/bioequivalence studies fulfilling the requirements of this section would be required to conduct an in vivo bioavailability study in humans comparing the reference material with an oral solution or oral suspension of an equivalent amount of quinidine contained in the reference material.

A manufacturer of a quinidine drug product subject to this proposed section who has previously conducted in vivo bioavailability/bioequivalence studies, for example, to meet requirements for approval of an ANDA for a drug product covered by a Drug Efficacy Study Implementation notice, may request FDA to evaluate these studies to determine whether they are adequate and conclusive to ensure the bioequivalence of the drug product in light of current scientific knowledge and methodology. If found acceptable, the manufacturer would be required to conduct an in vitro test on one batch of the product.

To correlate in vivo data with in vitro data, where in vivo testing is required, the Director proposes that the same batch of both the test drug product and the reference material that were used in the in vitro tests be used in the in vivo test, unless a manufacturer has conducted in vivo tests in humans to demonstrate bioavailability/bioequivalence before the effective date of these proposed requirements. If more than one batch of the reference material has to be used in the in vitro test because some batches of the reference material did not meet the applicable dissolution specifications, the batch which meets the applicable dissolution specifications must be used in the in vivo test.

General guidelines for in vivo testing are set forth in § 320.25 (21 CFR 320.25). Specific draft guidelines for in vivo testing and for in vitro dissolution testing of quinidine oral drug products are on file in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and are available on request.

The proposed effective date of the final regulation is 30 days after its date of publication in the Federal Register. The Director proposes that the results of the required in vitro dissolution test be submitted to FDA on or before 60 days after the effective date of the final regulation and the results of the required in vivo test be submitted to FDA on or before 180 days after the effective date of the final regulation. The Director believes this will allow sufficient time for a manufacturer to conduct the required tests, evaluate the data, prepare the necessary reports, and submit them to FDA.

The Director advises, however, that for the manufacturer to meet an in vivo bioavailability requirement for some quinidine drug products, FDA may recommend that a manufacturer conduct a pilot study in certain instances, e.g., when an analytical assay method has not been used previously in an in vivo bioavailability/bioequivalence study, or where optimal sampling times have not been determined. The recommendation that a pilot study be conducted will be in the "Guidelines for In Vivo Bioavailability Studies." The Director may grant an extension of up to 180 days upon request from the manufacturer to allow sufficient time to conduct the pilot study and submit the data to FDA. FDA encourages the submission of protocols for conducting in vivo bioavailability studies. If a manufacturer submits a protocol for FDA to evaluate, the Director will grant an extension of time necessary for the initial review of the protocol.

The Director advises that any drug product subject to this proposal is regarded as a new drug as defined in section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)), requiring either an approved full or abbreviated NDA as a condition to lawfully market the product. Marketing of such a drug product must be in accordance with the requirements of § 320.58 (21 CFR 320.58).

After the effective date of a final regulation establishing a bioequivalence requirement, each manufacturer would be required under § 320.56 (21 CFR 320.56) to conduct the in vitro dissolution test on a sample of each batch of the quinidine drug products to ensure batch-to-batch uniformity. The Director further proposes to require that the dissolution test be incorporated into a manufacturer's stability testing program. A batch of drug product whose dissolution falls below the specifications required by this regulation after entering the marketplace is subject to regulatory action.

References

Copies of all references cited below are on public display in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen there from 9 a.m. to 4 p.m., Monday through Friday.

1. Skelly, J. P., et al., "Quinidine Bioavailability Monograph," with collaborator P. Coates.

2. Moe, G. K. and J. A. Abildskov, "Antiarrhythmic Drugs," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., Edited by Goodman, L. S. and A. Gilman, The MacMillan Co., New York, pp. 686-694, 1975.

3. Ueda, C. T., B. J. Williamson, and B. S. Dzindzio, "Absolute Quinidine Bioavailability," *Clinical Pharmacology and Therapeutics*, 20:260-265, 1976.

4. Greenblatt, D. J., et al., "Pharmacokinetics of Quinidine in Humans after Intravenous, Intramuscular and Oral Administration," *Journal of Pharmacology and Experimental Therapeutics*, 202:365-378, 1977.

5. Mahon, W. A., M. Mayersohn, and T. Inaba, "Disposition Kinetics of Two Oral Forms of Quinidine," *Clinical Pharmacology and Therapeutics*, 19:566-575, 1976.

6. Kessler, K. M. et al., "Quinidine Elimination in Patients with Congestive Heart Failure or Poor Renal Function," *New England Journal of Medicine*, 290:706-709, 1974.

7. Crouthamel, W. G., "Elimination of Quinidine in Congestive Heart Failure," *New England Journal of Medicine*, 290:1379-1380, 1974.

8. Crouthamel, W. G., "The Effect of Congestive Heart Failure on Quinidine Pharmacokinetics," *American Heart Journal*, 90:335-339, 1975.

9. Bellet, S., L. R. Roman and A. Boza, "Relationship Between Serum Quinidine Levels and Renal Function," *American Journal of Cardiology*, 27:368-371, 1971.

10. Thomson, G. W., "Quinidine as a Cause of Sudden Death," *Circulation*, 14:757-765, 1956.

11. Wetherbee, D.C., D. Holzman and M. G. Brown, "Ventricular Tachycardia Following Quinidine," *American Heart Journal*, 43:89–96, 1952.

12. Shaftel, N. and A. Halpern, "The Clinical Study of Quinidine Polygalacturonate," *American Journal of Medical Science*, 236:184–202, 1958.

13. Thompson, E. J., R. Marwaha and G. Naik, "Comparative Clinical Evaluation of Two Salts of Quinidine Using 24-hour Holter Monitor Recordings," *Journal of Angiology*, 29:251–259, 1978.

14. Strum, J. D. et al., "Comparative Bioavailability of Four Commercial Quinidine Sulfate Tablets," *Journal of Pharmaceutical Sciences*, 66:539–542, 1977.

15. Riegelman, S., FDA Contract 223–74–3145, Quinidine Bioavailability Studies II and III.

16. Riegelman, S., FDA Contract 223–74–3145, Quinidine Bioavailability Studies IV.

17. Memorandum from Pelsor, F. R. to H. J. Malinowski, "Dissolution Profiles-200 mg Quinidine Sulfate Tablets and Capsules," November 19, 1979.

The agency has carefully considered the potential environmental impact of this proposal and has concluded that the action will not have a significant effect on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979, 44 FR 71742) may be seen in the office of the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701(a), 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055 (21 U.S.C. 321(p), 352, 355, 371(a))) and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.79), it is proposed that Part 320 be amended in Subpart D by adding § 320.220 to read as follows:

320.220 Certain quinidine oral drug products.

(a) *Applicability.* The requirements of this section apply to all single active ingredient oral dosage form drug products containing the following quinidine products: quinidine sulfate, quinidine gluconate, and quinidine polygalacturonate.

(b) *In vitro test requirements*—(1) *General.* Each manufacturer of a drug product that is subject to this section, except for the manufacturer of the reference material who is subject to paragraph (b)(3) of this section and manufacturers of products previously tested in vivo which are subject to paragraph (b)(4) of this section, shall conduct an in vitro dissolution test by the dissolution procedure set forth in the official U.S.P., comparing samples from a lot of the drug product with samples from a lot of the reference material specified by the Food and Drug Administration. The number of dosage units of test drug product and reference material to be tested is determined by reference to the U.S.P. dissolution acceptance table. If the samples from the lot of the reference material do not meet the applicable dissolution specification for the product, test additional lots of reference material, up to a total of three lots, until a reference lot which meets the applicable dissolution specifications is tested. If none of the three lots of reference material tested meets the applicable dissolution specifications, notify the Director, Division of Biopharmaceutics, Bureau of Drugs, Food and Drug Administration, before any in vivo testing.

(2) *Specific requirements for test drug products.* (i) The test is to be conducted using 900 milliliters of 0.1*N* HCl, U.S.P. apparatus 1, and a basket speed of 100 revolutions per minute.

(ii) The test drug product and reference material meet the in vitro portion of the bioequivalence requirement if each has a dissolution of not less than 85 percent in 30 minutes.

(3) *Specific requirement for manufacturer of reference material.* Each manufacturer of a specified reference material shall conduct an in vitro dissolution test on one batch of the reference material using the U.S.P. dissolution procedure and the U.S.P. dissolution acceptance table in determining the number of samples to be tested. In addition, the requirements of paragraph (b)(2) of this section must be met.

(4) *Specific requirements for products previously tested in vivo to demonstrate dioavailability/bioequivalence.* If a manufacturer of a drug product subject to this section has previously conducted in vivo tests in humans to demonstrate bioavailability/bioequivalence of its drug product and the product has been found acceptable by the Food and Drug Administration under paragraph (d)(5) of this section, the manufacturer shall conduct an in vitro dissolution test on one batch of its drug product. The procedure, specifications to be met, and number of samples to be tested must meet the requirements of paragraph (b)(1) and (2) of this section.

(5) *Submission of test results.* Each manufacturer of a drug product subject to this section shall submit the results of the required in vitro dissolution test to the Food and Drug Administration on or before (60 days after the effective date of this section).

(c) *In vitro testing of each batch.* An in vitro dissolution test must be performed on each batch of drug product subject to this section. The test procedure, specifications to be met, and number of samples to be tested must meet the applicable requirements of paragraph (b)(1) and (2) of this section. It is not necessary, however, to compare samples of the reference material with the batch of drug product being tested.

(d) *In vivo portion of the bioequivalence requirement.* (1) Each manufacturer of a drug product subject to this section, except a manufacturer of the reference material who is subject to paragraph (d)(3) of this section and a manufacturer who has conducted in vivo bioavailability/bioequivalence studies in humans before the effective date of ths section which have been found acceptable under paragraph (d)(5) of this section, shall conduct an in vivo bioavailability study in humans comparing its drug product to the reference material.

(2) The test drug product meets the in vivo portion of the bioequivalence requirement in humans if the following conditions are met:

(i) The test drug product and the reference material do not differ by more than 20 percent as determined by comparing the mean values for measured parameters, for example, concentration of the active drug ingredient in the plasma, peak plasma levels (Cmax), rate of absorption (measured by time to obtain peak plasma level (Tmax), or the absorption constant (Ka)), and area under the plasma concentration-time curves (AUC).

(ii) In at least 75 percent of the subjects, the test drug product is at least 75 percent as bioavailable as the reference material using each subject as his or her own control, that is, administering both the reference material and the test drug product to each subject using a crossover procedure.

(iii) Analytical and statistical techniques used are sensitive enough to detect differences in rate and extent of absorption that are not attributable to subject variability.

(3) Each manufacturer of a drug product subject to this section that is selected by the Food and Drug Administration as the reference material for in vivo studies, who has not conducted in vivo bioavailability/bioequivalence studies fulfilling the requirements of this section before (insert the effective date of the final regulation) shall conduct an in vivo

bioavailability study in humans comparing its product (that is, the reference material) with an oral solution or oral suspension of an equivalent amount of the quinidine contained in the reference material.

(4) Each manufacturer of a drug product subject to this section shall submit the results of the required in vivo testing to the Food and Drug Administration on or before (180 days after the effective date of this section). The Food and Drug Administration may grant an extension of up to 180 days upon request if a manufacturer can document the need for an extension, for example, by submitting a protocol for review or demonstrating that pilot studies are required before starting the tests.

(5) Any manufacturer of a drug product subject to this section who has conducted one or more in vivo bioavailability/bioequivalence studies in humans before the effective date of this section may request an evaluation of these studies to determine whether the studies are adequate and conclusive to ensure the bioavailability/bioequivalence of the drug product in light of current scientific knowledge and methodology. Each request is required to contain the new drug application number, the established (generic) name of the product, the dosage form and strength of the drug product, and the date(s) of submission of the pertinent study information contained in the new drug application.

(6) Each manufacturer requesting this evaluation that holds an approved or pending full new drug application for the drug product shall submit the request for evaluation to the Division of Cardio-Renal Drug Products (HFD-110), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Each manufacturer requesting the evaluation that holds an approved or pending abbreviated new drug application for the drug product shall submit the request for evaluation to the Division of Generic Drug Monographs (HFD-530), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(e) *Inclusion of bioequivalence data in full or abbreviated new drug application.* Each manufacturer of a drug product subject to this section and currently marketed under a full or abbreviated new drug application shall submit the required in vitro and in vivo data in the form of a supplement to the application. Each manufacturer of a drug product subject to this section that is not marketed on the effective date of the final regulation shall include the required in vitro and in vivo data in the original full or abbreviated new drug application submitted to the Food and Drug Administration.

(f) *Failure to meet bioequivalence requirement.* Any manufacturer unable to meet either the in vitro or in vivo specifications required by this section will be required to reformulate the drug product.

(g) *Reference material and guidelines for testing.*

(1) The reference material to use in the in vivo and in vitro tests is specified in the "Guidelines for In Vivo Bioavailability Studies for Quinidine Drug Products." The same batch of the test drug product and of the reference material used in the in vitro test are to be used in the in vivo test, unless a manufacturer conducted in vivo tests in humans to demonstrate bioavailability/bioequivalence before the effective date of this section. If more than one batch of the reference material has to be used in the in vitro test because some batches of the reference material do not meet the applicable dissolution specifications, the batch that meets the applicable dissolution specifications must be used in the in vivo test.

(2) Guidelines for the conduct of in vivo and in vitro tests or oral solid dosage form quinidine drug products are on file in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and are available on request to that office.

(h) *Modifications.* Alternative methods or modifications to the bioequivalence requirement for in vitro or in vivo testing as set forth in this section may be used if evidence is submitted demonstrating that the modifications will ensure the bioequivalence of the drug to an extent equal to or greater than the methods set forth in this section. The data should be submitted to, and approved before use by, the Director, Division of Biopharmaceutics (HFD-520), Food and Drug Administration. Any approved modification will be incorporated into the appropriate guidelines for the drug.

Interested persons may, or or before December 30, 1980, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 16, 1980.

Jerome A. Halperin,

Acting Director, Bureau of Drugs.

[FR Doc. 80-34028 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 1020

[Docket No. 76N-0308]

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

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the performance standard for diagnostic x-ray systems and their major components by revising and adding requirements concerning computed tomography (CT) x-ray systems. CT systems are new medical diagnostic tools whose use in the United States has grown significantly in recent years. Because CT systems have many performance features that are unlike conventional x-ray systems, the present x-ray standard is not entirely appropriate for CT systems. The proposed amendments to the standard address the special characteristics of CT systems.

DATES: Comments by December 30, 1980; FDA proposed that the final rule based on these proposed amendments will become effective 1 year after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wang, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Under authority of the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602 (42 U.S.C 263b et seq.)), FDA administers an electronic product radiation control program to

protect the public health and safety. This authority provides for developing and administering radiation safety performance standards for electronic products. A radiation safety performance standard for diagnostic x-ray systems and their major components was published in the Federal Register of August 15, 1972 (37 FR 16461) and became effective on August 1, 1974. (The extension of effective date was published in the Federal Register of June 12, 1973 (38 FR 15444)). The agency has additional authority to provide for the safety and efficacy of diagnostic x-ray systems under the Medical Device Amendments of 1976 (Pub. L. 94–295), amending the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040 et seq. (21 U.S.C. 301 et seq.)).

Background

When the performance standard for diagnostic x-ray systems and their major components (§§ 1020.30, 1020.31, and 1020.32 (21 CFR 1020.30, 1020.31, and 1020.32)) was being developed, CT systems were only in the developmental stage and were not in routine clinical use in the United States. For this reason, no special provisions were made for CT systems in the diagnostic x-ray equipment standard. The agency has evaluated the standard as it relates to CT systems and concluded that, because of the special characteristics of CT systems, there are a number of areas in which the present diagnostic x-ray equipment standard is inadequate or inappropriate for proper control of these systems. Therefore, the agency believes that it is necessary to amend the standard to address the radiation safety problems unique to CT systems. A notice of intent on this subject was published in the Federal Register of September 30, 1976 (41 FR 43180). Two drafts of these amendments were completed and circulated to interested parties for review and comment prior to the publication of this proposal. The agncy discussed the drafts of the proposed rule with the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC). This committee, a statutory advisory committee to the Commissioner of Food and Drugs, must be consulted before the agency issues or amends any standard under the Radiation Control for Health and Safety Act of 1968. Also, to obtain additional comments from the clinical community, as recommended by TEPRSSC, agency staff conducted selected interviews of radiologists concerning the proposed amendments prior to the publication of this proposal.

FDA received a total of 37 comments on the first draft of these amendments (March 1978), of which 17 were from physicists, 16 from manufacturers, and 4 from radiologists. On the second draft (October 1978), a total of 18 comments were received, of which 10 were from manufacturers and 8 from physicists.

The rationale for the proposed amendments and a discussion of the agency response to comments on earlier drafts follow.

Amendments to § 1020.30

Because of the unique characteristics of CT systems, FDA proposes to add a new § 1020.33, *"Computed tomography equipment,"* to the diagnostic x-ray standard specifically for this type of equipment. Because references to this new section must be incorporated into the diagnostic x-ray standard, the first section of this proposal identifies those paragraphs of § 1020.30 that FDA proposes to amend so as to address CT systems.

Addition to the definitions. Current § 1020.30(b)(36) (21 CFR 1020.30(b)(36)) specifies certain conditions of operation as technique factors for all diagnostic x-ray equipment. For a CT system, these currently are the peak tube potential expressed in kilovolts (kV) and either the tube current in milliamperes (mA) and the exposure time in second(s) or the product of tube current and exposure time (mAs).

The use of exposure time as a technique factor for the description of x-ray equipment other than CT has several rationales. First, the relationship of x-ray exposure to the patient as a function of exposure time at given tube current and peak tube potential settings is generally understood by the user community. Second, there is a one-to-one relationship between the exposure time and the amount of time used to produce an image. Thus, the exposure time for a particular diagnostic procedure may be selected to diminish any blurring in the final image that could result from patient motion.

Some models of CT equipment do not have a one-to-one relationship between exposure time and the amount of time needed to complete a scan. The amount of time needed to complete a scan (scan time) can be longer than the exposure time for these types of systems. For many CT systems, scan time, rather than the exposure time, is normally selected by the operator. Because scan time is often the only selection possible and because it is sometimes difficult to determine the exposure time for these CT systems, scan time is a more appropriate technique factor when setting up these CT systems for a diagnostic study.

Thus, the agency proposes to modify the definition of technique factors in § 1020.30(b)(36) to address CT systems. For CT systems, including scan time as a technique factor allows the user to anticipate the probable extent of motion artifacts for selected values of scan time. However, it also provides a technique factor that does not scale directly with dose. Therefore, the agency also proposes to require that manufacturers provide the users with the relationship between scan time and the dose delivered by the system to a standard dosimetry phantom (see § 1020.33(c) (21 CFR 1020.33(c)) discussion later in this preamble).

To clarify computed tomography, scan, and scan time, definitions of these terms are proposed for addition to § 1020.30(b)(58), (59), and (60).

Information to be provided for users. Currently, § 1020.30(h)(3)(vi) (21 CFR 1020.30(h)(3)(vi)) prescribes that, for each x-ray control and associated high voltage generator, the manufacturer shall provide to the user a statement of the maximum deviation from the indication given by labeled control settings and/or meters during any exposure when the equipment is connected to an appropriate electrical supply. The intent is to provide the user with maximum deviation statements concerning technique factor control settings for radiographic as well as fluoroscopic equipment. However, this section needs to be more specific concerning what is required both for traditional and CT equipment. Thus, the agency proposes to amend § 1020.30(h)(3) to express more clearly the intent of this section of the regulation.

In conjunction with the above requirement, § 1020.30(h)(3)(vii) currently requires that the manufacturer of x-ray controls or generators provide a statement defining the measurement bases for any maximum deviation statement provided to the user. The intent of this provision is to allow the manufacturer appropriately to define any technique factor for this equipment. For example, the manufacturer may choose, on traditional equipment, to define the beginning and end points of exposure time with respect to a certain percentage of the voltage waveform. This requirement is not intended to be a means of describing test instrumentation. Therefore, the agency proposes to change the wording of § 1020.30(h)(3) to match more closely the original intent of this regulation and to extend this requirement to CT.

Exclusion of CT equipment from the present requirements on aluminum equivalence of material between patient and image receptor—§ 1020.30(n). To limit patient exposure while maintaining diagnostic information, § 1020.30(n) (21 CFR 1020.30(n)) limits the attenuation of the beam by certain items between the patient and image receptor by placing upper limits on the aluminum equivalence of these items at prescribed conditions of operation. Currently, these conditions of operation are: a tube potential of 100 kilovolts peak (kVp), with a half-value layer of 2.7 millimeters (mm) of aluminum and the x-ray beam directed perpendicular to the material.

For CT equipment, materials positioned between the patient and the detectors can be divided into two groups: materials fixed with respect to the patient and materials moving with respect to the patient. Materials fixed with respect to the patient include traditional patient restraint and support materials and packing material unique to CT equipment. The packing material is placed around the patient to present the CT system with a nearly cylindrical object for imaging. Materials moving with respect to the patient include beam-shaping and beam-hardening filters used to reduce beam-hardening artifacts and the dynamic range required of the detectors.

It is difficult to transfer the current aluminum equivalency limits directly to CT equipment because the current requirements are based on one specific orientation of the x-ray source with respect to the patient restraint and support materials. For CT diagnostic procedures, the x-ray source does not remain at a specific orientation with respect to the patient. This means that the patient restraint and support materials will be between the x-ray source and the patient only during a portion of the scan.

Because there are no criteria for aluminum equivalence of CT patient restraint and support materials, limits on these materials cannot be specified at this time. Appropriate limits must be based upon specific knowledge of the relationship between CT patient restraint and support materials and the image quality and dose to the patient, knowledge that is not currently available. The same considerations apply to packing material unique to CT equipment and materials moving with respect to the patient. Until such time as appropriate criteria can be determined, the agency proposes to exclude all materials positioned between the patient and detectors used with CT systems from the requirements of § 1020.30(n).

Computed Tomography Equipment—§ 1020.33

Definitions. A new framework of definitions is proposed in § 1020.33(b) as a description of the CT process. Although terms such as "slice" and "slice plane" are currently in common usage, they do not lend themselves to precise definitions, nor do they form a completely adequate framework for constucting mandatory requirements. As an alternative, descriptions using the word "tomogram" in its usual medical sense (a representation of patient anatomy) are more appropriate for these requirements because there is no region of the volume imaged by current CT systems that is conveniently bounded by two planes so that it could properly be referred to as a "slice." Therefore, a conceptual difficulty exists in appropriately defining this term. The actual tissue volume that contributes to the final "tomogram" may be extremely irregular in shape, and the contributions of different portions of this volume may be weighted very differently (according to the sensitivity profile). Thus, the term "tomogram" is more suitable for describing the output of the CT system, and its use would circumvent the difficulties inherent in the use of the term "slice."

Information to be provided for users. Proposed § 1020.33(c) requires that manufacturers of CT systems provide information concerning the absorbed dose delivered by CT systems to a standard dosimetry phantom and the imaging performance corresponding to this dose within the normal range of system conditions of operation. This information would be provided and identified in a separate section of the user's instruction manual or instruction sheets.

CT systems have two characteristics that require users be provided dose information. First, the doses resulting from CT systems are difficult for users to measure; and second, the doses delivered may not scale in a direct manner with technique factors as they do in conventional radiography. This is because the spatial distributions of dose delivered by CT systems are geometrically much more complicated than those of conventional x-ray systems. Therefore, descriptions of these spatial distributions in conventional dose terminology are necessarily lengthly and cumbersome. In addition, the dose distributions can vary significantly depending upon system design and method of operation. To properly characterize the radiologic impact of a CT system, it is, therefore, necessary to provide to the user an adequate description of the dose distributions produced by a particular system and the manner in which they are affected by variations in the system conditions of operation.

If this information is to be useful or meaningful, dose information alone is not sufficient. Because the amount of information contained in the image is dependent upon the dose delivered to the patient, dose information must be accompanied by an indication of the imaging performance when the given dose is delivered. Selection of the system or mode of operation that delivers the lowest dose to the patient would be inappropriate if doing so resulted in images that might not furnish the necessary diagnostic information. Conversely, the mode of operation that results in maximum detail in the resulting image may be unacceptable from a radiation risk standpoint for some patients or procedures. The user must have the proper information to make such judgments.

Dose information. The agency proposes to require in proposed § 1020.33(c)(2) that information concerning the radiation dose resulting from CT systems be provided to purchasers and, upon request, to others. The dose information would be obtained from measurements of the dose delivered to standard dosimetry phantoms for each model of equipment operated under typical conditions selected by the manufacturer. A description of the typical conditions of operation under which the dose was determined shall also be provided along with the dose information. The standard phantoms will be specified in an agency publication, "Standard Computed Tomography Dosimetry Phantoms as Required by 21 CFR 1020.30(c)(2)" (Ref. 1), a draft of which is on file in the office of the Hearing Clerk, FDA. The agency invites comments on this draft publication concurrently with the comment period on this notice.

Most users of CT systems do not have a convenient method of determining or estimating the doses delivered by CT systems. Because of the wide range of doses delivered by CT systems and the direct relationship between dose delivered and the character or quality of the images produced, users of CT systems should give consideration to the dose delivered when selecting system operating parameters and techniques. The required dose information would provide the basic information necessary for such considerations. Although the required dose information is obtained

using standard cylindrical dosimetry phantoms, it would be indicative of the doses resulting to patients under similar conditions.

Comments received by the agency on the previous drafts of these proposed amendments indicated a general agreement with the concept of requiring manufacturers to provide dose information. Some comments evidenced a concern that the amount and type of information required should not be too extensive for the needs of a typical user. In addition, comments have suggested that, to be most useful to clinical users of CT systems, the dose information should provide information on, or related to, the dose resulting from complete CT procedures or examinations rather than information on the doses from single scans. The agency, therefore, is modifying the information requirements proposed in earlier drafts of these proposed amendments. It proposes here that the value of the computed tomography dose index (CTDI) be provided by the manufacturer for specified locations in the standard phantoms.

This dose descriptor will permit the convenient estimation of the doses resulting from CT procedures consisting of a number of scans as a function of the distance between scans and the system conditions of operation. The dose descriptor used to describe the doses from CT systems, the CTDI, is defined in proposed § 1020.33(b)(1) as the integral of the dose along a line perpendicular to the tomographic plane (dose profile) divided by the nominal slice thickness. Thus, each point in the tomographic plane has associated with it a value of the CTDI.

The CTDI has been chosen as the dose descriptor for the CT systems because of three useful features. First, the CTDI at at point in the tomographic plane is related to the average dose at the same point of the multiple scan dose profile resulting from a series of scans each separated from the next by a constant distance. In particular, the CTDI is equal to the average dose when each scan in the series is separated by the nominal slice thickness provided the number of scans in the series is large enough so that the first and last scans of the series do not contribute any significant dose over the width of the center scan of the series. The average dose of the multiple scan dose profile is that value obtained by averaging the multiple scan dose profile over a length equal to the distance between consecutive scans with the length centered at the midpoint of the scan series. The CTDI permits the estimation of the dose from multiple scan procedures directly, without the need to generate such information from extensive manipulation of single scan dose profile data. Second, the average dose from multiple scans separated by distances other than the nominal slice thickness may be obtained simply by multiplication of the CTDI by the ratio of the nominal slice thickness to the distance between scans. Third, the CTDI incorporates both the width of the dose profile as well as the magnitude of the dose because it is defined as an integral over distance perpendicular to the tomographic plane.

Thus, the CTDI is a more useful description of the dose than simple statements of the dose at a given location, the maximum dose in a dose profile, or the maximum surface dose, because none of these descriptors provides information on the width or extent of the dose profile. The CTDI, when compared to the maximum dose in the dose profile at that point in the tomographic plane, can provide a measure of the matching in a direction perpendicular to the tomographic plane of the x-ray beam width to the width of the imaged volume as described by the nominal slice thickness. The closer the CTDI value is to the maximum dose in the dose profile, the more closely the x-ray beam width matches the imaged volume width.

To describe the variation in dose as a function of position in the tomographic plane, FDA proposes that the CTDI be provided for five locations in the tomographic plane (at the center and in each quadrant near the edge of the phantom). These locations and the dosimetry phantoms are described in detail in the referenced agency publication (Ref. 1). The dosimetry phantom would be oriented so that one of specified locations coincides with the maximum CTDI at one centimeter (cm) interior to the surface. To describe the variation in dose as a function of system conditions of operation, FDA proposes that CTDI at the center of the dosimetry phantom be provided as a function of system conditions of operation. In addition, the CTDI at 1 cm interior to the surface of the phantom would also be provided as a function of the peak tube potential for the location having the maximum CTDI 1 cm interior to the phantom. The proposed dose information will give users an indication of the magnitude of doses to be expected in patients under the same system operating conditions. These estimates would be appropriate for procedures consisting of about nine or more scans separated by constant interval between scans. From a survey of CT units in the United States, it has been determined that most CT procedures require at least nine or more scans (Ref. 2). The information to be provided will also permit estimation of the changes in dose as a function of changes in system conditions of operation or distance between scans.

The agency also proposes that dose profiles at the center location of the dosimetry phantom be provided along with the sensitivity profiles at the same location as a function of nominal slice thickness. A graphical comparison of the dose profile to the sensitivity profile will provide to the user a description of x-ray collimation efficiency perpendicular to the tomographic plane. Such information would permit selection of slice thicknesses which result in the most efficient use of radiation to perform a given diagnostic task. For example, if the curve of the sensitivity profile closely matches that of the dose profile, then the system only irradiates tissue being imaged. If the width of the dose profile exceeds the sensitivity profile by a significant amount, the contrary would be true. Users of CT systems should be aware of the effect of slice thickness selection on collimation efficiency and would receive such information under this proposal.

Imaging performance information. Proposed § 1020.33(c)(3) requires that the user information state the image noise, sensitivity profile, nominal slice thickness, and modulation transfer function (MTF) for the same CT conditions of operation and all other aspects of data collection as the dose information. The manufacturer would be free to choose the method of measurement for these parameters but would be required to describe fully the measurement techniques used for determining the specifications concerning the CT system to permit the agency or other interested party to verify the data. In addition, the manufacturer would be required to provide the CT user with maximum deviation statements concerning the given specifications.

The required parameters are objective measures of imaging performance. Image noise, the common indicator of precision of CT number estimation, would be defined independent of the CT number scale through the use of the contrast scale. The sensitivity profile gives the imaging capability of the CT system over the direction perpendicular to the tomographic plane, i.e., it indicates the system response to the axial position of a small high-contrast object. The nominal slice thickness,

obtained from the sensitivity profile, is often used as the indexing distance between scans. The MTF is the system response in the spatial frequency domain.

Quality assurance. Because of the nature and complexity of CT equipment, there are many possible sources of image degradation that may not be immediately obvious on clinical images. These include such items as x-ray beam and detector misalignment and detector malfunction or deterioration. The detection of suboptimum performance can be performed by scanning appropriate quality assurance (QA) test phantoms as a periodic system performance check. Therefore, the agency proposes in § 1020.33(d) that the manufacturer provide with each CT system the necessary phantoms to perform quality assurance tests on the CT equipment.

Comments concerning the QA requirement for CT equipment indicated that additional requirements are needed to help the CT user verify that the image display as well as the CT system is functioning properly. The agency agrees and proposes to require that manufacturers supply representative images obtained with the QA phantom and provide a means for displaying these images on the image-viewing device as a reference for comparison. These representative images would be obtained under the same CT conditions of operation as those for the imaging information required by proposed § 1020.33(c)(3)(i). In addition, the CT system would have the capability to store these representative images in digital form and display them. This would allow the CT user to display these representative images for comparison to verify proper functioning of the CT system itself and the associated image display system. Because the mean CT number for water or other reference material can drift with time, the agency also proposes that the manufacturer be required to state this value and its acceptable limits of variation.

Information in advertisements. In early drafts of the "information to user" section, the agency proposed that only objective imaging parameters be required to be provided by manufacturers to the users. However, sample images and statements of subjective imaging parameters, such as low contrast detectability, are often used in CT advertising. The agency notes that certain images may appear to be much better than those produced under normal conditions of operation if the dose delivered to produce the image is increased from that of normal operation. Therefore, the agency proposes in § 1020.33(e) to require that detailed information accompany or be made available for any performance specifications, including representative images, which the manufacturer chooses to provide in advertisements. This detailed information would provide the method of measurement used by the manufacturer to obtain the specifications or images and would provide dose information under the same conditions of operation. This requirement would permit the manufacturer to provide any additional information concerning the imaging performance of the system which the manufacturer judges to be useful, but would ensure that such information is accurate in sufficient detail to be useful, and that it is accompanied by dose information to permit risk-benefit assessments to be made.

Control and indication of conditions of operation. Section 1020.31(a) (21 CFR 1020.31(a)) currently prescribes certain requirements associated with the control and indication of technique factors. The first requirement (§ 1020.31(a)(1)) pertains to the visual indication of technique factors prior to an exposure. For conventional x-ray systems, such indication is needed to confirm intended exposures to patients and image receptors prior to initiating an exposure. The same considerations apply to CT equipment. For these types of systems, however, there are more conditions of operation that have a significant impact on patient exposure and image quality than the technique factors as defined in § 1020.30(b)(36). For this reason, proposed § 1020.33(f)(1) requires that visual indication of the conditions of operation be provided prior to the initiation of a CT scan or a scan sequence. When applicable, scan time may be indicated by a chart which provides the value of scan time as a function of other conditions of operation, such as traverse speed, scan diameter, and scan arc.

Very early designs of conventional x-ray equipment depended on the operator actually terminating the exposure with a handswitch. However, with the advent of x-ray systems providing shorter exposure times, it became increasingly difficult for the operator to manually deliver the correct dose to the patient. To prevent overexposures due to poor operator performance, § 1020.31(a)(2) currently requires a timer on x-ray systems to terminate the exposure. Because control of a scan is provided through monitoring specific equipment functions, CT equipment does not use timing circuits in the traditional sense. This characteristic could lead to very large localized patient dose in the event of equipment failure. Thus, the agency proposes in § 1020.33(f)(2) that the CT x-ray control terminate a scan automatically in the event of equipment failure whenever the preset value of scan time would be exceeded by 10 percent.

Some CT procedures may involve 10 to 20 consecutive scans and total procedure times greater than 1 minute. This type of process can lead to operator inattentiveness. Thus, the agency proposes in § 1020.33(f)(3) that means be provided to require operator initiation of each individual scan of a series of consecutive scans. This provision is intended to assure that an operator is present during exposure so that an individual scan or series of scans can be terminated in the event of problems with the patient, the equipment, or the data.

An amendment to the present regulations is needed to address the possibility of dose to the patient resulting from (1) adjustment of x-ray tube current to or from operating levels, (2) a traverse of the x-ray beam across the patient without collecting transmission data for image production, and (3) collecting transmission data at a number of orientations of the x-ray source to select technique factors. The first two situations result in dose to the patient even though transmission data are not being used for image production or technique factor selection and give no benefit to the patient as a result of the exposure. FDA believes that the first two situations can be avoided with appropriate design and proposes to limit the dose to the patient to only those circumstances where transmission data are being used for technique factor selection or image production.

Comments on drafts of the proposal concerning the allowance of patient exposure for technique factor selection were mixed. However, the agency has concluded that allowance for patient exposure can be justified if this exposure results in the elimination of retakes due to improper technique factor selection by the operator. Comments the agency received indicated that this is the case for at least one CT system. In addition, allowance for technique factor selection would enable the CT users to use the computer to make the best selection of technique factors. Some comments that supported this requirement have suggested that an upper limit of 10 to 15 percent of the total patient dose be placed on patient exposure during technique factor

selection. The agency agrees that this type of exposure needs to be minimized and the concept of an upper limit for technique factor selection needs to be given further consideration. Further comments concerning this concept are invited. Although there is no upper limit in the current proposal for technique factor selection, the agency will continue to monitor carefully the manufacturer's design of CT systems with regard to exposure during technique factor selection.

Section 1020.31(a) currently prescribes that the operator shall be able to terminate the x-ray exposure at any time during an exposure of greater than one-half second. There is a need for a similar abort mechanism on CT equipment. Therefore, the agency proposes in § 1020.33(f)(2)(iv) that means be provided to terminate any scan or series of scans, under CT x-ray systems control, of greater than one-half-second duration. Comments received by the agency indicate that, for CT equipment, the scan data would not be recoverable in the event of an abort. Therefore, the agency also proposes that termination of x-ray exposure would necessitate resetting the CT conditions of operation prior to the initiation of another scan.

Tomographic plane indication and alignment. FDA proposes in § 1020.33(g) that CT systems be equipped with a means to indicate the location on the patient where the tomogram will be obtained. An accurate and reliable means for patient positioning and alignment will prevent unnecessary patient exposure by reducing the number of scans which have to be made to image the anatomical structures of interest.

Proposed § 1020.33(g) specified that a means be provided to indicate the position of the tomogram and imposes a requirement on the accuracy of this indication without specifying the specific means to be used. Most current CT systems employ a light source to indicate on the surface of the patient the position of the section to be imaged.

Proposed § 1020.33(g) addresses both single and multiple tomogram systems and permits the means for alignment to be off-set from the actual position of the x-ray field. For example, the means for indicating the position of the tomogram could be located outside the gantry at a fixed distance from the actual tomographic plane. Following patient positioning using the device, the patient would be moved relative to the CT system prior to initiation of the scan and distance corresponding to the fixed distance between the reference plane and the indicated position.

Because of the small thickness of the section imaged in a CT scan (on the order of a cm or less), it is important that means for indicating the position of this volume be accurate if it is to be useful. FDA proposes a maximum deviation of 5 mm for the accuracy of the means for alignment. This accuracy provides a tolerance larger that those currently claimed by some manufacturers and should permit measurement by a relatively simple test procedure. Based upon the field surveys made to date by the agency, the tolerance of 5 mm appears to be both readily achievable and sufficiently accurate to permit correct patient positioning. The agency particularly invites comment on whether a more stringent requirement is warranted.

Beam-on and shutter status indicators. Section 1020.31(a) currently requires that the x-ray control visually indicate when the high-voltage circuit is energized. This enables the operator to know when x-rays are being produced. A similar requirement is needed for CT equipment. In addition, some CT x-ray systems provide a beam shutter used during calibration and warmup procedures. This type of equipment, in many cases, requires extensive warmup and calibration procedures prior to scanning patients. Thus, the potential for accidental radiation exposure in the gantry area exists absent the appropriate warning signals. For these reasons, the agency proposes in § 1020.33(h)(1) that the x-ray control and housing of the scanning mechanism provide visual indication of x-ray production and shutter status. Another comment had suggested that the requirement by revised by replacing visual with audible indicators. The agency's experience, however, has been that audible indicators are not appropriate for all procedures because the noise can be disturbing to some patients and perhaps interfere with the procedure.

As a result of comments on drafts of these amendments, proposed § 1020.30(h)(2) would set a limit of 100 milliroentgens in 1 hour at any point 5 centimeters outside the external surface of the housing of the scanning mechanism when the shutter is closed for those scanners employing a shutter to control the x-ray beam. Systems have been designed which allow high voltage to be applied to the x-ray tube continuously and which control the emission of x-ray with a shutter attached to the tube-housing assembly. For these systems, there is a possibility that operators or others will be in the vicinity of the housing of the scanning mechanism for extended periods while high voltage is applied to the tube. It is, therefore, important that the shutter and the tube housing assembly limit leakage radiation during periods between scans. Comments and data are invited on the adequacy of the proposed limit for the protection of people in the vicinity of these CT systems.

Scan increment accuracy. If the distance incremented between scans is not accurate, there can be an adverse effect on patient dose and diagnostic information. For example, an actual scan increment greater than the indicated value can result in gaps between tomograms, whereas an actual scan increment less than the indicated value can result in unneeded patient dose and diagnostic information. In addition, those systems using an offset alignment system for positioning the patient rely on accurate incrementation prior to a scan sequence. In response to comments, proposed § 1020.33(i) prescribes performance criteria on scan increment accuracy. The difference between the indicated scan increment and the actual distance traveled by the patient, on the patient support device, would not exceed 1 mm. A description of a compliance measurement method has been incorporated to clarify the meaning of this requirement. The 100-kilogram test object represents the mass of the male American adult between ages 18 to 74, at two standard deviations above the average, according to data taken by the National Center for Health Statistics.

CT number mean and standard deviation. Proposed § 1020.33(j) requires that the manufacturer provide capability to calculate the mean and standard deviation of CT numbers. The ability of the CT system to perform calculations of the mean and standard deviation of the CT numbers from a given area of the image will aid the user in quality assurance testing and may aid in the diagnosis of different pathologies.

Effective Date

FDA intends that these amendments become effective 1 year after date of publication of the final rule in the Federal Register.

References

1. Standard Computed Tomography Dosimetry Phantoms as required by 21 CFR 1020.33(c)(2), Food and Drug Administration, Bureau of Radiological Health, Draft, May 30, 1980.

2. Evens, R. G., R. G. Jost, "Economic Analysis of Body Computed Tomography Units Including Data on Utilization," *Radiology* 127:151–157, April 1978.

The agency has determined pursuant to 21 CFR 25.24 (proposed December 11,

1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 as amended (42 U.S.C. 263f)) and under the Federal Food, Drug, and Cosmetic Act, as amended (secs. 201, 501, 502, and 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 351, 352, and 371)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), FDA proposes to amend Part 1020 as follows:

1. In § 1020.30 the introductory text of paragraph (a), (a)(2), introductory text of (b), (b)(48), introductory text of (c), (d)(2), (d)(2)(vi), introductory text of (e), introductory text of (g), (h)(1), and (h)(1)(ii) the words "this section and §§ 1020.31 and 1020.32" are changed to read "this section and §§ 1020.31, 1020.32, and 1020.33"; in the introductory text of paragraph (d), (d)(1)(vii), and (d)(2)(viii) the words "by § 1020.31 or § 1020.32" are changed to read "by § 1020.31, § 1020.32, or § 1020.33";

2. Section 1020.30 is otherwise revised to read as follows:

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

* * * * *

(b) * * *

(36) "Technique factors" means the following conditions or operation:

* * * * *

(iii) For CT equipment rated for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs.

(iv) For CT equipment not rated for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent.

(v) For all other equipment, peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

(58) "Computed tomography, (CT)" means the production of a tomogram by the acquisition and computer processing of X-ray transmission data.

(59) "Scan" means the simultaneous collection of one or more sets of X-ray transmission data necessary for the production of one or more tomograms.

(60) "Scan time" means the period of time between the beginning and end of X-ray transmission data accumulation for a single scan.

(61) "Tomogram" means the depiction of the X-ray attenuation properties of a section through a body.

* * * * *

(h) * * *

(3) * * *

(vi) A statement of the maximum deviation from the preindication given by labeled technique factor control settings or indicators during any radiographic or CT exposure where the equipment is connected to a power supply as described in accordance with this paragraph. In the case of fixed technique factors, the maximum deviation from the nominal fixed value of each factor shall be stated;

(vii) A statement of the maximum deviation from the continuous indication of x-ray tube potential and current during any fluoroscopic exposure when the equipment is connected to a power supply as described in accordance with this paragraph; and

(viii) A statement describing the measurement criteria for all technique factors used in paragraph (h)(3)(iii), (vi), and (vii) of this section, for example, the beginning and end points of exposure time measured with respect to a certain percentage of the voltage waveform.

* * * * *

(n) *Aluminum equivalent of material between patient and image receptor.* Except when used in a CT X-ray system, the aluminum equivalent of each of the items listed in Table II, which are used between the patient and image receptor, shall not exceed the indicated limits.

* * *

* * * * *

3. New § 1020.33 is added to read as follows:

§ 1020.33 Computed tomography equipment.

(a) *Applicability.* The provisions of this section are applicable to CT X-ray systems or their components as specified in § 1020.30(a)(1) manufactured (1 year after date of publication of final rule in the Federal Register).

(b) *Definitions.* As used in this section, the following definitions apply:

(1) "Computed tomography dose index (CTDI)" means the integral of the dose profile along a line perpendicular to the tomographic plane divided by the nominal slice thickness. This is:

$$CTDI = \int_{-\infty}^{+\infty} D(z)\, dz \,/\, T$$

where:

z=Position along an axis perpendicular to the tomographic plane.
D(z)=Dose at position z.
T=Nominal slice thickness.

(2) "Contrast scale" means the change in linear attenuation coefficient per CT number relative to water; that is:

$$\text{Contrast scale} = \frac{\mu_x - \mu_w}{(CT)_x - (CT)_w}$$

where:

μ_w=Linear attenuation coefficient of water.
μ_x=Linear attenuation coefficient of reference material.
$(CT)_w$=CT number of water.
$(CT)_x$=CT number of reference material.

(3) "CT conditions of operation" means all selectable parameters governing the operation of a CT system including nominal slice thickness, filtration, and the technique factors as defined in § 1020.30(b)(36) of this chapter.

(4) "CT number" means the number used to represent the X-ray attenuation associated with each elemental area of the CT image.

(5) "Dose" means the absorbed dose as defined by the energy imparted by ionizing radiation to a region of matter divided by the mass of the matter in the region.

(6) "Dosimetry phantom" means the device prescribed in HHS Publication (number to be inserted in final rule) for use in measurement and specification of dose from CT systems.

(7) "Dose profile" means the dose as a function of position along a line perpendicular to the tomographic plane.

(8) "Modulation transfer function" means the modulus of the Fourier transform of the impulse response of the system.

(9) "Multiple tomogram system" means a computed tomography system which obtains X-ray transmission data during a single scan to produce more than one tomogram.

(10) "Noise" means the standard deviation of the fluctuations in CT number expressed as a percent of the attentuation coefficient of water. Its estimate (S_n) is calculated using the following expression:

$$S_n = \frac{100 \times CS \times s}{\mu_w}$$

where:

CS = Contrast scale.

μ_w = Linear attenuation coefficient of water.

s = Estimated standard deviation of the CT numbers of picture elements in a specified area of the CT image.

(11) "Nominal slice thickness" means the full-width at half-maximum of the sensitivity profile taken at the center of the cross-sectional volume over which X-ray transmission data are collected.

(12) "Picture element" means an elemental area of a tomogram.

(13) "Scan increment" means the amount of relative displacement of the patient with respect to the CT X-ray system measured along the direction of such displacement.

(14) "Scan sequence" means a preselected set of two or more scans performed consecutively under the same CT conditions of operation.

(15) "Sensitivity profile" means the relative response of the CT system as a function of position along a line perpendicular to the tomographic plane.

(16) "Single tomogram system" means a CT system which obtains X-ray transmission data during a scan to produce a single tomogram.

(17) "Tomographic plane" means that geometric plane which the manufacturer identifies as corresponding to the output tomogram.

(c) *Information to be provided for users.* Each manufacturer of a CT X-ray system shall provide the following technical and safety information, in addition to that required under § 1020.30(h) of this chapter, to purchasers and, upon request, to others at a cost not to exceed the cost of publication and distribution of such information. This information shall be identified and provided in a separate section of the user's instruction manual.

(1) *Conditions of operation.* A statement of the CT conditions of operation used to provide the information required by paragraphs (c)(2) and (3) of this section.

(2) *Dose information.* The following dose information obtained by using the dosimetry phantoms described in HHS Publication (number to be inserted in final rule). For any CT X-ray system designed to image both the head and body, separate dose information shall be provided for each application. All dose measurements shall be performed with the normal patient support and attenuation materials present.

(i) The CT dose index (CTDI) at the specified locations in the dosimetry phantoms. The CT conditions of operation shall correspond to typical values suggested by the manufacturer for CT of the head or body. The dosimetry phantoms shall be oriented such that one of the specified locations coincides with the maximum CTDI at 1 centimeter interior to the surface of the dosimetry phantom. This location shall be specified by the manufacturer with respect to the housing of the scanning mechanism or other readily identifiable feature(s) of the system in such a manner as to permit reproducible placement of the dosimetry phantom in this orientation.

(ii) The CT dose index (CTDI) in the center location of the dosimetry phantom for each selectable CT condition of operation that varies either the rate or duration of X-ray exposure. This CTDI shall be presented as a value that is normalized to the CTDI in the center location of the dosimetry phantom from paragraph (c)(2)(i) of this section, with the CTDI of paragraph (c)(2)(i) of this section, having a value of one. As each individual CT condition of operation is changed, all others shall be maintained at the typical values described in paragraph (c)(2)(i) of this section. These data shall encompass the range of each CT condition of operation stated as appropriate by the manufacturer for head and/or body CT. When more than three selections of a CT condition of operation are available, the information shall be provided at least for the minimum, maximum, and mid-range value for the CT condition of operation.

(iii) The CT dose index (CTDI) at the location coincident with the maximum CTDI at 1 centimeter interior to the surface of the dosimetry phantom for each selectable peak tube potential. The CTDI shall be presented as a value that is normalized to the maximum CTDI located at 1 centimeter interior to the surface of the dosimetry phantom from paragraph (c)(2)(i) of this section, with the CTDI of paragraph (c)(2)(i) of this section having a value of one. These data shall encompass the range of peak tube potential appropriate for head and/or body scanning. When more than three selections of peak tube potential are available, the information shall be provided, at least, for the minimum, maximum, and mid-range value of peak tube potential.

(iv) The dose profile in the center location of the dosimetry phantom for each selectable nominal slice thickness. When more than three selections of nominal slice thicknesses are available, the information shall be provided at least for the minimum, maximum, and mid-range value of nominal slice thickness. The dose profile shall be presented on the same graph and to the same scale as the corresponding sensitivity profile required by paragraph (c)(3)(iv) of this section.

(v) A statement of the maximum deviation from the values given in the information provided according to paragraph (c)(2)(i), (ii), (iii), and (iv) of this section.

(vi) Determination of compliance shall be based on the measurement protocols described in HHS Publication (number to be inserted in final rule).

(3) *Imaging performance information.* For any CT X-ray system designed to image both the head and body, separate imaging performance information for each application. All CT conditions of operation and all other aspects of data collection shall be identical to those specified for the dose information provided according to paragraph (c)(2)(i) of this section. The following imaging performance information shall be required:

(i) A statement of the noise.

(ii) A graphical presentation of the modulation transfer function for the same imaging processing and presentation mode as that used in the statement of the noise.

(iii) A statement of the nominal slice thickness(es).

(iv) A graphical presentation of the sensitivity profile, at the location corresponding to the center location of the dosimetry phantom, for each selectable nominal slice thickness, for which the dose profile is given according to paragraph (c)(2)(iv) of this section.

(v) A description of the phantom or device and test protocol or procedure used to determine the specification, and a statement of the maximum deviation from the specifications provided in accordance with paragraph (c)(3)(i), (ii), (iii), and (iv) of this section.

(d) *Quality assurance.* The manufacturer of any CT X-ray system shall provide the following with each system. All information required by this section shall be provided in a separate section of the users instructional manual.

(1) A phantom(s) capable of providing an indication of contrast scale, noise, and the resolution capability of the system for low and high contrast objects and measuring the mean CT number for water or a reference material.

(2) Instructions on the use of the phantom(s) including a schedule of testing appropriate for the system, allowable variations for the indicated parameters, and a method to store, as records, quality assurance data.

(3) Representative images obtained with the phantom(s) using the same processing mode and CT conditions of

operation as in paragraph (c)(3) of this section for a properly functioning system of the same model. The representative images shall be of two forms as follows:

(i) Photographic copies of the images obtained from the image display device.

(ii) Images stored in digital form on a storage medium compatible with the CT system. The CT system shall be provided with the means to display these images on the image display device.

(e) *Information in advertisement.* Any claim or statement concerning performance specifications, including representative images, contained in any catalog, specification sheet, and any other descriptive or commercial brochure and literature, including videotape and film pertaining to CT X-ray systems, shall include the following information:

(1) The CT dose index (CTDI) in the center and the location coincident with the maximum CTDI at 1 centimeter interior to the surface of the dosimetry phantom. These data shall be given for the same CT conditions of operation under which the imaging performance specifications are claimed.

(2) A sufficiently detailed description of the CT conditions of operation and any phantom, device, or object imaged and the test protocol or procedure used to determine the imaging performance specifications to permit their verification.

(3) A statement of the uncertainties and sources of error associated with the determination of the imaging performance specification.

(4) Paragraphs (e)(2) and (e)(3) of this section may be satisfied by including in the catalog, specification sheet, and any other descriptive or commercial brochure and literature, including videotape and film pertaining to CT X-ray systems, a reference to a separate document which describes the manufacturer's performance specifications and test procedures. When this is so referenced, the manufacturer shall make copies of this document readily available to interested parties at cost not to exceed the cost of publication and distribution.

(f) *Control and indication of conditions of operation*—(1) *Visual indication.* The CT conditions of operation to be used during a scan or a scan sequence shall be indicated prior to initiation of a scan or a scan sequence. On equipment having all or some of these conditions of operation at fixed values, this requirement may be met by permanent markings. Indication of the CT conditions of operation shall be visible from any position from which scan initiation is possible.

(2) *Timers.* (i) Means shall be provided to terminate the x-ray exposure automatically by either deenergizing the x-ray source or shuttering the x-ray beam in the event of equipment failure affecting data collection. Such termination shall occur within an interval that limits the total scan time to no more than 110 percent of its present value through the use of either a backup timer or devices which monitor equipment function. A visible signal shall indicate when the x-ray exposure has been terminated through these means and manual resetting of the CT conditions of operation shall be required prior to the initiation of another scan.

(ii) Means shall be provided to require operator initiation of each individual scan of a series of consecutive scans.

(iii) Means shall be provided such that the exposure from the system does not exceed the radiation levels specified in § 1020.30(k) except when x-ray transmission data are being collected for use in image production or technique factor selection.

(iv) The operator shall be able to terminate the x-ray exposure at any time during a scan, or series of scans under x-ray system control, of greater than one-half second duration. Termination of the x-ray exposure shall necessitate resetting of the CT conditions of operation prior to the initiation of another scan.

(g) *Tomographic plane indication and alignment.* (1) For any single tomogram system, means shall be provided to permit visual determination of the tomographic plane or a reference plane offset from the tomographic plane.

(2) For any multiple tomogram system, means shall be provided to permit visual determination of the location of a reference plane. The relationship of the reference plane to the planes of the tomograms shall be provided to the user in addition to other information provided according to § 1020.30(h). This reference plane can be offset from the location of the tomographic planes.

(3) The total error in the indicated location of the tomographic plane or reference plane shall not exceed 5 millimeters.

(4) For any offset alignment system, the manufacturer shall provide specific instructions with respect to the use of this system for patient positioning, in addition to other information provided according to § 1020.30(h) of this chapter.

(5) If a light localizer is used to satisfy the requirements of paragraphs (g)(1) and (2) of this section, the localizer shall provide illumination levels sufficient to permit visual determination of the location of the tomographic plane or reference plane under ambient light conditions of up to 500 lux.

(h) *Beam-on and shutter status indicators.* (1) The x-ray control and housing of the scanning mechanism shall provide visual indication whenever x-rays are produced and, if applicable, whether the shutter is open or closed. If the x-ray production period is less than one-half second, the indication of x-ray production shall be actuated for one-half second. Indicators at the housing of the scanning mechanism shall be discernible from any point where insertion of any part of the human body into the primary beam is possible.

(2) The radiation emitted from the tube housing assembly shall not exceed 100 milliroentgens (2.58×10^{-5} coulomb/kilogram) in 1 hour at any point 5 centimeters outside the external surface of the housing of the scanning mechanism when the shutter is closed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimensions greater than 20 centimeters.

(i) *Scan increment accuracy.* The deviation of indicated scan increment from actual scan increment shall not exceed ± 1 millimeter. Compliance shall be measured as follows: The determination of the deviation of indicated versus actual scan increment shall be based on measurements taken with, at most, a 100-kilogram mass on the patient support device. The patient support device shall be incremented from a typical starting position to the maximum incrementation distance or 30 centimeters, whichever is less, and then returned to the starting position. Measurement of actual versus indicated scan increment may be taken anywhere along this travel.

(j) *CT number mean and standard deviation.* (1) A method shall be provided to calculate the mean and standard deviation of CT numbers for an array of picture elements about any location in the image. The number of elements in this array shall be under user control.

(2) The manufacturer shall provide specific instructions concerning the use of the method provided for calculation of CT number mean and standard deviation in addition to other information provided according to § 1020.30(h) of this chapter.

Interested persons may, on or before December 30, 1980, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this

proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to 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 office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 16, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 80-33946 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Ch. XXVI

Proposed Agenda of Priority Regulations Under the Multiemployer Pension Plan Amendments Act of 1980

AGENCY: Pension Benefit Guaranty Corporation

ACTION: Proposed agenda of regulations.

SUMMARY: This document sets forth a list of those regulations that the Pension Benefit Guaranty Corporation proposes to develop initially in order to implement the Multiemployer Pension Plan Amendments Act of 1980. The PBGC is publishing this list in order to obtain the views of the public with respect to which regulations are most urgently needed under the new multiemployer plan insurance program. The UBGC will use the public's comments in establishing its regulatory agenda under the new Multiemployer Law, and this will be included in PBGC's next semiannual agenda of regulations, to be published on December 19, 1980.

DATES: Comments should be received by November 28, 1980.

ADDRESS: Comments should be addressed to the Assistant Executive Director for Policy and Planning, Suite 7100, 2020 K Street, N.W., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC Public Affairs office, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Terrence M. Deneen, Office of the Executive Director, Policy and Planning, Suite 7100, 2020 K Street, N.W., Washington, D.C. 20006; 202-254-4895.

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364 (the "Multiemployer Act"), became law on September 26, 1980. Under it, a new insurance program for multiemployer pension plans is created. The Multiemployer Act is lengthy and complex and will require a large number of regulations to implement it fully. The Act either directs or authorizes PBGC to promulgate over 60 different regulations. Obviously, such a large number of regulations cannot be developed simultaneously.

Accordingly, PBGC has begun a review of the multiemployer Act to determine what regulations are most critically needed in order to enable both covered plans and PBGC to function under the new law. The list set forth below represents PBGC's preliminary judgment as to those regulations which should be developed first. In creating this list, PBGC has given consideration to the statutory provisions that require it to promulgate regulations, to the need for providing guidance to plan administrators, sponsors and participants, and to its limited staff resources.

PBGC invites the public to comment on this list and to suggest changes in it; reasons for suggested changes should be provided. After reviewing the public comments, the PBGC will develop a list of the priority regulations to be developed under the Multiemployer Act. That list will be reflected in the PBGC's next semiannual agenda of regulations under development, to be published on December 19, 1980. Because of the publication date for the agenda, it is important that comments on this proposal be received by November 28, 1980.

All citations below are to sections of the Employee Retirement Income Security Act ("ERISA") as amended by the Multiemployer Act.

1. Rules Governing the Arbitration of Disputes Concerning Employer Liability

Description. Section 4221 provides that any dispute between an employer and the sponsor of a multiemployer plan regarding the determination of the employer's withdrawal liability to the plan shall be resolved through arbitration. Section 4221(a)(2) provides that an arbitration proceeding under this section shall be conducted in accordance with fair and equitable procedures prescribed by the PBGC.

Need. This regulation is needed to provide the rules of procedure under which an arbitration proceeding will be conducted.

2. Adoption of Alternative Rules For Allocating Unfunded Vested Benefits

Description. Section 4211 of ERISA provides a presumptive rule, and three alternative rules, that a mutiemployer plan may use to allocate unfunded vested benefits to an employer that withdraws from the plan after April 28, 1980. In addition, section 4211(c)(5)(A) provides that multiemployer plans may develop and adopt by amendment, other methods for allocating unfunded vested benefits to a withdrawn employer. An amendment adopting an allocation method not described in section 4211 is subject to PBGC approval based on a determination that use of the alternative method would not significantly increase the risk of financial loss to plan participants, beneficiaries, or the PBGC. Any such amendment adopted after January 31, 1981 may not be applied to an employer that withdrew before the date the amendment is adopted without the employer's consent.

Need. The use of the allocation methods described in section 4211 may be administratively cumbersome or inequitable for many multiemployer plans. This regulation is needed so that plan sponsors will know what procedures they must follow in adopting alternative allocation methods and in submitting those methods to the PBGC for approval.

3. Rules Prescribing Adjustments in the Allocation of Unfunded Vested Benefits

Description. The rules for allocating unfunded vested benefits set forth in 4211 of ERISA utilize several fractions, the denominators of which are the total amounts contributed under a plan by all employers. Section 4211(c)(5)(D) authorizes PBGC to promulgate rules to "permit adjustments in any denominator * * * where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators".

Need. The use of the denominator prescribed in the statute would be administratively cumbersome and costly for some plans. Accordingly, this regulation is needed to enable those plans to allocate unfunded vested benefits without incurring excessive administrative costs.

4. Rules Governing the Allocation of Unfunded Vested Benefits Following a Termination by Mass Withdrawal

Description. Section 4219(c)(1)(D)(ii) provides that if a multiemployer plan

terminates through the withdrawal of all employers, the total unfunded benefits of the plan shall be fully allocated among the withdrawn employers. This section also requires a redetermination of the liability of employers who withdrew from the plan pursuant to an agreement or arrangement among employers. The allocation, or reallocation, of the plan's unfunded benefits must be done in a manner that is not inconsistent with rules prescribed by the PBGC.

Need. This regulation is needed to provide guidance with respect to how this allocation, or reallocation, must be done.

5. Rules for the Adjustment of Employer Liability for Withdrawals after April 28, 1980

Description. Section 4217(a) of ERISA provides a special rule which prevents certain events which occurred before April 29, 1980, from triggering withdrawals and from increasing the liability for a partial withdrawal after that date. Under this section, for the purpose of determining withdrawal liability for a complete or a partial withdrawal after April 28, 1980, and for the purpose of determining whether a partial withdrawal has occured after that date, the amount of contributions and the number of contribution base units of the affected employer which are properly allocable to (1) work performed under a collective bargaining agreement for which there was a cessation of contributions before April 29, 1980, or (2) work performed at a facility for which there was a cessation of contributions before April 29, 1980, are not to be taken into account. Section 4217(b) authorizes the PBGC to prescribe regulations setting forth the method by which the withdrawal liability of other employers in a plan is to be adjusted where an employer receives the relief provided by this rule. This adjustment is necessary to ensure that substantially all liabilities are allocated to contributing employers.

Need. This regulation is needed to provide for the correct allocation of plan liabilities among employers, and to protect plans and PBGC from risk of financial loss which might occur in those cases where certain employers obtain relief from the special rule.

6. Interest on Withdrawal Liability Payments

Description. Section 4219(c)(6) provides that plans shall charge interest on delinquent withdrawal liability payments and on a defaulted employer's total outstanding withdrawal liability. The interest rate charged under this section is based, in accordance with PBGC regulations, on prevailing market rates for comparable obligations.

Need. This regulation is needed so that employers and plan sponsors will be able to determine the interest charges on withdrawal liability payments.

7. Rules Governing Benefit Reductions in Plans that Terminate by Mass Withdrawal of Employers

8. Rules for Valuing Assets and Liabilities in Plans that Terminate by Mass Withdrawal of Employers

9. Rules Governing the Powers and Duties of Sponsors of Plans that Terminate by Mass Withdrawal

Description. Section 4281 of ERISA contains numerous rules relating to the administration and payment of benefits under plans that have terminated by mass withdrawal. If a plan terminates through mass withdrawal, Section 4281(b)(1) provides that the value of plan assets, together with the value of nonforfeitable benefits under the plan, must be determined in writing in accordance with PBGC regulations. This valuation must be performed for the plan year within which the termination occurred, and every year thereafter.

Section 4281(c) requires the sponsor of a terminated plan to reduce plan benefits to the extent necessary to ensure that plan assets are sufficient, as determined and certified in accordance with PBGC regulations, to discharge when due the plan's obligations with respect to nonforfeitable benefits.

In addition, section 4281(d)(3) provides that the sponsor of an insolvent terminated plan shall have the powers and duties of the plan sponsor of an insolvent plan that is in reorganization. However, the PBGC is directed to prescribe rules governing the sponsor's exercise of those powers. Under certain circumstances, the sponsor of an insolvent terminated plan is required to suspend payment of any benefits that are in excess of those guaranteed under Section 4022A of ERISA. The PBGC is directed to prescribe rules that ensure that plan participants and beneficiaries receive adequate notice of benefit suspensions.

Need. These regulations are needed to provide guidance and direction concerning the administration and payment of benefits under plans that have terminated by mass withdrawal.

10. Rules Governing the Valuation of Outstanding Claims for Withdrawal Liability

Description. When a plan terminates through mass withdrawal, the plan sponsor must value any outstanding claims against employers for withdrawal liability in order to compute the value of plan assets. Under Section 4001(a)(12) of ERISA, the outstanding claims are to be valued in accordance with regulations prescribed by the PBGC.

Need. This regulation is needed so that the plan sponsor of a plan that terminates through mass withdrawal is able to satisfy his or her statutory obligation to value plan assets.

11. Rules Varying the Standards Governing the Sale of Assets

Description. Section 4204 of ERISA provides that an employer will not have partial or complete withdrawal liability solely because covered operations of the employer are transferred to another employer in connection with a sale of the employer's assets, if certain specified conditions are satisfied. This provision applies to any sale occurring after April 28, 1980. Some of the enumerated conditions are: 1) the purchaser provides a bond to the plan, and 2) the contract of sale provides that if the purchaser partially or completely withdraws from the plan during the five plan years following the sale, the seller is secondarily liable for any withdrawal liability. PBGC is authorized to vary these conditions by regulation, "if the variance would more effectively or equitably carry out the purposes of (Title IV)".

Need. This regulation is needed because there are individual transactions or classes of transactions that might be unnecessarily frustrated by a strict application of the statutory rules without variance.

12. Rules for Determining a Year of Service

Description. Section 4022A of ERISA provides for the guarantee of certain nonforfeitable benefits under insolvent multiemployer plans. The value of guaranteed benefits is needed for several purposes under the Multiemployer Act. The amount of the guarantee is derived from a formula based on years of credited service and on an accural rate. In addition, the accrual rate for base benefits is computed by dividing a participant's base benefit by the number of full and fractional years credited to the participant under the plan.

Need. This regulation is needed for plan sponsors to be able to determine the value of guaranteed benefits under their plans.

13. Rules Governing the Election of Plan Status

Description. The Multiemployer Act changed the statutory definition of

"Multiemployer plan" in section 3(37) of ERISA and section 414(f) of the Internal Revenue Code of 1954. Because of this change, some plans that were not multiemployer plans under the prior law are multiemployer plans under the Multiemployer Act. Section 4303 of ERISA provides that plan sponsors of certain plans that are affected by this change in the statutory definition may elect within one year after enactment of the Multiemployer Act, pursuant to rules established by the PBGC, to retain their status as non-multiemployer plans.

Need. This regulation is needed to permit sponsors of certain plans to elect, within the time limits imposed by the Act, to have their plans remain non-multiemployer plans.

14. PBGC Actuarial Assumptions For Computing Unfunded Vested Benefits

Description. Section 4213(a) provides that the PBGC may prescribe by regulation actuarial assumptions which plan actuaries may use in their determination of a multiemployer plan's unfunded vested benefits. The value of unfunded benefits is used, in turn, to compute an employer's withdrawal liability.

Need. The regulation is needed to provide standards that may be used for the computation of withdrawal liability.

15. Rules Governing the Notice of Insolvency

Description. Section 4245(e) requires the plan sponsor, when he or she determines that the plan may become insolvent, to give notice of that fact to the PBGC. In addition, the plan sponsor must inform employees and affected employee organizations of the possible insolvency. Section 4245(e)(4) requires that the notice be given in accordance with regulations prescribed by the PBGC.

Need. This regulation is needed so that plan sponsors can comply with this statutory obligation. In addition, this notice is important to PBGC for program and financial planning.

16. Rules Governing the Notice of a Merger or Transfer of Assets Between Multiemployer Plan

Description. Section 4231(b)(1) requires the plan sponsor of a multiemployer plan to notify PBGC, in accordance with regulations prescribed by PBGC, of a merger or transfer of assets or liabilities to another multiemployer plan at least 120 days before the effective date of the merger or transfer.

Need. This regulation is needed so that plan sponsors can comply with this statutory obligation.

17. Rules Defining "Seagoing Industry"

Description. Section 4402(g) (4) of ERISA provides a different effective date for the withdrawal liability provisions of the Multiemployer Act applicable to plans in the West coast "seagoing industry", as defined by the PBGC by regulation.

Need. This regulation is needed to estblish the applicability of the withdrawal liability provisions to West coast maritime plans.

18. Rules Defining "Trucking Industry"

Description. Section 4203(d) of ERISA provides a special withdrawal liability rule applicable to plans maintained by employers primarily engaged in the long and short haul trucking industry, the household goods moving industry or the public warehouse industry. The existence of withdrawal liability under this rule depends, in part, on PBGC's making a determination that the plan has suffered substantial damage to its contribution base as a result of the withdrawals.

Need. Because the statute does not define the terms "trucking industry", "household goods moving industry" and "public warehousing industry", a regulation is needed to describe the scope of this special rule.

19. Rules Defining "Building and Construction Industry"

Description. Section 4203(a) of ERISA defines the circumstances under which an employer withdraws from a multiemployer plan. Section 4203(b) includes a special definition of withdrawal for the building and construction industry. Under the special rule, a withdrawal is considered to take place only if an employer ceases to have an obligation to contribute under the plan, and either (1) continues to perform work of the same type for which contributions were previously required in the jurisdiction of the collective bargaining agreement or (2) resumes work in the jurisdiction within five years.

Need. Because the statute does not define the term "building and construction industry", a regulation is needed to define the scope of this special rule.

Issued in Washington, D.C., this 29th day of October, 1980.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 80-34094 Filed 10-30-80; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD-FRL 1647-6; Docket No. OAQPS 79-7]

Proposed Revision of the National Ambient Air Quality Standards for Carbon Monoxide; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On August 18, 1980, the Environmental Protection Agency proposed in the Federal Register (45 FR 55066) revisions to the national ambient air quality standard for carbon monoxide. Public hearings have been held on this proposed standard revision in Washington, DC (October 2, 1980) and in Denver, CO (October 10, 1980). In order to provide an opportunity for full and complete public review of the proposed standard, the comment period is being extended to November 24, 1980.

DATES: Comments are due on or before November 24, 1980.

ADDRESS: Submit comments (duplicate copies are preferred) to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. OAQPS 79-7, 401 M Street, SW., Washington, D.C. 20460.

Docket No. OAQPS 79-7, containing material relevant to this proposed rulemaking, is located in the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street, SW., Washington, D.C. The docket may be inspected between 8 A.M. and 4 P.M. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Michael H. Jones (MD-12), Strategies and Air Standards Division, Research Triangle Park, N.C. 27711, telephone 919-541-5231.

Dated: October 24, 1980.

David G. Hawkins,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 80-33029 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 52

[A-5-FRL 1647-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The United States Environmental Protection Agency (USEPA) announced in today's Federal Register final rulemaking on revisions to the carbon monoxide and ozone portions of the Ohio State Implementation Plan (SIP). Ohio submitted these revisions to satisfy the requirements of Part D of the Clean Air Act, as amended in 1977. In the final rulemaking, USEPA conditionally approved certain revisions to the Ohio SIP. A discussion of conditional approval and its practical effect appears in the July 2, 1979 Federal Register (44 FR 38583) and the November 23, 1978 Federal Register (44 FR 6718). A conditional approval requires the State to remedy identified deficiencies by specified deadlines. This notice solicits public comment on the deadlines by which the State of Ohio has committed itself to remedy conditionally approved portions of its SIP. Although public comment is solicited on the deadlines, the State remains bound by its commitments unless the schedules are disapproved by USEPA in its Final Rulemaking action. A conditional approval means that the restriction on new source construction in designated nonattainment areas will not apply unless the State fails to submit the corrections by the specified date, or unless the corrections are ultimately determined to be inadequate.

DATES: Comments must be received on or before December 1, 1980.

ADDRESSES: Comments should be sent to the following address: Mr. Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Copies of the materials submitted by the State and by the public during the comment period announced in this notice of proposed rulemaking are available for review during normal business hours at the following addresses:

USEPA Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

USEPA, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clarizio, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 866-6035.

SUPPLEMENTARY INFORMATION: In final rulemaking action published in today's Federal Register, USEPA identified the actions taken by the State of Ohio to remedy deficiencies in the carbon monoxide and ozone portions of the Ohio SIP submittal. These deficiencies were noted in USEPA's March 10, 1980 Notice of Proposed Rulemaking (45 FR 15192). In today's final rulemaking USEPA also identified the conditions which must be satisfied by the State of Ohio to correct the specified deficiencies in the revisions to the Ohio SIP. The State of Ohio has provided assurances that it will satisfy these conditions on specific schedules.

USEPA proposes to approve the following schedules for the State of Ohio's correction of deficiencies in the carbon monoxide and ozone portions of the Ohio SIP.

Schedules

I. Carbon Monoxide RFP Demonstration

A. For the Dayton area the State has committed to submitting an acceptable RFP demonstration by: November 1, 1980.

B. As part of the revised carbon monoxide attainment demonstration for the Steubenville area the State will submit an RFP demonstration by: August 15, 1981.

II. Carbon Monoxide Attainment Demonstration

A. The State has committed to submit for the Dayton area a schedule for the study, evaluation and implementation of control measures at the identified hotspot and if necessary evidence of priority funding for the carbon monoxide "hot spot" evaluation and implementation. The State has committed to submit the material by: November 1, 1980.

B. The State has committed to submit the following materials for the Steubenville area:

(1) A revised attainment demonstration by: August 15, 1981.

(2) Regulations requiring RACT level of control in the Steubenville area for carbon monoxide sources that are contributing to the violation and/or other appropriate control strategies. The State submitted the following schedule for the development of the RACT regulations:

(a) complete carbon monoxide study by: November 1, 1980.

(b) RACT regulations would be effective by: August 1, 1981.

III. Ozone Attainment Demonstration

A. For the Canton, Cleveland and Columbus areas the State has committed to submit either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category. The State has agreed to submit this information by: August 1, 1981.

B. For the Cleveland area the State has agreed to submit the following:

(1) Additional TSM strategies to be implemented which in conjunction with the additional point source regulations will demonstrate attainment of the ozone NAAQS; and

(2) A schedule which delineates the dates on which the additional point source controls will be developed and implemented. These two items will be submitted by: November 1, 1980.

IV. Ozone RFP Demonstration

A. For the Canton urban area the State will submit a revised RFP line by: August 1, 1981.

V. Chapter 3745-21 of the Ohio Administrative Code

A. The State has agreed to:

(1) promulgate and submit to USEPA regulations which meet the RACT requirements for waste water separators. If these regulations contain exemptions which are not supported by the CTGs then the State must demonstrate that the resultant emissions differ from the CTG allowable emissions by no more than five percent. These regulations, and any necessary support are to be submitted by: February 15, 1981.

(2) study the emissions resulting from the proposed regulation 09(R) and to submit the results to USEPA by: October 1, 1980.

If it should be necessary to revise the rule the State has committed to submitting the State adopted revised rule by: February 15, 1981.

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

This notice of proposed rulemaking is issued under authority of Section 110 of the Clean Air Act, as amended.

Dated: September 18, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-33877 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

(A-5-FRC 1647-4)

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The United States Environmental Protection Agency (USEPA) announces in today's Federal Register final rulemaking on revisions to the carbon monoxide and ozone portions of the Ohio State Implementation Plan (SIP) for the Youngstown urban area. Ohio submitted these revisions to satisfy the requirements of Part D of the Clean Air Act, as amended in 1977. In the final rulemaking, USEPA conditionally approved certain revisions to the Ohio SIP. A discussion of conditional approval and its practical effect appears in the July 2, 1979, Federal Register (44 FR 38583) and the November 23, 1979 Federal Register (44 FR 6718). A conditional approval requires the State to remedy identified deficiencies by specified deadlines. This notice solicits public comment on the deadlines by which the State of Ohio has committed itself to remedy the conditionally approved portions of its SIP. Prior to final rulemaking on the deadlines, the State is bound by its commitments to meet the proposed deadlines. A conditional approval means that the restriction on new source construction in designated nonattainment areas will not apply unless the State fails to submit the corrections by the specified date, or unless the corrections are ultimately determined to be inadequate.

DATES: Comments must be received on or before December 1, 1980.

ADDRESSES: Comments should be sent to the following addresses: Mr. Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Copies of the materials submitted by the State are available for review during normal business hours at the following addresses:

USEPA Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

USEPA, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clarizio, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 886-6035.

SUPPLEMENTARY INFORMATION: In final rulemaking action published in today's Federal Register, USEPA identified the actions taken by the State of Ohio to remedy deficiencies in the carbon monoxide and ozone portions of the Ohio SIP for the Youngstown urban area. These deficiencies were noted in USEPA's May 16, 1980 Notice of Proposed Rulemaking (45 FR 32333).

USEPA proposes to approve the following schedules for the State of Ohio's correction of deficiencies in the Youngstown urban area plan.

I. Ozone Attainment and Reasonable Further Progress (RFP) Demonstration

A. For the Youngstown area the State has committed itself to submit technical support for the 100% VOC emission reduction estimate from the cutback asphalt category or (2) to re-evaluate the baseline emissions to account for the posible VOC emissions resulting from this category. The State has also agreed to submit a revised ozone RFP demonstration. The State has agreed to submit this information by August 1, 1981.

II. Transportation Control Plan

A. The State has agreed to submit by November 3, 1980 the Regional Policy Board's commitment to meet specific annual emission reduction goals. The Regional Policy Board is composed of elected officials from each of the affected local jurisdictions within the Youngstown urban area.

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

This notice of proposed rulemaking is issued under authority of Section 110 of the Clean Air Act, as amended.

DATED: September 25, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-33878 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-9-FRL 1650-4]

Approval and Promulgation of Implementation Plans; Guam Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Revisions to the Guam Air Pollution Control Standards and Regulations have been submitted to the Environmental Protection Agency (EPA) by the Governor's designee for the purpose of revising the Guam Implementation Plan. The intended effect of these revisions is to update the rules and regulations and to correct deficiencies in the Implementation Plan. The EPA invites public comment on these rules, especially as to their consistency with the Clean Air Act.

DATES: Comments may be submitted on or before December 30, 1980.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air and Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revisions and EPA's associated evaluation reports are available for public inspection during normal business hours at the EPA Region IX office at the above address and at the following locations.

Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910.

Public Information Reference Unit, Room 2404 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, (415) 556-2938.

SUPPLEMENTARY INFORMATION: The Governor's designee submitted the following rules and regulations on the indicated dates, as revisions to the Guam Implementation Plan.

October 12, 1979

Chapter 1—Definitions
Rule 3.1—Permits Required
Rule 3.2—Exemptions
Rule 3.3—Applications
Rule 3.4—Standards for Approval, or Denial of Permit Applications
Rule 3.5—Action on Applications
Rule 3.6—Performance Testing
Rule 3.7—Revoking of Permits
Rule 3.8—Transfer of Permits
Rule 3.9—Reporting Information

Chapter 4—Monitoring, Records and Reporting
Rule 5.3—(Sampling and Testing Methods)
Rule 6.2—(Control of Open Burning)
Rule 7.1—(Control of Particulate Emission)
Rule 7.4—(Control of Particulate Emission)
Rule 7.5—Fuel Burning Installations
Rule 8.3—(Control of Fugitive Dust)
Rule 8.4—Processing, Handling, Transportation, and Storage
Rule 8.5—Construction and Sandblasting Operations
Rule 8.6—Grading and Clearing
Rule 8.7—Roads and Parking Lots
Chapter 10—Control of Visible Emission of Particulates for Stationary Sources
Chapter 12—Air Pollution Emergencies
Rule 13.1—(Control of Sulfur Dioxide Emissions)
Rule 13.2—(Control of Sulfur Dioxide Emissions)
Chapter 14—Motor Vehicle Pollution Control
Chapter 15—Standards of Performance for New Stationary Sources
Chapter 16—National Emission Standards for Hazardous Air Pollutants
Rule 18.1—Appeal
Rule 18.2—Circumvention
Rule 18.3—Severability
Rule 18.4—Effective Date

(Deletions)

Rule 3.12—Conditional Permit
Rule 3.17—Compliance Schedule
Rule 12.3—Declaration of Air Pollution Emergency

April 1, 1980

Addendum to 13.1—Compliance Order for the Guam Power Authority's Power Barge "Inductance"

Under Section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove these regulations as Implementation Plan revisions. All rules submitted have been evaluated and determined to be in accordance with the Clean Air Act, 40 CFR Part 51 and EPA policy, with certain exceptions. Therefore, it is the purpose of this notice to propose to approve all the rule revisions listed above and to incorporate them into the Guam Implementation Plan, with the exception of the rules discussed below.

Nuisance rules are not appropriate for inclusion in the Implementation Plan since they are not specifically directed at the attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). Therefore, no action is being taken on Rule 1.18, "Nuisance", Rule 1.19, "Odor," and Chapter 11, *Control of Odor in Ambient Air.*

New Source performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) rules implement § 111 and § 112 of the Clean Air Act and thus are not appropriate for inclusion in the SIP under § 110 of the Act. Therefore no action is being taken on Chapter 15, Standards of Performance for New Stationary Sources, and Chapter 16, National Emission Standards for Hazardous Air Pollutants, as revisions to the Guam Implementation Plan.

Rule 8.7, *Roads and Parking Lots,* is proposed to be disapproved because it could allow an emissions increase, and a control strategy demonstration has not been submitted showing that any increased emissions would not interfere with the attainment or maintenance of the (NAAQS).

Rule 13.2, (Control of Sulfur Dioxide Emissions), is inconsistent with section 123(a)(2) of the Clean Air Act which requires continuous control strategies. Rule 13.2 contains intermittent control strategies and thus is proposed to be disapproved.

The Regional Administrator hereby issues this notice setting forth these revisions, including rule deletions caused thereby, as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Comments received will be available for public inspection at the EPA Region IX Office and the EPA Public Information Reference Unit.

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

EPA has reviewed the revisions being acted upon in this notice and has determined that they are "specialized" revisions not subject to the procedural requirements of Executive Order 12044.

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

Dated: October 21, 1980.

Sheila M. Prindiville,

Acting Regional Administrator

[FR Doc. 80-34001 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-7-FRL 1650-2]

Approval and Promulgation of State Implementation Plans; Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Notice of Availability.

SUMMARY: This notice withdraws a prior Federal Register notice announcing the availability of the May 8, 1979, submission of the Omaha carbon monoxide (CO) State Implementation Plan (SIP). This action is being taken because the May 8, 1979, CO plan has been revised substantially since its submittal, and Governor Charles Thone has requested that EPA take no formal action on the original plan. A seperate Federal Register notice announces the availability of the revised plan.

DATE: This withdrawal is effective October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Eloise Reed, Air Support Branch, U.S. Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106. Telephone (816) 374-3791, (FTS) 758-3791.

SUPPLEMENTARY INFORMATION: A Federal Register notice published at Volume 44, No. 159, FR page 47777, August 15, 1979, announced the availability and solicited public comments on the May 8, 1979, submittal of revisions to the Nebraska SIP for the Omaha carbon monoxide nonattainment area. The plan was sent as required by Section 172 of the Clean Air Act, as amended in 1977, to revise the Nebraska SIP to provide for attainment of the National Ambient Air Quality Standards in areas which have been designated nonattainment. No comments were received as a result of the original notice.

On September 20, 1979, Governor Charles Thone informed EPA that the plan was being revised further and requested that EPA take no formal action. In consideration of the foregoing, the notice published in the Federal Register, Volume 44, No. 159 on August 15, 1979, entitled "Approval and Promulgation of State Implementation Plan: Nebraska—Notice of Availability" is hereby withdrawn.

The availability of the revised plan is announced in a seperate Federal Register notice.

Dated: October 22, 1980.

Kathleen Cumin,

Regional Administrator.

[FR Doc. 34000 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-7-1650-1]

Approval and Promulgation of Implementation Plans; Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Notice of Receipt of Submittal to Satisfy Proposed Conditions of Plan Approval.

SUMMARY: This notice announces the receipt of corrections to deficiencies noted in Nebraska's State Implementation Plan (SIP) revision for the Lincoln carbon monoxide nonattainment area. The Notice of Proposed Rulemaking which listed the deficiencies to the SIP revision was published on November 13, 1979 (44 FR 65408). The SIP revisions and corrections are submitted to fulfill the requirements of the Clean Air Act Amendments of 1977.

EPA's Notice of Final Rulemaking on the Lincoln CO SIP revision, to be published at a later date, will discuss the adequacy of the corrections to deficiencies noted at 44 FR 65408 and will promulgate final action on the SIP.

The period for receiving comments on the state's submittals and what EPA's final action should be will extend for 30 days beyond today's publication date.

DATES: Comments received before December 1, 1980, will be considered in EPA's final rulemaking or this SIP revision.

ADDRESSES: Comments should be addressed to Eloise Reed, Air Support Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106.

The Nebraska submittals may be examined during normal business hours at the above address and also at the following locations:

Environmental Protection Agency, Public Information and Reference Unit, Room 2922, 401 M Street, S.W., Washington, D.C. 20460

Nebraska Department of Environmental Control, 301 Centennial Mall, Lincoln, Nebraska 68509

Lincoln-Lancaster County Air Pollution Control Agency, 2200 St. Mary's Avenue, Lincoln, Nebraska 68502

Permits and Inspection Division, Housing and Community Development Department, 1819 Farnam, Room 402, Omaha, Nebraska 68102

Lincoln-Lancaster County Planning Commission, 555 South Tenth Street, Lincoln, Nebraska 68508

Omaha-Council Bluffs Metropolitan Area Planning Agency, 7000 West Center Road, Omaha, Nebraska 68106.

FOR FURTHER INFORMATION CONTACT: Eloise Reed, (816) 374-3791; (FTS 758-3791).

SUPPLEMENTARY INFORMATION: The proposed rulemaking for the Lincoln carbon monoxide nonattainment area SIP revision, as published at 44 FR 65408, noted several deficiencies which must be corrected.

The SIP was evaluated in relation to the plan approval criteria listed in the proposed rulemaking and found to be deficient in that it did not (1) address reasonably available control technology for existing sources, (2) contain an emissions inventory, (3) identify emissions growth from new stationary sources, (4) address or reference a new source review permit program, (5) identify and commit resources, (6) identify compliance necessary for attainment, and (7) contain the necessary schedules for implementation of the computerized signalization program for Lincoln.

The Supplement to the General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas, published July 2, 1979 (44 FR 38583), permits EPA to conditionally approve SIPs containing minor deficiencies when the state provides assurances that it will provide corrections on a specified schedule. The proposed rulemaking for Lincoln CO proposes approval of the state's submittal on the condition that corrections to deficiencies be made within six months from the date of the proposed rulemaking. The official submittal by the Governor was delayed in internal state review and subsequently underwent a second public hearing for a nonsubstantive change on June 27, 1980. Although the official submittal by the Governor was received on September 25, 1980, ten months after the proposed rulemaking, a draft of the submittal was received on January 7, 1980, well within the six month period of the condition. No comments were received on the proposed rulemaking.

EPA is reviewing the corrections to deficiencies to determine if they comply with the requirements of the Clean Air Act. A preliminary review indicates that all deficiencies have been corrected satisfactorily except the deficiency pertaining to new source permits. The SIP revision contains necessary revisions to the new source review regulation, but the regulation must still be revised to make it specifically applicable to CO and to define "adverse effect" in relation to impacts on nonattainment areas. The state is currently working to make these revisions. Because EPA views the absence of an approvable new source review provision as a significant deficiency, no final action will be taken until the state submits its revised new source review regulation.

Dated: October 22, 1980.

Kathleen Cumin,

Regional Administrator.

[FR Doc. 80-34003 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-10-FRC 1649-7]

State of Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this Notice is to invite public comment on EPA's proposed removal of § 52.676(b) of Title 40 of the Code of Federal Regulations from the Idaho State Implementation plan (SIP). Section 52.676(b) is an interim regulation for control of sulfur dioxide (SO_2) emissions from the Bunker Hill Company lead and zinc smelter located in Kellogg, Idaho. The removal of this section from the SIP is requisite to issuance of a primary non-ferrous smelter order which will contain the identical provisions of this interim regulation.

DATE: Comments will be accepted on or before December 1, 1980.

ADDRESSES: The relevant material for this action is available for inspection at the following locations during normal business hours:

Central Docket Section, West Tower Lobby, Gallery 1 (#10A-79-4), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Air Programs Branch, Environmental Protection Agency, 1200 sixth Avenue, M/S 625, Seattle, Washington 98101.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, M/S 629, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Lepic, Air Programs Branch, Environmental Proctecion Agency, 1200 Sixth Avenue, M/S 625, Seattle, Washington 98101, Telephone No. (206) 44-1125, FTS: 399-1125.

SUPPLEMENTARY INFORMATION: In January 1972, the State of Idaho submitted a State Implementation Plan (SIP) to EPA in accordance with Section 110 of the Clean Air Act. On May 31, 1972, EPA approved the SIP except for the sulfur dioxide (SO_2) control strategy and compliance schedule sections (37 FR 10842). On October 7, 1974, EPA proposed regulations for the control of SO_2 from the Bunker Hill complex requiring 96 percent permanent control of SO_2 (39 FR 36018). Thereafter, on January 10, 1975, the State of Idaho submitted to EPA, as a proposed revision to the SIP, a regulation (Regulation S) for the control of SO_2 at the Bunker Hill complex. On April 10, 1975, EPA proposed to disapprove the

Idaho submission on the grounds that it did not meet the requirements of Section 110 of the Clean Air Act and 40 CFR 51.13 On November 19, 1975, EPA approved portions of the State of Idaho's Regulations S including the ultimate emission limitation, disapproved other portions of Regulations S including an interim emission limitation, and promulgated federal regulations to replace the disapproved portions (40 FR 53584). Thereafter, the Bunker Hill Company challenged EPA's final rulemaking action in this matter.

The United State Court of Appeals for the Ninth Circuit issued its opinion on July 5, 1977 and remanded the matter back to EPA for further administrative proceedings.[1] The Court stated that a more extensive administrative record was needed to show that the requirements promulgated by EPA dealing with the interim emission limitation were technologically feasible.

In response to a request by Bunker Hill, EPA promulgated regulations on November 8, 1977 defining requirements pertaining to excess emissions caused by startup, shutdown or malfunction of equipment (42 FR 58171). On November 23, 1977, Bunker Hill challenged EPS's rulemaking on excess emissions and EPA consented to consolidate the November 8, 1977 regulations with the remand of the November 19, 1975 regulations.

During the period of time from December 28, 1977 through June 11, 1979, EPA and the Bunker Hill Company engaged in extensive document discovery, document production, and the development of written testimony for the remand proceedings. Concurrently, EPA and the Bunker Hill entered into a preliminary understanding which set forth, in principle, the areas of agreement between EPA and the Bunker Hill Company. On June 11, 1979, representatives of the Bunker Hill Company and EPA executed a Settlement Agreement and an Interim Regulation.

The regulations promulgated by EPA in November 1975 called for an interim overall plant SO_2 emission limit of 680 tons per week (approximately 82 percent control), acid plant tailgas limits of 2,600 parts per million (ppm) (6-hour average) and a prohibition of bypassing strong gas steams around the acid plant and to the atmosphere. In the technical support document for that rulemaking EPA suggested that supplemental SO_2 injection techniques using a sulfur combustion furnace could be utilized to remedy certain acid plant design deficienceis to enable Bunker Hill to meet the SO_2 control requirements. The sulfur combustion furnace was not a regulatory requirement but rather was suggested as one possible remedy to the SO_2 control problems at Bunker Hill.

As a result of the remand proceedings, EPA initiated a complete re-evaluation of the remanded SO_2 control regulation. The purpose of the review was to demonstrate that either the existing regulation or a more stringent regulation was technically feasible and also to present numerous alternative methods for meeting SO_2 control requirements.

The review included two major segments—an analysis of the Bunker Hill operation and an evaluation of other non-ferrous smelters and acid plants where a high degree of SO_2 capture has been achieved. In addition, the cost and feasibility of SO_2 control alternatives were examined. The technical material supporting this proposed rulemaking is summarized in a report entitled "Summary of Technical Material Supporting EPA Rules Governing Sulfur Dioxide Capture at Bunker Hill", August 1979.

On December 13, 1979, (44 FR 72118) EPA incorporated the terms of the settlement agreement into the SIP by promulgating a new interim SO_2 regulation as 40 CFR 52.676(b). That regulation allows the use of dispersion techniques and was to serve as an interim SO_2 control requirement until such time that a primary Nonferrous Smelter Order (NSO) could be issued to the Bunker Hill Company.

On June 24, 1980, EPA published in the Federal Register (45 FR 42514) the minimum requirements for an initial (first) NSO issued pursuant to Section 119 of the Act. EPA is preparing to issue a first NSO to the Bunker Hill Company located in Kellogg, Idaho in accordance with the June 11, 1979 Settlement Agreement. Before the Bunker Hill Company's first NSO can be issued, however, the interim SO_2 control regulation as well as any reference to it must be removed from the Idaho State Implementation Plan. Once this is done, the SIP will meet the requirement of Section 110 of the Act which prohibits the inclusion of dispersion techniques in the SIP.

EPA finds that good cause exists for providing a 30-day comment period for the following reasons: (1) pursuant to the terms of the Settlement Agreement, a short period of time is allowed for exclusion of the interim regulation and issuance of the Bunker Hill Company NSO, (2) the public has had adequate notice of the guidelines for preparation of State Implementation Plans and was provided earlier an opportunity to comment on the terms of the interim regulation and the procedure of its removal from the SIP in 44 FR 5227 (September 7, 1979) and (3) the impact of this rulemaking is limited only to the State of Idaho. Therefore, EPA is soliciting public comments for 30 days on its proposal to remove § 52.676(b) of Title 40 of the Code of Federal Regulations from the Idaho SIP.

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

Interested parties are invited to comment on all aspects of this amendment to the Idaho SIP. Comments should be submitted, preferably in triplicate, to the address listed in the front of this Notice. Public comments postmarked by December 1, 1980, will be considered in any final action EPA takes on this proposal.

(Secs. 110, 172, Clean Air Act (42 U.S.C. 7410(a), 7502))

Dated: October 21, 1980.

Donald Dubois,

Regional Administrator.

[FR Doc. 80-34004 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

[1] Bunker Hill Company V. EPA, 572 F.2d 1286 (9th Cir. 1977), hearing denied, No. 75-3670 (December 28, 1977).

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40 CFR Part 52

[EN-5-FRL 1651-3]

Indiana State Implementation Plan; Extension of Comment Period

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking, notice of extension of comment period.

SUMMARY: The U.S. EPA is giving notice that the comment period for the notice of proposed rulemaking on the Indiana State Implementation Plan (SIP) revision to control particulate emissions from iron and steel process sources in the State of Indiana published July 3, 1980, (45 FR 45314) has been extended from October 17, 1980 to October 31, 1980.

DATE: Comments are now due on or before October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Carol Wilniowski, Docket Clerk, Air Enforcement Branch, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2082.

SUPPLEMENTARY INFORMATION: This notice extends the period for submitting comments on the notice published July 31, 1980 (45 FR 45314) proposing rulemaking on revisions to Indiana's SIP. These revisions pertain to the control of particulate emissions from iron and steel process sources in the State of Indiana.

United States Steel Corporation, Jones & Laughlin Steel Corporation and Youngstown Sheet & Tube Company, by their attorney, on October 17, 1980, requested a 14 day extension of time for filing their comments regarding U.S. EPA's proposed action on the revisions. In addition, Citizens for a Better Environment, on October 8, 1980, requested a 20-day extension of time for filing their comments.

U.S. EPA has decided that the extension of the public comment period is appropriate and the comment period is hereby extended to October 31, 1980.

Dated: October 22, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-34110 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 57

[EN-10-FRL 1649-3]

Proposal To Issue a First Primary Nonferrous Smelter Order to the Bunker Hill Co., Kellogg, Idaho

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue a first primary Nonferrous Smelter Order (NSO) to the Bunker Hill Company, Kellogg, Idaho. A Settlement Agreement reached between EPA and the Bunker Hill Company on June 11, 1979, and published at 44 FR 72118 (December 13, 1979) and amended at 45 FR 1419 (January 7, 1980) (pertained to numbering of footnotes), requires that EPA issue a first NSO under Section 119 of the Clean Air Act (the Act) to Bunker Hill. The Agreement calls for the NSO to be issued promptly after promulgation of the national rules governing the NSO program. The Agreement acknowledges that Bunker Hill was considered by the EPA to meet the economic qualification tests of the then proposed NSO regulations. These rules were promulgated in final form on June 24, 1980, (40 FR 42514).

DATE: Written comments must be received on or before December 1, 1980 to be considered by EPA.

ADDRESSEES: Comments should be submitted to Director, Enforcement Division, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101. Supporting material, 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: Betty Swan, EPA, M/S 513, 1200 Sixth Avenue, Seattle, Washington 98101. Telephone 206-442-1387.

SUPPLEMENTARY INFORMATION: Bunker Hill operates a nonferrous lead/zinc smelter at Kellogg, Idaho. On June 11, 1979, representatives of the Bunker Hill Company and EPA executed a Settlement Agreement which is the basis for this first NSO. The Agreement specifies the contents of the NSO, and provides procedures for its issuance. Because EPA had not yet promulgated final national rules governing the NSO program when it entered into the Agreement, the Agreement called for implementing the terms of the NSO in the interim by revision of the Idaho State Implementation Plan (SIP). The Agreement also provides that the Bunker Hill Company would not challenge issuance of its first NSO if it contains the same terms as specified in the Agreement. These terms, which were promulgated by EPA as a revision to Idaho's SIP on December 13, 1979 (44 FR 72118) and which comprise the provisions of the Bunker Hill Company's first NSO are summarized below.

Emission limits: The proposed NSO establishes SO_2 emission limits which Bunker Hill must meet by June 11, 1980. These limits include an overall plant SO_2 emission limit from the two tall stacks of 625 tons, running 7-day average. One exceedence of the 7-day limit is allowed per calendar quarter. The overall limit includes acid plant bypass emissions and excess emissions caused by start-up, shut-down, maintenance and malfunction. Acid plant tailgas SO_2 emissions are limited to 2600 ppm averaged over a running 6-hour period. All emissions are to be measured by approved continuous monitoring equipment which meet specified criteria.

Excess emissions: Bypass of process exhaust strong gas streams around an acid plant is excused only under five narrowly defined situations. The NSO specifies the amount of time bypass can occur following process or acid plant breakdown. It also specifies the amount of time (in terms of operating parameters) that process exhaust gas can bypass the acid plant during acid plant restart. After June 11, 1980 and except as described below, Bunker Hill is prohibited from continuing to operate its processes while the applicable acid plant is shutdown for the annual maintenance period.

Annual acid plant maintenance offset: Continued process operation while an acid plant is shut down for annual maintenance is allowed to occur for up to 14 days per year provided an offset of emissions is achieved. An interim method is provided to establish the offset until the new SO_2 control system is on line. Effective June 11, 1982, for every ton of SO_2 that is bypassed during the annual maintenance period Bunker Hill must, during the course of the year, capture an additional ton of SO_2. Such additional SO_2 must be removed from either the sinter machine weak stream or the blast furnance SO_2 stream neither of which are currently controlled.

Fugitive SO_2 emission program: The Bunker Hill Company is required to install a system to eliminate over 90 percent of the blast furnace upset conditions. This system should result in the capture of approximately 21 tons per week of fugitive SO_2 emissions. Those emissions will be released to the atmosphere via the main stack. If the blast furnace fugitive emission program captures less than 21 tons per week, the overall plant SO_2 emission limit will then be reduced by that portion of the 21 tons per week which is not captured.

Research and development program: The June 11, 1979, Settlement Agreement required the Company to immediately commence a continuous research and development program. Bunker Hill was, however, provided with the option of either employing a full scale or a reduced scale program. The Company chose to implement the full scale program. Successful implementation of the full scale program will satisfy the acid plant maintenance offset provision which will allow the Company to operate the plant within certain limits when an acid plant is down for scheduled maintenance.

The Company has indicated by letter of June 11, 1980, that it chooses to employ the full scale program. However, the NSO contains requirements applicable to both the full scale and reduced scale programs, as provided in the Settlement Agreement.

Supplementary control system: The Company is required to employ a supplementary control system (SCS) to meet National Ambient Air Quality Standards (NAAQS) using an SCS implementation plan and operating manual approved by EPA. SCS program deficiencies defined by an ERA study entitled "Review of the SCS Used by the Bunker Hill Company-Kellogg, Idaho" (EPA 330/2-79-001) must be corrected.

A study must also be performed by Bunker Hill to demonstrate that ambient

SO_2 monitors are located in all areas of maximum expected ambient SO_2 concentrations. Alternative techniques are allowed where air quality in a monitored location is used in conjunction with modeling techniques to predict SO_2 concentrations elsewhere. The modeling techniques, however, must be calibrated using temporary SO_2 monitors. A compliance schedule specifies when the study is to be completed, when a revised SCS plan and operational manual are to be submitted and when the new SO_2 monitors are to be placed into service. Until such time that the Administrator approves the new SCS program, the existing SCS and SO_2 monitors will be used on an interim basis to assure attainment of NAAQS.

Solicitation of comments: The Agency at this time is time is soliciting comments on this proposal to issue a first primary NSO to the Bunker Hill Company, Kellogg, Idaho. It should be noted that the administrative record supporting the interim regulation contained in 40 CFR 52.676(b) constitutes a complete and accepted application for an NSO.

(Secs. 110 and 119 of CAA as amended 42 U.S.C. 7410 and 7419)

Note.—The EPA has determined that this notice does not contain a significant regulation requiring a regulatory analysis under Executive Order 12044.

Dated: October 7, 1980.

Donald P. Dubois,

Regional Administrator.

Part 57 of Chapter I, title 40 of the Code of Federal Regulations is hereby amended as folows:

Subpart I—Idaho

Section 57.901, paragraphs (a) and (b) are added as follows:

§ 57.901 Nonferrous Smelter Order for Bunker Hill Company.

(a) Pursuant to the Bunker Hill Company and EPA Agreement of June 11, 1979, the following requirements constitute the elements of the NSO.

(b) The NSO for the *Bunker Hill Company lead and zinc smelter located in Shoshone County in the Idaho portion of the Eastern Washington-Northern Idaho Interstate Region.*—(1) *SO_2 Emission Limitations.* Effective on June 11, 1980, the owner(s) or operator(s) of the subject smelter shall comply with the requirements of paragraph (b)(1) in regard to the capture of SO_2. The requirements governing SO_2 gas stream bypass during the annual acid plant maintenance period as provided by paragraphs (b)(5) and (b)(6) shall become effective on June 11, 1979.

(i) The owner(s) or operator(s) of the smelter subject to paragraph (b)(1) of this section shall not cause or allow the discharge of gases in excess of:

(A) 2600 parts per million (by volume) SO_2 averaged over any hourly running 6-hour averaging period, from any sulfuric acid plant as determined by continuous monitoring equipment specified in paragraph (b)(1)(iv) of this section and in accordance with the compliance procedures specified in paragraph (b)(4)(iii) of this section. In determining violations of the 6-hour averaging period, no two violations shall contain any common hourly data points; and

(B) 567,000 kg (625 tons) SO_2 over a daily (midnight to midnight) running 7-day period as determined by continuous monitoring equipment [2] specified in paragraph (b)(1)(iv) of this section and in accordance with the compliance procedures specified in paragraph (b)(4)(iii) of this section. Such limitation is plant wide and shall apply to the sum total of SO_2 emissions from the lead smelter main stack and the zinc plant main stack and shall include all excess emissions as defined in paragraph (b)(2)(i) of this section. Except as provided in paragraph (b)(6)(ii) of this section the emission limitation shall not be exceeded more than once per three (3) month calendar quarter, e.g., January, February and March. Such single excused emission shall be the first exceedence of the 7-day limit in the three (3) month quarterly period. In determining violations of the 7-day limit, no two (2) violations shall contain any common daily (midnight-to-midnight) data points. As provided in Appendix A to this regulation and upon notification by the Enforcement Division Director of the EPA-Region X the plant wide emission limit shall be decreased to not less than 548,000 kg (604 tons) SO_2.

(ii) *Bypass Prohibition.* Except as provided in paragraph (b)(2)(ii) of this section all SO_2 gas streams discharged from any zinc plant roaster and from the strong gas exit point on the input end of the lead smelter sinter machine shall at all times be processed in an SO_2 removal facility. The owner(s) or operator(s) shall not cause or allow these SO_2 gas streams to be discharged to the atmosphere.

(iii) *Circumvention.* Other than for temporary process control or to temporarily prevent significant equipment damage, dilution air or other extraneous gases shall not be allowed to enter or combine with any process gas normally treated by an SO_2 removal facility or with any acid plant tailgas prior to SO_2 concentraiton or flow measurement where the purpose of such combination would be to:

(A) In other than the lead smelter or zinc plant main stacks decrease the concentraiton of SO_2 in such streams;

(B) Otherwise adversely effect the operation of any SO_2 removal system, SO_2 concentration measurement device or gas flow measurement device; and

(C) Decrease the concentration of SO_2 in gases exhausted from the sinter machine and zinc roasters which will have the effect of circumventing the requirements of paragraph (b)(2)(ii) of this section. The owner(s) or operator(s) must promptly inform the Administrator of any substantial changes in process gas flow which may affect the performance of any SO_2 removal facility or measurement device, regardless of the purpose for any such change.

(iv) *Continuous Monitoring.* The owner(s) or operator(s) shall install and calibrate, and shall thereafter maintain, operate and periodically test measurement systems for continuously monitoring and recording SO_2 emission concentrations, gas volumetric flow rates and gas flow indication in accordance with paragraph (b)(4)(ii) of this section for the monitoring equipment listed and at the following locations:

(A) Continuously operated SO_2 emission concentration and gas volumetric flow rate monitors and recorders located immediately downstream of each acid plant such that the measurement system measures only the tailgas from one acid plant;

(B) Continuously operated SO_2 concentration and gas volumetric flow rate monitors and recorders located in the zinc plant main stack;

(C) Continuously operated SO_2 concentration and gas volumetric flow rate monitors and recorders located in the lead smelter main stack and the lead smelter acid plant (upstream of the acid plant converter);

(D) Continuously operated gas flow indicating devices which will indicate and record the presence of gas flow in any duct or outlet from the sinter machine where SO_2 gas streams normally treated in an SO_2 removal facility may be bypassed around such facility and be routed to the atmosphere;

(E) Continuously operated gas flow indicating devices which will indicate and record the presence of gas flow in each of the individual five ducts receiving the bypass exhaust gas from zinc roasters #1 through #5. Each device must be located to monitor the bypass from only one roaster;

[2] The owner(s) or operator(s) shall have the right in any enforcement proceeding to raise the issue of the accuracy of continuous monitoring instruments.

(F) Continouosly operated gas flow indicating devices which will indicate and record the presence of gas flow in any duct or outlet where a single zinc roaster or combination of zinc roasters exhaust gas streams may be bypassed around an acid plant and routed to the atmosphere; and

(G) Based on a finding that the monitoring equipment specified herein is reasonably deemed to be inadequate to provide for effective regualtory compliance the Administrator may require the owner(s) or operator(s) to install and continuously operate gas volumetric flow rate monitor(s) and recorder(s) in any duct or outlet where exhaust gas may be bypassed around the acid plant(s) and routed to the atmosphere. In the event that such a finding is made by the Administrator, the owner(s) or operator(s) agree to install and operate such continuous monitors on or before sixty (60) days after the owner(s) or operator(s) receive such written notification by the Enforcement Division Director of Region X–EPA.

(v) *Continuous Process Monitoring.* The owner(s) or operator(s) shall install and calibrate, and shall thereafter maintain, operate and periodically test measurement systems for continuously monitoring and recording process parameters for the monitoring equipment listed and at the following locations:

(A) Continuous temperature monitors located to measure and record the inlet gas temperature at the first and third catalyst beds of each sulfuric acid plant;

(B) Continuously operated monitors which will detect and record the commencement and cessation of concentrate feed entering each zinc roaster. The recorder data from such monitors shall be printed on the same chart as used to record bypass gas flow in paragraph (b)(1)(iv) (E) and (F) of this section from each individual zinc roaster; and

(C) Continuously operated monitor which will detect and record the commencement and cessation of concentrate feed entering the sinter machine. The recorded data from such monitor shall be printed on the same chart as used to record bypass gas flow in paragraph (b)(1)(iv)(D) of this section form the sinter machine; and

(vi) *Fugitive SO_2 Emissions.* The owner(s) or operator(s) shall utilize best engineering techniques to capture and vent such fugitive SO_2 gases through stacks serving the facility. Such techniques shall include but not be limited to:

(A) Maintaining and operating all ducts, flues and stacks in a leak-free condition;

(B) Maintaining and operating all process equipment and gas collection systems in such a fasion that outleakages of SO_2 gases will be prevented to the maximum extent possible;

(C) Instituting a program to reduce the fugitive emissions from the zinc roasters by reducing the frequency of positive pressure surges in the zinc roasters. This will be accompanied by component replacement, new fans, better operating practices, or other improvements to the integrity of the gas collection system as necessary to attain the Occupational Safety and Health Administration (OSHA) lead standard. This project will be completed on the dates required by the OSHA regulation to meet the lead workplace concentration standard. The estimated reduction in SO_2 fugitive emissions is approximately 8 tons per week and after treatment in an acid plant is expected to increase the total SO_2 emissions in the zinc smelter main stack by no more than 1 ton per week;

(D) Instituting a program to improve the draft maintained in the sinter machine hooding. This program will include increased maintenance on the strong and weak gas ducts, complete replacement of any mild steel hood material with stainless steel, excluding the last two hood sections which are not subject to high corrosion, and improvements in other system components to achieve 90 percent collection of the existing fugitive emissions estimated to be 4 tons of SO_2 per week. Part of these emissions will be treated in an acid plant so the increase in emissions through the lead smelter tall stack is estimated to be 3 tons of SO_2 per week. Such a program is expected to increase the total SO_2 emissions from the lead smelter main stack by no more than 3 tons per week; and

(E) Installing and operating a manual and if necessary automatically controlled tuyere air flow control system on both blast furnaces on or before June 11, 1980. The system is to be designed to eliminate over 90 percent of the current furnace upset conditions that result in fugitive SO_2 emissions. Such a program is expected to increase the total SO_2 emissions from the lead smelter main stack by no more than 21 tons per week. The program will be designed to reduce the frequency of blast furnace upset conditions to an aggregate total of less than 3.4 hours per week.

(F) Compliance with the fugitive SO_2 emission control program will be judged by Appendix A to this regulation.

(2) *Excess Emissions.* Effective on June 11, 1980, the owner(s) or operator(s) of the subject smelter shall comply with the requirements of paragraph (b)(2) of this section in regard to acid plant bypass, excess emissions and equipment malfunction. The requirements governing excess emissions during the annual acid plant maintenance period as set forth in paragraphs (b)(5) and (b)(6) of this section shall become effective on June 11, 1979.

(i) *Definition of Excess Emissions.* Any SO_2 emissions exceeding the limitations specified in paragraph (b)(1)(i) of this section above shall constitute an excess emission. SO_2 gas streams discharged to the atmosphere from any zinc plant roaster and from the strong gas exit point on the input end of the lead smelter sinter machine without being processed in an SO_2 removal facility shall also constitute an excess emission.

(ii) *Presumptively Excused Excess Emissions.* Where the owner(s) or operator(s) fully comply with the reporting requirements of paragraph (b)(2)(iv) of this section and further demonstrate that the conditions specified in paragraphs (b)(2)(ii) (A) through (E) of this section have been met, the bypass of SO_2 gas streams around an SO_2 removal facility shall be excused. Any excess emissions, whether or not claimed by the owner(s) or operator(s) to be excused excess emissions, may be deemed by the Administrator to violate this regulation where the owner(s) or operator(s) fail to comply with any requirement of paragraph (b)(2)(ii) of this section or upon a finding by the Administrator that the excess emissions claimed to be excusable by the owner(s) or operator(s) were caused by one or more of the conditions set forth in paragraph (b)(2)(v) (A) through (C) of this section. Excess emissions resulting from the following conditions are presumptively excused:

(A) *Process Shutdown Following Acid Plant Breakdown.* In the event of a breakdown or malfunction of an acid plant, the owner(s) or operator(s) may bypass the gas stream normally controlled by such acid plant, only for the time period necessary to shut down the process equipment (zinc roaster(s) or sintering machine) whose SO_2 streams would normally be controlled by such acid plant. Shutdown of the process equipment shall be initiated immediately and the time period to accomplish the shutdown and during which bypass is excused shall not exceed the following:

(*1*) 15 minutes for the sinter machine except where complete emptying of the

sinter belt is required the time period shall not exceed 60 minutes; and

(2) 30 minutes for shutdown of any single zinc roaster or combination of zinc roasters;

(B) *Process Shutdown Following Zinc Roaster Breakdown.* In the event of a breakdown or malfunction of a zinc roaster, the owner(s) or operator(s) may bypass the gas exhaust from that individual roaster around an acid plant and to the atmosphere commencing 5 minutes after concentrate feed ceases to enter such roaster;

(C) *Process Startup Following Zinc Roaster Shutdown.* During the period when a zinc roaster is restarted following its shutdown the owner(s) or operator(s) may bypass the gas exhausted from that individual roaster around the acid plant and to the atmosphere only as follows:

(1) If either of the zinc plant acid plants is being restarted the owner(s) or operator(s) may bypass, around an acid plant and to the atmosphere, the roaster exhaust gas *only* for the time period necessary for a well designed, operated and maintained acid plant [3] to establish autothermal [4] operation; and

(2) If no acid plant is being restarted and if one or more zinc roasters is operating the owner(s) or operator(s) may bypass, around an acid plant and to the atmosphere, the exhaust gas from the individual roaster which is starting-up but *only* for the time period which ends 15 minutes after concentrate feed commences to enter such roaster;

(D) *Process Start-up Following Sinter Machine Shutdown.* In the event that the sinter machine has been shutdown, and upon its restart, the owner(s) or operator(s) may bypass the exhaust gas, around the acid plant and to the atmosphere, *only* as follows:

(1) If the sintering machine has been shutdown for greater than 3 hours bypass may occur but may not exceed the time period necessary for a well designed, operated and maintained acid plan to re-establish autothermal operation; and

(2) If the sintering machine has been shutdown due to an acid plant component failure and the repair of the acid plant component takes longer than 3 hours bypass during restart of the sinter machine may occur. Such bypass may not exceed the time period necessary for a well designed, operated and maintained acid plant to reestablish autothermal operation;

(E) *Continued Process Operation During Annual Acid Plant Maintenance.* The owner(s) or operator(s) may bypass the process emissions around the acid plant and to the atmosphere during the annual acid plant maintenance period *only* to the extent allowed by paragraphs (b)(5) and (b)(6) of this section;

(iii) *Other Excess Emissions.* The owner(s) or operator(s) may in the required excess emission report of paragraph (b)(2)(iv) of this section claim that excess emissions should be deemed by the Administrator to be excusable. Any excess emission claimed to be excusable under this paragraph (b)(2)(iii) of this section shall be a violation of this regulation unless and until the owner(s) or operator(s) demonstrate to the satisfaction of the Administrator that such excess emission should be excused. For the purpose of illustration, cited below are categories of other excess emissions which may be excused:

(A) Bypass of gas around SO_2 removal facilities where necessary to prevent loss of life, personal injury or severe property damage. (Severe property damage does not include economic losses caused by production losses such as those caused by shut down of the blast furnace or electrolytic zinc processes due to lack of feed material.); and

(B) Sudden and unavoidable excess acid plant tailgas SO_2 emissions which are beyond the control of the owner(s) or operator(s). However, excess emissions shall not be deemed beyond the control of the owner(s) or operator(s) if caused by one or more of the following:

(1) Improperly designed acid plant components;

(2) Improperly operated process(es) or acid plant equipment;

(3) Inadequate maintenance of acid plant and/or gas cleaning systems; and

(4) In general, any fluctuations in volume or SO_2 concentrations of the acid plant feed gas.

(iv) *Excess Emission Report.* For any excess emissions, including those covered in paragraphs (b)(2)(ii) and (b)(2)(iii) of this section the owner(s) or operator(s) shall submit an initial report to the Enforcement Division Director of the EPA—Region X. The report shall be submitted monthly within fifteen (15) days from the last day of the prior month. The owner(s) or operator(s) shall also record and maintain other supplemental information as set forth in paragraph (b)(2)(iv)(B) of this section.

(A) The initial report shall contain the following information:

(1) Identity of the gas stream, stack or other point where the excess emissions accurred;

(2) General magnitude of the excess emissions;

(3) Time and duration of the excess emissions;

(4) Nature and cause of such excess emissions; and

(5) Identity of the equipment causing the excess emissions;

(B) The supplemental information shall include the following and if requested be provided to be Enforcement Division Director of EPA—Region X within thirty (30) days of request:

(1) Specific steps taken by the operator(s) to limit the excess emissions and when those steps were commenced;

(2) If the excess emissions were the result of equipment malfunction, the steps taken to remedy the malfunction and to prevent the recurrence of such malfunction;

(3) Specific magnitude of the excess emissions including monitoring data and calculations which describe or may be used in determining the magnitude of the excess emissions;

(4) Maintenance schedules applicable to the equipment causing the excess emissions;

(5) Copies of properly signed contemporaneous operating log sheets; and

(6) Other related documentation as may be reasonably requested by the Director to assist him in the evaluation of the excess emissions including any information necessary to make the determinations set forth in paragraph (b)(2)(v) of this section.

(C) Failure of the owner(s) or operator(s) to provide the EPA with a full and complete excess emissions report within a timely fashion, shall constitute a violation of this regulation.

(v) *Evaluation of Excess Emission Report. In evaluating the excess emissions, the Enforcement Division Director shall take into consideration, the following:*

(A) Whether the air pollution control systems and process equipment were at all times maintained and operated, to the maximum extent practicable, in a manner consistent with best practice for minimizing emissions;

[3] As used in this regulation, in a well designed, operated and maintained acid plant the first catalyst bed must be at or be heated to a minimum temperature of 750°F before the zinc roaster (or sinter machine) the acid plant serves re-starts.

[4] As used in this regulation the term "autothermal operation" is defined as the point in time when the temperature of gases entering the first catalyst bed in the acid plant converted is at 825°F or when the temperature of gases entering the third catalyst bed is at 750°F whichever comes first. The owner(s) or operator(s) shall insure that at any time an acid plant is started up sufficient gas will be routed to the acid plant as soon as possible to achieve autothermal operation. Further, the fan supplying gas to the lead smelter acid plant (Fan No. 6) shall upon start-up of the sinter machine immediately be brought up to full R.P.M. and operating Logs maintained to document full RPM flow rate.

(B) Whether the amount and duration of the excess emissions were minimized to the maximum extent practicable during periods of such emissions, and process equipment was shut down within the shortest reasonable time after the SO_2 removal facility shut down occurs; and

(C) Whether the excess emissions were part of a recurring pattern indicative of serious deficiencies in, the design, operation or maintenance of, the process(es), the gas cleaning equipment or the SO_2 removal facility, including whether prescribed maintenance schedules were followed.

(vi) Nothing in this subsection shall be construed to limit the authority of the Administrator to take any action under Section 303 of the Clean Air Act.

(3) *Supplementary Control System.* Effective on June 11, 1979, the owner(s) or operator(s) of the subject smelter, in addition to meeting the SO_2 capture requirements of paragraph (b)(1) of this section shall employ a supplementary control system (SCS) to the extent necessary to meet National Ambient Air Quality Standards (NAAQS) for SO_2 and such other additional control measures as may be necessary, to assure the attainment and maintenance of NAAQS for SO_2. The requirements applicable to the SCS program and meeting ambient air quality standards are as follows:

(i) *SCS Analysis.* On January 18, 1979, the Administrator provided the owner(s) or operator(s) with a copy of an EPA technical analysis of the existing SCS program detailing deficiencies in such program;

(ii) *Final SCS Program.* Except during the interim period as provided in paragraph (b)(3)(vii) of this section, the final SCS program shall be conducted in accordance with the provisions of an SCS implementation plan and an SCS operational manual, both of which must be approved by the Administrator. The SCS implementation plan shall describe the administrative requirements, personnel staffing, components and equipment of the SCS system. The SCS manual shall describe the circumstances under which, the extent to which, and the procedures through which emissions shall be curtailed to prevent violations of the NAAQS for SO_2. Process SO_2 emission shall be curtailed in accordance with the SCS operating manual whenever the potential for violating any NAAQS for SO_2 is indicated at any point in a designated liability area (as defined in paragraph (b)(3)(v) of this section) by air quality measurements and air quality predictions;

(iii) *The SCS Implementation Plan.* An approvable SCS implementation plan shall contain (but not be limited to) the following:

(A) A detailed description of the emission monitoring system and the continuous SO_2 monitoring network that will be used in the SCS to detect maximum ground-level SO_2 concentrations in the designated liability area (DLA). Such description must specify the number, type and exact location of each SO_4 monitor and instack monitor to be used. As approvable monitoring system/network must include the following:

(*1*) Except as provided in paragraph (b)(3)(viii)(C) of this section, the continuous SO_2 monitoring equipment shall be located at all ambient air[5] points of expected maximum groundlevel SO_2 concentrations in the DLA provided that if deemed necessary to guarantee attainment and maintenance of standards, monitors may be located in other locations with the approval of the Administrator. The determination of the locations where maximum concentrations may occur shall take into account all reasonably probable meteorological and process operating conditions, as well as the presence of other sources of SO_2 significantly affecting SO_2 concentrations in the DLA;

(*2*) The number and location of sites shall be based on dispersion modeling, measured ambient air quality data, meteorological data and other meteorological information;

(*3*) The system shall include the use of fixed SO_2 ambient monitors and one mobile monitor to be sited as, from time to time, the EPA—Region X may reasonably direct unless the Administrator determines, on the basis of a demonstration by the owner(s) or operator(s), that the use of fewer monitors would not limit coverage of points of maximum concentration or otherwise reduce the capability of the owner(s) or operator(s) to prevent any violations of the NAAQS in the DLA; and

(*4*) All monitors shall be continuously operated and maintained and shall meet the performance specifications contained in 40 CFR Part 53. The monitors shall be capable of routine real time measurement of maximum expected SO_2 concentrations for the averaging times of SO_2 NAAQS.

(B) A detailed description of the meteorological sensing network. Such description must specify the number, type and exact location of each meteorological instrument to be used. An approvable network must have an assessment capability adequate to identify conditions requiring emission curtailment to prevent possible violations of the NAAQS. The meteorological assessment capability shall provide all forecast and current information necessary for successful use of the system's operational manual;

(C) A program whereby the owner(s) or operator(s) systematically evaluates and improves the ability of the SCS to protect against violations of the NAAQS. Such program mut be based upon the information contained in the EPA Guideline Document—OAQPS 1.2-036; and

(D) A clear delineation of authority delegated to an appropriate named company official to require all other smelter personnel to comply with the SCS operator's curtailment decisions. The identity of responsible and knowledgeable on-site company personnel who are the qualified SCS operators and are authorized to initiate and supervise the actions that will be taken to curtail emissions shall be listed; such personnel must, upon request, be able and be authorized by the Company to inform the Administrator as to the status of the SCS, meteorological and air quality conditions at any time and whether and to what extent the recommendations or determinations of the SCS operator(s) were followed or overridden by any Company offical in making any curtailment or operating decision;

(iv) *The SCS Operating Manual.* An approvable operational manual shall require operation of the SCS to include (but not be limited to) the following:

(A) Prescribed emission curtailment decisions based on the use of real time information from the air quality monitoring network, dispersion model estimates of the effect of SO_2 emissions on air quality, and meteorological observations and predictions;[6]

(B) The maintenance and calibration procedures and schedules for all SCS equipment;

(C) The procedures to be followed for the regular acquisition of all meteorological information necessary to operate the system;

(D) The ambient concentrations and meteorological conditions that shall be used as criteria for initiating various

[5] As used in this regulation the term "ambient air" shall be defined in the same manner as that term is defined in the Clean Air Act and regulations promulgated thereunder.

[6] The intent behind this subparagraph is set forth in subpart D of the recently proposed NSO regulations (44 FR 6283; 6290–6291 (January 31, 1979) and 44 FR 11096; 11097 (February 27, 1979).

degrees of non-discretionary emission curtailment;

(E) The meteorological variables including the thresholds, ranges and combinations of values as to which judgments may be made to anticipate the onset of, and apply, the criteria stated in paragraph (b)(3)(iv)(D) of this section. Specifically, the maximum emission rates which may prevail under each of these meteorological and air quality situations must be specified. Such emission rates shall be determined by in-stack monitors and shall be the basis for determining whether provisions of the operational manual are adhered to;

(F) The procedures through which and the maximum time period within which a curtailment decision will be made and implemented by the SCS operator;

(G) The method for immediately evaluating the adequacy of a particular curtailment decision, including the factors to be considered in that evaluation;

(H) The procedures through which and the time within which additional necessary curtailment will immediately be effected; and

(I) The procedures to be followed to protect the NAAQS for SO_2 in the event of a mechanical failure in any element of the SCS.

(v) *Designated Liability Area.* The DLA shall be the area within two circles, each with a radius of 10 statute miles (16 kilometers) with the center point of such circles coinciding, respectively, with the main stack serving the lead smelter and the main stack serving the zinc plant. If new information becomes available which demonstrates that the DLA should be redefined, the administrator shall consider such information and if appropriate, redefine the DLA.

(vi) *Consent to Liability.* On or before July 11, 1979, the owner(s) or operator(s) shall submit to the Administrator an affidavit signed by a responsible company official, empowered to do so, stating that in any judicial or administrative proceeding to enforce this regulation the owner(s) will accept responsibility for violations of the NAAQS for SO_2 in areas of ambient air in the DLA as defined by paragraph (b)(3)(v) of this section.

(vii) *Interim Conduct of SCS Program.* Until the Administrator approves under paragraph (b)(3)(x) of this section a revised SCS implementation plan and a revised SCS operational manual required under paragraph (b)(3)(ix)(C) of this section, the owner(s) or operator(s) shall conduct the SCS program in accordance with the existing SCS operational manual and the existing SCS implementation plan which has been approved by the Director of the State of Idaho Department of Health and Welfare (IDHW): *Provided,* That upon execution of the consent to liability as required by paragraph (b)(3)(vi) of this section, the existing manual and plan shall be deemed modified by such consent.

(viii) *Study Regarding NAAQS.* Within the times specified by paragraph (b)(3)(ix) of this section, the owner(s) or operator(s) shall submit a study to EPA—Region X which accomplishes the following:

(A) Demonstrates that the NAAQS for SO_2 are being met in all areas of ambient air within the DLA surrounding the smelting complex;

(B) Corrects the deficiencies in the existing SCS operational manual and SCS implementation plan described in the EPA technical study of the present SCS program as described in paragraph (b)(3)(i) of this section or documents that the EPA study erroneously described such deficiencies;

(C) Demonstrates that ambient SO_2 monitors are located (or will be located) in all areas of maximum expected ambient SO_2 concentrations that take into account all probable meteorological and operating conditions. For specific locations of maximum expected ambient SO_2 concentrations, if the owner(s) or operator(s) can demonstate in the study that maximum ground-level SO_2 concentrations can be predicted through use of alternate techniques then SO_2 ambient monitors may not have to be placed at each such respective location: *Provided,* That such respective localities are inaccesible. "Alternative techniques" as used here shall be deemed to be a demonstration through SO_2 monitoring and calibrated modelling techniques that the compliance status of each unmonitored location of maximum expected SO_2 concentration will be accurately determined from data collected at an alternative monitoring site; and

(D) Failure to timely submit an approvable study shall constitute a violation of this regulation.

(ix) *Required Submissions.* The following items must be submitted to the Administrator within the time limitations shown:

(A) Within two (2) months following the date of promulgation of the final NSO regulations under Section 119 of the Act, the owner(s) or operator(s) shall submit a study plan for the study required by paragraph (b)(3)(viii) of this section; within one (1) month following receipt of such plan the Administrator will provide comments to the owner(s) or operator(s) on such study plan;

(B) Within five (5) months following the date of promulgation of the final NSO regulations under Section 119 of the Act, the owner(s) or operator(s) shall submit a final study plan for the study required by paragraph (b)(3)(viii) of this section which incorporates the EPA comments described in paragraph (b)(3)(ix)(A) of this section;

(C) Within one (1) year following the date of promulgation of the final NSO regulations under Section 119 of the Act or the final tall stack regulations under Section 123 [7] of the Act (whichever is later), the owner(s) or operator(s) shall submit to the Administrator the NAAQS attainment and SO_2 ambient monitor placement study required by subparagraph (b)(3)(viii);

(D) Within eighteen (18) months following the date of promulgation of the final NSO regulations under Section 119 of the Act or the final tall stack regulations under Section 123 of the Act (whichever is later), the owner(s) or operator(s) shall submit to the Administrator an approvable SCS implementation plan and an approvable SCS operational manual which accomplishes the following:

(*1*) takes into account the placement of SO_2 ambient monitors in the areas of maximum expected ambient SO_2 concentrations, as specified by paragraph (b)(3)(viii)(B) of this section; and

(*2*) Incorporates the requirements of paragraphs (b)(3)(iii) and (b)(3)(iv) of this section and which remedies the problems identified in the EPA technical study of the present SCS program as described in paragraph (b)(3)(i); and

(E) Within twenty-four (24) months following the date of promulgation of the final NSO regulations under Section 119 of the Act or the final tall stack regulations under Section 123 of the Act (whichever is later), the owner(s) or operator(s) shall submit to the Administrator a certification that placement of SO_2 ambient monitors is in accordance with paragraph (b)(3)(viii)(C) of this section.

(x) *Final Conduct of SCS Program.* Upon the Administrator's review and approval of the information submitted under paragraph (b)(3)(ix)(D) of this section, the owner(s) or operator(s) will be required to conduct the SCS program in accordance with a revised SCS operational manual and the revised SCS implementation plan approved herein. Failure of the owner(s) or operator(s) to timely submit an approvable study plan, study, SCS implementation plan or SCS

[7] These Section 123 tall stack regulations were proposed in the Federal Register on January 12, 1979 (44 FR 2608).

operational manual will constitute a violation of this regulation.

(xi) *SCS Violations.* During the interim conduct of the SCS program as discussed in paragraph (b)(3)(vii), failure to curtail SO_2 emissions when and as much as indicated by the applicable SCS operational manual or to follow the provisions of the applicable SCS manual and SCS implementation plan shall constitute a violation of this regulation if the NAAQS for SO_2 are exceeded as a result of such failure. Upon commencement of the final SCS program as discussed in paragraph (b)(3)(x) of this section, failure to curtail SO_2 emissions when and as much as indicated by the revised SCS operational manual or to follow the provisions of the revised manual and SCS implementation plan shall constitute a violation of this regulation. Any violation of the NAAQS for SO_2 in the DLA shall be a violation of this regulation unless EPA determines on the basis of a showing by the owner(s) or operator(s) that:

(A) The smelter owner(s) or operator(s) had taken all emission curtailment action indicated by the SCS operational manual; and

(B) The violation was caused in significant part by emissions of another source(s) which were in excess of the maximum permissible emissions applicable to such source(s).

(xii) *Continuing Review of the SCS Program.* The owner(s) or operator(s) shall continuously review the design and operation of the SCS program to determine what measures may be available for improving the performance of the system. An annual report shall be submitted to the Administrator by March 1 of each calendar year detailing the results of this review and specifying measures implemented to prevent the recurrence of any ambient SO_2 violations.

(4) *Monitoring, Compliance Reporting and Compliance Determination.* Effective on June 11, 1979, the owner(s) or operator(s) of the subject smelter shall comply with the requirements of paragraph (b)(4) of this section in regard to monitoring, compliance reporting and compliance determination except where such requirement is to be met in accordance with a separate compliance schedule provided for by this regulation:

(i) *SCS Program.* For the SCS program, the owner(s) or operator(s) shall:

(A) Maintain, in a useable manner, records of all air quality measurements made, meteorological information acquired, and emission curtailments ordered (including the identity of the persons making such decisions) during the operation of the SCS. Such records shall be retained for at least two years; and

(B) Submit to the Administrator, on a monthly basis, within fifteen (15) days after the end of each month, all measurements made of air quality and all other information regarding the SCS program that the Administrator may request. Such submission shall include a monthly summary indicating all dates and times when a NAAQS for SO_2 was exceeded or equaled in the DLA.

(ii) *Compliance Monitoring.* For compliance monitoring, the owner(s) or operator(s) shall:

(A) *SO_2 Concentration Monitors.* Install, operate and maintain SO_2 concentration measurement system(s) in accordance with the performance specifications and other requirements contained in Appendix D to 40 CFR Part 52, and the conditions outlined as follows:

(*1*) All SO_2 monitors shall be operated continuously and each monitor shall take and record at least one measurement [8] of SO_2 concentration in each 15 minute period;

(*2*) The sampling point shall be located at least 8 stack diameters (diameter measured at sampling point) downstream and 2 diameters upstream from any flow disturbance such as a bend, expansion, constriction, or flame, unless another location is approved by the Administrator;

(*3*) The sampling point for monitoring emissions shall be in the duct at the centroid of the cross section if the cross sectional area is less than $4.645m^2$ (50 ft^2) or at a point no closer to the wall than 0.914m (3 ft) if the cross sectional area is $4.645m^2$ (50 ft^2) or more. The monitor sample point shall be in an area of small spatial concentration gradient and shall be representative of the concentration in the duct; and

(*4*) The SO_2 concentration measurement system(s) shall be subject to the manufacturer's recommended zero adjustment and calibration procedure at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case such specifications or recommendations shall be followed. Records of these procedures shall be made which clearly show instrument readings before and after zero adjustment and calibration.

[8] In the event SO_2 measurements cannot be recorded because monitoring equipment was out-of-service for periodic zero adjustment and calibration or maintenance an arithmetic mean shall be used to determine SO_2 concentration for a given time interval. 75% of the required data will be considered sufficient to calculate a valid arithmetic average.

(B) *Gas Volumetric Flow Rate Monitors.* Install, operate and maintain gas volumetric flow rate system(s) in accordance with the performance specifications and other requirements contained in Appendix E to 40 CFR Part 52 and the conditions outlined as follows:

(*1*) The monitors are to be operated on a continuous basis and must be located at least 8 stack diameters (diameter measured at sampling point) downstream and 2 diameters upstream from any flow disturbance such as a bend, expansion, constriction, or flange, unless another location is approved by the Administrator.

(*2*) The sampling point with the duct shall be representative of the average flow in the duct or at the point specified by the instrument manufacturer.

(*3*) The instrument used to monitor SO_2 gas streams which bypass the lead smelter acid plant shall be adequate to disclose the time of the bypass and its duration.

(*4*) The measurement system(s) shall be subjected to the manufacturer's calibration procedures at intervals recommended by the manufacturer. Records of these procedures shall be made which clearly show instrument readings before and after any adjustments. If manufacturers calibration procedures do not exist procedures will be specified by the EPA.

(C) *Gas Flow Indicating Devices.* Install, operate, and maintain a system to detect the occurrence of situations when any gas is bypassed around an acid plant as specified in paragraph (b)(1)(iv) of this section in accordance with the following conditions:

(*1*) The system design for detecting gas flow shall be approved by the Enforcement Division Director of the EPA Region X;

(*2*) The device shall be located in each flue or duct where gas may bypass an acid plant;

(*3*) The system shall be capable of detecting gas flows as low as 5 percent of the maximum expected flow through each duct; and

(*4*) The system shall be continuously operated and capable of disclosing and recording the time of the bypass and its duration.

(D) *Field Test.* All continuously operated instrumentation required herein shall be field tested after installation. If field test requirements are not specified by the manufacturer EPA will provide test requirements. The Administrator shall be notified at least twenty (20) days prior to that start of the field test period, to afford the Administrator the opportunity to have an observer present.

(E) *Certification of Monitors.* With the exception of the 168 hour break-in period for the SO_2 concentration measurement system(s), all SO_2 concentration and gas volumetric flow rate and gas flow indicating system(s) shall be recertified by the owner(s) or operator(s) at reasonable intervals as requested by the Administrator but in no case less frequently than once per year. The Administrator shall be notified in writing at least twenty (20) days prior to any tests associated with this requirement so that he may have an observer present. A report of the results of each test shall be forwarded to the Administrator within sixty (60) days of the completion of each test;

(F) *Continuous Data Recorder.* The equipment utilized to record the data and parameters measured by continuous monitoring instrumentation shall meet the following requirements or alternate equivalent requirements as the Administrator may require:

(*1*) Where various parameters are recorded on one strip chart the data must, to the Administrator's satisfaction, be continuously traced and each trace be individually and continuously identifiable when the chart is reproduced. In the event a color coded system of data recording is utilized copies of strip chart recordings submitted to the EPA must also be color coded or include a mathematically reduced tabulation of the data on at least 15 minute intervals;

(*2*) The scale for all SO_2 concentration readings must be set so that the maximum expected readings will be at least 40 percent of full scale;

(*3*) The scale for all gas volumetric flow readings must be set so that the maximum expected readings will be at least 80 percent of full scale; and

(*4*) Other requirements regarding data reduction and recording may be specified by the Administrator as required to enforce this regulation.

(G) All SO_2 concentration, gas volumetric flow rate and gas flow indicating measurement and recording instruments shall be maintained on operational mode and one line at *all* times except that provision will be made excusing the owner(s) or operator(s) from monitoring during periods when monitors break down due to causes beyond the control of the owner(s) of operator(s). In such an event, the owner(s) or operator(s) shall notify the Administrator within three (3) days of such a break down and provide information as to actions taken during the instrument malfunction period. All strip chart recordings of the instrumentation of paragraphs (b)(1)(iv) and (b)(1)(v) of this section must be marked once per shift as to the actual time a selected recorded measurement is being recorded. Quality assurance checks shall be performed on all continuous monitoring instrumentation at the frequency specified by the manufacturer or as otherwise reasonably required by the Administrator;

(H) Maintain, in a useable manner, process strip chart recordings, records of all measurements accumulated by the continuous monitoring systems of paragraph (b)(1)(iv) and (b)(1)(v) of this section and compliance determination calculations (measurements) of paragraph (b)(4)(iii) of this section below. Such information shall be retained for at least two (2) years. The Administrator or his authorized representative shall have reasonable access to these records; and

(I) Maintain, in a useable manner, process strip chart recordings, records and operators log sheets of plant operations for a period of at least two (2) years. The Administrator or his authorized representative shall have reasonable access to these records.

(iii) *Compliance Determination.* For compliance determination, the following shall apply:

(A) *Acid Plant Tailgas—Continuous Monitors.* Compliance with the requirements of paragraph (b)(1)(i)(A) of this section shall be determined using the continuous measurement system(s) of paragraph (b)(1)(iv) of this section installed, calibrated, maintained and operated in accordance with the requirements of paragraph (b)(4)(ii) of this section. An hourly running 6-hour averaging period shall commence at each clock hour and continue for a consecutive 6 clock hour period. A new hourly running 6-hour averaging period will commence at every clock hour. For example, in a given day the following typical hourly running 6-hour averaging periods will occur: 2 a.m. to 8 a.m.; 3 a.m. to 9 a.m.; 4 a.m. to 10 a.m.; and 5 a.m. to 11 a.m. *et seq.* Six-hour average SO_2 concentration shall be calculated as of the end of each clock hour for the preceding 6 hours, in the following manner:

(1) Divide each 6-hour period into not less than twenty-four (24) equally spaced time intervals;

(2) Determine on a compatible basis an SO_2 concentration for each individual time interval.[9] These measurements may be obtained either by continuous integration of all measurements recorded during the time interval or from the arithmetic average of any number of SO_2 concentration readings equally spaced over the time interval, in the latter case, the same number of concentration readings shall be taken in each interval and the readings shall be similarly spaced within each interval; and

(3) Calculate the arithmetic average of all interval concentration measurements in each 6-hour period.

(B) *Acid Plant Tailgas—Manual Test.* Notwithstanding the requirements of paragraph (b)(4)(iii)(A) of this section, compliance with the requirements of paragraph (b)(1)(i)(A) of this section shall also be determined by using the methods described below at such times as may be reasonably specified by the Administrator. For any acid plant, a 6-hour average SO_2 concentration shall be determined as follows:

(*1*) The test of each acid plant tailgas SO_2 concentration shall be conducted while the acid plant is operating at or above the maximum rate at which it will be operated and under such other conditions as the Administrator may specify;

(*2*) Concentrations of SO_2 in emissions shall be determined by using Method 8 as described in 40 CFR Part 60. The analytical and computational portions of Method 8 as they relate to determination of sulfuric acid mist and sulfur trioxide as well as isokinetic sampling, may be omitted from the over-all test procedure;

(*3*) Three independent sets of measurements of SO_2 concentrations shall be conducted during three 6-hour periods for each acid plant. Each 6-hour period will consist of three consecutive 2-hour periods. All tests must be completed within a 72-hour period;

(*4*) In using Method 8, traversing shall be conducted according to Method 1 as described in 40 CFR Part 60. The minimum sampling volume for each 2-hour test shall be 1.132 M^3 (40 ft^3) corrected to standard conditions, dry basis;

(*5*) The velocity of the total effluent from each acid plant evaluated shall be determined by using Method 2 as described in 40 CFR Part 60 of this chapter and transversing according to Method 1. Gas analysis shall be performed by using the integrated sample technique of Method 3 as described in 40 CFR Part 60. Moisture content shall be determined by using Method 4 except that stack gases arising only from a sulfuric acid production unit may be considered to have zero moisture content;

(*6*) The gas sample shall be extracted at a rate proportional to gas velocity at the sampling point;

(*7*) The SO_2 concentration in parts per million-maximum 6-hour average for each stock is determined by calculating

[9] Supra note 8.

the arithmetic average of the results of the three 6-hour test period each consisting of three 2-hour tests; and

(*8*) When necessitated by process variables or other factors, changes to the above test procedures may be approved by the Administrator.

(C) *7-Day Emissions—Continuous Monitoring.* Compliance with the requirements of paragraph (b)(1)(i)(B) of this section shall be determined using the continuous measurement system(s) of paragraph (b)(1)(iv) of this section installed, calibrated, maintained and operated in accordance with the requirements of paragraph (b)(4)(ii) of this section. A daily running 7-day period shall commence at midnight of each day and continue for a consecutive 7-day period. A new daily running 7-day period will commence at midnight of every day. For example, in a given week the following typical daily running 7-day periods will occur: Tuesday (0000 hours) to Monday (2400 hours); Wednesday (0000 hours) to Tuesday (2400 hours) and Thursday (0000 hours) to Wednesday (2400 hours), *et seq.* The SO_2 emission rate for a 7-day period shall be calculated on a daily basis (midnight to midnight) in the following manner:

(*1*) Divide each 6-hour period into not less than twenty-hour (24) equally spaced time intervals;

(*2*) Determine on a compatible basis an SO_2 concentration and a stack gas flow rate measurement for each individual time interval for each affected stack.[10] These measurements may be obtained either by continuous integration of SO_2 concentration and stack gas flow rate measurements (from the respective affected facilities) recorded during the time interval or from the arithmetic average of any number of SO_2 concentration and stack gas flow rate readings equally spaced over the time interval. In the latter case, the number of concentration readings shall be taken in each time interval and the readings shall be similarly spaced within each time interval;

(*3*) Calculate the arithmetic average (pounds SO_2 per hour) of all interval emission rate measurements in each 6-hour period for the zinc plant main stack and the lead smelter main stack and multiply that arithmetic average by the number of time intervals in the 6-hour period; and

(*4*) Calculate the SO_2 emission rate for each consecutive 7-day period (midnight to midnight) by summing the twenty-eight (28) 6-hour average SO_2 emission rates for each stack measured over a 7-day period.

[10] Supra note 8.

(D) *Miscellaneous Source SO_2 Emissions.* The owner(s) or operator(s) shall perform a manual source test of the SO_2 emissions from the zinc fuming furnace and any other SO_2 emitting process equipment whose SO_2 emissions are not routed through the zinc plant main stack or lead smelter main stack. These emissions will not be used in calculating the 7-day SO_2 emissions as described in paragraph (b)(4)(iii)(c) above but must be submitted to the Administrator on an annual basis. The following shall apply to the performance of the manual source test:

(*1*) Manual source test methods shall be in accordance with the procedures contained in Appendix A to 40 CFR Part 60 and as follows:

(*i*) SO_2 emissions shall be measured by Method 8 sampling train; 3 runs of at least 60 minutes sampling time per run will constitute one manual source test. The minimum sampling volume for each 1-hour test shall be 1.15 m^3 (40.6 ft^3) corrected to standard conditions, dry basis. The analytical and computational portions of Method 8 as they related to determination of sulfuric acid mist, as well as the isokinetic sampling may be omitted from the overall test procedure.

(*ii*) Sampling will be conducted at a rate proportional to gas velocity determined according to Methods 1 and 2.

(*iii*) Two gas samples will be collected during each sampling run, according to Method 3.

(*iv*) Moisture content of the gas stream will be determined from the weight gain of the Method 8 train impringers.

(*v*) When necessitated by process variables or other factors, changes to the above test procedures may be approved by the Administrator.

(*2*) Source tests shall be conducted on or before (twelve months following execution of this Agreement) and at intervals specified by the Administrator but in any event not less than once per year;

(*3*) The process(es) tested shall be operated at or above the maximum rate at which it will be operated during the year and under such other conditions as the Administrator may specify; and

(*4*) The Administrator shall be notified in writing at least twenty (20) days prior to any such test so that he may have an observer present.

(*5*) *Research and Development Program.* Commencing on June 11, 1979, the owner(s) or operator(s) of the subject smelter shall comply with the requirements of paragraph (b)(5) of this section in regard to research and development. The provisions of this paragraph are intended to be read together with those set forth in paragraph (b)(6) of this section regarding bypass of SO_2 streams during the annual acid plant maintenance period:

(i) *Full Scale Research and Development Program.* Except as provided in paragraph (b)(5)(iii) of this section, the owner(s) or operator(s) shall implement a full scale program to capture and control an SO_2 gas stream which was not controlled as of September 28, 1978. A qualifying program shall meet the requirements of paragraphs (b)(5)(ii), (iv), (v), (vi), (vii) and (viii) of this section and shall consist of one of two options:

(A) An SO_2 removal facility (flue gas desulfurization system) to capture the weak stream exhausted from the sinter machine; or

(B) Substantially complete recirculation of the sinter machine weak steam[11] and treatment of the resultant gas stream in an SO_2 removal facility.

(ii) *Fuel Scale System Design Criteria.* The following shall constitute the design criteria for the full scale research and development system:

(A) Sinter machine weak stream flue gas desulfurization system:

(*1*) 95 percent SO_2 capture efficiency as determined by monitoring equipment continuously measuring feed gas SO_2 concentration and tail gas SO_2 concentration; and

(*2*) 95 percent on-line availability;

(B) Substantially complete sinter machine weak stream recirculation:

(*1*) Not less than 97 percent partitioning of SO_2 generated in the machine shall be routed to an SO_2 removal facility;

(*2*) Not more than 3 percent partitioning of the SO_2 gas generated in the machine shall be routed to the atmosphere via the tip end gas stream; and

(*3*) The SO_2 capture efficiency of the SO_2 removal facility shall not be impaired because of the additional gas captured through utilization of weak stream recirculation.

(iii) *Reduced Scale Research and Development Program.* The owner(s) or operator(s) may elect not to perform the full scale research and development program as set forth in paragraph (b)(5)(i) of this section: *Provided,* That:

(A) The owner(s) or operator(s) notify the EPA—Region X, in writing, of such decision no later than June 11, 1980, and provide a detailed account of the reasons for rejection of the full scale research and development program,

[11] Nothing in this regulation shall be construed to relieve the owner(s) or operator(s) from meeting the requirements of the Clean Air Act or regulations promulgated thereunder regarding construction or modification requirements concerning new sources.

including all cost and design information considered in the decision;

(B) The owner(s) or operator(s) immediately submit for the Administrator's approval a substitute research and development program, consisting of construction and operation of a flue gas desulfurization system with a minimum volume operating capacity of 5000 SCFM to treat a portion of the weak gas exhausted from the sinter machine or blast furnace;

(C) Such flue gas desulfurization system is constructed and operated in accordance with the requirements of paragraphs (b)(5)(iv), (v), (vi), and (viii) of this secton within the time periods specified in paragraph (b)(5)(vii) of this section. The following shall constitute the design criteria for the reduced scale research and development system:

(*1*) 95 percent SO_2 capture efficiency as determined by monitoring equipment continuously measuring feed gas SO_2 concentration and tailgas SO_2 concentration;

(*2*) 95 percent on-line availability;

(*3*) Continuous measurement instrumentation to monitor and record the following:

(i) System temperatures, pressures and gas and liquid flow rates;

(ii) Feed gas and tailgas SO_2 concentration;

(iii) Pressure drop within the system; and

(iv) pH and all other critical flue gas desulfurization operating parameters such as liquid make-up and recirculation flow rates;

(*4*) To the extent technically feasible sufficient automatic control instrumentation shall be provided such that the system automatically compensates for feed gas excursions in particulate loading, flow rate and SO_2 concentration while insuring minimum design criteria are maintained; and

(*5*) To the extent technically feasible system design and control should be such that correct chemical balance is maintained to avoid scaling, corrosion and equipment malfunction.

(D) The flue gas desulfurization system shall be operated continuously, except during periods of reasonably unavoidable equipment failure in accordance with good engineering practice and in a manner such that the project will result in the collection of information adequate to determine the economic and technological feasibility of a full scale application of such flue gas desulfurization system.

(iv) *Evaluation of the Research and Development Program.* Effective on June 11, 1979, the owner(s) or operator(s) shall evaluate the research and development program and prepare and submit an annual report to the Administrator by March 1 of each calendar year on the progress of the research and development project and detailing the following:

(A) Capital, operating and other costs of the system;

(B) Disposal of by-products (or waste material) and associated environmental impact;

(C) Energy utilization and related potential effects on energy conservation;

(D) The effectiveness of the system to improve capture of other pollutants of both occupational and environmental significance;

(E) Problems in system design and suggested methods or actual methods undertaken to improve the design including any anticipated scale-up problems;

(F) Maintenance requirements and frequency of system shutdown;

(G) Personnel staffing requirements;

(H) SO_2 capture efficiency as impacted by process exhaust gas fluctuations and sinter machine (or blast furnace) shutdowns; and

(I) Such other related technical information as may be reasonably required by the Administrator to assist him in the evaluation of the research and development program.

(v) *System Operation.* The owner(s) or operator(s) shall install and operate the full scale or reduced scale removal facility, whichever it elects, in accordance with good engineering practice and shall make a good faith effort to operate the project continuously, except for periods of reasonably unavoidable malfunction until the expiration date of the first primary non-ferrous smelter order or until discontinuance is authorized under paragraph (b)(6)(iii) of this section or by written authorization of the Administrator, and in such manner as will result in the collection of information necessary to determine the economic and technological feasibility of the facility. If technically feasible, system performance must be at the design criteria as specified in paragraphs (b)(5)(ii) or (b)(5)(iii) of this section subsequent to its initial break-in period.

(vi) *Sanctions.* Except where the owner(s) or operator(s) have first demonstrated to the satisfaction of the Administrator that due to technical infeasibility design criteria cannot be achieved, departure from the design criteria of paragraphs (b)(5)(ii) and (iii) (as applicable) above in the final construction or operation of the research and development program, or failure to meet the compliance schedule and reporting requirements, shall constitute a violation of this regulation.

(vii) *Research and Development Compliance Schedule.* The owner(s) or operator(s) shall comply with the following research and development program compliance schedule:

(A) Complete an engineering evaluation of the full scale and reduced scale research and development systems listed in paragraphs (b)(5)(i) and (b)(5)(iii) of this section and submit a complete report and data to the Administator on or before June 11, 1980;

(B) Notify the Administrator of the research and development system and the gas stream to be treated on or before June 11, 1980;

(C) Complete all engineering and design work on the research and development system on or before ten months following the notification of paragraph (b)(5)(vii)(B) of this section but in any event not later than April 11, 1981. The Administrator shall be provided with a copy of the engineering design for the technique selected;

(D) Award construction contracts for the SO_2 capture system on or before fourteen months following the notification of paragraph (b)(5)(vii)(B) of this section but in any event not later than August 11, 1981. Such award shall be contingent upon a primary nonferrous smelter order first being issued to the owner(s) or operator(s);

(E) If the full scale research and development system is selected, complete construction of the SO_2 capture system and begin acceptance testing on or before March 11, 1982; and complete all start-up and acceptance testing of the SO_2 capture system and place such system in service by June 11, 1982; and

(F) If the reduced scale research and development system is selected, complete construction of the flue gas desulfurization system by December 11, 1981, and place such system in service by February 11, 1982.

(viii) *Consent to Access.* The owner(s) or operator(s) shall submit a binding written agreement, signed by a responsible corporate official empowered to do so consenting to:

(A) Grant the representatives and contractors of the EPA access to any information or data employed or generated in the research and development program, including any process, emissions, or financial records which the EPA determines are needed to evaluate the technical or economic merits of the program;

(B) Grant physical access to the representatives and contractors of the EPA to each facility at which such research is conducted; and

(C) Grant the representatives and contractors of the EPA reasonable access to the persons in charge of conducting the program on behalf of the smelter owner for discussions of progress, interpretation of data and results, and any other similar purposes as deemed necessary by the EPA.

(6) *Annual Acid Plant Maintenance Offset.* Commencing on June 11, 1979, the owner(s) or operator(s) of the subject smelter shall comply with the requirements of paragraph (b)(6) of this section in regard to continued process operation during the period when an acid plant is shutdown for annual maintenance.

(i) *Bypass Prohibition,* Except as provided in paragraph (b)(6)(ii) of this section, the owner(s) or operator(s) shall not operate the lead smelter sinter machine or any zinc plant roaster when any acid plant(s) serving that process is shut down for maintenance.

(ii) *Criteria for Continuing Process Operation.* Excess emissions occurring during the period when the acid plant is shutdown for the annual maintenance period [12] shall not constitute a violation of paragraph (b)(1)(ii) of this section or be included in the computation of the plant wide SO_2 emissions of paragraph (b)(1)(i)(B) of this section, provided that:

(A) The owner(s) or operator(s) commits to install additional SO_2 removal facilities and/or performs process changes to capture a gas stream in accordance with the full scale research and development program requirements of paragraphs (b)(5)(i) and (b)(5)(vii) of this section. If at any time the owner(s) or operator(s) elect not to undertake a full scale qualifying project, excess emissions occuring during the period when the acid plant is shut down for any annual maintenance period shall constitute a violation of this regulation;

(B) The owner(s) or operator(s) provide written notification to the EPA—Region X on or before June 11, 1980, that it will perform the full scale research and development program. During the period prior to such notification, excess emissions occurring when the acid plant is shut down for the annual maintenance period shall not constitute a violation of this regulation. Such continued operation while an acid plant is shut down for annual maintenance shall not in any event exceed fourteen (14) calendar days per year for each acid plant through and until June 11, 1980.

(C) Commencing with the first twelve (12) month period after the election of a full scale qualifying research and development system under paragraph (b)(5)(i) of this section, and until the system is required to be placed in service under paragraph (b)(5)(vii) of this section, the combined amount of SO_2 which is released by reason of continued process operation during the annual acid plant maintenance period for all 3 acid plants does not exceed the lesser of fourteen (14) days for each acid plant per year or the annual incremental SO_2 capture for which the full scale research and development system is designed.

(D) During the period of time commencing when the full scale research and development system is required to first be placed in service under paragraph (b)(5)(vii) of this section and ending on the expiration date of the first primary non-ferrous smelter order, the following shall apply:

(*1*) No process operation is allowed to continue while the respective acid plant is shut down for its annual maintenance period until and unless the full scale system or process change has operated for the time period specified in paragraph (b)(6)(iii) of this section;

(*2*) During such time period, the full scale system or process change must perform substantially in accord with the system design criteria set forth in paragraph (b)(5)(ii) of this section;

(*3*) The owner(s) or operator(s) must continue to operate the full scale research and development system beyond the time period described in paragraph (b)(6)(iii) of this section and until the expiration date of the first primary non-ferrous smelter order; further the system must perform substantially in accord with the system design criteria set forth in paragraph (b)(5)(ii) of this section; and

(*4*) The combined annual amount of SO_2 which is released by reason of continued process operation during the annual acid plant maintenance period shall not exceed for all 3 acid plants the annual incremental SO_2 capture for which the full scale research and development system is designed and operated;

(E) Annual maintenance shall not be performed simultaneously on the lead smelter acid plant and any zinc acid plant or simultaneously on both zinc plant and acid plants. If, under paragraph (b)(5)(i) of this section, a sinter machine flue gas desulfurization system is installed, annual maintenance shall not be performed simultaneously on the lead smelter acid plant and the flue gas desulfurization system; further, the sinter machine flue gas desulfurization system shall receive the maximum quantity of SO_2 practicable for the sinter machine when the lead smelter acid plant is shut down. During annual acid plant maintenance at the zinc plant, the zinc plant acid plant which remains in service shall receive the maximum quantity of SO_2 practicable from the operating zinc roasters; and

(F) Continued process operation while an acid plant is shut down for annual maintenance shall not in any event exceed fourteen (14) calendar days for each acid plant per year.

(iii) *Discontinuance of Full Scale Research and Development Program.* In the event that severe and unavoidable production losses are incurred as a direct result of the operation of the full scale research and development system or process change during a full nine (9) month period for the flue gas desulfurization system or three (3) month period for the sinter machine weak stream recirculation, or upon terms otherwise agreed, in writing, by the Administrator, the owner(s) or operator(s) may discontinue operation of the full scale research and development project provided that:

(A) Notification to the Administrator of discontinuance of such operation shall be given within one month following the expiration of the requisite period. Such notification shall be accompanied by a full written justification of and analysis for the discontinuance; and

(B) Until the expiration date of the first primary non-ferrous smelter order, the lead smelter sinter machine and any zinc plant roaster shall be shut down during any subsequent annual acid plant maintenance period.

(iv) *Pre-determined SO_2 Emissions.* For the purposes of determining compliance with the design and operating criteria set forth in paragraphs (b)(6)(ii)(C) and (D) of this section, the quantity of incremental SO_2 deemed captured by the full scale qualifying project shall be calculated using a predetermined quantity of SO_2 which is emitted in the relevant gas stream prior to installation of such full scale project. The determination of pre-exiting SO_2 emissions shall be as follows:

(A) For the sinter machine weak stream, a value of 15.7 tons of SO_2 per 24 hours of operation shall be used;

(B) For the blast furnance, a value of 18.3 tons of SO_2 per 24 hours of operation shall be used; and

(C) On or before June 11, 1980, if the owner(s) or operator(s) demonstrate to the satisfaction of the Administrator,

[12] The term "annual maintenance period" as used herein is defined as the period occurring once (or twice if the catalyst needs to be replaced two times a year) per year for each acid plant when various maintenance functions such as catalyst replacement and heat exchange cleaning occur. This period normally lasts less than two weeks.

using manual source test techniques, continuous SO_2 measurement techniques, or equivalent alternatives, that a different pre-existing SO_2 emission value is correct, that value may be substituted for the value(s) listed in paragraphs (b)(6)(iv)(A) and (B) of this section upon agreement of the Administrator.

(7) *Violations*—(i) *Violations of Provisions.* Failure to comply with any provisions of this regulation or with the NSO issued to replace this regulation may subject the owner(s) or operator(s) to enforcement and sanctions as set forth in the Clean Air Act and regulations promulgated thereunder.

(ii) *Violations of NAAQS.* Nothing in this subparagraph shall be construed to relieve the owner(s) or operator(s) from liability for violations of the NAAQS.

Appendix A—Fugitive Sulfur Dioxide Emission Control Program and Its Impact to Total Plant Emissions

The total plant emission limitation of paragraph (b)(1)(i)(B) was developed based on historical emission data and included the increase in SO_2 emissions from the main stacks that would likely occur as a result of implementation of the fugitive control program described in paragraphs (b)(1)(vi)(C) (zinc roaster), (b)(1)(vi)(D) (sinter machine), and (b)(1)(vi)(E) (blast furnace). Accordingly, failure of the owner(s) or operator(s) to comply with any of the provisions of the fugitive SO_2 control program will be deemed a violation of this regulation.

For example, if blast furnace upset conditions occur for 8.36 hours in any 7-day period the plant wide emission limit would be reduced 6 tons per running 7-day period, i.e. the new plant wide emission limit would be 619 tons SO_2 per running 7-days.

Compliance will be determined as follows:

a. The zinc roaster program of paragraph (b)(1)(vi)(C) is based on compliance with applicable OSHA lead workplace standards in accordance with the OSHA schedules of compliance;

b. The sinter machine program of paragraph (b)(1)(vi)(D) must ensure complete installation of new stainless steel hooding with the exception of the last two (2) sections of the hood which are not subject to high corrosion on or before June 11, 1980; and

c. The blast furnace program of paragraph (b)(1)(vi)(E) must eliminate 90 percent of the blast furnace upset conditions (currently occuring approximately 20 percent of the time).

EPA inspection of the blast furnace operation will be made to ensure that upset conditions occur no more than an aggregate total of 3.36 hours per any 7-day period. The owner(s) or operator(s) explicitly agree that failure to meet the requirements stated herein at any time subsequent to June 11, 1980, will immediately result in the decrease in the plant wide emission limit in proportion to the amount the objective was not attained. The proportional formula is shown below:

$$\text{Amount of plant wide emission reduction from the 625 tons per 7-day limit} = 21 \times \left[1 - \frac{33.6 - 2(H_u - 3.36)}{33.6} \right]$$

Where H_u = hours in any 7-day period when the blast furnace is in an upset condition. For the purpose of use in this formula H_u cannot exceed 20.16 hours.

[FR Doc. 80-34028 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-33-M

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40 CFR PART 180

[FRL 1595-8; PP8F2058/P141]

Oxylfuorfen; Proposed Tolerance

Correction

In FR Doc. 80-26938, appearing at page 58497, in the issue Wednesday, September 3, 1980, on page 58498, make the following corrections:

(1) In the first column, the second full pargraph, the sixth line down, is corrected to read: "dose (LD_{50}) with an LD_{50} greater than 5.0".

(2) In the first column, the second full paragraph, the last line of that paragraph, insert the article "a" after the word "with".

(3) In the second column, the third full pargraph down, the third line, correct ">0.1 percent," to read "<0.1 percent,".

(4) In the last column, last paragraph, the fifth line up from the botton, correct "Order of" to read "Order or".

BILLING CODE 1505-01-M

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40 CFR Part 446

[WH-FRL 1646-2]

Paint Formulating; Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Additional Analytical Data.

SUMMARY: EPA is making available additional analytical data on wastewater samples taken at six paint formulating plants using the Agency's verification sampling and analysis protocol. The purpose of this notice is to provide these additional data for public review and to request comment on the new data. These data are available in EPA's Public Information Reference Unit. EPA is inviting submission of comments relating only to the new data which are the subject of this notice.

DATES: Comments on these data must be submitted on or before December 1, 1980.

ADDRESS: Send comments to Ben J. Honaker, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. The additional data will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM 213 (EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Ben J. Honaker, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St. SW. Washington, D.C. 20460, Telephone (202) 426-2554.

SUPPLEMENTAL INFORMATION: On January 3, 1980 EPA published proposed effluent limitations and standards (45 FR 912) for the Paint Formulation Point Source Category. This proposed regulation implements Sections 301, 304, 306, and 307 of The Clean Water Act of 1977. The comments received by EPA indicated concern by the paint industry over sample handling and accuracy of analytical results based on the use of the Agency's screening protocol. In addition, some commenters expressed concern that there were insufficient analytical data to represent the industry's wastewater adequately. In order to be responsive to these concens, EPA has obtained additional samples of wastewater from the paint industry and analyzed them according to its current verification protocol. Six paint plants, previously sampled by EPA, were visited and wastewater samples were collected and analyzed under procedures that strictly adhered to the *Guidelines Establishing Test Procedures for the Analysis of Pollutants; Proposed Regulations* (44 FR 69464-69575).

SOLICITATION OF COMMENTS: EPA invites and encourages public participation in its rulemaking process. Comments

should be specifically directed only to the significance of the new data with respect to the limitations and standards proposed for the paint industry on January 3, 1980. Any comments not related to this specific data will not be considered. The Agency is allowing 30 days from the publication of this notice for evaluation and presentation of comments.

Dated: October 23, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80-33888 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-29-M

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40 CFR Part 447

[WH-FRL 1646-3]

Ink Formulating, Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Envoronmental Protection Agency.

ACTION: Notice of Availability of Additional Analytical Data.

SUMMARY: EPA is making available additional analytical data on wastewater samples taken at three ink formulating plants using the Agency's verification sampling and analysis protocol. The purpose of this notice is to provide these additional data for public review and to request comment on the new data. These data are available in EPA's Public Information Reference Unit. EPA is inviting submission of comments relating only to the new data which are the subject of this notice.

DATES: Comments on these data must be submitted on or before December 1, 1980.

ADDRESS: Send comments to Ben J. Honaker, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. The additional data will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213 (EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Ben J. Honaker, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, Telephone (202) 426-2554.

SUPPLEMENTAL INFORMATION: On January 3, 1980 EPA published proposed effluent limitations and standards (45FR928) for the Ink Formulation Point Source Category. This proposed regulation implements Sections 301, 304, 306, and 307 of the Clean Water Act of 1977. One of the comments received by EPA indicated concern by the ink industry over sample handling and accuracy of analytical results based on the use of the Agency's screening protocol. In addition, this commenter expressed concern that there were insufficient analytical data to represent the industry's wastewater adequately. In order to be responsive to these concerns, EPA has obtained additional samples of wastewater from the ink industry and analyzed them according to its current verification protocol. Three ink plants, previously sampled by EPA, were visited and wastewater samples were collected and analyzed under procedures that strictly adhered to the *Guidelines Establishing Test Procedures for the Analysis of Pollutants; Proposed Regulations* (44 FR 69464-69575).

SOLICITATION OF COMMENTS: EPA invites and encourages public participation in its rulemaking process. Comments should be specifically directed only to the significance of the new data with respect to the limitations and standards proposed for the ink industry on January 3, 1980. Any comments not related to this specific data will not be considered. The Agency is allowing 30 days from the publication of this notice for evaluation and presentation of comments.

Dated: October 23, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80-33889 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-29-M

INTERSTATE COMMERCE COMMISSION

49 CFR 1051

[Ex Parte No. MC.-147]

Information Required on Receipts and Bills—Responsibility for Loading and Unloading Motor Vehicles

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: "The Motor Carrier Act of 1980" has changed a number of statutory provisions affecting the Commission. One change is the requirement that when shippers and receivers of freight in interstate commerce require that any person who owns or operates a motor vehicle be assisted in loading and unloading, they shall be responsible for providing this assistance or shall compensate the owner or operator of the motor vehicle for all costs associated with securing such assistance. The purpose of the proposed rule is to implement this change and make explicit in receipts or bills of lading of regulated carriers the responsibility for loading and unloading the motor vehicle and the compensation, if any, to be paid for this service.

DATES: Written comments are due on or before December 15, 1980.

ADDRESSES: An original and 15 copies, if possible, should be sent to: Ex Parte No. MC-147, Room 7417, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Lewis R. Teeple, phone: (202) 275-7612.

SUPPLEMENTARY INFORMATION: In passing the Motor Carrier Act of 1980, the Congress was concerned that drivers, especially owner-operators, be protected against the practice known as "lumping," that is, the coercion of carriers and owner-operators, to obtain assistance in loading or unloading of freight. Section 15 (49 U.S.C. 11109(a)) of the new law mandates that whenever a shipper or receiver of property requires that any person who owns or operates a motor vehicle be assisted in loading and unloading, they are to be responsible for providing assistance or compensate the owner or driver of the motor vehicle for all costs associated with such assistance. This requirement, now in effect, applies to all interstate transportation by motor carrier, not just transportation subject to regulation by this Commission.

Other sections of the Act require that this responsibility for loading and unloading be explicitly set forth in writing. For example, a new part (b) is added to Section 11107 of the recodified Interstate Commerce Act to provide:

The Commission shall require, by regulation, that any arrangement, between a motor carrier of property providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and any other person, under which such other person is to provide any portion of such transportation by a motor vehicle not owned by the carrier shall specify, in writing, who is responsible for loading and unloading the property onto and from the motor vehicle.

Anyone with an interest in this proceeding should also review the notice of proposed rulemaking in Ex Parte No. MC-43 (Sub-No. ——) Lease and Interchange of Vehicles, which would implement the above requirement

that regulated carriers set forth in lease agreements the responsibility for loading and unloading. That rulemaking also proposes that the lease contain the compensation, if any, to be paid for loading or unloading.

Similarly, Section 16 of the Act requires that any contract of haul prescribed for motor carriers operating under the 10526(a)(6) exemption, "shall specify the arrangements, including compensation, with respect to loading and unloading of the property transported under such contract." The Act does not, however, make it a requirement that loading and unloading arrangements between regulated carriers and shippers be specifically stated in writing in the contract of carriage or freight bill. In this connection, we have received complaints from shippers, consignees, drivers and motor carriers, that there is confusion at origin and destination as to the responsibility of the parties for loading and unloading. This confusion will be eliminated by a statement as to the loading and unloading responsibility in bills of lading or freight bills of regulated motor carriers.

In proposing this rule, we are mindful of the Congressional intent that the ability of the parties to apportion responsibility for loading and unloading between and among shippers, receivers, carriers, and owner-operators should be left to the market place. The purpose of this rule is to make explicit the market place decision as to apportionment and to make certain the right of an owner-operator, carrier, or driver for recovery of loading or unloading charges if he or she is required to perform or accept services not covered in the agreement.

This proposed action does not significantly affect the quality of the human environment or the conservation of energy resources.

We Propose

To amend title 49 of the Code of Federal Regulations by adding 1051.1(c) to the CFR as set forth in the appendix.

This notice and action are issued under authority contained in 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: October 16, 1980.

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

Agatha L. Mergenovich,
Secretary.

Appendix

* * * * *

Part 1051 is amended by adding § 1051.1(c) as follows:

§ 1051.1 [Amended]

(c) Every common and contract carrier by motor vehicle of property subject to the jurisdiction of this Commission shall specify on every receipt or bill of lading issued for the transportation of property in interstate or foreign commerce who is responsible for loading and unloading the property onto and from the motor vehicle and the compensation, if any, to be paid for this service. The receipt or bill of lading issued for the transportation of property in interstate or foreign commerce shall contain the following statement:

Pursuant to Federal Law, 49 United States Code 11109(a) "Whenever a shipper or receiver of property requires that any person who owns or operates a motor vehicle be assisted in the loading or unloading of such vehicle, the shipper or receiver shall be responsible for providing such assistance or shall compensate the owner or operator for all costs associated with securing and compensating the person or persons providing such assistance."

[FR Doc. 80-33951 Filed 10-30-80; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for Stephanomeria malheurensis (Malheur wire-lettuce)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Malheur wire-lettuce (*Stephanomeria malheurensis*) to be an Endangered species and to designate its Critical Habitat, under the authority contained in the Endangered Species Act. This plant is known only from one small population located in Harney County in southeastern Oregon. The lone population of this species is vulnerable to any substantial habitat alteration and faces the potential threat of surface mining on and near the site where it occurs. A determination that *Stephanomeria malheurensis* is an Endangered species and designation of its Critical Habitat would implement the protection provided by the Endangered Species Act of 1973, as amended.

DATES: Comments from the public must be received on or before January 29, 1981. A public meeting and a public hearing will be held on November 13 and December 2, 1980, respectively.

ADDRESSES: Interested persons or organizations are requested to submit comments or materials, preferably in triplicate, to the Regional Director (SE), Department of the Interior, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and material relating to this proposal are available for public inspection by appointment during normal business hours at the Service's Regional Office, 700 NE. Multnomah Street, Suite 550, Portland, Oregon. The public meeting and the public hearing on this proposal will be held at the Museum Club Room, 18 West D Street, Burns, Oregon, beginning at 10:00 a.m. on November 13 and December 2, 1980, respectively.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Marshall, Senior Staff Biologist, Endangered Species Program, Region 1, U.S. Fish and Wildlife Service, Department of the Interior, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232, 503/231-6131.

SUPPLEMENTARY INFORMATION: The first discovery of *Stephanomeria malheurensis* was made in 1966 when seeds of this species were collected along with those from a population of its ancestral subspecies, *Stephanomeria exigua ssp. coronaria*. The locality where these two taxa are found together is at the northern end of the range of the ancestral subspecies. further studies by Dr. Leslie Gottlieb of the University of California, Davis, demonstrated consistently distiguishable field characteristics and reprodutive isolation between these two taxa, establishing *Stephanomeria malheurensis* as a valid species (Gottlieb 1973, 1977, 1978). This annual plant is a member of the aster family (Asteraceae) and grows to 5 dm. tall, with a basal rosette of leaves, a much branched stem with scale-like leaves, and numerous pink to white (rarely yellow-orange) flower heads. *Stephanomeria malheurensis* is known only from one locality ner Malheur National Wildlife Refuge in Hareny County, Oregon. Its Habitat is situated on top of a dry, broad hill on a soil derived from volcanic tuff layered with some limestone. Numbers of individual plants vary greatly from year to year depending on the amount of precipitation prior to and during the spring growing season. This plant flowers in July and August.

The extremely restricted range of this plant makes the species vulnerable to even small land disturbances in and around its habitat. Such a potential threat exists in the form of some recently established mining claims which include the habitat of

Stephanomeria malheurensis. Future zeolite mining in the area endangers the continued existence of this species (Griffith and Hohn, 1979). The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and the effects of the proposed action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be Endangered, Threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the Federal Register (40 FR 27823–27924) of his acceptance of this report as a petition within the context of Subsection 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523–24572) to determine approximately 1,700 vascular plant taxa to be Endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975 Federal Register publication. *Stephanomeria malheurensis* was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909–17916).

The Endangered Species Act Amendments of 1978 (Pub. L. 95–632) required that all proposals over two years old be withdrawn. On December 10, 1979, the Service published a notice of the withdrawal of the June 16, 1976, proposal along with other proposals which had expired (44 FR 70796–70797). At this time the Service has sufficient new information to warrant reproposing *Stephanomeria malheurensis*. Its Critical Habitat is proposed for the first time.

Note.—The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Summary of Factors Affecting the Species

Subsection 4(a)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) states that the Secretary of the Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in that subsection. These factors and their application to *Stephanomeria malheurensis* Gottlieb are as follows:

1. *Present or threatened destruction, modification, or curtailment of its habitat or range. Stephanomeria malheurensis* has been known from only one 70-acre location south of Burns in Harney County, Oregon, since its discovery. No more than 750 adult plants of the species have been found in any one summer season since observations began in 1968. The restricted range of the species makes it vulnerable to many types of habitat alteration. Zeolite mining in the area is likely in the near future, and mining claims cover the entire area of this species' habitat as well as all adjacent areas. Protection of the habitat of *Stephanomeria malheurensis* and its immediate surroundings is imperative to the conservation of the species.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

3. *Disease or predation* (including grazing). A 160-acre tract of land including the entire population of *Stephanomeria malheurensis* has been fenced, which prevents grazing of the species by livestock. Larvae of an unidentified insect have been found foraging on the species, but their effect is unknown.

4. *The inadequacy of existing regulatory mechanisms.* The Bureau of Land Management (BLM) administers all of the land supporting this species, and in August 1975 it gave notice of the closure of the 160 acres necessary for the species' survival (40 FR 39536–39537). However, zeolite was determined to be a locatable mineral under mining law in June 1977. In consequence, access to the zeolite ore is regulated by the Mining Law of 1872, as amended. The adequacy of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579), often called the BLM organic act, to protect *Stephanomeria malheurensis* is unclear in these circumstances. The Endangered Species Act of 1973, as amended, offers additional possibilities for protection of the species.

5. *Other natural or man-made factors affecting its continued existence.* The small size of the only known population causes this species to be in significant danger of extinction due to natural fluctuations in the number of individuals in the population. Since this species is an annual, its numbers vary greatly from year to year, depending largely on the amount of precipitation prior to and during the spring growing season. In 1974 and 1975, juvenile populations of *Stephanomeria* numbered 12,000 and 35,000, respectively (Gottlieb, 1977). New fieldwork shows the population was only a few dozen individuals in August 1980 (Brauner and Gottlieb, 1980). In addition, Brauner and Gottlieb discuss the effects of a 1972 fire which swept much of the colony area. In 1979 and 1980, it has become apparent that cheat grass (*Bromus pectorum*) has invaded the burnt area much to the detriment of *Stephanomeria*. In their September 1980 report, Gottlieb states that the Malheur wire-lettuce is eminently threatened with extinction unless immediate action is taken to control the cheat grass invasion.

Critical Habitat

The Act defines "Critical Habitat" as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species."

Critical Habitat for *Stephanomeria malheurensis* is being designated to include the 160-acre Scientific Study Area on Bureau of Land Management land located 27 miles south fo Burns in Harney County, Oregon. This includes the entire, lone population of *Stephanomeria malheurensis*. This area is located on the lands west of state highway 205 within the SE¼ of the NE¼, and the NE¼ of the SE¼, Section 11; and the W½ of the SW¼ of the NW¼, and the SW¼ of the NE¼ of the SW¼, and the NW¼ of the SW¼, Section 12, T27S, R30E, Willamette Meridian. Natural expansion will likely be a desired management goal in the future. The proposed Critical Hibitat includes land within the Scientific Study Area which presently does not support the species but provides a buffer against adverse indirect impacts and which is considered essential for the conservation of the species.

Subsection 4(f)(4) of the Act requires, to the maximum extent practicable, that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such

activities are identified below for this species. It should be emphasized that Critical Habitat designation may not affect all of the activities mentioned below, as Critical Habitat designation only affects Federal agency activities through Section 7 of the Act.

Any activity which would significantly disturb the soil, topography or other physical and biological comnponents of the area where *Stephanomeria malheurensis* occurs would adversely modify its Critical Habitat. Land uses in the immediate locality of the population and in its surroundings must be carefully regulated to prevent such modifications. This might require restricting mining activities within and perhaps near the area in order to prevent adverse direct and indirect impacts. Since access to zeolite on BLM land is regulated by the Mining Law of 1872, the effect of this species' listing and Critical Habitat designation on the mining activity is uncertain (cf. BLM, n.d.; Sheridan 1977, 1978). Cooperative efforts between the Anaconda Company, the BLM, the Service, and any others so as to avoid damage to the species and its habitat are certainly indicated.

Sebsection 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a draft impact analysis and believes at this time that economic and other impacts of this action are not significant for the foreseeable future. The area proposed as Critical Habitat for *Stephanomeria malheurensis* is already being protected by the BLM, and represents only about 5 percent of the 3,000 acre area with mining claims by the Anaconda Company. The exact distribution of the subsurface deposits of zeolite are unknown, so that their relationship to the habitat requirements of the species cannot be determined. Furthermore, it is not know whether the zeolite is commercially exploitable in this area, and if it is, whether Section 7 would provide protective regulation for the species and its Critical Habitat.

The Service has contacted the Bureau of Land Management, which has jurisdiction over the land under consideration in this proposed action, and the Anaconda Company, which has the mining claims on the land where the species occurs. The BLM, other interested Federal agencies, the Anaconda Company, and other interested persons or organizations are requested to submit information on economic or other impacts of the proposed action. The Service will prepare a final impact analysis prior to the time of final rulemaking.

Effects of This Proposal If Published As a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

Subsection 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered, and any proposed or designated Critical Habitat. Provisions for Interagency Cooperation implementing this section are codified at 50 CFR Part 402. New regulations to accommodate amendments to Section 7 are in preparation. This proposed rule requires Federal agencies to confer with the Director on any of their actions which are likely to jeopardize this proposed species, or adversely modify its proposed Critical Habitat. If published as a final rule, Federal agencies would be required to insure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of this species, or adversely modify its Critical Habitat.

The only known potential action which may be affected by the Endangered Species Act is the zeolite mining by private interests planned for the Federal land in the immediate area which includes the proposed species and its Critical Habitat. As the Federal land management agency, the Bureau of Land Management would be responsible for carrying out the intentions of the Endangered Species Act on this land. The Mining Law of 1872, however, may restrict the authority of the BLM to regulate mining activities of locatable minerals, including zeolite. Voluntary or mandatory protection of this species and its habitat will require cooperation between the BLM, the private mining interests, and the U.S. Fish and Wildlife Service.

The Act and implementing regulations published in the June 24, 1977, Federal Register (42 FR 32373–32381) set forth a series of general trade prohibitions and exceptions which apply to all Endangered plant species. The regulations are found at §17.61 of 50 CFR and are summarized below. With respect to *Stephanomeria malheurensis* all prohibitions of Section 9(a)(2) of the Act, as implemented by § 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species, under certain circumstances. No such trade in this species is known. It is anticipated that few permits involving the species would ever be requested.

If this plant is listed as an Endangered species and its Critical Habitat designated, certain conservation authorities would become available and protective measures may be undertaken for it. These could include increased management of the species and its habitat, the provision of two-thirds Federal (and one-third State) funds for the species should Oregon qualify for a cooperative agreement under Subsection 6(c)(2) of the Act, and the development of a recovery plan for the species as specified in Subsection 4(g).

If listed as Endangered under the Act, the Service will review this species to determine whether it should be considered for the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere for placement upon its Annex, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

A draft Environmental Assessment has been prepared in conjunction with this proposal. It is on file in the Service's Portland Regional Office, 700 NE Multnomah Street, Suite 550, Portland, Oregon, and may be examined by appointment during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR Parts 1500—1508).

Public Comments Solicited

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of each Endangered species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack

thereof) to the species included in this proposal;

(2) The location of any population of *Stephanomeria malheurensis* and the reasons why any habitat of this species should or should not be designated as Critical Habitat;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and the probable impact of such activities on the area designated as Critical Habitat; and

(5) The foreseeable economic and other impacts of the Critical Habitat designation of Federal activities.

Final promulgation of a rule on *Stephanomeria malheurensis* will take into consideration any comments and additional information received by the Director, and such communications may lead him to adopt a final rule that differs from this proposal.

Public Meetings

The Service hereby announces that a public meeting and a public hearing will be held on this proposed rule. The public is invited to attend the meeting and to present opinions and information on the proposal. Specific information relating to the public meeting and the public hearing is set out below:

Public Meeting

Place: Museum Club Room, 18 West D. Street, Burns, Oregon
Date: November 13, 1980
Time: 10:00 a.m.
Subject: Malheur wire-lettuce

Public Hearing

Place: Museum Club Room, 18 West D. Street, Burns, Oregon
Date: December 2, 1980
Time: 10:00 a.m.
Subject: Malheur wire-lettuce

This proposal is published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, 92 Stat. 3751, 93 Stat. 1225). The primary authors of the proposed rule are Bruce MacBryde, Office of Endangered Species, Washington, D.C. (703/235-1975) and Peter A. Stine, Endangered Species Staff, Portland Regional Office, Portland, Oregon (503/231-6131).

References Cited

Brauner, S. and L.D. Gottlieb. 1980. Letter dated September 3, 1980 addressed to Dr. Janet Hohn. Portland Regional Office. U.S. Fish and Wildlife Service.

Bureau of Land Management. n.d. Draft Environmental Impact Statement. Surface Management of Public Lands under the U.S. Mining Laws 43 CFR 3809. BLM, Washington. Gottlieb, L.D. 1973 Genetic differentiation, sympatric speciation, and the origin of a diploid species of *Stephanomeria*. Amer. J. Bot. 60(6):545-553. Gottlieb, L.D. 1977. Phenotypic variation in *Stephanomeria exigua* ssp. coronaria (Compositae) and its recent derivative species "Malheurensis." Amer. J. Bot. 64(7):873-880. Gottlieb, L.D. 1978. *Stephanomeria malheurensis* (Compositae), a new species from Oregon. Madrono 25(1):44-46. Griffith, S.K., and J.E. Hohn. 1979. Status report on *Stephanomeria malheurensis* Gottlieb. Prepared by U.S. Fish and Wildlife Service, Portland, July 5, 1979.

Sheridan, D. 1977. Hard rock mining on the public land. Council of Environmental Quality. GPO, Washington.

Sheridan, D. 1978. Mining the public wealth. Sierra Club Bull. 63(3):10-13.

Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of plants:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Stephanomeria malheurensis	Malheur wire-lettuce	U.S.A. (OR)	E	NA	17.96a	NA

2. It is further proposed that § 17.96(a) be amended by adding the Critical Habitat of *Stephanomeria malheurensis* after that of Asteraceae (*Echinacea tennesseensis* as follows:

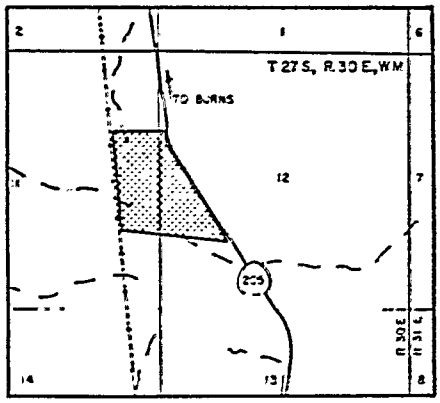
§ 17.96 [Amended]

Asteraceae

Stephanomeria malheurensis

Malheur wire-lettuce

Oregon, Harney County: the lands west of State highway 205 within the SE¼ of the NE¼ and NE¼ of the SE¼, Section 11; and W½ of the SW¼ of the NW¼, and the SW¼ of the NE¼ of SW¼, Section 12, T27S, R30E, Willamette Meridian.



Dated October 27, 1980.

Robert S. Cook,

Director, Fish and Wildlife Service.

[FR Doc. 80-33834 Filed 10-30-80; 8:45 am]
BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 45, No. 213
Friday, October 31, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Colorado-Ute Electric Association, Inc., Montrose, Colo.; Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $13,600,000 to Colorado-Ute Electric Association, Inc., of Montrose, Colorado. These loans will be used to finance the construction of headquarters and maintenance facilities.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. John J. Bugas, Manager, Colorado-Ute Electric Association, Inc., P.O. Box 1149, Montrose, Colorado 81401.

In order to be considered, proposals must be submitted on or before December 1, 1980 to Mr. Bugas. The right is reversed to give such consideration and make such evaluation or other disposition of all proposals received, as Colorado-Ute Electric Association, Inc., and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 24th day of October, 1980.

Robert W. Feragen,
Administrator, Rural Electrification Administration.

[FR Doc. 80-33918 Filed 10-30-80; 8:45 am]
BILLING CODE 3410-15-M

East Kentucky Power Cooperative; Final Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration as lead agency has prepared a Final Environmental Impact Statement in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a loan guarantee for East Kentucky Power Cooperative (East Kentucky), P.O. Box 707, Winchester, Kentucky 40391. The U.S. Environmental Protection Agency, Region IV; U.S. Army Corps of Engineers, Louisville District; U.S. Department of the Interior (U.S. Fish and Wildlife Service) and Kentucky Department for Natural Resources and Environmental Protection have acted as cooperating agencies during the NEPA process.

The loan guarantee would allow East Kentucky to secure funds required for the construction of a proposed steam-electric generating station near Trapp, Clark County, Kentucky. The project consists of two 650 MW (gross) coal-fired generating units scheduled for operation in 1984 and 1987, respectively, and ancillary facilities. Proposed electric transmission associated with the project involves three 345 kV lines from the Smith Plant to the Avon Substation, (23 km), to the Maggard Substation (92 km), to the Brodhead Substation (59 km); one 161 kV line from Brodhead Substation to Tyner Substation (44.7 km); and four 138 kV lines from the Smith Plant to Lake Reba (14.8 km), Stanton (19.6 km), Spencer Road (24.9 km), and the Dale Station (13.2 km). The project will provide a reliable source of electrical power to fill existing and projected future needs of East Kentucky's member distribution cooperatives.

The Kentucky Department for Natural Resources and Environmental Protection published a public notice of Preliminary Determination under the regulations for Prevention of Significant Air Quality Deterioration (PSD) on May 27, 1980. EPA completed its review. Final determination relative to giving approval to construct the facility under PSD regulations, 40 CFR 52.21 was issued August 21, 1980.

The U.S. Environmental Protection Agency also proposes to issue a National Pollutant Discharge Elimination System (NPDES) Permit. NPDES and application number KY0055972. The NPDES Permit contains limiations on the amounts of pollutants of the Clean Water Act (33 U.S.C. Section 1251 et seq.) and other lawful standards regulations. A revised draft NPDES Permit is included in this Final Environmental Impact Statement.

The Kentucky Department for Natural Resources and Environmental Protection has certified the discharge(s) in accordance with the provisions of Section 401 of the Clean Water Act (33 U.S.C. Section 1251 et seq.) on August 21, 1980.

Additional information on the proposed project may be secured from Mr. Frank W. Bennett, Director, Power Supply Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-6183.

Copies of the Federal Final Environmental Impact Statement have been sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality regulations. Limited supplies of the Final Environmental Impact Statement are available upon request to Mr. Bennett at the address given above. Copies of the Final Environmental Impact Statement, which includes the Environmental Analysis, Preliminary Determination and revised draft NPDES Permit, may be examined during regular business hours at the East Kentucky headquarters building and at the following locations:

Rural Electrification Administration (USDA), 14th and Independence Avenue, SW., Room 5829, Washington, D.C. 20250
U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308
Kentucky Department for Natural Resources and Environmental Protection, Century Plaza—U.S. 127 South, Frankfort, Kentucky 40601

Libraries

Clark County Library, 109 S. Main Street, Winchester, Kentucky 40391
Kennedy Memorial Library, West Library, Kentucky 41472
Lexington Public Library, 251 West 2nd Street, Lexington, Kentucky 40500
Mt. Sterling Public Library, 117 West High Street, Mt. Sterling, Kentucky 40353
Madison County Public Library, 345 Lancaster Avenue, Richmond, Kentucky 40475
Menifee County Public Library, Frenchburg, Kentucky 40322
Powell Public Library, Court Street, Stanton, Kentucky 40380
Owsley County Public Library, Boonesville, Kentucky 41314

Persons, organizations and agencies wishing to comment should do so in writing within 30 days and address their correspondence to Mr. Bennett of REA at the address given above.

Final REA action pursuant to this proposed East Kentucky project (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 and any requirements of other environmentally related statutes, regulations and Executive Orders have been met.

This Federal Assistance Program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 24th day of October 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 80-33917 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-15-M

United Power Association and Cooperative Power Association; Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Draft Environmental Impact Statement (DEIS) in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a request for a loan guarantee commitment from the Rural Electrification Administration from United Power Association of Elk River, Minnesota, and Coopertative Power Association of Minneapolis, Minnesota. This loan guarantee Commitment is planned to assist in obtaining financing for the construction of a 345 kV transmission line from the Sherburne County Substation near Becker, Minnesota, to the Benton County Substation, near St. Cloud, Minnesota.

Additional information may be secured on request, submitted to Frank W. Bennett, Director, Power Supply Division, Rural Electrification Administration, U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250. Phone: (202) 447-6183. Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any enviornmental impact involved from which comments have not been requested specifically.

Copies of the REA DEIS are being sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality regulations. Copies are available upon request to Mr. Bennett at the previously indicated address. The DEIS may be examined during regular working hours at the offices of REA in the South Agriculture Building, 14th Street and Independence Avenue, S.W., Washington, D.C., or at the office of United Power Association in Elk River, Minnesota.

Comments concerning the environmental impact of the construction proposed should be addressed to Mr. Zoller at the address given above. Comments must be received on or before December 15, 1980, to be considered in connection with the proposed action.

This DEIS has been developed by REA and the Minnestoa Environmental Quality Board (MEQB), Room 100, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, as joint lead agencies pursuant to Section 1501.5(b) of the Council of Environmental Quality regulations. MEQB which has approval authority for the routing of high voltage transmission in Minnesota, issued their DEIS for the subject project on July 10, 1980.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after requirements set forth in the National Environmental Policy Act of 1969 have been met.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 24th day of October 1980.

Robert W. Feragen,

Administrator.

[FR Doc. 80-33919 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-15-M

Office of the Secretary

National Advisory Council on Child Nutrition; Meeting

Correction

In FR Doc. 80-32895 appearing on page 70528 in the issue for Friday, October 24, 1980, third column, second line from the bottom of the paragraph, the zip code should read "20250".

BILLING CODE 1505-01-M

Soil Conservation Service

North Fork Forked Deer River Watershed, Tenn.

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of authorization of Federal assistance in the installation of works of improvements.

FOR FURTHER INFORMATION CONTACT: Mr. Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, Nashville, Tennessee 37203, telephone number (615) 749-5471.

NOTICE: Federal assistance in the installation of works of improvement under the authority of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1008) has been authorized for the North Fork Forked Deer River Watershed, Tennessee.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 21, 1980.

Joseph W. Hass,

Acting Chief.

[FR Doc. 80-33968 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Dockets 38224 and 37501; 80-10-149]

Perkiomen Airways, Ltd.; Order

October 24, 1980.

Petition of Perkiomen Airways, Ltd. for compensation for losses sustained in providing compulsory service at Hazleton, Pennsylvania.

By Order 79-10-159, October 25, 1979, the Board defined essential air service for Hazleton as two round trips per day, five days per week, offering a minimum of 10 seats in each direction between Hazleton and either New York or Philadelphia. It was determined that service must be provided by aircraft having at least two engines, two pilots and unimpeded cabin entry through airstairs or similar type access. To date, the Board has not selected a carrier to provide essential air service at Hazleton which had not had air service since 1977 until April 15, 1980, when Perkiomen Airways, Ltd. (Perkiomen) inaugurated Hazleton—Philadelphia service. On May 27, 1980, Perkiomen filed a 30-day notice of its intent to terminate service, however, by Order 80-6-152, the Board required Perkiomen to continue providing service until June 26, 1980.[1]

On July 3, 1980, Perkiomen submitted a petition for advance compensation for the period June 26 through July 26, 1980 in which it estimated losses of $24,406, exclusive of profit element, utilizing Navajo equipment. On July 10, 1980, an operational audit of Perkiomen was conducted by the Board's staff who discovered that Perkiomen was actually providing this service with a Piper Apache, a four-passenger airplane that does not meet the requirements for providing essential air service in this market. Staff then requested that the Federal Aviation Administration's (FAA) General Aviation District Office in Allentown determine which equipment Perkiomen actually used and the number of flights performed during the June 26-July 26 period. The FAA reported (by letter dated July 23, 1980) that Perkiomen operated Navajo equipment during July 10-July 18 in performing twelve round trips, but that during all of June through July 10 it used a Piper Apache in performing 24 round trips. In a letter dated July 30, 1980, staff requested data from Perkiomen indicating losses incurred from its Navajo operations during July 10-July 26, 1980. In its letter of August 4, Perkiomen supplied additional data pertaining to its July 10-26 operations and acknowledged that it had in fact operated the Apache during June 26-July 9, 1980.

On October 2, 1980, Perkiomen submitted an application for compensation for losses for the period June 26-August 24, 1980 and requested that the July 3 petition be either withdrawn and substituted by the instant application or amended entirely by the instant application. Perkiomen has claimed losses of $4,562 for its Apache operations and $30,654 for its Navajo operations, exclusive of a profit element.[2]

In our review of Perkiomen's Navajo-service subsidy need, we have made various adjustments the net effect of which is to reduce its subsidy need from $30,654 to $29,689, exclusive of profit element, during the period July 10—August 24, 1980. We will not now compensate Perkiomen for losses experienced from its Apache operations but will consider this matter in setting a final rate.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly §§ 102, 204, 419 and 1002(d) thereof, and the regulations promulgated in 14 CFR 302 and 304:

1. We set the interim level of compensation for losses sustained by Perkiomen Airways, Ltd. by virtue of its provision of essential air service to Hazleton, Pennsylvania at $225.91 for each scheduled flight completed using Navajo equipment beginning July 10, 1980, subject to a maximum compensation per 30-day period of $903.64 per day times the number of weekdays;

2. This proceeding shall remain open pending entry of an order fixing the final rate of compensation and the amount of such rate of compensation may be the same as, lower than, or higher than the interim rate of compensation set here; and

3. We shall serve this order upon all parties to this proceeding.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33970 Filed 10-30-80; 8:45 am]

BILLING CODE 6320-01-M

[1] We have since extended Perkiomen's obligation for additional 30-day increments.

[2] In brief, Perkiomen had applied for advance compensation for performing essential air service when in fact it had not operated the required number of flights nor had it operated equipment meeting our specifications for performing this service for part of that period. The Bureau of Domestic Aviation has referred this matter to the Bureau of Consumer Protection for its review. It is not the Board's intention to determine Perkiomen's compliance with § 419 or Board orders requiring it to continue serving Hazleton in this order; the intent of this order is merely to determine an interim compensatory rate for its Navajo service.

[Docket 37392; 80-10-147]

Transatlantic, Transpacific and Latin American Service Mail Rates Investigation; Order Fixing Final Service Mail Rates

By Order 80-10-31, served October 10, 1980, we directed all interested persons to show cause why the Board should not establish the international service mail rates proposed therein as final rates of compensation for the period October 1 through December 31, 1980.

Trans World Airlines, Inc. and Pan American World Airways, Inc. have filed notices of objection and answers to Order 80-10-31. Both carriers reiterate their earlier objections to the proposed rates since they are based on the same methodology which they are challenging in the United States Court of Appeals for the Second Circuit.[1] Otherwise, they have no objection to the proposed rates.

Since the answers filed raise no material issue of fact concerning the rates proposed for the final quarter of calendar year 1980, we deem all further procedural steps waived short of fixing the final rates.

Therefore, in accordance with the Federal Aviation Act of 1958, as amended, particularly §§ 204(a) and 406, the Board's Procedural Regulations promulgated in 14 CFR, Part 302, and the authority delegated by the Board in its Organization Regulations, 14 CFR 385.16(g).

1. We make final the tentative findings and conclusions set forth in Order 80-10-31.

2. The fair and reasonable rates of compensation to be paid in their entirety by the Postmaster General in accordance with the provisions of section 406 of the Federal Aviation Act of 1958, as amended, to the carriers for the transportation by aircraft of space-available mail, military ordinary mail and all other mail over their respective routes in the Atlantic, Pacific, and Latin American rate areas,[2] the facilities used and useful therefor, and the services connected therewith, for the period from October 1 through December 31, 1980, or until further Board order, are those set forth in the attached Appendix.[3]

3. The fair and reasonable temporary rates of compensation for the transportation of mail by aircraft in international services for the period from January 1, 1981, until further Board

[1] *Trans World Airlines, Inc.* v. *Civil Aeronautics Board*, Docket No. 79-4131 and *Pan American World Airways, Inc.* v. *Civil Aeronautics Board*, Docket No. 79-4132.

[2] The Atlantic, Pacific and Latin American rate areas are delineated in Attachments 1, 2, and 3, respectively, to Order 79-7-17.

[3] Appendix is on file with the original at the Office of Federal Register.

order shall be the final rates established for the period October 1 through December 31, 1980.

4. The terms and conditions applicable to the transportation of each class of mail at the rates established here are those set forth in Order 79-7-16.

5. A copy of this order shall be served upon all parties to this proceeding.

Persons entitled to petition the Board for review of this order in accordance with the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the service date of this order.

We shall make this order effective and an action of the Civil Aeronautics Board upon expiration of the above period unless a petition for review is filed or the Board gives notice that it will review this order on its own motion.

We shall publish this order in the Federal Register.

By Julien R. Schrenk, Chief, Domestic Fares & Rates Division, Bureau of Domestic Aviation.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33971 Filed 10-30-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Maritime Administration

Construction of One 83'-6" Twin Screw Steel Landing Craft; Intent To Compute Foreign Cost

Notice is hereby given of the intent of the Maritime Subsidy Board, pursuant to the provisions of Section 502(b) of the Merchant Marine Act, 1936, as amended, to compute the estimated foreign cost of the construction of one 83'-6" twin screw steel landing craft.

Any person, firm or corporation having any interest (within the meaning of Section 502(b)) in such computations may file written statements by the close of business on November 10, 1980, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th & E Streets NW., Washington, D.C. 20230.

Dated: October 27, 1980.

By Order of the Maritime Subsidy Board, Maritime Administration.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 80-33858 Filed 10-30-80; 8:45 am]

BILLING CODE 3510-15-M

National Bureau of Standards

Magnetic Tape Labels and File Structure for Information Interchange Issuance of Federal Information Processing Standard

Correction

In FR Doc. 80-32313 appearing at page 68990 in the issue of Friday, October 17, 1980, make the following changes:

(1) On page 68991, second column, third paragraph from bottom, second line, "X.23-1974," should be corrected to read "X3.23-1974,".

(2) On page 68992, first column, last paragraph, second line, "following "mechanisms described" should be corrected to read "following "mechanisms" described".

(3) On page 68992, second column, line 6, "language separately" should be corrected to add "language supplied with the computer system (Federal or ANSI) shall be separately".

(4) On page 68992, second column, sixth complete paragraph, third line, "languages for" should be corrected to read "languages or".

(5) On page 68992, third column, second complete paragraph, line 1, "Dpetional" should be corrected to read "optional".

BILLING CODE 1505-01-M

Approval of Federal Information Processing Standard Microfilm Readers

Under the provisions of Pub. L. 89-306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards. On June 23, 1980, notice was published in the Federal Register (45 FR 42001-42002) that a standard for Microfilm Readers was being proposed for Federal use. Interested parties were invited to submit written comments concerning this proposed standard to the National Bureau of Standards (NBS).

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended to the Secretary his approval of the standard as a Federal Information Processing Standard (FIPS),and prepared a detailed justification document for the Secretary's review in support of that recommendation. The purpose of this notice is to announce that the Secretary has approved the standard as a FIPS, and that the standard shall be published as FIPS Publication 84. The provisions of the standard are effective on October 31, 1980.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution Avenue and E Street, NW., Washington, D.C. 20230.

The objective of this standard is to facilitate effective information interchange when the information is recorded on mircoforms generated by computer systems. The standard defines the minimum acceptable image quality for microfilm reading devices for the display of computer output microforms. It also sets requirements for heat and noise factors associated with the safe use of such reading devices.

The approved FIPS contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice. With certain qualifications noted in the announcement portion, this FIPS represents the adoption of American National Standard MS20-1979, Microfilm Readers.

By arrangement with the American National Standards Institute and the National Micrographics Association interested parties may purchase copies of this standard, including the specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies section of the announcement portion of the standard.

Persons desiring further information about this standard may contact Mr. Thomas Bagg, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921-3723.

Dated: October 27, 1980.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 84

Announcing the Standard for Microfilm Readers

Federal Information Processing Standards Publications are issued by the National

Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. Microfilm Readers.

Category of Standard. Hardware Standard, Computer Output Microfilm Readers.

Explanation. This standard provides the minimum levels of image quality, illumination, and related characteristics for equipment that displays computer-generated microforms which are made in accordance with Federal Information Processing Standards Publication (FIPS PUB) 54, Computer Output Microform (COM) Formats and Reduction Ratios, 16 mm and 105 mm. This standard also contains sections on maximum safe termperatures and maximum acceptable noise levels.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. American National Standard for Microfilm Readers (ANSI/NMA MS20-1979).

Related Documents. Federal Information Processing Standards Publication, Computer Output Microform (COM) Formats and Reduction Ratios, 16 mm and 105 mm (FIPS PUB 54).

Applicability. This standard is applicable to the acquisition of microform readers used by Federal agencies to display computer-generated microforms.

Users of existing equipment are encouraged to employ this standard. Equipment not in accordance with this standard should be evaluated periodically by Federal agencies because readers with inadequate quality images impact on productivity by causing misreading (errors) and fatigue.

Specifications. This standard adopts in whole the American National Standard for Microfilm Readers (ANSI/NMA MS20-1979).

Qualifications. When microforms contain characters smaller than those permitted by FIPS PUB 54 such as in graphic art materials or engineering drawings, the resolving power of the reader must be increased above the minimum level specified. Appendix A of the standard tabulates resolving power requirements. Appendix B of the standard contains a list of variables of specific features of equipment covered by this standard to which agencies may require conformance as appropriate to their application requirements.

Implementation Schedule. All applicable equipment ordered on or after October 31, 1980 must be in conformance with this standard unless a waiver has been obtained in accordance with the procedure described below.

Exceptions to this standard are made in the following cases:

a. For equipment installed or on order prior to October 31, 1980.

b. Where procurement actions are in the solicitation phase (i.e., Requests for Proposals or Invitations for Bids have been issued) prior to October 31, 1980.

Waivers. Heads of agencies may request that the requirements of this standard be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and that the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must address the criteria stated above as the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for a Waiver to a Federal Information Processing Standard. No agency shall take any action to deviate from the standard prior to the receipt of a waiver approval from the Secretary of Commerce. No agency shall begin any process of implementation or acquisition of non-conforming equipment unless it has already obtained such approval.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute and the National Micrographics Association.) When ordering, refer to Federal Information Processing Standards Publication 84 (FIPS-PUB-84), and title. Copies of standards and documents referenced and listed in Section 10 of the standard are available from ANSI and NMA. Documents with the prefix MS are available from the National Micrographics Association, 8719 Colesville Road, Silver Spring, Maryland 20910. The other documents are available from the American National Standards Institute, 1430 Broadway, New York, New York 10018. Payment may be made by check, money order, or deposit account.

[FR Doc. 80-33916 Filed 10-30-80; 8:45 am]
BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Caribbean Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established a Scientific and Statistical Committee, which will meet to examine and provide recommendations to the Council on the draft fishery management plan framework for shallow-water reef fish, and also may consider other related business.

DATE: The meeting, which is open to the public, will convene on Tuesday, November 25, 1980, at approximately 9:30 a.m., and will adjourn at approximately 4:30 p.m.

ADDRESS: The meeting will take place at Council Headquarters, Banco de Ponce Building, Room 1108, Hato Rey, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918; telephone (909) 753-4926.

Dated: October 28, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-34033 Filed 10-30-80; 8:45 am]
BILLING CODE 3510-22-M

Sea Grant Review Panel; Partially Closed Meeting

The Sea Grant Review Panel will meet from 8:30 a.m. to 4:30 p.m. on November 12-13, 1980, in the 6th floor Conference Room, Institute of Science and Technology Building, 220 Bonisteel Boulevard, Ann Arbor, Michigan.

The Panel was established in 1976 by Section 209 of the National Sea Grant Improvement Act (Pub. L. 94-461, 33 U.S.C. 1128) to advise the Secretary of Commerce, the Administrator of the National Oceanic and Atmospheric Administration, and the Director of the National Sea Grant College Program with respect to:

(1) Sea Grant proposals, grants, and contracts.

(2) Sea Grant fellowships.

(3) Sea Grant College and Regional Consortia Designations.

(4) Formulation of planning guidelines and priorities.

(5) Other matters at the Secretary's discretion.

The Panel currently has 15 members appointed by the Secretary of Commerce, with a balanced representation of interests, including those qualified in disciplines and fields included in marine sciences as well as other activities related to ocean and coastal resources.

The Panel's meeting agenda has six parts: (A) A presentation by the University of Michigan Sea Grant Program, (B) A discussion of the current posture of Sea Grant, (C) A discussion of program performance evaluation criteria and methodology, (D) A discussion of affirmative action options, (E) A discussion of benefits

documentation methodology, and (F) A discussion of Sea Grant Program managers.

Agenda items A through E will be open to the public, and, if time permits, the chair will solicit oral comments by attendees. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (F), the Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 23, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that this item may be exempt from the provisions of the Act relating to open meetings and public participation, because discussion may disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy within the purview of 5 U.S.C. 552b(c)(6).

Minutes of the open portion of the meeting will be available 30 days thereafter on written request addressed to National Sea Grant College Program 6010 Executive Boulevard, Rockville, Maryland 20852. For further information contact Mr. Arthur G. Alexiou, Executive Secretary of the Sea Grant Review Panel, at the above address. Telephone: (301) 443-8894.

A copy of the Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, Department of Commerce (202) 377-4217.

Dated: October 28, 1980.

Francis J. Balint,

Acting Director, Office of Management and Computer Systems, National Oceanic and Atmospheric Administration.

[FR Doc. 80-34050 Filed 10-30-80; 8:45 am]

BILLING CODE 3510-12-M

National Telecommunications and Information Administration

Frequency Management Advisory Council; Open Meeting

In accordance with Section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 3:30 p.m. on November 21, 1980, in the Aspen Room at the National Telecommunications and Information Administration, 1325 "G" Street NW., Washington, D.C. (Public entrance to the building is on "G" Street, between 13th Street and 14th Street NW.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 11 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The agenda items for the meeting will be:

(1) Briefing on Spectrum Economics; Mr. Dale Hatfield, Associate Administrator, Office of Policy Analysis & Development, NTIA.

(2) US/ITU Relationships; Discussion of 1975 FMAC "Staff Study on the Future Relationships of the USA with the ITU."

(3) Report of Working Group on "ITU Conference Preparations"—Mr. Bill Borman.

(4) Discussion of FMAC Document; 17-80 concerning the Region 2 Broadcast Satellite Conference 1983—Chairman.

(5) Report of Nominating Committee—Mr. Bill Borman.

(6) Any other procedural business of the Council.

(7) Scheduling of the next meeting.

The meeting will be open to public observation; and a period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before November 19, 1980. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 15 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

Inquiries may be addressed to the Council Control Officer, Mr. Charles L. Hutchison, National Telecommunications and Information Administration, Room 268, 1325 "G" Street NW., Washington, D.C. 20005, telephone 202-724-3301.

Dated: October 28, 1980.

C. C. Dodson,

Committee Liaison Officer, National Telecommunications and Information Administration.

[FR Doc 80-33850 Filed 10-30-80; 8:45 am]

BILLING CODE 3510-60-M

Grant Appeals Board of the Public Telecommunications Facilities Program; Open Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: By this notice we announce the forthcoming meeting of the Grant Appeals Board of the Public Telecommunications Facilities Program (PTFP).

PURPOSE: To condider the petition of Barbara Wheeler Gilbert, on behalf of the Wiconi Project of the South Dakota United Indian Association (Wiconi), seeking reconsideration of an action of the PTFP staff declining to accept for filing Wiconi's application for a grant under the Public Telecommunications Financing Act of 1978, Pub. L. No. 95-567, 92 Stat. 2405, 47 U.S.C. 390, *et seq.* (1978), refusing to waive the closing date for the filing of applications and denying Wiconi's petition for extraordinary relief to become the substitute applicant for the American Indian Satellite Project.

TIME: December 5, 1980, at 1:30 p.m.

PLACE: National Telecommunications and Information Administration, 1800 G Street, N.W. Room 765, Washington, D.C.

COMMENTS: Interested parties are encouraged to submit comments on the petition for reconsideration of Ms. Gilbert (Appendix A). For the convenience of such parties we have attached a copy of a letter, dated January 30, 1980, setting forth the staff decision rejecting Wiconi's petition for extraordinary relief (Appendix B). An original and seven copies of any comments should be filed on or before November 28, 1980 with: Office of Chief Counsel, NTIA/DOC, 1800 G Street, N.W. Room 703, Washington, D.C. 20504. A certificate of service must be attached to the comments reflecting that a copy of the comments has been served on: Barbara W. Gilbert: Project Director, American Indian Satellite Project, 905 6th Street, S.W. Washington, D.C. 20024.

Additional information may be obtained from Robert Hunter, National Telecommunications and Information Administration, Office of Chief Counsel, 1800 G Street, N.W. Room 703, Washington, D.C. 20504. Telephone (202) 377-1866.

L. Daniel O'Neill,

Chief Counsel.

(Catalog Program Number 11.550.)

July 29, 1980.

Re: Your Departmental Correspondence, June

30, 1980, The American Indian Satellite Project, PTFP File No. 1138–T.

Mr. Henry Geller
Assistant Secretary for Commerce and Information, U.S. Department of Commerce, 1800 G Street, N.W., Room 770, Washington, DC 20504.

Dear Mr. Geller: In accordance with the Rules and Regulations of the Department of Commerce, National Telecommunications and Information Administration, Public Telecommunications Facilities Program; Policy Statement which appeared in the Federal Register of Thursday, June 7, 1979 at Section 2301.33 entitled "Petition for Reconsideration", this document is to be construed as an official petition for reconsideration in regard to the action referenced above concerning the American Indian Satellite Project.

The reply will take the form of page-by-page arguments and information thereof, followed by an explanatory letter, so that vital information concerning the Project will be brought forward in the official record for the petition for reconsideration.

The timeliness of the situation in full view through this document we request that your official answers concerning our provided information and particularly the route(s) to be taken by NTIA in consideration of said provided information.

Respectfully submitted,

Barbara Wheeler Gilbert,

Project Director, American Indian Satellite Project.

Response to June 30, 1980 Communication:

Page 1: Par. 2, L.6: Due to comprehensiveness of grant, clearly it is not inadequate. Cumulative scores over 300 points. Your letter quotes, "It will be better to regroup and do a more thorough job next time around." NTIA makes the assertion that the non-stipulative nature of the quote contained therein is an absolute request for deferral. No such documentation at said writing existed. Neither, has the group known as FACT completed any submission or definitive work regarding a proposal to NTIA ever been completed by its members. In point of fact, that particular group of three people, Lee Piper, Thomas Whitford and the absent Lawrence Tekala have never even provided official Articles of Incorporation, or IRS tax status numbers; or further, no proper documentation of its non-profit status via a submission of minute meetings, dates of the election of officers, the date when the missing Mr. Tekala's position on the Board was duly substituted by a legitimate personage. Nowhere has FACT "explicitly stated that it will amend its application and resubmit it next year". This is assumed by NTIA who, from the record of FACT, has no logical reason to do so, that FACT will provide any work on the American Indian Satellite Project in the future.

Par. 3 to Pg. 2: NTIA offered the "agency theory" as an acceptable avenue for the substitution of South Dakota United Indian Association (Wiconi) (hereinafter SDUIA) for FACT to carry out grant work. Further, NTIA required that the "Kurt Waldheim of the Indians" be brought to them to provide validation of substitution regarding the agency theory. Mr. Russell Means, internationally recognized Indian leader since the early 1970's, came forward, and so provided verbal validation before three attorneys from NTIA, Messers. Skall, Hunter and Soloman. During the teleconference several persons added their knowledge of the matter by request; Mr. Charles Poor Thunder and Mr. John Stewart, as well as Mr. Means, the three attorneys and Mrs. Gilbert. Mr. Means provided personal testimony during the teleconference on the issue of trust law as applicable to the issues of this entire problem. As Means not only may be considered an expert in such legalities, but is a driving force and trustee to the American Indian International Treaty Council at the United Nations, he provided the NTIA attorneys with legal information and direction to speak with Sam DeLoria of New Mexico who, as a member of the bar, and an American Indian, could speak to these issues in an effort to aid the NTIA lawyers in understanding the obligation of all federal departments, agencies, bureaus, etc, in its dealings with the American Indian people. Hence, NTIA is absolutely incorrect in taking the "word" of the BIA as regards the trust responsibility.

NTIA has been provided with accurate information on trust matters, both written and verbal, and still has chosen to ignore its legal obligation on the basis of hearsay from the BIA.

With regard to the granting of the petition for extraordinary relief the grant proposal was allowed to continue for scoring. To date, NTIA has officially not bothered to inform the people concerned with the official scores of the grant. There must be some meaning to this fact when coupled with the others which have come to light within the grant process; i.e. that the other grantees have been notified, monies have been decided upon, and yet, should we have come forward, as in this document, we clearly have, to request reconsideration—appeal to the waiver decision—there seems to be no finances left for us. This peculiarity of action on the part of NTIA can be construed to show its sincerity in dealing with this issue. Although much time has been devoted to denying the American Indian Satellite Project its funding for FY 1980, little time has been devoted to keeping the financial doors open just in case a waiver appeal were to be forwarded on and ruled upon in a positive way.

Let this document provide the record with the information that as NTIA requested submissions or discussions SDUIA brought them forward. However, when simple remedies to NTIA's question could have been been requested of FACT, i.e. providing articles of incorporation, when was Mrs. Piper elected as Chairman, with Tekala's vacancy on the Board, was the group FACT legitimate at the time of questions first raising. These things are or should be on hand at the PTFP files. However, no one at NTIA can show proof that as a legal entity, FACT still exists or existed at the time of its adversary position to NTIA on the submission of SDUIA. In essence, NTIA will not even explore these simple questions to ascertain whether or not FACT has a legal right to insist on the deferral of the grant until next year when it can perhaps do a better job.

Page 2: Par. 1: Barbara Gilbert has information as to the original purpose and incorporation papers of FACT because she aided Mr. Elliott in the creation of the Articles of Incorporation, in wording, in personally typing them, in procuring a lawyer to oversee same, and in no less action than traveling to Phoenix, Arizona to provide, at her own expense, these official papers for signing to Mr. Tekala, Mrs. Piper and Mr. Whitford. Mrs. Gilbert began working on the American Indian Satellite Project via the personal request of the Project's inceptor, Mr. Elliot, over two years ago. As a public communications specialist her services were sought to make the Project a realistic one for the Indian people.

When on Tuesday, January 1st, 1980, Mrs. Gilbert received a telephone call from Mr. William Lucas of NTIA, and was informed that the April deadline (toward which FACT had been aiming then) had been cancelled and the only time for 1980 to file a grant proposal was in January 9th, she immediately telephoned Mr. Whitford to advise him of this information. During that phone call Whitford requested Mrs. Gilbert to write the proposal as "you're the only one of us who has the knowledge of NTIA or the background to pull this thing together in time." When Mrs. Gilbert, who understood that Mr. Whitford was the Chairman of FACT, asked him if he would inform Mrs. Piper that she would proceed in time to meet the deadline, Whitford assured her that he "would take care of Piper". To wit, a letter arrived some weeks later to Mrs. Gilbert authorizing her to be FACT's Washington representative.

Mrs. Gilbert's affiliation with the grant proposal, therefore, came about because of requests. Until the end of March, in point of fact, when Mrs. Gilbert receive a copy of a letter from Mrs. Piper, she was continuing to operate under her prior FACT authorization via phone calls and letters. When, in March, word was received that FACT was withdrawing, Mrs. Gilbert undertook to save the FY 1980 funding via the proposal she had written and sought advice from Mr. William Lucas of NTIA. It was Mr. Lucas who offered the avenue of waiver of the sponsoring organization, in a phone conversation, not only explaining same, but dictating its wording to Mrs. Gilbert who transcribed, typed and submitted said waiver. The substitution stemming from her interpretation of the above cited letter from Mrs. Piper of the FY 1980 withdrawal and her knowledge of the perilous health conditions, among others, of the daily lives of thousands of American Indian people. Her motivation, therefore, was to provide these vastly needed services as quickly as possible. Hence, SDUIA was sought out and agreed to be the substitute group; Mr. Lucas was made aware of this. He had no "in-house" problem with the substitution for said reason(s). In work over one and one-half years with Mr. Lucas, it has been Mrs. Gilbert who has brought Indian peoples' attention to NTIA; i.e. arranging meetings and attending with Mr. Elliott, Mr. Whitford and NTIA's own Mrs.

Dinota, in weekly or more often, telephone calls and meetings; Mrs. Gilbert has brought her expertise and most of the Congressional and Indian support to the Project. It was Mrs. Gilbert who established the Advisory Council, made up of Indian leaders and people who are expert in their relative fields who donated their time, concern and advice already to the Project and who stand ready to do so even now.

The agency theory expressed herein at same cite was indeed proven in the teleconference with Mr. Means, Mr. Poor Thunder, Mr. Stewart, Mrs. Gilbert, Mr. Skall, Mr. Hunter and Mr. Soloman.

In summation of this p. 2, par. 1 citation, it is held by Indian leaders whom we have had the finances to contact that the substitution of sponsoring organization from FACT to SDUIA is not only fully justified, by mandatory due to such immensely critical concerns as the extremely poor health situations found among the American Indian people. Footnote 1 on p. 2 directs its attention to a waiver of proposal submission closing date, "We have consistently stated that waiver of closing date would only be considered under the most compelling circumstances. A sufficient demonstration has not been made to distinguish this situation so as to merit such a waiver."

The following questions must be brought forward here relative to the phrase "compelling circumstances". What does NTIA consider "sufficient demonstration" by a non-founded group if not the statistics that the American Indian people on reservations have the lowest form of health care delivery and information, or the lowest sort of educational considerations of any people within the entire United States." Why, when they have been told by responsible leaders and others, do they close their ears and write such clearly unreasonable statements? What, indeed, is a more compelling circumstance than this? Another year's wait for the beginning of this vital and cost-effective Project will mean that things will not change for the first Americans in these areas and that people may literally waste unto death. If NTIA feels that this is not a compelling circumstance, than the question is, what truly is?

Page 3: Par. 1 and Footnote 2: The situation of Mrs. Piper and Mr. White Bear telegramming NTIA in opposition came five months after the Phase I submission of the AISP grant proposal, a month or more after its own withdrawal of "its" proposal, a month after the attempt at substitution of sponsoring organization. Further, it is true and apparent that FACT, which has been offered full standing on the Project via a multitude of sources, holds fast to an "us (FACT) or no one" position. When one examines the necessities listed to NTIA in this and other papers, for the Project to go forward, and has freely offered and open door to FACT, explaining the only reasons for a substitution group was an unannounced withdrawal of the proposal, it is extremely difficult to understand where the priorities of FACT lie.

Clearly, SDUIA has shown, by words and written word, often, that a year further without grant funding will have an adverse effect. However, as SDUIA was told to speak with Messers. Skall, Soloman and Hunter on a specific date, filed two supporting briefs on the subject, by specific dates, it is fitting to construe that to date FACT has not brought any substantial work or answers to NTIA for as long as it has existed by the people who are in it. For NTIA to withhold funding for a grant which scored well over 300 cumulative points, on a technicality, in favor of a group which, thus far has provided no definative, positive effort points to a peculiarity or disparity in its official decision-making process.

Page 4: Par. 2: Never specifically has NTIA requested anything other than the "Kurt Waldheim" situation previously stated herein. Mr. Means' authority or legitimacy stands for itself, and as an American Indian person he believes that when he answers a question to the best of his ability, he is swearing on his honor. Other than this SDUIA could have brought to bear much Congressional support as well as that of other Indian leaders, had it been requested at the time.

Par. 3: NTIA states that the two grants appear alike. Of course. They are wirtten and created by Mrs. Gilbert. No question has ever come up on that point. SDUIA assertions of the lack of knowledge of FACT come from those who are on FACT's board at the time of question or those whom FACT might have hired. Mrs. Gilbert provided the information contained in the proposal from her twenty-five years of public communications experience and constant effort with the American Indian people to provide the services referred to herein via the AISP.

As regards Mr. Tekala, Mrs. Gilbert has been informed that well over a year ago, his status as a board member of FACT was void. He left the reservation and therefore had no tribal contact with his people or other Indian groups of the same type. Since then, it has been said that he has died. He therefore, cannot be held as a person able to aid FACT in any way this year.

As pertains to the matter of whether or not FACT was formed by a certain number of Indian people directly, or what its sole duties are, without NTIA's ordering FACT to produce its Articles of Incorporation, board minutes, etc., no one, on either side of the issue can state definitively anything different than Mrs. Gilbert has alleged. Commonly, in law, such situations provide for anyone with a differing opinion to produce evidence substantiating its claim. As SDUIA cannot have access to the FACT Articles of Incorporation, etc. only NTIA can prove this to anyone's satisfaction. At this point we have no proof that FACT is not a surrogate of Indian leaders other than the word of Mr. Means and those already associated with the Project, seems to be the attitude of NTIA. When no other effort was requested of SDUIA by NTIA, it was felt that the evidence produced and other Indian persons whose names had been given to NTIA to re-check these statements were sufficient.

Footnote 4: Although SDUIA was advised that it was ineligible under the articles of its own incorporation, we direct the NTIA attorneys to re-read the articles at article II, which states, "The purpose of this Council or Association shall be to promote the social, health, education, economic and spiritual welfare of the Indians in South Dakota and to assist said members and persons herein before referred to in attaining their ambitions and assist them in the advancement of their respective vocations; to cooperate with Tribal Councils and effect a better understanding and mutual benefit of said agencies and ourselves . . . to in every way cooperate with reservations in assisting the American Indians not living on the reservations and to do any and all things determined necessary for the furtherance of the purposes herein set forth."

This information is contained in the grant proposal. It in no way precludes SDUIA from sponsorship of the American Indian Satellite Project. However, SDUIA can amend its articles to include its pursual of telecommunications entities, if necessary and has been so stated. This is the least of the problems facing this issue; purely a matter of a few minutes paper work.

Page 5: Par. 1: The legality of trust laws being relevant to all federal agencies has been addressed herein, and is included in our previously submitted briefs, and was substantiated further by Mrs. Gilbert, who is a student of such law, Mr. Means, Mr. DeLoria and the director of the Institute for the Development of American Indian Law, Kirke K. Kickingbird, who provided the written information on the subject, *Nine Essays on American Indian Law*, which has been given to the NTIA attorneys concerned with the Project. For NTIA to take the word, over the telephone of the BIA, ignoring the written and verbal statements of the above listed people, and not to thoroughly check these points in the law means that when NTIA is searching for answers to a question on this important issue it feels free to take telephone information and accept same as truth and correct. However, when American Indian leaders and others concerned with trust law bring forward information via telephone conversations and written word concerning this issue, NTIA feels free to ignore a question of constitutionality. This is not dealing in fairness, nor can an issue as vitally important as government attorneys ignoring the Constitutional issue be let simply to float by a departmental administrator.

There is no evidence to substantiate the allegation of NTIA that SDUIA said that the Project is so fragile that failure to continue the application this year would dramatically reduce the chances of it being re-filed next year. The point made was that NTIA, due to its dealings thus far, would not be sought to fund the Project next year by SDUIA. That, it would move forward in the private sector. The problem with pursuing this avenue is that more time would lapse.

Par. 2: See comments above on this page relative to trust law. At line 11, "It has not withdrawn from the Project but merely deferred its application" . . . "regroup and do a more thorough job" in the FY 1981 funding round". Your attention is directed to the entire letter written to NTIA on this matter. It is ambiguous and may (obviously) be constued a number of ways. SDUIA contends that if the word "withdraw" which is used in said letter means deferr than how can other words be taken literally by that party?

Par. 3: "NTIA has been impressed by the desire of both FACT and Wiconi to plan and construct the Project, etc. . . .". It has been sworn and shown, by several persons, that FACT has done nothing substantive thus far toward forming a cohesive and realistic satellite project. It was done by Mrs. Gilbert. It has been shown that FACT has as its main goal at this time to thwart any attempt at funding this year by any other Indian group. The "deep regret" alluded to in Mr. Cameron's letter, which was written in the NTIA legal department, cannot be thought of as a positive attribute, due to its corrent stand.

General remarks: Outlined for your information, Mr. Geller, are the point-by-point arguments we have with the presentation made to us in the form of the letter from Mr. Cameron of June 30, 1980.

However, it seems that although NTIA speaks as though it would like to do anything necessary to fund the grant, it won't. Nowhere was fairness to the parties brought out. Words were said, but when actions came, they were very different indeed from the words. Since March, the people mentioned in this document have been requesting all manner of different items. Each time one was requested, SDUIA brought the requested material or persons forward. Nothing changed however.

The mandate of NTIA is to provide telecommunications services to the "have-nots". If this is adhered to, then the American Indian people must come first on any list comprised of "have-nots". When FACT has accepted telephone information and SDUIA's information presented in the same way and in writing cannot be accepted for use by NTIA, then a problem exists in the avenue of fair dealing by NTIA with both groups. See Pg. 4, Par. 2 your June 30 letter.

If fairness is proffered by NTIA in its dealings with SDUIA, then why, to date, have we received no notification of our cumulative score—or its availability—from NTIA? Why should such a good grant, that is vital in its scope be turned down on technicalities when other acceptable legal alternatives have been brought forward? Why did NTIA wait until other notifications had been made to other grantees and monies allocated to other programs to produce the June 30th letter? We were told, via conversations with Mr. Soloman, that we could submit for an appeal. But it seems that if justice is returned in our case, via all of the sorted information provided to NTIA in the past and herein, that even if our appeal is heard and ruled upon favorably, there will be no funds left to provide the Project so that it can go forward. For these reasons and more we request an appeal process to promptly be started. Thousands of personal dollars have gone into telephone calls and typing services and photocopy services. This is not the way a grant process is supposed to carry on. When people with the knowledge and the support and the willingness to provide the services alluded to by the AISP grant stand ready to carry out those services, why can it not be done? Certainly *not* for the reasons laid out in the June 30th letter.

In summation, Mr. Geller, how, with our history of paper work to NTIA can it say that we have not made our points; how with the history of over one and one-half year's liasion with the agency; numerous phone calls from Indian leaders, 2 briefs, a two hour plus oral defense with Mr. Means as mentioned previously, 3 avenues given for ruling favorably upon our case and the like can NTIA deny?

It seems that NTIA has one set of standards for one party with the Project and another for the other party. When questions have been raised about FACT's being duly incorporated and possessing three board members in good standing, NTIA has ignored the lack of evidence and not requested same. We seem to be faced with an awful lot of "yes, but's".

This document is provided as an informational one, written in conversational tone, by me soley, because I am sincerely interested in resolving this situation fairly. There is no one else who had part in bringing about this language herein. As a private citizen who no longer has the benefit of voluntary counsel because she no longer is employed by the law firm where she worked when the two briefs were written, she has brought to your attention the matters relative to the situation as she sees them. When the government agencies ignore certain laws, i.e. trust laws, for their own convenience and never follow through on the issues in substance, citizens, I feel, should take an active part in "righting that wrong". I am without benefit of counsel. I would like it otherwise so that I could be sure that I am not putting myself in a bad situation. However, the principle still applies. My words are put forward in the spirit of cooperation between those who may be construed as the "have-nots" and the government. It is my belief that this Project is vital and timely. It has its own merits which have achieved high rank among your NTIA readers of proposals. I ask that the appeal board be set up and in motion so that we can all feel, all parties to this issue, that we have pursued the rights of people of this land in fairness, and no less. I stand ready to aid your board in any way that it sees fit. Please contact me regarding this issue so that resolution may come about quickly.

Most sincerely yours,

Barbara Wheeler Gilbert.

905 Sixth Street, S.W.
Apartment 408
Washington, DC 20024
554-0261, 554-0322

June 30, 1980.

Re: PTFP File No. 1138-T, American Indian Satellite Project.

Arnold P. Lutzker, Esquire,
Dow, Lohnes & Albertson,
Washington, D.C.

Dear Mr. Lutzker: The Wiconi Project of the South Dakota United Indian Association (Wiconi), through you, has petitioned the National Telecommunications and Information Administration (NTIA) for extraordinary relief. Wiconi requests that it be substituted as the sponsoring organization for a FY 1980 grant application that, until March 13, 1980, was pending before the Public Telecommunications Facilities Program (PTFP). That application, submitted by First American's Commission for Telecommunications (FACT), sought funds for planning the American Indian Satellite Project (Project). We have considered your petition and supporting material, together with FACT's opposition and other information on the record, and have concluded that the petition must be denied.

By way of brief background, on January 9, 1980, FACT reactivated for the FY 1980 funding round, its deferred FY 1979 PTFP planning grant application. However, in a March 13, 1980, letter to the PTFP, Lee Piper, Chairperson of FACT's board of directors, asked that the application be withdrawn from consideration "for this funding year" because the board felt that "the proposal as submitted, is inadequate . . . . It will be better to regroup and do a more thorough job next time around." (In our view, FACT was asking that consideration of its application be *deferred* for one year. Section 2301.7 (a) and (b) of the PTFP Rules—FACT's application had been accepted for filing during the FY 1979 funding cycle. 44 Fed. Reg. 46,712, 46,720 (published August 8, 1979). The language of the March 13th letter clearly shows that FACT is not withdrawing its interest in proceeding with the Project. Indeed, FACT explicitly states that it will amend its application and resubmit it next year.

In light of FACT's letter and the importance of the Project to the American Indian people, Wiconi, in a March 21, 1980 letter, asked to be substituted as the Project's sponsoring organization so that the application could remain in contention for a grant this year.

Based on the two letters, the Office of Chief Counsel tentatively concluded that NTIA could not grant the substitution in the absence of either FACT's endorsement or a showing by Wiconi that FACT was acting for another organization or agency which had the authority to substitute another party in its stead for the purpose of applying for a grant.[1] This position was made clear over a period of several days to Wiconi leaders, representatives, and spokesmen. As a result, Wiconi filed a petition for extraordinary relief on April 18, 1980. NTIA granted the petition to the extent that processing of the application could continue pending resolution of sponsorship. The burdens of initially presenting us with facts in support of its agency theory and of proof were placed on Wiconi. 45 Fed. Reg., *supra*, n. 1, at 36,032.

Wiconi has alleged two bases on which NTIA can grant the substitution request: (1) FACT is the agent of 100 Indian leaders; and (2) the government's "trust responsibility" to Indians. To support the agency theory, Wiconi argues that the Project was conceived by Jerry Chris Elliot who presented the idea to the leaders of 40 Indian nations, tribes and

[1] Early conversations with Wiconi spokespersons indicated that the March 21st request was for waiver of the January 9, 1980, application closing date so that Wiconi could submit *its own* application for a grant. PTFP has never waived the closing date and we refused to do so in this case. 45 Fed. Reg. 35,970, 36,032 (May 28, 1980); and note 3, *infra*. We have consistently stated that waiver of a closing date would only be considered under the most compelling circumstances. A sufficient demonstration has not been made to distinguish this situation so as to merit such a waiver.

organizations. These leaders, Wiconi continues, created FACT "solely for the purpose of applying to NTIA . . ." for a planning grant, that this is FACT's only purpose and that FACT's board of directors "reports to a constituency which consists of leaders of the now 100 nations and tribes concerned with the Project." Wiconi's April 25, 1980 Statement in Support of the Petition for Extraordinary Relief at 2-3. (Statement in Support). Wiconi cites Section 274 of Williston on Contracts (Third Edition) for the proposition that an agency relationship can be created—"if the facts fairly disclose" one is acting for or representing another. And, it is argued that because of the manner in which FACT was created; the limitations of its reponsibilities to merely apply for a PTFP grant; that Barbara Gilbert actually prepared the application for FACT's board, but was not affiliated with FACT; and that FACT's board reports to the Indian leaders shows that the leaders are the principal and FACT their agent. From this, Wiconi concludes that the leaders substituted it as the sponsoring organization after FACT deferred the application so that the Project would continue to be considered for a grant this year

In phone conversations NTIA's Deputy Chief Counsel starting on April 17th and in a May 7, 1980 telegram, FACT representatives Lee Piper and Bernie Whitebear opposed the substitution request [2], as well as the possibility of filing jointly with Wiconi this year.[3]

As you know, we gave Wiconi the burden of presenting evidence to support its agency theory. After reviewing Wiconi's material, we conclude that they have not met this burden. Wiconi has given us unsupported and unverified allegations rather than providing us with facts—names, dates, resolutions, etc.,—and supporting affadavits from those involved. For example, throughout the April 25, 1980 Statement in Support, Wiconi makes the following claims:

FACT was created by the leaders of 100 Indian nations and tribes for the purpose of applying for PTFP funds for the Project.

FACT's three original directors were not fully familiar with the scope of the Project or the field of telecommunications.

FACT's board of directors reports to the leaders of 100 Indian tribes and nations, and without the continuing support of the leaders, FACT would not be able to implement the Project.

FACT's staff work has been performed by Ms. Barbara Gilbert and FACT has not sought funds from any source other than PTFP.

FACT's PTFP application was prepared by Barbara Gilbert who was acting on behalf of Indian organizations. This work stemmed from Ms. Gilbert's relationship with the leaders of the 100 nations and tribes.

After FACT withdrew, the Indian leaders substituted Wiconi for FACT so that the application could continue to be considered and that action, combined with FACT's withdrawal, terminated the agency relationship between FACT and the Indian people.

Several of these factors would be relevant to our decision to grant the substitution if they had been proven. Unfortunately, Wiconi had failed to provide us with names, dates, or documents to support its allegations. Neither the Indian leaders nor their organizations are identified; no date is given for the meetings at which FACT was selected, and subsequently dismissed, as agent and Wiconi substituted; no copies of resolutions or minutes of meetings were provided; and no written statements from Indian leaders, sworn or unsworn, in support of Wiconi's claims were given to NTIA. The only verification is an affidavit from Barbara Gilbert, who is not an Indian leader. She only states that the facts set out in Wiconi's Statement in Support are true to the best of her knowledge and belief.

In many respects, FACT's FY 1979 and 1980 applications appear to be substantially alike, using the same basic technology to achieve the same goals. Contrary to Wiconi's assertions of the lack of knowledge or familiarity with the Project on the part of FACT's directors, FACT's FY 1979 application was signed by Lawrence Tekala, a FACT director, and he is listed as the contact person for the application. The FY 1979 application does not indicate that Barbara Gilbert was the preparer. (Barbara Gilbert is listed as the project director and contact person on FACT's FY 1980 application.) And, nowhere in that application, or for that matter, in the FY 1980 application, does it indicate that FACT's only purpose is to apply for a PTFP grant or that FACT's board is to report to the Indian leaders. The applications state that the Project was conceived and FACT was formed on April 20, 1979, by several Indian individuals and organizations. FY 1979 application, 150-P, Program Narrative at 2; FY 1980 application, 1138-T, Program Narrative at 8. The Wiconi application's Program Narrative is essentially identical and the statement of the background of the Project does *not* say that FACT was formed by 40 to 100 Indian leaders. At most, FACT's application states that the organization was "created to direct and pursue the development of a National Telecommunications Network controlled by Indian and Native People." FY 1979 application, 150-P, Program Narrative at 5. This is hardly an indication that FACT is a surrogate of the Indian leaders and not an independent legal entity.

In short, Wiconi's supporting materials are insufficient, in light of FACT's opposition and the statements in its applications, to establish, by even a preponderance, the existence of the agency relationship and NTIA's authority to ratify the removal FACT from its timely filed application.[4] Accordingly, we conclude that the facts provided by Wiconi do not "fairly disclose" that an agency relationship ever existed between FACT and the Indian leaders. See Williston, *supra*, page 2.

Independent of the agency theory, Wiconi argues that NTIA, and all Federal agencies, are "legally bound to act in the best interests of the American Indian people" because of the "unique legal responsibilities" the Federal Government owes to the Indian people; *i.e.*, the trust relationship. Statement in Support at 6, citing *Cherokee Nation* v. *Georgia*, 30 U.S. 1 (1831) and *Federal/Indian Relationship* from *Old Problems—Present Issues: Nine Essays on American Indian Law* (Inst. for Development of Indian Law). Specifically, Wiconi argues that FACT's failure to amend its application in response to a PTFP request (and its "withdrawal" of the application) jeopardizes the Project's chances for funding. Therefore, NTIA, acting in the best interests of the American Indian people, should allow Wiconi to prosecute the application in place of FACT. In addition, Wiconi representatives have stated to us that the coalition supporting the Project is fragile and that failure to continue the application this year dramatically reduces the chances of it being refiled next year.

Wiconi has failed to show that the generalized theory of trust responsibility applies specifically to telecommunications and the Interior Department has advised us that it does not. NTIA recognizes the potential merit of such a satellite project and the benefits that it might bring to the Indian people. But, even if we were able to concede that the trust responsibility does apply, we would still be unable to conclude, based on Wiconi's generalized and undocumented arguments, that substituting Wiconi for FACT would be in the best interests of those people. Aside from an allegation, there is no indication that the one year deferral of the application will preclude the fulfillment of the Project. Indeed, this is the second year that FACT has submitted an application for the Project. It has not withdrawn from the Project but merely deferred its application in order to, in FACT's words, "regroup and do a more thorough job" in the FY 1981 funding round. Letter of March 13, 1980, from Lee Piper to the

[2] Wiconi asks that we reject FACT's May 7th opposition because it was late and no excuse was offered for the late filing. (We had requested the FACT comment on the Wiconi's pleadings by May 6, 1980. 45 Fed. Reg., *supra* at 36,032). We will not reject the opposition. Wiconi has neither claimed nor shown that any harm or prejudice resulted from the one day delay. Moreover, Wiconi overlooks that FACT had clearly stated its opposition to the substitution in several phone conversations with NTIA's Deputy Chief Counsel, and that this fact was promptly relayed by Wiconi representatives, including Barbara Gilbert and yourself, in phone conversations with the Deputy Chief Counsel, starting on April 17.

[3] In the May 7th telegram, FACT also asked that its application be reactivated for this year, and that it be given until May 19th to submit amendments that earlier had been requested by the PTFP. Except in extraordinary circumstances, the time for filing amendments to applications, Section 2301.5(b) of the PTFP Rules, is strictly adhered to both for the administrative convenience of the PTFP and, more importantly, for fairness to applicants who comply with our filing deadlines. FACT offered no justification for this request and, accordingly, we reject the effort to reactivate the application and to waive, by nearly one month, the time for filing amendments.

[4] We also note that Wiconi was advised repeatedly, and as early as April 16th, that it was ineligible under the PTFP Rules because its articles of incorporation did not authorize it to provide public telecommunications services nor state that it was, at least in part, organized for cultural or educational purposes. *See* 47 U.S.C. Sections 392(a)(1), 397(7)(B) and (11), as amended by the Public Telecommunications Financing Act of 1978; and Section 2301.4(a)(4) of the PTFP Rules. This fact, however, is not controlling of our decision here.

PTFP. Wiconi has not challenged the truth of that statement beyond saying that it did not believe FACT would have the continued support of the Indian leaders. Absent affidavits from a number of leaders and the existence of an agency relationship, we cannot conclude that the best interests of the Indian people would be served by our terminating FACT's interest in its application and substituting Wiconi.

NTIA has been impressed by the desire of both FACT and Wiconi to plan and construct the Project. We also recognize the potential benefits to the Indian people of such a project. We deeply regret the division between two important Indian organizations and sincerely hope that representatives of the American Indian community will be able to file for the next round of facilities grants in January 1981.

Sincerely,

John Cameron,

Director Public Telecommunications Facilities Division.

cc: Lee Piper and Barbara Gilbert.

[FR Doc. 80-34072 Filed 10-30-80; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1980; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1980 commodities to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: October 31, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 27, 1980, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (45 FR 43457) of proposed addition to Procurement List 1980, November 27, 1979 (44 FR 67925).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1980:

Class 7530

Paper, Teletypewriter Roll, 7530-00-721-9691, 7530-00-223-7969, 7530-00-262-9178.

C. W. Fletcher,

Executive Director.

[FR Doc. 80-33921 Filed 10-30-80; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1980; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1980 commodities and a military resale commodity to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 3, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities, military resale commodity, and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities, military resale commodity, and service to Procurement List 1980, November 27, 1979 (44 FR 67925):

Class 6515

Case, Ear Plug, 6515-00-299-8287 (Increase from 80% to 100% of Government requirements).

Class 7510

Paperweight, Shotfilled, 7510-00-286-6985.

Class 7530

Paper, Teletypewriter, Roll, 7530-00-142-9037.

Class 9905

Tree Shade, 9905-00-NSH-0001.

Military Resale Item No. and Name

No. 570, Clothespins, Plastic

SIC 7349

Janitorial Service, Naval Air Station Miramar, San Diego, California.

C. W. Fletcher,

Executive Director.

[FR Doc. 80-33922 Filed 10-30-80; 8:45 am]

BILLING CODE 6820-33-M

COMMUNITY SERVICES ADMINISTRATION

Decision to Fund Ten Conduit Migrant and Seasonal Farmworker Emergency Energy Assistance Programs Operating in Every State Except Hawaii and Alaska

AGENCY: Community Services Administration.

ACTION: Notice to all boards of directors of CAA(s) and SECO(s).

SUMMARY: The Community Services Administration is notifying all Boards of Directors of Community Action Agencies (CAAs) and State Economic Opportunity Offices (SECOs), in accordance with Section 222(a) of the Economic Opportunity Act of 1964, as amended, that a decision has been made to fund ten (10) conduit migrant and seasonal farmworker Emergency Energy Assistance Programs in every state except Hawaii and Alaska.

Grants are being awarded to the following organizations for operation in the following states: New England Farmworker Council (serving Maine, Connecticut, Rhode Island, New Hampshire, Vermont, Massachusetts); Rural New York Farmworker Opportunities, Inc. (serving: New York and New Jersey); Farmworker Corporation of New Jersey, Inc. (serving: Delaware, Maryland, Pennsylvania, Virginia, West Virginia); Mississippi Delta Housing Corporation (serving: Alabama, Georgia, Louisiana, Tennessee, Kentucky, North Carolina, South Carolina, Florida, Mississippi); Minnesota Migrant Council (serving: Illinois, Indiana, Michigan, Minnesota, Ohio, South Dakota, Wisconsin); Colonias del Valle (serving: New Mexico, Oklahoma, Texas, Arkansas); ORO Development Corporation (serving: Kansas, Nebraska, Missouri, Iowa); North Dakota Migrant Council (serving: North Dakota, Montana, Wyoming, Utah, Colorado); Campesions Unidos (serving: California, Arizona, Nevada); and Idaho Migrant Council (serving: Idaho, Oregon, Washington). These organizations will directly engage in Emergency Energy Assistance and

delegate activities in those areas where the conduit has no direct delivery system.

DATE: This notice becomes effective October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Eduardo Gutierrez or Mr. Tom Blackburn-Rodriguez, 1200 19th Street, N.W., Washington, D.C. 20506, Telephone: (202) 254-5400, Teletypewriter (202) 254-6218.

(Sec. 602, 78 Stat. 530, 42 U.S.C. 2942)

William W. Allison,

Acting Director.

[FR Doc. 80-3403 Filed 10-30-80; 8.45 am]

BILLING CODE 6315-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Tripler Army Medical Center, Hawaii; Filing of Environmental Impact Statement

In compliance with the National Environmental Policy Act of 1969 and in accordance with the President's Reorganization Plan No. 1, the Army provided the Environmental Protection Agency for filing, on October 27, 1980, an Environmental Impact Statement concerning the construction of an addition/alteration project at Tripler Army Medical Center, Hawaii, to bring that facility up to current requirements.

Copies of the statement have been forwarded to concerned Federal, State, and local agencies. Interested organizations or individuals may obtain copies from the Hospital Commander, Tripler Army Medical Center, Oahu, Hawaii.

In the Washington area, inspection copies may be seen in the Environmental Office, Office of the Assistant Chief of Engineers, DA, Room 1E676, Pentagon, Washington, D.C. 20310 (Phone number 202-694-4269).

Dated: October 24, 1980.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASHA (IL&FM)

[FR Doc. 80-33988 Filed 10-30-80;8.45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of Army

Intent To Prepare Draft Environmental Impact Statement (DEIS) for Alenaio Stream Flood Control Project, Island of Hawaii

October 24, 1980.

AGENCY: US Army Corps of Engineers, DOD, Honolulu District.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: 1. The proposed action is a flood-control project. The major objectives are to reduce the potential flood hazard for the safety and well-being of the community, reduce the possible loss from property caused by floodwaters, and reduce erosion which affects coastal water quality and ecosystems.

2. Reasonable alternatives to be investigated in detail during the survey study include the following structural and nonstructural measures:

a. *Structural:*

(1) *Reservoir.* Impoundment and controlled release of floodwaters by a dam and reservoir.

(2) *Channel Improvements and Diversion Channel.* Improving the stream to remove restrictive bends and enlarging the existing channel capacity or constructing a diversion channel to divert storm flows into adequate waterways and to keep the existing stream within the prescribed channel capacity.

b. *Nonstructural:*

(1) *Floodplain Restrictions.* Restriction of future development in the floodplain by land-use controls such as zoning, subdivision regulations, etc.

(2) *Floodproofing.* The alteration of a structure or conditions surrounding the structure to prevent damage by floodwaters.

3. The program involves coordination with the sponsoring agencies, other government agencies, community organizations, and the general public. Activities include informal meetings, workshops, formal public meetings, issuance of public notices and letter responses. All pertinent agencies have been notified of study initiation. An initial public meeting was held with interested agencies and the public in June 1980. Additional workshop and public meeting are scheduled in December 1980 and February 1982, respectively.

a. *Significant Issues to be Analyzed:*

(1) Comparative environmental impacts of the proposed alternatives.

(2) Project impacts on cultural resources.

(3) Project impacts on stream water quality aquatic resources.

(4) Assessment of community responses to alternative plans.

b. *Possible Assignments for Input into the EIS Among the Lead and Cooperating Agencies:*

(1) *US Fish and Wildlife Service.* Provision of a Fish and Wildlife Coordination Act Section 2b report to assist in assessment of ecological impacts.

(2) *State Historic Preservation Officer.* Identification and evaluation of previous cultural resource surveys.

(3) *County of Hawaii.* Socio-economic data.

(4) *State Department of Health.* Water Quality data.

c. *Identification of Other Environmental Review and Consultation Requirements:*

(1) Section 106 of the National Historic Preservation Act of 1966 requires survey and coordination regarding potential impact on significant cultural resources.

(2) Section 404 of the Clean Water Act of 1977 requires evaluation of projects to assess impacts resulting from deposition of dredged or fill materials into waters of the U.S.

(3) Coastal Zone Management Act of 1972 requires that a project must comply with the federal law as well as be consistent with the Coastal Zone Management program for the State of Hawaii.

4. A scoping meeting will not be held on the project. Pertinent Federal, State, and local agencies responsible for planning assessment have already been informed of the proposed action. Those agencies include the sponsoring agency, the County of Hawaii Department of Public Works; State Historic Preservation Officer; the US Fish and Wildlife Service; US Soil Conservation Service; and the US Geological Survey.

5. Under the present schedule, the DEIS will be made available to the public in August 1981.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. James K. Ligh, Project Engineer, US Army Engineer District, Honolulu, Building 230, Fort Shafter, Hawaii 96858, Telephone: (808) 438-9526.

Dated: October 24, 1980.

Kenneth E. Sprague,

Lieutenant Colonel, Corps of Engineers, Deputy District Engineer.

[FR Doc. 80-33862 Filed 10-30-80; 8.45 am]

BILLING CODE 3710-NH

Office of the Secretary

Discharge Review Boards; Revised Complaint Procedures

Notice is hereby given of a revision to procedures under which discharge review applicants or other members of the public may complain to the Office of the Secretary of Defense concerning decisional documents or index entries issued by the Army, Naval, and Air Force Discharge Review Boards.

Decisional documents and index entries issued by the Discharge Review Boards of the Military Departments are subject to certain provisions of the Stipulation of Dismissal and Court Orders in *Urban Law Institute of Antioch College, Inc. v. Secretary of Defense*, Civil Action No. 76-0530, (D.D.C.), (Stipulation of Dismissal: January 31, 1977, Court Orders: August 23, 1978 and November 9, 1978). These provisions were implemented through Department of Defense Directive 1332.28 (Discharge Review Board Procedures and Standards) dated March 29, 1978, with Change 1 dated December 17, 1979, (43 FR 13564, March 31, 1978, and 44 FR 76486, December 27, 1979, respectively) (also 32 CFR 70) and a memorandum from the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated October 28, 1978 (44 FR 5185, January 25, 1979). Procedures for processing complaints concerning decisional documents or index entries were set forth in a memorandum from the Principal Deputy Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated December 9, 1978 (44 FR 5185, January 25, 1979). These procedures established a three member Joint Service Review Activity, consisting of one officer in grade 0-6 from each of the Military Departments, to act on complaints. Revised procedures for processing complaints were set forth in a memorandum from the Deputy Assistant Secretary of Defense (Military Personnel Policy) dated October 12, 1979 (44 FR 62929, November 1, 1979). These procedures modified the membership of the Joint Service Review Activity to consist of one Judge Advocate from each of the Military Departments since the function of the Joint Service Review Activity is essentially of a legal nature.

The current revision to complaint procedures explains that the Deputy Assistant Secretary of Defense (Military Personnel Policy) is the final authority with respect to action on complaints and sets forth the specific responsibilities of the Military Departments, Discharge Review Boards, Joint Service Review Activity, and Deputy Assistant Secretary of Defense (Military Personnel Policy) in processing complaints. The revision clarifies the internal procedures of the Department of Defense in processing complaints but does not change the overall complaint procedure as it affects discharge review applicants or other members of the public. The revision has no effect upon either the substantive standards of discharge review or the standards for determining the adequacy of a decisional document with respect to the Stipulation of Dismissal or Department of Defense Directive 1332.28. In order to provide discharge review applicants and other interested members of the public with prompt processing of complaints, and in order to ensure compliance with Court Orders, immediate implementation of the revision is required. In view of the above, publication of these revised complaint procedures for public comment thereon is impracticable, unnecessary, and contrary to the public interest.

These revised complaint procedures are effective October 31, 1980. For further information contact Captain Ronald W. Stanley, Administrative Director, Joint Service Review Activity, Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy), telephone (202) 695-5153.

M. S. Healy,

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

October 28, 1980.

Complaint Procedures

1. These procedures implement certain provisions of the Stipulation of Dismissal and Court Orders in *Urban Law Institute of Antioch College, Inc. v. Secretary of Defense*, Civil Action No. 76-0530 (D.D.C.) (Stipulation of Dismissal: Jan. 31, 1977, Court Orders: Aug. 23, 1978 and Nov. 9, 1978) and a memorandum from the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated 28 October 1978 concerning the same. These procedures are established for the sole purpose of ensuring that decisional documents and index entries issued by the Discharge Review Boards of the Military Departments comply with the requirements of the Stipulation of Dismissal and, when applicable, DoD Directive 1332.28. These procedures may be modified or supplemented by the Deputy Assistant Secretary of Defense for Military Personnel Policy (DASD (MPP)), Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (OASD (MRA&L)).

2. Any person may correspond with the Office of the Secretary of Defense concerning decisional documents or index entries issued by the Discharge Review Boards. Such correspondence shall be processed in accordance with these procedures. The DASD (MPP) is the final authority with respect to action on such correspondence.

3. A three member Joint Service Review Activity (JSRA) consisting of one Judge Advocate from each Military Department shall advise the DASD (MPP). The operations of the JSRA shall be coordinated by a full-time Administrative Director, who shall serve as Recorder during meetings of the JSRA. The members and the Administrative Director shall serve at the direction of the DASD (MPP).

4. a. Correspondence with the Office of the Secretary of Defense concerning decisional documents or index entries issued by the Discharge Review Boards should be addressed as follows: Joint Service Review Activity, OASD (MRA&L) (MPP), Washington, D.C. 20301.

b. All such correspondence shall be controlled by the Administrative Director through the use of a uniform docketing procedure.

c. All such correspondence shall be reviewed by the Administrative Director and categorized as either a complaint or an inquiry in accordance with the following:

(1) A complaint is any correspondence in which it is alleged that a decisional document or an index entry issued by a Discharge Review Board contains a specifically identified violation of the Stipulation of Dismissal or DoD Directive 1332.28.

(2) An inquiry is any correspondence other than a complaint.

5. The following procedures shall be utilized in processing complaints:

a. The Administrative Director shall acknowledge receipt of the compliant.

b. The Administrative Director shall assign a docket number to the complaint.

c. The Administrative Director shall forward the complaint to the Military Department concerned.

d. The Military Department shall review the complaint and ensure the following:

(1) If the Military Department determines that all of the allegations contained in the complaint are not specific or have no merit, it shall address the allegations using the format at Attachment 1 (Review of Complaint).

(2) If the Military Department determines that some of the allegations contained in the complaint are not specific or have no merit and that some of the allegations contained in the complaint have merit, it shall address the allegations using the format at Attachment 1 (Review of Complaint) and its Discharge Review Board shall take appropriate corrective action by amending the decisional document or, when the decisional document cannot be amended, by notifying the applicant and counsel, if any, of the opportunity to request a new review.

(3) If the Military Department determines that all of the allegations contained in the complaint have merit, its Discharge Review Board shall take

appropriate corrective action by amending the decisional document or, when the decisional document cannot be amended, by notifying the applicant and counsel, if any, of the opportunity to request a new review.

(4) If, during the course of its review, the Military Department notes any other defects in the decisional document or index entries (under the Stipulation of Dismissal or DoD Directive 1332.28), its Discharge Review Board shall take appropriate corrective action by amending the decisional document or, when the decisional document cannot be amended, by notifying the applicant and counsel, if any, of the opportunity to request a new review. (This does not establish a requirement for the Military Department to review a complaint for any purpose other than to determine whether the allegations contained in the complaint are specific and have merit; rather, it simply provides a format for the Military Department to address other defects noted.)

(5) When the Discharge Review Board takes corrective action under paras. d(2), d(3), or d(4) above or i below by amending a decisional document concerning a review for which the applicant had the opportunity to request a *de novo* review, it shall notify the applicant and counsel, if any, of the new opportunity to request a *de novo* review.

(6) When the Military Department determines that some or all of the allegations contained in the complaint are not specific or have no merit but its Discharge Review Board takes corrective action under paras. d(2) or d(4) above, the Discharge Review Board's notification to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel, should include the following or similar wording: "This is in partial response to (your)/(a) complaint to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated———— concerning————Disharge Review Board decisional document————. A final response to (your)/(the) complaint, which has been returned to the Office of the Assistant Secretary of defense (Manpower, Reserve Affairs, and Logistics) for further review, will be provided to you in the near future."

(7) When the Discharge Review Board takes corrective action under paras. d(3) above or i below, its notification to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel, should include the following or similar wording: "This is in response to (your)/(a) complaint to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated———— concerning————Discharge Review Board decisional document————."

e. The Military Department shall return the complaint to the Administrtive Director with a copy of the decisional document and, when applicable, any of the following documents:

(1) The "Review of Complaint".

(2) A copy of the amendment to the decisional document and the accompanying transmittal letter(s) to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel.

(3) A copy of the notification to the applicant and counsel, if any, of the opportunity to request a new review, and a copy of the notification to the complainant, if other than the applicant or counsel, that the applicant has been authorized a new review.

f. The Administrative Director shall review the complaint and accompanying documents and ensure the following:

(1) If the Military Department determined that any of the allegations contained in the complaint are not specific or have no merit, the JSRA shall review the complaint and accompanying documents. The JSRA shall address the allegations using the format at Attachment 2 (Review of and Recommended Action on Complaint) and shall note any other defects in the decisional document or index entries (under the Stipulation of Dismissal or DoD Directive 1332.28) not previously noted by the Military Department. (This does not establish a requirement for the JSRA to review such complaints for any purpose other than to address the allegations contained in the complaint; rather, it simply provides a format for the JSRA to address other defects not previously noted by the Military Department.)

(2) If the Military Department determined that all of the allegations contained in the complaint have merit and its Discharge Review Board amended the decisional document, the amended decisional document shall be subject to review by the JSRA on a sample basis each quarter using the format at Attachment 3 (Review of and Recommended Action on Amended Decisional Document).

(3) If the Military Department determines that all of the allegations contained in the complaint have merit and its Discharge Review Board notified the applicant and counsel, if any, of the opportunity to request a new review (because the decisional document could not be amended), review of such corrective action is not required.

g. The JSRA shall meet for the purpose of conducting the reviews required in paras. f(1) and f(2) above and k(1) below. The Administrative Director shall call meetings once a month, if necessary, or more frequently depending upon the number of matters before the JSRA. Matters before the JSRA shall be presented to the members by the Recorder. Each member shall have one vote in determining matters before the JSRA, a majority vote of the members determining all matters. Determinations of the JSRA shall be reported to the DASD (MPP) as JSRA recommendations using the prescribed format. If a JSRA recommendation is not unanimous, the minority member may prepare a separate recommendation for consideration by the DASD (MPP) using the same format. Alternatively, the minority member may indicate "dissent" next to his signature on the JSRA recommendation.

h. The DASD (MPP) shall review all JSRA recommendations as follows:

(1) The DASD (MPP) shall review complaints using the format at Attachment 4 (Review of and Action on Complaint). The DASD (MPP) is the final authority in determining whether the allegations contained in a complaint are specific and have merit. If the DASD (MPP) determines that no further action by the Military Department is warranted, the complainant and the Military Department shall be so informed. If the DASD (MPP) determines that further action by the Military Department is required, the Military Department shall be directed to ensure that appropriate corrective action is taken by its Discharge Review Board and the complainant shall be provided an appropriate interim response.

(2) The DASD (MPP) shall review amended decisional documents using the format at Attachment 5 (Review of and Action on Amended Decisional Document). The DASD (MPP) is the final authority in determining whether an amended decisional document complies with the Stipulation of Dismissal and, when applicable, DoD Directive 1332.28. If the DASD (MPP) determines that no further corrective action by the Military Department is warranted, the Military Department shall be so informed. If the DASD (MPP) determines that further corrective action by the Military Department is required, the Military Department shall be directed to ensure that appropriate corrective action is taken by its Discharge Review Board.

(3) It is noted that any violation of the Stipulation of Dismissal is also a violation of DoD Directive 1332.28. However, certain requirements under DoD Directive 1332.28 are not

requirements under the Stipulation of Dismissal. If the allegations contained in a complaint are determined to have merit or if an amended decisional document is determined to be defective on the basis of one of these additional requirements under DoD Directive 1332.28, the DASD (MPP) determination shall reflect this fact.

i. With respect to a determination by the DASD (MPP) that further action by the Military Department is required, its Discharge Review Board shall take appropriate corrective action by amending the decisional document or, when the decisional document cannot be amended, by notifying the applicant and counsel, if any, of the opportunity to request a new review.

j. The Military Department shall provide the Administrative Director with, when applicable, any of the following documents relevant to corrective action taken in accordance with para. i above:

(1) A copy of the amendment to the decisional document and the accompanying transmittal letter(s) to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel.

(2) A copy of the notification to the applicant and counsel, if any, of the opportunity to request a new review, and a copy of the notification to the complainant, if other than the applicant or counsel, that the applicant has been authorized a new review.

k. The Administrative Director shall review the documents relevant to corrective action taken in accordance with para. i above and ensure the following:

(1) If the Discharge Review Board amended the decisional document, the amended decisional document shall be subject to review by the JSRA on a sample basis each quarter using the format at Attachment 3 (Review of and Recommended Action on Amended Decisional Document).

(2) If the Discharge Review Board notified the applicant and counsel, if any, of the opportunity to request a new review (because the decisional document could not be amended), review of such corrective action is not required.

l. Upon request, the Military Department shall provide the Administrative Director with other documents required by the JSRA or the DASD (MPP) in the conduct of their reviews. In this regard, it is noted that with respect to any allegation that a specific contention made by the applicant to the Discharge Review Board was not addressed by the Discharge Review Board, the complaint review process shall involve a review of all the evidence that was before the Discharge Review Board, including the testimony and written submissions of the applicant, to determine whether the contention was made, and if so, whether it was addressed adequately with respect to the Stipulation of Dismissal and, when applicable, DoD Directive 1332.28.

6. The following procedures shall be utilized in processing inquiries:

a. The Administrative Director shall assign a docket number to the inquiry.

b. The Administrative Director shall forward the inquiry to the Military Department concerned.

c. The Military Department shall prepare a response to the inquiry and provide the Administrative Director with a copy of the response.

d. The Military Department's reponse should include the following or similar wording: "This is in reponse to your inquiry to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated ——— concerning ———."

7. The Discharge Review Board concerned shall re-index all amended decisional documents and shall provide copies of the amendments to the decisional documents to the Armed Forces Discharge Review/Correction Boards Reading Room.

8. Each Military Department shall provide the Administrative Director with a monthly report using the format at Attachment 6 (Complaints/Inquiries Status Report). The report shall be prepared by the Military Department as of the last day of each month and provided to the Administrative Director not later than the fifth working day of the following month.

9. The Administrative Director is responsible for the disposition of all Military Department, Discharge Review Board, JSRA, and DASD (MPP) documents relevant to processing complaints and inquiries.

10. The Stipulation of Dismissal permits *Urban Law* plaintiffs to submit complaints to the DoD General Counsel for comment. The DoD General Counsel may refer such complaints to the Military Department concerned or to the JSRA for initial comment.

11. a. These procedures are effective 31 October 1980. The Joint Service Review Activity Procedures dated 12 October 1979 are hereby superseded.

b. With respect to the processing of any correspondence that was docketed prior to the effective date of these procedures, any further action shall be taken in accordance with these procedures. No revision of any action taken prior to the effective date of these procedures, to the extent that these procedures differ from the superseded procedures, shall be required.

Attachment 1

Review of Complaint

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:

1. Specific allegation(s) noted:

2. Finding(s), conclusion, and reason(s) with respect to each specific allegation:

3. Other defects noted in the decisional document or index entries:

(Authentication)

Attachment 2—Joint Service Review Activity, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of and Recommended Action on Complaint

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:

1. Attached is the Military Department's "Review of Complaint", which reflects the Military Department's finding(s), conclusion, and reason(s) with respect to each specific allegation noted in para. 2 below as well as any other defects in the decisional document or index entries noted by the Military Department.

2. Specific allegation(s) noted by the Military Department:

3. Specific allegation(s) not noted by the Military Department:

4. Finding(s), conclusion, and reason(s) with respect to each specific allegation:

5. Other defects in the decisional document or index entries not noted by the Military Department:

6. *Recommendation:*

( ) The complainant and the Military Department should be informed that no further action on the complaint is warranted.

( ) The Military Department should be directed to ensure that corrective action consistent with the above comments is taken by its Discharge Review Board.

(Army Member, JSRA)
(Navy Member, JSRA)
(Air Force Member, JSRA)
(Recorder, JSRA)

Attachment 3—Joint Service Review Activity, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of and Recommended Action on Amended Decisional Document

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:
Recommendation:

( ) The amended decisional document complies with the requirements of the Stipulation of Dismissal and, when applicable, DoD Directive 1332.28. The Military Department should be informed that no further corrective action is warranted.

( ) The amended decisional document does not comply with the Stipulation of Dismissal or DoD Directive 1332.28 as noted herein. The Military Department should be directed to ensure that corrective action consistent with the defects noted is taken by its Discharge Review Board.

(Army Member, JSRA)
(Navy Member, JSRA)
(Air Force Member, JSRA)
(Recorder, JSRA)

Yes	No	NA	Item	Source
			1. Discharge data a. Date of discharge b. Character of discharge c. Reason for discharge d. Specific regulatory authority under which discharge was issued	1 Stip., Para. 5A(1)(d)(i); DoDD Encl. 2, Para. (d)1
			2. Service data. (This requirement applies only in conjunction with Military Department implementation of DoD General Counsel letter dated July 20 1977, or to discharge reviews conducted on or after March 29, 1978.) *a. Date of enlistment b. Period of enlistment c. Age at enlistment d. Length of service e. Periods of unauthorized absence* f. Conduct and efficiency ratings (numerical or narrative)* g. Highest rank achieved h. Awards and decorations* i. Educational level j. Aptitude test score k. Art. 15's (including nature and date of offense or punishment)* l. Convictions by court-martial* m. Prior military service and type of discharge(s) received*	2 Ltr from DoD GC to Military Departments dtd July 20, 1977, DoDD Encl. 2, Para. (d)2
			3. Reference to materials presented by applicant (This requirement applies only to discharge reviews conducted on or after March 29 1978.) a. Written brief* b. Documentary evidence* c. Testimony*	3 DoDD, Encl. 2, Para. (d)3.
			4. Conclusions. The decisional document must indicate clearly the DRB's conclusion concerning a. Determination of whether a discharge upgraded under the SDRP would have been upgraded under DoD Directive 1332.28. (This applies only to mandatory re-reviews under Pub. L. No. 95-126 of SDRP reviews.) b. Character of discharge, where applicable.[1] c. Reason for discharge, where applicable.[2]	4 Stip., Para. 5A(1)(d)(iv); DoDD, Encl. 2, Para. (d)4c; Pub. L. No. 95-126.
			5. Reasons for conclusions. The decisional document must indicate clearly the DRB's reasons for conclusions concerning: a. Determination of whether a discharge upgraded under the SDRP would have been upgraded under DoD Directive 1332.28. (This applies only to mandatory re-reviews under Pub. L. No. 95-126 of SDRP reviews.) b. Character of discharge, where applicable.[1] c. Reason for discharge, where applicable.[2]	5 Stip., Para. 5A(1)(d)(v), DoDD, Encl. 2, Para. (d)4d
			6. Issues. (See Issues Worksheet.)	6 Stip., Paras. 5A(1)(d)(ii), (iii), and (v), 5A(4)(a), DoDD, Encl. 2, Paras. (d)4a, b, and d, (d)6

Yes	No	NA	Item	Source
			7. Advisory opinions.*	7. Stip., Para. 5A(1)(f); DoDD, Encl. 2, Para. (d)5.
			8. Minority opinions or reports.	8. Stip., Para. 5A(1)(g); DoDD, Encl. 2, Para. (d)7.
			9. Record of names and votes of board members.	9. Stip., Para. 5A(3); DoDD, Encl. 2, Para. (d)6.
			10. Indexing of decisional document.	10. Stip., Para. 5A(5)(a); DoDD, Encl. 2, Para. (i)4a.
			11. Authentication of decisional document. (This requirement applies only to discharge reviews conducted on or after March 29, 1978.)	11. DoDD, Encl. 2, para. (d)9.
			12. Other	12. As appropriate

ISSUES WORKSHEET[3]

Issue	Findings, Conclusions, and Reasons Therefor		
	Yes	No	NA

(to be continued as necessary)

EXPLANATION OF ITEMS MARKED NO
(to be used as necessary)

KEY

Yes: The decisional document meets the requirements of the Stipulation of Dismissal and, where applicable, DoD Directive 1332.28.

No: The decisional document does not meet the requirements of the Stipulation of Dismissal or DoD Directive 1332.28.

NA: Not applicable.

*Items marked by an asterisk do not necessarily pertain to every review. If the decisional document contains no reference to such an item, NA is indicated unless there is a specific complaint with respect to that item, in which case the underlying discharge review record shall be examined in order to determine whether YES or NO should be indicated.

FOOTNOTES

[1] In this instance "where applicable" means all reviews except:

a. Mandatory re-reviews under Pub. L. 95-126 of SDRP reviews.

b. Reviews in which the applicant requested only a change in the reason for discharge and the DRB did not raise the character of discharge as an issue.

[2] In this instance "where applicable" means all reviews in which:

a. The applicant requested a change in the reason for discharge.

b. The DRB raised the reason for discharge as an issue.

c. A change in the reason for discharge is a necessary component of a change in the character of discharge.

[3] a. Issues may be categorized as follows:

(1) Issues of fact, law, or discretion upon which the decision on the application is based, including those factors required by applicable regulations to be considered for determination of the character of and reason for the discharge or dismissal in question [where such factors are a basis for denial of any of the relief requested by the applicant]. (The material in brackets pertains only to discharge reviews conducted on or before March 28, 1978.)

(2) Issues of fact, law, or discretion that would have warranted greater relief than that afforded the applicant by the DRB's decision, if resolved in the applicant's favor; such issues must be stated clearly and specifically.

(3) Issues of fact, law or discretion that are irrelevant because the applicant was afforded full relief on the basis of another issue.

(4) Matters that are not issues of fact, law, or discretion or that are not clearly and specifically stated.

Only those issues in categories (1) and (2) above require findings, conclusions, and reasons therefor.

b. This review may be made based upon the decisional document without reference to the underlying discharge review record except as follows: if there is an allegation that a specific contention made by the applicant to the DRB was not addressed by the DRB. In such a case, the complaint review process shall involve a review of all the evidence that was before the DRB, including the testimony and written submissions of the applicant, to determine whether the contention was made, and if so, whether it was addressed adequately with respect to the Stipulation of Dismissal and, where applicable, DoD Directive 1332.28.

c. This review may be based upon the decisional document without reference to the regulation governing the discharge in question except as follows: if there is a specific complaint that the DRB failed to address a specific factor required by applicable regulations to be considered for determination of the character of and reason for the discharge in question [where such factors are a basis for denial of any of the relief requested by the applicant]. (The material in brackets pertains only to discharge reviews conducted on or before March 28, 1978.)

ATTACHMENT 4.—Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of and Action on Complaint

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:

1. Specific allegation(s) noted:
2. Finding(s), conclusion, and reason(s) with respect to each specific allegation:
3. Other defects noted in the decisional document or index entries:
4. *Determination:*
   ( ) No further action on the complaint is warranted.
   ( ) Corrective action consistent with the above comments is required.

(DASD (MPP))

ATTACHMENT 5.—Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of and Action on Amended Decisional Document

Review of and Action on Complaint

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:
Determination:

( ) The amended decisional document complies with the requirements of Stipulation of Dismissal and, when applicable, DoD Directive 1332.28. No further corrective action is warranted.

( ) The amended decisional document does not comply with the Stipulation of Dismissal of DoD Directive 1332.28. Further corrective action is required consistent with the defects noted in the attachment;

(DASD (MPP))

Attachment to Attachment 5.—Defects in the Amended Decisional Document (to be used as necessary)

Attachment 6

Complaints/Inquiries Status Report

1. Total number of Complaints/Inquiries received through last day of (previous month): ————
2. Complaints/Inquiries received by docket number* during (current month):
3. Total number of Complaints/Inquiries received through last day of (current month): ————
4. Status of Complaints by docket number* pending Military Department action 60 days or more after the docket date:
5. Status of Inquiries by docket number* pending Military Department action 30 days or more after the docket date:

(Authentication)

[FR Doc. 80-33887 Filed 10-30-80; 8:45 am]
BILLING CODE 3810-70-M

* In chronological order beginning with the "oldest" complaint or inquiry

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of settlement.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that a Consent Order was entered into between the Office of Enforcement, ERA, and the firm listed below during the month of September 1980. The Consent Order represents resolution of an outstanding compliance investigation by the DOE and the firm and concerns overcharges in sales of gasoline during the period covered by the audit. This Consent Order is concerned exclusively with the firms agreement to refund overcharges through price reduction on all customer purchases.

For further information regarding this Consent Order please contact James C. Easterday, District Manager of Enforcement, Southeast District, Economic Regulatory Administration, 1655 Peachtree Street, N.E., Atlanta, Georgia 30367, telephone number (404) 881-2396.

Firm name and address	Settlement terms	Period covered
P & B Petroleum Company.	Refund $10,150.78, including interest, through price reduction on customer purchases, payment of $500.00 penalty.	March 1, 1979 through April 30, 1979.

Issued in Atlanta, Georgia, on the 21st day of October, 1980.

William R. Gibson,

Acting District Manager of Enforcement.

[FR Doc. 80-33880 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-01-M

Mosbacher Production 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 Mosbacher Production Company. This Proposed Remedial Order charges Mosbacher with pricing violations in the amount of $780,097.96 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 1973 through December 1978, in the Counties of Madison and Leon, Texas.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, Southwest District Manager, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, or by calling 214/767-7745. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearing and Appeals, 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 17th day of October, 1980.

Herbert F. Buchanan,

Deputy District Manager, Southwest District, Economic Regulatory Administration.

[FR Doc. 80-33879 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-01-M

Gasoline Marketing Advisory Committee, Gasoline Decontrol Subcommittee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92.463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Gasoline Decontrol Subcommittee of the Gasoline Marketing Advisory Committee.

Date and time: November 21, 1980—9:30 a.m.–4:00 p.m.

Place: State Capitol, Old Supreme Court Chambers Meeting Room, Colfax Avenue and Sherman Street, Denver, Colorado.

Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy—Room 8G087, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 202-252-5187.

Purpose of parent committee: To provide the Department of Energy with expert and technical advice concerning the wholesale and retail selling of gasoline.

Tentative agenda: Discussion of the effects of gasoline decontrol on the industry, the public, and the Department of Energy.

Public participation: The meeting is open to the public. The Chairperson of the Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 27, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80-34046 Filed 10-30-80; 8:45 am]

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Federal Energy Regulatory Commission

[Vol. 304]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: October 24, 1980.

BILLING CODE 6450-85-M

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JC ID    JA ID    API NO       SEC   FIELD NAME                                FIELD NAME          PROD   PURCHASER
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*****************************************************************************
  TEXAS RAILROAD COMMISSION
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=A R ARCHER JR                          RECEIVED:  10/07/80  JA: TX
 8101278   21993        4241330762 103   R L HENDERSON #5 (86255)             CODY BELL (CANYON)        180.0 CRA INC
 8101277   21992        4241330762 103   R L HENDERSON #6 (86639)             CODY BELL (CANYON)        270.0 CRA INC
=ADUBE OIL & GAS CORPORATION            RECEIVED:  10/07/80  JA: TX
 8101215   19134        4229330452 103   N E SHORTER NO 1                     FARRAR SE                 378.0 TEXAS UTILITIES FUEL
=AMERICAN PETROFINA COMPANY OF TEXAS    RECEIVED:  10/07/80  JA: TX
 8101343   22162        4210332036 103   J B TUBB A NU 19L (TUBB)             SAND HILLS (TUBB)           8.5 WARREN PETROLEUM CO
=AMERICAN QUASAR PETROLEUM CO           RECEIVED:  11/07/80  JA: TX
 8101342   22152        4210332214 103   MUNN A #12                           SEC 40 BLK 2 N&TC           0.0 PHILLIPS PETROLEUM C
=AMOCO PRODUCTION CO                    RECEIVED:  10/07/80  JA: TX
 8101359   22148        4218930152 103   ANTON IRISH CLEARFORK UNIT #372      ANTON IRISH                27.0 PIONEER NATURAL GAS
*8101218   19233        4203931355 103   C B ROBERTS #6                       HASTINGS WEST              34.6 TEXAS EASTERN TRANSM
 8101357   22136        4218930303 103   D O WILLIAMS #6                      ANTON IRISH                 1.0 PIONEER NATURAL GAS
 8101145   21292        4234930978 102   DOROTHY CLARK OIL UNIT A #1          CHENEYBORO (COTTON VALLE   54.8 LONE STAR GAS CO
*8101107   15189        4203931418 103   FANNIE DRAKE #29                     WEST HASTINGS              36.0 TEXAS EASTERN TRANS
*8101106   15188        4203931429 103   FANNIE DRAKE NO 31                   HASTINGS WEST              31.0 AMOCO GAS CO
 8101175   18006        4229530560 103   IMKE UNIT #2                         N MAMMOTH CREEK           292.0 NORTHERN NATURAL GAS
 8101291   22068        4213533017 103   J M COWDEN R/A A #111                NORTH COWDEN/DEEP/          1.0 PIONEER NATURAL GAS
 8101190   17423        4239131345 103   J M O BRIEN B #11-I                  GRETA/1300/               180.0 TRANSCONTINENTAL GAS
*8101206   17003        4203931445 103   LAURA D SHAW NO 22                   HASTINGS WEST              27.3 TEXAS EASTERN TRANS
*8101091   14279        4203931304 103   MARY CONDON B NO 5                   HASTINGS WEST             135.0 AMOCO GAS CO
 8101146   21329        4200331921 103   MIDLAND FARMS X #2                   FASKEN (PENN)              54.7 PIONEER NATURAL GAS
 8101250   21652        4221932734 103   MONTGOMERY DAVIES #3                 LEVELLAND                  15.0 EL PASO NATURAL GAS
 8101324   22422        4229500000 108   PAUL PIERCE #1                       N MAMMOTH CREEK            19.0 NORTHERN NATURAL GAS
 8101358   22137        4227930057 103   PRESTON LYDA #1                      ANTON IRISH                11.3 PIONEER NATURAL GAS
 8101325   22423        4235730825 103   R P ROBERTS #4                       HORIZON                    29.0 PHILLIPS PETROLEUM C
 8101350   22180        4235730829 103   R P ROBERTS WELL #5                  HORIZON                    73.0 PHILLIPS PETROLEUM C
 8101293   22095        4222732002 103   TEX LAND/MRGE CO /A/R/A/B/ #94       IATAN EAST/HOWARD/          1.5 GETTY OIL CO
=ANDERSON PETROLEUM INC                 RECEIVED:  10/07/80  JA: TX
 8101321   22385        4210500000 103   L B COX JR A #1-8                    OZONA (CANYON SAND)        30.0 ANDERSON PIPELINE CO
 8101202   22024        4210532259 103   L B COX JR A 1-11                    OZONA (CANYON SAND)        30.0 ANDERSON PIPELINE CO
=ARCO OIL AND GAS COMPANY               RECEIVED:  10/07/80  JA: TX
 8101227   20123        4200332101 103   EMMA COWDEN NO 69                    EMMA                       10.0 EL PASO NATURAL GAS
 8101274   21977        4221530963 103   EVERETT BELL GAS UNIT 1 #4           TABASCO (R)               200.0 TENNESSEE GAS PIPELI
 8101202   16867        4221530873 103   SWALLOW GAS UNIT #4X-UT              DONNA (7560)              300.0 TENNESSEE GAS PIPELI
 8101283   22038        4221530976 103   SWALLOW GAS UNIT #5                  DONNA (7560)              350.0 TENNESSEE GAS PIPELI
 8101275   21978        4221530929 103   SWALLOW GAS UNIT #6                  DONNA (7560)              182.0 TENNESSEE GAS PIPELI
 8101185   18509        4210304361 108   UNIVERSITY Y TG NO 1                 DUNE                        0.9 PHILLIPS PETROLEUM C
 8101186   18510        4210304360 108   UNIVERSITY Y TG NO 2                 DUNE                        0.9 PHILLIPS PETROLEUM C
 8101187   18511        4210304359 108   UNIVERSITY Y TG NO 3                 DUNE                        1.5 PHILLIPS PETROLEUM C
 8101188   18512        4210304362 108   UNIVERSITY Y TG NO 4                 DUNE                        0.8 PHILLIPS PETROLEUM C
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JD NO	DOCKET	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8101189	18513	4210304353	108	UNIVERSITY Z TG NO 4	DUNE	1.5	PHILLIPS PETROLEUM C
-ARKLA EXPLORATION COMPANY				RECEIVED: 10/07/80 JA: TX			
8101177	16455	4236530774	102	BRANNON #1	CARTHAGE (COTTON VALLEY)	363.0	ARKANSAS LOUISIANA G
-BILBO-ANGELE PRODUCTION CO				RECEIVED: 10/07/80 JA: TX			
8101220	19720	4246900000	103	F H BURNS A-1	VICTORIA	270.0	
-BILL FORNEY INC				RECEIVED: 10/07/80 JA: TX			
8101131	21651	4229732039	102	MAXINE B MEANS #1	CHARLINE (FORNEY 6) FIEL	700.0	TRANCONTINENTAL GAS
8101131	21651	4229732039	103	MAXINE B MEANS #1	CHARLINE (FORNEY 6) FIEL	700.0	TRANCONTINENTAL GAS
-BRAZOS RESOURCES INC				RECEIVED: 10/07/80 JA: TX			
8101208	17099	4205100000	102	BILLY POST NO 1	CALDWELL (AUSTIN CHALK)	100.0	FERGUSON CROSSING PI
-CALDWELL OIL & GAS CO INC				RECEIVED: 10/07/80 JA: TX			
8101126	16042	4250700000	102	B M WHITE NO 1-L(80392)	J A SPILLER(OLMOS)	91.3	C&Y & B PIPELINE CO
8101121	16043	4250700000	102	B M WHITE NO 1-U(79839)	J A SPILLER(ESCONDIDO)	73.0	C&Y & B PIPELINE CO
-CASHCO ENERGY CORPORATION				RECEIVED: 10/07/80 JA: TX			
8101172	21637	4218500000	102	FINELY-SMITH NO 1	MARTIN PRAIRIE (SUBCLARK	365.0	LONE STAR GAS CO
8101172	21637	4218500000	103	FINELY-SMITH NO 1	MARTIN PRAIRIE (SUBCLARK	365.0	LONE STAR GAS CO
8101170	21632	4218500000	102	KNOTT NO 1	IOLA (SUBCLARKSVILLE) FI	365.0	LONE STAR GAS CO
8101170	21632	4218500000	103	KNOTT NO 1	IOLA (SUBCLARKSVILLE) FI	365.0	LONE STAR GAS CO
8101169	21585	4218500000	102	W O YEAGER NO 1	IOLA (GLEN ROSE) FIELD	182.0	LONE STAR GAS CO
8101169	21585	4218500000	103	W O YEAGER NO 1	IOLA (GLEN ROSE) FIELD	182.0	LONE STAR GAS CO
8101171	21636	4218500000	102	WILLIAMS NO 1	IOLA (GLEN ROSE) FIELD	73.0	LONE STAR GAS CO
8101171	21636	4218500000	103	WILLIAMS NO 1	IOLA (GLEN ROSE) FIELD	73.0	LONE STAR GAS CO
-CHAMPLIN PETROLEUM COMPANY				RECEIVED: 10/07/80 JA: TX			
8101198	17672	4243130774	103	I W TERRY NO 2	CONGER SW (PENN)	60.0	NORTHERN NATURAL GAS
-CIG EXPLORATION INC				RECEIVED: 10/07/80 JA: TX			
8101239	20654	4248330487	102	GREENHOUSE #1	GAGEBY CREEK (ATOKA)	18.0	COLORADO INTERSTATE
-CITIES SERVICE COMPANY				RECEIVED: 10/07/80 JA: TX			
8101229	20146	4212331020	103	GOHMERT A NO 6 (LOWER ZONE)	COTTONWOOD CK SO 5300	125.0	
8101228	20145	4212331020	103	GOHMERT A NO 6 (UPPER ZONE)	COTTONWOOD CK SO YEGUA 4	180.0	
-CLEHCO INC				RECEIVED: 10/07/80 JA: TX			
8101236	20383	4220330662	102	PEARCE GAS UNIT NO 1	LANSING N (COTTON VALLEY	180.0	ARKANSAS LOUISIANA G
-CLOVER ENERGY CORP				RECEIVED: 10/07/80 JA: TX			
8101181	18181	4228531423	103	M LAMPLEY #1 (ID# 83672)	NORTH HOPE (FRIO 2880)	91.3	LO-VACA GATHERING CO
-COLA PETROLEUM INC				RECEIVED: 10/07/80 JA: TX			
*8101247	20541	4232930806	103	DAVENPORT #1	CALVIN (DEAN)	33.5	PHILLIPS PETROLEUM C
-COLORADO INTERSTATE GAS CO				RECEIVED: 10/07/80 JA: TX			
8101142	20995	4237500000	108	MASTERSON 27R	WEST PANHANDLE (RED CAVE	10.0	COLORADO INTERSTATE
-CONOCO INC				RECEIVED: 10/07/80 JA: TX			
8101364	22122	4243300000	108	GUEST CANYON SAND #15	GUEST	1.0	CITIES SERVICE OIL C
8101294	22108	4213500000	108	H S FOSTER #9 ID #08302	COWDEN SOUTH	0.4	PHILLIPS PETROLEUM C
8101252	21902	4200730631	103	ST CHARLES CO NO 66 87302	BLACKJACK (V-1)	365.0	HOUSTON PIPE LINE CO
8101354	22252	4242731386	103	T B SLICK EST-H #82 (87265)	RINCON (VICKSBURG 5900)	400.0	TENNESSEE GAS PIPELI
8101153	21431	4200331934	103	H H BONER A #25 (ID #01663)	FUHRMAN-MASCHO	11.7	PHILLIPS PETROLEUM C
-COTTON PETROLEUM CORPORATION				RECEIVED: 10/07/80 JA: TX			
8101230	20180	4235730429	103	JEWELL NO 1	FRANTZ (LOWER MORROW)	21.0	DIAMOND SHAMROCK
-CZAR RESOURCES INC				RECEIVED: 10/07/80 JA: TX			
8101351	22187	4228930352	103	G P RENNOE #1-84934	HERRING	275.0	SOUTH TEXAS GATHERIN
-DIAMOND SHAMROCK CORPORATION				RECEIVED: 10/07/80 JA: TX			
8101302	22397	4229500000	108	ANDREW S BROADDUS NO 1	HORSE CREEK NW	13.0	SOUTHWESTERN PUBLIC
8101286	22049	4235730968	103	CARL ELLIS I NO 4	ELLIS RANCH	100.0	NATURAL GAS PIPELINE
8101196	17558	4239330716	103	FRANK M CHAMBERS ET AL C NO 4	MENDOTA NW	1000.0	
*8101302	21862	4234130485	103	J T BROWN ET AL NO 6	WEST PANHANDLE	55.0	NORTHERN NATURAL GAS

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ID NO	ID NBR	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
*8101301	p1861	4234300000	103	ROBERTSON C NO 5	WEST PANHANDLE	127.0	NORTHERN NATURAL GAS
8101285	p2048	4239330767	103	VERNON M FLOWERS EST NO 4	MENDUTA NW	66.0	/
-DORCHESTER EXPLORATION INC				RECEIVED: 10/07/80 JA: TX			
8101284	p2046	4243130804	103	TERRY 18 NO 2 (ID #25805)	CONGER (PENN)	64.0	ESPERANZA PIPELINE C
8101167	p1560	4243130807	103	WESTBROOK 27 NO 2	CONGER (PENN)	180.0	ESPERANZA PIPELINE C
-E D ANDERSON				RECEIVED: 10/07/80 JA: TX			
8101183	18430	4255802180	108	UNIVERSITY M #1	INGHAM (DEVONIAN)	0.0	EL PASO NATURAL GAS
-EARL T SMITH & ASSOCIATES INC				RECEIVED: 10/07/80 JA: TX			
8101327	p5481	4221131143	102	BOWERS LUCKY 13-35 NO 13	BOWERS (DES MOINES UPPER	360.0	PALO DURO PIPELINE C
-ECHO PRODUCTION INC				RECEIVED: 10/07/80 JA: TX			
8101341	p2319	4249731581	103	KEOWN #1 (#19927)	GREENWOOD (6650 ATOKA)	73.0	LONE STAR GAS CO
-ENTERPRISE RESOURCES INC				RECEIVED: 10/07/80 JA: TX			
8101240	p0699	4233930400	102	ROBINSON GAS UNIT #1 (86344)	BENDER N (5740)	180.0	
-EXXON CORPORATION				RECEIVED: 10/07/80 JA: TX			
8101279	p2003	4239330712	103	FLOWERS-LISTON #2	MENDOTA NW (GRANITE WASH	653.0	TRANSWESTERN PIPELIN
*8101213	18962	4200331911	103	FULLERTON CLFK UNIT #1911	FULLERTON	37.0	PHILLIPS PETROLEUM C
*8101168	p1572	4200332117	103	FULLERTON CLFK UNIT #735	FULLERTON	20.0	PHILLIPS PETROLEUM C
8101173	p1641	4200130912	103	G W EATON ESTATE #27	NECHES (WOODBINE)	20.9	UNITED GAS PIPELINE
8101174	p1642	4207330365	103	HARRY LEE CARTER C NO 11	NECHES (WOODBINE)	31.5	UNITED GAS PIPELINE
8101280	p2006	4216531694	103	ROBERTSON CLFK UNIT #1082	ROBERTSON N (CLFK 7100)	24.0	PHILLIPS PETROLEUM C
8101281	p2007	4216531729	103	ROBERTSON CLFK UNIT #7702	ROBERTSON N (CLFK 7100)	24.0	PHILLIPS PETROLEUM C
8101157	p1509	4235531161	102	S E FLOUR BLUFF G U #1 WELL #1	S E FLOUR BLUFF	730.0	
8101147	p1334	4226130496	103	S K EAST B-30 (86312)	SARITA EAST (DEEP FRIO)	365.0	NATL GAS PIPELINE CO
-FISHER-WERR INC				RECEIVED: 10/07/80 JA: TX			
8101221	19732	4235330810	103	GUEST A NO 1	ARLEDGE (PENN SAND)	150.0	SUN GAS CO
8101222	19733	4235330832	103	GUEST A NO 2	ARLEDGE (PENN SAND)	15.0	SUN GAS CO
-FORA CO				RECEIVED: 10/07/80 JA: TX			
8101100	14331	4223300000	108	J L NOEL (00151) NO 2	PANHANDLE CARSON COUNTY	0.4	GETTY OIL CO
8101092	14322	4223300000	108	MOORE-LANGDON (00703) NO 1	PANHANDLE HUTCHINSON COU	5.5	GETTY OIL CO
8101099	14329	4223300000	108	MOORE-LANGDON (00703) NO 10	PANHANDLE HUTCHINSON COU	3.0	GETTY OIL CO
8101093	14323	4223300000	108	MOORE-LANGDON (00703) NO 2	PANHANDLE HUTCHINSON COU	3.7	GETTY OIL CO
8101094	14324	4223300000	108	MOORE-LANGDON (00703) NO 4	PANHANDLE HUTCHINSON COU	5.9	GETTY OIL CO
8101095	14325	4223300000	108	MOORE-LANGDON (00703) NO 5	PANHANDLE HUTCHINSON COU	3.7	GETTY OIL CO
8101096	14326	4223300000	108	MOORE-LANGDON (00703) NO 6	PANHANDLE HUTCHINSON COU	1.8	GETTY OIL CO
8101097	14327	4223300000	108	MOORE-LANGDON (00703) NO 7	PANHANDLE HUTCHINSON COU	3.3	GETTY OIL CO
8101098	14328	4223300000	108	MOORE-LANGDON (00703) NO 8	PANHANDLE HUTCHINSON COU	1.8	GETTY OIL CO
8101103	14347	4223300000	108	MOORE-LANGDON (00703) NO 9	PANHANDLE HUTCHINSON COU	3.0	GETTY OIL CO
8101101	14335	4223300000	108	PITCHER (00959) NO A-1	PANHANDLE HUTCHINSON COU	4.0	GETTY OIL CO
8101102	14336	4223300000	108	PITCHER (00959) NO A-3	PANHANDLE HUTCHINSON COU	4.8	GETTY OIL CO
-FOREST OIL CORPORATION				RECEIVED: 10/07/80 JA: TX			
8101217	19208	4237132635	107	J H DUNLAP 7 NO 1-R	GOMEZ (ELLENBURGER)	913.0	LO-VACA GATHERING CO
-FRANK J KING				RECEIVED: 10/07/80 JA: TX			
*8101209	17158	4239930960	103	CHARLES WAYNE GLASS #2	CREWS SW (GARDNER UP)	73.0	UNION TEXAS PETROLEU
-FREEMAN PICKETT INC				RECEIVED: 10/07/80 JA: TX			
8101353	p2217	4244900000	108	WINTERBOTHAM #1 (05901)	DOVE CREEK (CANYON C)	4.9	CRA INC (GAS)
-G DEPRANG OIL CO				RECEIVED: 10/07/80 JA: TX			
8101105	14965	4208331710	102	DEPRANG B NO 11	DECO (GRAY) FIELD	1.9	UNION TEXAS PETROLEU
-GALAXY OIL COMPANY				RECEIVED: 10/07/80 JA: TX			
8101124	15912	4223300000	108	HUBER PRITCHARD #2-01590	PANHANDLE FIELD	1.0	J M HUBER CORP
-GAS PRODUCING ENTERPRISES INC				RECEIVED: 10/07/80 JA: TX			
8101258	p1954	4237530689	103	BIVINS 16-7RD	WEST PANHANDLE (RED CAVE	67.0	COLORADO INTERSTATE
8101259	p1955	4237530690	103	BIVINS 21-33RD	WEST PANHANDLE (RED CAVE	20.0	COLORADO INTERSTATE

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JD NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8101260	21956	4237530691	103	BIVINS 21-37RD	WEST PANHANDLE (RED CAVE	106.0	COLORADO INTERSTATE
8101261	21957	4237530692	103	BIVINS 21-39RD	WEST PANHANDLE (RED CAVE	22.0	COLORADO INTERSTATE
8101262	21958	4237530693	103	BIVINS 28-40RD	W PANHANDLE (RED CAVE)	48.0	COLORADO INTERSTATE
8101263	21959	4237530685	103	BIVINS 33-1S	W PANHANDLE (RED CAVE)	10.0	COLORADO INTERSTATE
8101264	21960	4237530684	103	BIVINS 35-4S	WEST PANHANDLE (RED CAVE	7.0	COLORADO INTERSTATE
8101265	21961	4237530682	103	BIVINS 40-1S	WEST PANHANDLE (RED CAVE	5.0	COLORADO INTERSTATE
8101257	21953	4237530695	103	BIVINS 5-60	WEST PANHANDLE (RED CAVE	22.0	COLORADO INTERSTATE
8101266	21962	4237530683	103	BIVINS 55-2S	WEST PANHANDLE (RED CAVE	42.0	COLORADO INTERSTATE
8101253	21912	4237530674	103	MASTERSON 83-15RD	WEST PANHANDLE (RED CAVE	17.0	COLORADO INTERSTATE
-GETTY OIL COMPANY				RECEIVED: 10/07/80 JA: TX			
8101337	22290	4234130567	103	M B ARMSTRONG #23	PANHANDLE MOORE COUNTY	19.0	PANHANDLE EASTERN PI
8101336	22289	4223330755	103	M B ARMSTRONG #24	PANHANDLE HUTCHINSON COU	2.0	PANHANDLE EASTERN PI
8101335	22288	4234130576	103	M B ARMSTRONG #25	PANHANDLE MOORE COUNTY	19.0	PANHANDLE EASTERN PI
8101334	22287	4234130577	103	M B ARMSTRONG #26	PANHANDLE MOORE COUNTY	0.4	PANHANDLE EASTERN PI
-GRAHAM OIL & GAS LTD				RECEIVED: 10/07/80 JA: TX			
8101314	21779	4203931519	103	T L SMITH #1-A	WILDCAT	0.0	
-GULF OIL CORPORATION				RECEIVED: 10/07/80 JA: TX			
8101300	21859	4215730409	103	A E MYERS NO 25 (LS #04106)	THOMPSON	30.0	UNITED TEXAS TRANSMI
8101296	21854	4215730883	103	A E MYERS NO 27 (LS #04106)	THOMPSON	30.0	UNITED TEXAS TRANSMI
8101254	21914	4241330885	103	ALTHEA DYCHE B NO 1	U S M (QUEEN)	9.0	NORTHERN NATURAL GAS
8101347	22174	4223700000	108	BILLIE YATES NO 10	BOONSVILLE BEND CONGL (G	5.4	NATURAL GAS PIPELINE
8101346	22172	4223700000	108	C B CROWLEY NO 2	BOONSVILLE BEND CONGL GA	10.0	NATURAL GAS PIPELINE
8101309	21758	4239330605	103	CHAMBERS J S NO 1-66	N W MENDOTA/LOWER DOUGLA	7.0	MICHIGAN WISCONSIN P
8101276	21986	4238931060	103	D E PERKINS ET AL NO 1	SCOTT (CHERRY CANYON)	275.0	TRANSWESTERN PIPELIN
8101315	21852	4215730894	103	F I BOOTH ET AL A #47 (#04099)	THOMPSON	10.0	UNITED TEXAS TRANSMI
8101125	15929	4221130983	103	FORGEY #1-112-T	ALPAR/TONKAWA	70.0	TRANSWESTERN PIPELIN
8101326	22433	4215500000	108	GOLDSMITH SAN ANDRES UNIT #253	GOLDSMITH	3.1	PHILLIPS PETROLEUM C
8101133	21260	4237132938	103	HILLIN-WINFIELD NO 1	U S M (QUEEN)	29.0	NORTHERN NATURAL GAS
8101339	22307	4247531910	103	HUTCHINGS STUCK ASSN #1037	H S A (SAN ANDRES)	1.0	CABOT CORP
8101338	22306	4247532009	103	HUTCHINGS STUCK ASSN #1068	WAGON WHEEL (PENN)	107.0	CABOT CORP
8101272	22089	4237132988	103	J H DYCHE B NO 3	U S M (QUEEN)	45.0	NORTHERN NATURAL GAS
8101340	22309	4249531063	103	KEYSTONE CATTLE CO #346	KEYSTONE (COLBY)	143.0	CABOT CORP
8101158	21512	4249531093	103	KEYSTONE HULT UNIT NO 9335	KEYSTONE (HULT)	305.0	CABOT CORP
8101134	21261	4237132943	103	NORA BOATMAN ET AL C NO 1	U S M (QUEEN)	48.0	NORTHERN NATURAL GAS
8101299	21857	4203931153	103	STATE TRACT 8 NO 1-(#74200)	BASTROP BAY	90.0	
8101295	21853	4215730414	103	T R BOOTH NO 22 (LS #04100)	THOMPSON	15.0	UNITED TEXAS TRANSMI
8101297	21855	4215730416	103	T R BOOTH NO 23 (LS #04100)	THOMPSON	30.0	UNITED TEXAS TRANSMI
8101298	21856	4215730887	103	T R BOOTH NO 24 (LS #04100)	THOMPSON	15.0	UNITED TEXAS TRANSMI
-H-M OIL CO				RECEIVED: 10/07/80 JA: TX			
8101248	20635	4223931425	102	WHITLEY #1	MORALES N (3300)	160.0	HOUSTON PIPELINE CO
-H V RISIEN				RECEIVED: 10/07/80 JA: TX			
8101165	21529	4224931149	103	OEHLKE #1	WILDCAT	100.0	VALERO ENERGY CORP
-HOOKS & HOOKS				RECEIVED: 10/07/80 JA: TX			
8101256	21939	4205932304	103	HOOKS RANCH C #1	OYER CADDO	1.5	MATRIX LAND CO
-IKE LOVELADY INC				RECEIVED: 10/07/80 JA: TX			
8101203	16884	4229732008	103	A GARZA NO 1 (041498)	CLEGG (WILCOX B)	1460.0	EL PASO NATURAL GAS
8101148	21393	4207931080	103	MABEL FIELD NO 1 (049148)	BUCKSHOT (4950)	11.0	WARREN PETROLEUM CO
-INDEPENDENT EXPLORATION CO				RECEIVED: 10/07/80 JA: TX			
8101143	21000	4236731479	102	BIRD #1 83777	BUCKNER (STRAWN)	55.0	JAMES P DUNIGAN INC
8101132	21004	4236731583	102	JOHNSON #2 82656	BUCKNER (STRAWN)	36.5	JAMES P DUNIGAN INC
8101144	21003	4236731488	102	STEPHENS A #1 83619	BUCKNER (STRAWN)	36.5	JAMES P DUNIGAN INC
-J A LEONARD				RECEIVED: 10/07/80 JA: TX			

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JC NO	DISTRICT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8101197	17567	4205100000	102	COOKSEY A 1	INEZ JAMESON (NAVARRO A)	18.2	
=J CLEO THOMPSON				RECEIVED: 10/07/80 JA: TX			
8101234	20210	4241300000	103	ROUSSELOT A #1	SAWYER (CANYON)	213.0	NORTHERN NATURAL GAS
=J D THOMAS				RECEIVED: 10/07/80 JA: TX			
8101166	21531	4241330794	103	FRED CASE 53 #1	VELREX (SW) CANYON	46.8	NORTHERN NATURAL GAS
=J M HUBER CORPORATION				RECEIVED: 10/07/80 JA: TX			
8101255	21918	4223330739	103	BRYAN MAYFIELD UNIT NO 9-25	PANHANDLE	8.0	COLORADO INTERSTATE
=JAKE L HAMON				RECEIVED: 10/07/80 JA: TX			
8101328	22256	4221131194	103	URSCHEL #1-49	TWISTER (DOUGLAS)	545.0	CITIES SERVICE GAS C
8101355	22255	4221131205	103	URSCHEL #1-58	TWISTER (DOUGLAS)	545.0	CITIES SERVICE GAS C
=JOHN Q MCCABE				RECEIVED: 10/07/80 JA: TX			
*8101344	22170	4241330841	103	WALTER MCGREGOR #1	FT MCKAVETT (LIME 4270)	23.4	ARCO OIL & GAS CO
=KAISER-FRANCIS OIL COMPANY				RECEIVED: 10/07/80 JA: TX			
8101140	20898	4235700000	108	JOE STOREY	PERRYTON	5.0	NORTHERN NATURAL GAS
=KERR-MCGEE CORPORATION				RECEIVED: 10/07/80 JA: TX			
8101204	16915	4222330713	103	PITTS NO 83	PANHANDLE HUTCHINSON	16.4	GETTY OIL CO
8101159	21513	4223330760	103	PITTS NO 88	PANHANDLE HUTCHINSON	4.0	GETTY OIL CO
8101225	20069	4223330762	103	PITTS NO 90	PANHANDLE HUTCHINSON	21.0	GETTY OIL CO
8101161	21515	4223330765	103	PITTS NO 92	PANHANDLE-HUTCHINSON	9.0	GETTY OIL CO
8101345	22171	4223330773	103	PITTS NO 93	PANHANDLE HUTCHINSON	9.8	GETTY OIL CO
8101162	21516	4223330768	103	PITTS NO 94	PANHANDLE HUTCHINSON	6.0	GETTY OIL CO
8101160	21514	4223330769	103	PITTS NO 95	PANHANDLE HUTCHINSON	1.6	GETTY OIL CO
=LEAR PETROLEUM EXPLORATION INC				RECEIVED: 10/07/80 JA: TX			
8101214	19003	4245930435	102	J R BEALL ET AL NO 1	DELRUSE (HAYNESVILLE) FI	0.0	ARKANSAS LOUISIANA G
=M K MCDANIEL				RECEIVED: 10/07/80 JA: TX			
8101115	15354	4208300000	108	MARY A PRATT NO 1	COLEMAN COUNTY REGULAR (	15.0	LOVACA GATHERING CO
=MAY PETROLEUM INC				RECEIVED: 10/07/80 JA: TX			
8101289	22057	4229530728	103	LONGHOFER #1	CAMBRIDGE (MORROW UPPER)	365.0	DIAMOND SHAMROCK COR
=MEADCO PROPERTIES				RECEIVED: 10/07/80 JA: TX			
8101268	21965	4223531429	103	#1 A SUGG 1900 RRC #08136	ELA SUGG (CISCO)	13.0	NORTHERN NATURAL GAS
8101271	21968	4223531440	102	#1 A SUGG 3065 RRC #85649	ELA SUGG (WOLFCAMP)	76.0	NORTHERN NATURAL GAS
8101273	21971	4223531425	103	#1 A SUGG 3083 RRC #86089	ELA SUGG (WOLFCAMP)	106.0	NORTHERN NATURAL GAS
8101272	21970	4223531439	102	#1 SHEEN 11 RRC #86404	ELA SUGG (WOLFCAMP)	34.0	NORTHERN NATURAL GAS
8101269	21966	4223531415	103	A SUGG 1901 RRC #84468	ELA SUGG (WOLFCAMP)	74.0	NORTHERN NATURAL GAS
8101270	21967	4223531421	102	CRAVENS 20 RRC #84718	ELA SUGG (WOLFCAMP)	160.0	NORTHERN NATURAL GAS
8101267	21964	4223531410	102	SUGG 3063 - RRC #08048	ELA SUGG (CISCO)	26.0	NORTHERN NATURAL GAS
=MEWBOURNE OIL COMPANY				RECEIVED: 10/07/80 JA: TX			
8101138	21284	4235730928	102	CONDON #1 ID #85913	HUNTOON NO (MORROW LOWER	36.0	NORTHERN NATURAL GAS
8101219	19465	4229530716	103	ECCLES UNIT #1 ID #85399	LEAR (MORROW)	105.0	NORTHERN NATURAL GAS
8101137	21283	4235730931	102	HARDY #2 ID #04471	HARDY (MORROW UPPER)	100.0	TRANSWESTERN PIPE LI
8101135	21281	4229530715	102	HARRELSON #1 ID #86553	SPERRY (TONKAWA)	73.0	NORTHERN NATURAL GAS
8101136	21282	4235730932	102	JUDICE #2 ID #04514	HARDY (MORROW UPPER)	160.0	TRANSWESTERN PIPELIN
8101122	15752	4235730875	103	MITCHELL #1	PEERY (CLEVELAND)	26.0	TRANSWESTERN PIPELIN
8101237	20394	4229530691	103	PEERY #5 (ID #04432)	PEERY (MARMATON)	40.0	TRANSWESTERN PIPELIN
=MGF OIL CORP				RECEIVED: 10/07/80 JA: TX			
8101154	21495	4231732104	103	PARKER NO 1	SPRABERRY (TREND AREA)	4.2	
8101155	21496	4231732082	103	PETERS 3 NO 1	SPRABERRY (TREND AREA)	5.8	PHILLIPS PETROLEUM C
=MICHAELSON PRODUCING CO				RECEIVED: 10/07/80 JA: TX			
8101251	21865	4210532477	103	UNIVERSITY 9 #6	FARMER (SAN ANDRES)	7.0	J L DAVIS
8101303	21864	4210532476	103	UNIVERSITY 9 #7	FARMER (SAN ANDRES)	7.0	J L DAVIS
=MITCHELL ENERGY CORPORATION				RECEIVED: 10/07/80 JA: TX			
8101127	16061	4249730577	108	M Y BENEDICT #1 66201	DAVENPORT (CONGL)	15.0	NATURAL GAS PIPELINE

JD NO	JA DKT	APT NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8101123	15783	4223700000	108	W T THORNTON #2 40143	BOONSVILLE (BEND CONG GA	9.0	SOUTHWESTERN GAS PIP
8101163	21519	4249731474	103	WILLIAM BENNETT #1	KHOME (CADDO)	180.0	NATURAL GAS PIPELINE
-MOBIL OIL CORP				RECEIVED: 10/07/80 JA: TX			
8101118	15389	4234100000	108	C R JONES NO 2	PANHANDLE WEST	1.5	PANHANDLE EASTERN PI
8101192	17492	4221932648	103	MAPLE WILSON NO 74	SLAUGHTER	2.5	AMOCO PRODUCTION CO
-MOBIL PROD TEXAS & NEW MEXICO INC				RECEIVED: 10/07/80 JA: TX			
*8101319	22360	4224900000	108	LA GLORIA GAS UNIT NO 71	LA GLORIA (CULPEPPER)	6.0	NATURAL GAS PIPE LIN
8101318	22359	4237130884	108	STATE HOUSTON CTY TIMBER CO D #8	BROOKLAW (TUBBS)	4.6	LONE STAR GAS CO
8101317	22358	4237100000	108	WAYNE MOORE #3	WAHA DELAWARE	1.3	EL PASO NATURAL GAS
8101329	22258	4238900000	108	WAYNE MOORE NO 12	WAHA WEST ELLENBERGER	7.2	EL PASO NATURAL GAS
-MORAN EXPLORATION INC				RECEIVED: 10/07/80 JA: TX			
8101207	22053	4210532336	103	FRIEND #2	UZONA (CANYON)	0.0	NORTHERN NATURAL GAS
8101208	22054	4210532335	103	POWELL #2	UZONA (CANYON)	0.0	NORTHERN NATURAL GAS
8101119	15634	4238330158	108	ROCKER B-6 BTTY - #56	SPRABERRY (TREND AREA)	4.7	NORTHERN NATURAL GAS
-MORGAN ENTERPRISES INC				RECEIVED: 10/07/80 JA: TX			
8101235	20269	4235531464	102	CHAPMAN J NO 1 (86575)	CHAPMAN (HIGHT)	500.0	HOUSTON PIPELINE CO
-NAPECO INC				RECEIVED: 10/07/80 JA: TX			
8101211	17795	4237132860	102	STEWART #1	SIXTY-NINE (PENN DETRITA	3.0	NATURAL GAS PIPELINE
-NATOMAS NORTH AMERICA INC				RECEIVED: 10/07/80 JA: TX			
8101120	15522	4248330595	102	PORTER NO 1	TWITTY GRANITE WASH	231.3	PALO DURO PIPELINE C
8101120	15522	4248330595	103	PORTER NO 1	TWITTY GRANITE WASH	231.3	PALO DURO PIPELINE C
-NIGAS SUPPLY INC				RECEIVED: 10/07/80 JA: TX			
8101313	21774	4206530718	103	KEITH #1	PANHANDLE CARSON	43.8	PANHANDLE EASTERN PI
8101312	21773	4206530717	103	KEITH #2	PANHANDLE CARSON	62.1	PANHANDLE EASTERN PI
8101311	21772	4206530716	103	KEITH #3	PANHANDLE CARSON	52.2	PANHANDLE EASTERN PI
8101310	21771	4206530744	103	KEITH #4	PANHANDLE CARSON	80.3	PANHANDLE EASTERN PI
-NORTH STAR PETROLEUM CORPORATION				RECEIVED: 10/07/80 JA: TX			
8101084	14103	4223300000	108	W A CARVER A-21 (00985)	PANHANDLE HUTCHINSON COU	4.9	PANHANDLE PRODUCING
8101085	14105	4223300000	108	W A CARVER A-24 (00985)	PANHANDLE HUTCHINSON COU	4.9	PANHANDLE PRODUCING
8101086	14106	4223300000	108	W A CARVER A-25 (00985)	PANHANDLE HUTCHINSON COU	4.9	PANHANDLE PRODUCING
8101087	14107	4223300000	108	W A CARVER A-29 (00985)	PANHANDLE HUTCHINSON COU	4.9	PANHANDLE PRODUCING
8101088	14108	4223300000	108	W A CARVER A-30 (00985)	PANHANDLE HUTCHINSON COU	4.9	PANHANDLE PRODUCING
8101082	14109	4223300000	108	W A CARVER A-31 (00985)	PANHANDLE HUTCHINSON COU	4.9	PANHANDLE PRODUCING
8101083	14112	4223300000	108	W A CARVER A-34 (00985)	PANHANDLE HUTCHINSON COU	4.9	PANHANDLE PRODUCING
8101090	14113	4223300000	108	W A CARVER A-35 (00985)	PANHANDLE HUTCHINSON COU	4.9	PANHANDLE PRODUCING
-ORION DEVELOPMENT CORP				RECEIVED: 10/07/80 JA: TX			
8101320	22364	4242932222	103	PHILLIPS #1A	STRONG SW (CONGL D) FIEL	766.0	SUN GAS GATHERING CO
-PANHANDLE PRODUCING COMPANY				RECEIVED: 10/07/80 JA: TX			
8101194	17539	4206500000	108	VIDA LEWIS A-4	PANHANDLE CARSON COUNTY	0.3	GETTY OIL CO
8101195	17540	4206500000	108	VIDA LEWIS A-8	PANHANDLE CARSON COUNTY	0.3	GETTY OIL CO
-PARKER & PARSLEY INC				RECEIVED: 10/07/80 JA: TX			
8101249	20644	4232930869	103	BUCHANAN E NO 1	SPRABERRY (TREND AREA)	15.0	PHILLIPS PETROLEUM C
-PENNZOIL PRODUCING COMPANY				RECEIVED: 10/07/80 JA: TX			
8101152	21473	4236530941	103	DUNLAP UNIT NO 1	CARTHAGE/COTTON VALLEY/	550.0	UNITED GAS PIPE LINE
-PETROMARK MINERALS INC				RECEIVED: 10/07/80 JA: TX			
8101164	21524	4204100000	102	JARVIS ESTATE UNIT I NO 1	KURTEN (WOODBINE) FIELD	66.0	PRODUCERS GAS CO
8101164	21524	4204100000	103	JARVIS ESTATE UNIT I NO 1	KURTEN (WOODBINE) FIELD	66.0	PRODUCERS GAS CO
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 10/07/80 JA: TX			
8101360	22113	4246101158	108	(00800) OHARROW NO 2	KING MOUNTAIN (ELLENBURG	6.0	EL PASO NATURAL GAS
8101366	22130	4213520793	108	(19710) FMBAR-B NO 36	GOLDSMITH N (SAN ANDRES-	12.0	EL PASO NATURAL GAS
8101365	22128	4213507258	108	(20533) HILLARD-C NO 7	PENWELL W (DEVONIAN)	6.0	EL PASO NATURAL GAS
8101348	22177	4213506443	108	(21556) N PENWELL UNIT NO 144	PENWELL	1.0	EL PASO NATURAL GAS
8101349	22178	4213507263	108	(21556) N PENWELL UNIT NO 46	PENWELL	7.0	EL PASO NATURAL GAS

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JD NO	TA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8101363	p2116	4213507266	108	(21556) NORTH PENWELL #17	PENWELL	4.0	EL PASO NATURAL GAS
*8101108	15285	4223300000	108	BELLE NO 3	PANHANDLE HUTCHINSON	0.1	EL PASO NATURAL GAS
8101199	16712	4242100000	108	BIVENS U NO 1	TEXAS HUGOTON	20.0	MICHIGAN WISCONSIN P
8101242	p0731	4234100000	108	BRANTS #1	PANHANDLE WEST	20.0	EL PASO NATURAL GAS
8101323	p2398	4229500000	108	BRILLHART-E NO 1	KIOWA CREEK-MORROW	18.6	PANHANDLE EASTERN PI
8101128	16145	4242130217	103	CLUCK E NO 1	TEX HUGOTON	155.0	MICHIGAN WISCONSIN P
8101205	16931	4249731439	103	COCANAUGHER NO 2	BOONSVILLE (BEND CONGL)	91.3	NATURAL GAS PIPELINE
8101109	15287	4223300000	108	COCKRELL RANCH NO 39	PANHANDLE HUTCHINSON	4.0	GETTY OIL CO
8101116	15359	4242100000	108	DUVALL A NO 1	TEXAS HUGOTON	18.5	MICHIGAN-WISCONSIN P
8101110	15291	4223300000	108	HAILE W B NO 7	PANHANDLE HUTCHINSON	9.5	GETTY OIL CO
8101111	15292	4223300000	108	HARVEY UNIT NO 08-14	PANHANDLE HUTCHINSON	12.0	GETTY OIL CO
8101129	16146	4219530632	103	HOLLOMAN NO 2	TEX-HUGOTON	170.0	PANHANDLE EASTERN PI
8101130	16147	4234130528	103	INEZ NO 2	WEST PANHANDLE	79.0	EL PASO NATURAL GAS
*8101200	16714	4223300000	108	JOHNSON AO NO 1	PANHANDLE WEST	20.0	EL PASO NATURAL GAS
8101112	15294	4223300000	108	JURDAN D NO 43	PANHANDLE CARSON	0.1	CABOT CORP
8101241	p0730	4219500000	108	LEE B #1	HANSFORD MORROW LOWER	20.0	NORTHERN NATURAL GAS
8101362	p2115	4246101412	108	N PEMBROOK SPRABERRY #39-05	SPRABERRY (TREND AREA)	1.0	NORTHERN NATURAL GAS
8101361	p2114	4246101691	108	N PEMBROOK SPRABERRY #78-03	SPRABERRY (TREND AREA)	1.0	NORTHERN NATURAL GAS
*8101113	15301	4223300000	108	WHITTENBURG C NO 4	PANHANDLE HUTCHINSON	0.7	EL PASO NATURAL GAS
*8101201	16716	4223300000	108	WHITTENBURG E NO 1	PANHANDLE WEST	20.0	EL PASO NATURAL GAS
8101114	15302	4223300000	108	WHORTON NO 1	TEXAS HUGOTON	20.0	MICHIGAN-WISCONSIN P
8101207	17012	4242100000	108	WITT C NO 1	TEXAS HUGOTON	18.0	MICHIGAN WISCONSIN P
-PITTS OIL CO & DALLAS PROD INC				RECEIVED: 10/07/80 JA: TX			
8101226	p0107	4207330376	103	HOLCOMB-LITTLE NO 1	WHITE OAK CREEK (TRAVIS	712.0	DELHI GAS PIPELINE C
-POLK & PATTON INC				RECEIVED: 10/07/80 JA: TX			
8101356	p2132	4249731656	103	WALTER SHEPHERD #1	BOONSVILLE (BEND CONGL)	285.0	NATURAL GAS PIPELINE
-QUINTEX PETROLEUM CORP				RECEIVED: 10/07/80 JA: TX			
8101191	17462	4205730864	103	MARY E STOFER NO 1	NORTH COLOMA CREEK (7650	88.3	DELHI GAS PIPELINE C
-RESOURCES INVESTMENT CORPORATION				RECEIVED: 10/07/80 JA: TX			
8101176	18448	4212331005	103	W M PRIDGEN #1	THOMASTON (WILCOX 7800)	0.0	
-RIAL OIL COMPANY				RECEIVED: 10/07/80 JA: TX			
8101149	p1403	4231732089	103	BUCK BAKER #1 (62742)	ACKERLY (DEAN SAND)	15.1	TEXACO INC
-RICHARD PHILLIPS				RECEIVED: 11/07/80 JA: TX			
8101179	17322	4242700000	103	GONZALES B P	KELSEY SOUTH (PENA A)	110.0	FLORIDA GAS TRANSMIS
-ROBERT CARGILL				RECEIVED: 10/07/80 JA: TX			
8101316	p2322	4218330429	103	MOTT UNIT #2-R	WILLOW SPRINGS (BODENHEI	275.0	ARKANSAS LOUISIANA G
-SAMEDAN OIL CORPORATION				RECEIVED: 10/07/80 JA: TX			
8101245	p0499	4222530302	103	EAST FT TRINIDAD DEXTER C #1-2	FORT TRINIDAD EAST (DEXT	25.0	LONE STAR GAS CO
-SANCHEZ-O'BRIEN MINERALS CORP				RECEIVED: 10/07/80 JA: TX			
8101184	18449	4250531120	102	SAN FERNANDO MINERALS NO 1	BIG MAC (LOBO 7870) FIEL	500.0	UNITED TEXAS TRANSMI
-SANCHEZ-O'BRIEN OIL & GAS CORP				RECEIVED: 10/07/80 JA: TX			
8101089	14116	4247932213	102	J C MARTIN III NO 2	DELORES CREEK	500.0	UNITED TEXAS TRANSMI
-SAXON OIL COMPANY				RECEIVED: 10/07/80 JA: TX			
8101352	p2189	4238300000	103	UNIVERSITY 34-2 NO 4	SPRABERRY (TREND AREA)	47.8	PHILLIPS PETROLEUM C
-SEELY OIL CO				RECEIVED: 10/07/80 JA: TX			
8101231	p0196	4249731329	103	MOWERY #1 (79758)	BOONSVILLE (BEND CONGL G	24.0	NATURAL GAS PIPELINE
-SHELL OIL CO				RECEIVED: 10/07/80 JA: TX			
8101290	p2059	4247531920	103	SEALY SMITH FOUNDATION #163	MONAHANS (PERMIAN TUBB 2	9.0	EL PASO NATURAL GAS
-SIMPSON-MANN OIL PRODUCERS				RECEIVED: 10/07/80 JA: TX			
8101364	p1662	4241300000	102	MYRTLE WILLIAMS ET AL #1-27	WILLIAMS RANCH (CANYON)	67.0	NORTHERN NATURAL GAS
-SOHIO NATURAL RESOURCES CO				RECEIVED: 10/07/80 JA: TX			
8101178	16565	4217331002	103	R S DAVENPORT C NO 17	CALVIN DEAN	25.0	EL PASO NATURAL GAS

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JC NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
-SOUTHLAND ROYALTY CO				RECEIVED: 10/07/80 JA: TX			
8101151	P1422	4210532281	103	TODD 67 #6	WYATT	75.0	PERMIAN CORP
8101150	P1420	4210532033	103	TODD 70 #1	HOWARD DRAW	65.0	PERMIAN CORP
-STRATA ENERGY INC				RECEIVED: 10/07/80 JA: TX			
8101306	P1676	4205130512	102	C L ANDERSON #1	GIDDINGS (AUSTIN CHALK)	50.0	CLAJON GAS CO
8101308	P1678	4205130490	102	G B SLOVACEK #1	GIDDINGS (AUSTIN CHALK)	50.0	CLAJON GAS CO
8101305	P1675	4205130528	102	LUCY SHANKLIN #1	GIDDINGS (AUSTIN CHALK)	50.0	CLAJON GAS CO
8101307	P1677	4205130542	102	PETER GRANDJEAN UNIT #1	GIDDINGS (AUSTIN CHALK)	50.0	CLAJON GAS CO
-SUN OIL COMPANY (DELAWARE)				RECEIVED: 10/07/80 JA: TX			
8101331	P2271	4208130776	103	CENTRAL NATL BANK A #10	LYGAY	96.0	LONE STAR GAS CO
8101330	P2270	4208130787	103	CENTRAL NATL BANK A #11	JAMESON/STRAWN	24.0	EL PASO NATURAL GAS
8101333	P2281	4208130792	103	CENTRAL NATL BANK A #13	LYGAY	53.0	LONE STAR GAS CO
8101104	14570	4223300000	108	M M GARCIA L NO 3	GARCIA	6.0	TRANSCONTINENTAL GAS
8101332	P2278	4208130576	103	TUBB-OMEGA NO 2	JAMESON NORTH (STRAWN)	12.0	LONE STAR GAS CO
-T M HOPKINS				RECEIVED: 10/07/80 JA: TX			
8101210	17235	4236500000	103	EDENS GAS UNIT #2	BECKVILLE WEST (COTTON V	108.0	ARKLA GAS
-TARTAN PRODUCTION CO				RECEIVED: 10/07/80 JA: TX			
8101193	17505	4205100000	102	MAREK NO 1 (RRC 12510)	CALDWELL (AUSTIN CHALK)	110.0	MAYNARD/CPC PIPELINE
-TAYLOR OPERATING COMPANY				RECEIVED: 10/07/80 JA: TX			
8101244	P0442	4249700000	103	D K MESSICK #1 (85193)	BOONSVILLE (BEND CONGL G	225.6	NATURAL GAS PIPELINE
8101243	P0441	4249700000	103	THOMAS HODGES #5 (85706)	BOONSVILLE (BEND CONGL G	138.7	NATURAL GAS PIPELINE
-TEE OPERATING CO				RECEIVED: 10/07/80 JA: TX			
8101212	18576	4228330644	103	STOREY NO 1	WASHBURN RANCH WEST (505	63.5	TRANSCONTINENTAL GAS
-TEXACO INC				RECEIVED: 10/07/80 JA: TX			
8101156	P1487	4210532649	103	A R KINCAID TRUST #8	OZONA (CANYON SAND)	281.0	NORTHERN NATURAL GAS
8101139	P1289	4232931048	107	CURNELL KNIGHT #1-A	GREASEWOOD (SILURO-DEVON	3.4	TEXAS UTILITIES FUEL
-TEXAS OIL & GAS CORP				RECEIVED: 10/07/80 JA: TX			
8101141	P0966	4222530335	103	RUNNING DUKE #2-1	RUNNING DUKE (RODESSA)	0.0	
-THOMAS D COFFMAN				RECEIVED: 10/07/80 JA: TX			
8101216	19203	4228730439	103	TWO FINGERS #1-038275	GIDDINGS (AUSTIN CHALK)	100.0	PGP GAS PRODUCTS INC
-TOMMY LITTLEPAGE				RECEIVED: 10/07/80 JA: TX			
8101223	19744	4250300000	103	MARY TAYLOR (#19267)	YOUNG COUNTY REGULAR	3.0	LEWTEX OIL & GAS CO
8101224	19745	4250300000	103	ROSSER #2 (19575)	YOUNG COUNTY REGULAR	45.0	LEWTEX OIL & GAS CO
-TRAVELERS OIL CO				RECEIVED: 10/07/80 JA: TX			
8101233	P0200	4206500000	103	BURNETT A NO 4	PANHANDLE-CARSON COUNTY	36.5	PHILLIPS PETROLEUM C
8101232	P0199	4206500000	103	BURNETT A NO 5	PANHANDLE-CARSON COUNTY	36.5	PHILLIPS PETROLEUM C
-W MENGDEN				RECEIVED: 10/07/80 JA: TX			
8101180	17359	4220100000	103	R J S NO 8	OVERSDALE N (Y-5)	358.0	LONE STAR GAS
-WAYNAN W BUCHANAN				RECEIVED: 10/07/80 JA: TX			
8101117	15374	4236731239	103	T H KEYES UNIT #1	TOTU SOUTH (CADDO LIME)	186.0	LONE STAR GAS CO
-WESLEY STEPHENS				RECEIVED: 10/07/80 JA: TX			
8101238	P0429	4250333182	103	STOFFERS 40 NO 1	YOUNG COUNTY REGULAR	8.0	LEWTEX OIL & GAS CO
-WHITEHEAD PRODUCTION CO INC				RECEIVED: 10/07/80 JA: TX			
8101246	P0515	4223732527	103	SARTAIN-MASON (85869)	PERRIN EAST (5400 CONGL)	180.0	NATURAL GAS PIPELINE
-WOOD MCSHANE & THAMS				RECEIVED: 10/07/80 JA: TX			
8101102	18403	4216531283	108	ELAM 1 RRC #75067	BLOCK A-34 (YATES)	1.9	EL PASO NATURAL GAS

BILLING CODE 6450-85-C

Other Purchasers Volume No: 304

8101091	Texas Eastern Transmission Co.
8101106	Texas Eastern Transmission Co.
8101107	Amoco Gas Co.
8101108	Panhandle Eastern Pipeline Co.
8101113	Panhandle Eastern Pipeline Co.
8101168	Amoco Production Co.
8101200	Panhandle Eastern Pipeline Co.
8101201	Panhandle Eastern Pipeline Co.
8101206	Amoco Gas Co.
8101209	El Paso Natural Gas Co.
8101213	Amoco Production Co.
8101218	Amoco Gas Co.
8101247	Intratex Gas Co.
8101301	Panhandle Eastern Pipeline Co.
8101302	Panhandle Eastern Pipeline Co.
8101319	Transcontinental Gas Pipeline Corp.
8101344	Northern Natural Gas Co.

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feed (MMcf). An (*) preceeding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these preceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 17, 1980.

Please reference the FERC Control Number (JD No.) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33766 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER80-715 and ER80-58, et al.]

Alabama Power Co.; Order Accepting for Filing and Suspending Proposed Rates, Granting Waiver of Notice Requirements, and Consolidating Proceedings

Issued October 24, 1980.

On August 29, 1980, Alabama Power Company (Alabama) filed an executed transmission agreement with Alabama Electric Cooperative, Inc. (AEC).[1] Under the proposed agreement, Alabama would provide AEC with firm transmission service to enable AEC to transmit its self-generated energy to two of its distribution cooperative members [2] that are not physically connected with AEC's system. The two distribution entities are presently served under Alabama's Wholesale Tariff Rate REA-1. The proposed agreement would supplant the REA-1 rate for AEC's two members.

Under the terms of the agreement, AEC is to pay Alabama according to the voltage level of transmission service as determined by a cost of service formula. The methodology and procedure to be used in calculating applicable charges are described in exhibits to the agreement.

Alabama states that it intends to periodically update its rates by submitting informational schedules that reflect current costs. The transmission agreement provides that changes in the charges through application of the formula will not be made more frequently than annually.

Alabama has requested waiver of the Commission's notice requirements to permit a September 1, 1980 effective date for the proposed agreement.

On September 4, 1980, AEC filed a letter with the Commission noting its concurrence in Alabama's request for waiver of notice and an effective date of September 1, 1980. AEC states, however, that it disagrees with Alabama's characterization of the agreement as an initial rate filing. AEC further states that the transmission agreement has been approved by the Alabama Public Service Commission.[3] Finally, AEC renews objections to the rate formulae which AEC previously expressed with respect to similar formula rates under investigation in Docket No. ER80-506.

Notice of the filing was issued on September, 5, 1980, with responses due on or before September 26, 1980. No responses have been received.

Discussion

Alabama has tendered its transmission agreement as an initial rate schedule. The agreement however represents a change in service between Alabama and AEC. AEC is presently served by Alabama pursuant to an interconnection agreement under consideration in Docket No. ER80-506. The transmission agreement adds to the service received by AEC by including wheeling to AEC's two distribution cooperative customers. Alabama's submittal, therfore, constitutes a change in service within the purview of section 35.1(c) of the regulations and a change in rate schedule subject to suspension under section 205 of the Federal Power Act.

Alabama and AEC have joined in a request for waiver of the 60-day notice requirement of section 35.3 of the Commission's regulations in order to allow an effective date of September 1, 1980. The parties state that implementation of the agreement is necessary for AEC to begin providing power to the particular delivery points covered by the agreement. Inasmuch as both parties to the agreement have specifically requeste waiver, and no protests have been received, we find that good cause exists to grant waiver of the notice requirements.

Our review indicates that the proposed formula and the rates calculated under the formula hve not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the formula and associated rates for filing and suspend their operation as ordered below.

In a number of suspension orders,[4] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that the contemplated transmission arrangement is necessary in order to allow AEC to commence generation service to its distribution cooperatives. In addition, we note that both parties to the agreement have requested an effective date of September 1, 1980, and no protests to the agreement have been received. Accordingly, consistent with our

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[1] See Attachment A for Rate Schedule designations.

[2] Baldwin County Electric Membership Corporation (Baldwin) and Pioneer Electric Cooperative (Pioneer).

[3] Alabama Public Service Commission, Order No. 2806, issued August 29, 1980.

[4] *E.g., Boston Edison Co.*, Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-488 (August 22, 1980) (one day suspension).

treatment of similar rates currently under investigation, we shall exercise our discretion to suspend the rates and formula for only one day, permitting the rates to take effect subject to refund thereafter on September 2, 1980.

In several previous dockets involving various subsidiaries of the Southern Company, the Commission has suspended similar formula rates, initiated investigation into the formulas and resulting rates, and consolidated the pending dockets.[5] Because of the similarity between the formula rates in the instant docket and the formula rates proposed in Docket Nos. ER80-58, *et al.*, we shall also consolidate the instant docket with those ongoing proceedings.

In Docket No. ER80-58,[6] and in subsequent dockets, the Commission has consistently taken the position that if a formulary rate which has not been found to be just and reasonable operates to increase rates, subsequent filings must be made under section 205 of the Federal Power Act. Therefore, any subsequent revision to the charges developed under the suspended formula shall be filed by Alabama as a change in rate within 60 days before its proposed effective date. However, we shall waive the full filing requirements of section 35.13 of the Commission's regulations as to subsequent revisions on condition that any increased charges shall be collected subject to refund pending the outcome of the Commission's investigation.

The Commission Orders

(A) Alabama's request for waiver of the Commission's notice requirements is hereby granted.

(B) The formula and associated rates for transmission service contained in the proposed transmission agreement are hereby accepted for filing and suspended for one day from the proposed effective date, the rates to become effective September 2, 1980, subject to refund.

(C) Waiver of the full filing requirements contained in section 35.13 of the regulations is hereby granted for future changes in transmission charges made in accordance with the formula filed herein, on the condition that Alabama agrees to collect any increased charges under the formula subject to refund pending Commission investigation. Alabama shall file any changes in the charges under the formula with the Commission within 60 days before their proposed effective dates.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Act and by the Federal Power Act, particularly sections 205 and 206 thereof, 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 formula and rates proposed by Alabama in this docket.

(E) This proceeding is hereby consolidated with Docket Nos. ER80-58, ER80-65, ER80-160, ER80-243, ER80-262, ER80-343, ER80-415, ER80-466 and ER80-506 for purposes of hearing and decision.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A—Alabama Power Company, Docket No. ER80-715

Filed: August 29, 1980.

Dated: August 28, 1980.

Other Party: Alabama Electric Cooperative.

Effective: September 2, 1980, subject to refund.

Designation and Description

(1) Rate Schedule FERC No. 147 (Supersede Service Agreements dated May 7, 1976, with Baldwin County and dated February 13, 1973, with Pioneer under Electric Tariff Orig. Vol. No. 1)—Agreement For Transmission Service To Distribution Cooperative Members of Alabama Electric Cooperative.

(2) Supplement No. 1 to Rate Schedule FERC No. 147—Delivery Point Agreement (Baldwin Co. E.M.C.)

(3) Supplement No. 2 to Rate Schedule FERC No. 147—Delivery Point Agreement (Pioneer Electric Cooperative).

(4) Supplement No. 3 to Rate Schedule FERC No. 147—Exhibit B, Definition of Service Levels and Associated Losses.

(5) Supplement No. 4 to Rate Schedule FERC No. 147—Exhibit C, Capacity Charges for Transmission facilities (115 KV and above).

(6) Supplement No. 5 to Rate Schedule FERC No. 147—Exhibit D, Capacity Charges for Service from Sub-Transmission Facilities (39 to 69 KV).

(7) Supplement No. 6 to Rate Schedule FERC No, 147—Exhibit E, Capacity Charges for Service from Transmission Substations Facilities (Sub-Transmission Voltage High side and primary distribution—low side).

(8) Supplement No. 7 to Rate Schedule FERC No. 147—Exhibit F, Capacity Charges for Primary Distribution.

(9) Supplement No. 8 to Rate Schedule FERC No. 147—Losses at Each Service Level.

(10) Supplement No. 1 to Supplement No. 4 Rate Schedule FERC No. 147—Rates for 1980.

(11) Supplement No. 1 to Supplement No. 5 Rate Schedule FERC No. 147—Rates for 1980.

(12) Supplement No. 1 to Supplement No. 6 Rate Schedule FERC No. 147—Rates for 1980.

(13) Supplement No. 1 to Supplement No. 7 Rate Schedule FERC No. 147—Rates for 1980.

[FR Doc. 80-33790 Filed 10-30-80; 8:45 am]

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[5] *See* Docket Nos. ER80-58 and consolidated Docket Nos. ER80-65, ER80-160 (Florida Power Corporation), ER80-248 (Jacksonville Electric Authority), ER80-262 (Florida Power and Light Company), ER80-343 (Savannah Electric and Power Company), ER80-415 (Mississippi Power and Light Company and ER80-506 (Alabama Power Company). AEC was granted leave to intervene in Docket No. ER80-58.

[6] Order issued February 12, 1980.

[Projects Nos. 3353, 3355, and 3365]

Continental Hydro Corp.; Application for Preliminary Permit

October 24, 1980.

Take notice that Continental Hydro Corporation (Applicant) filed on August 25, 1980, there applications for preliminary permits [purusant to the Federal Power Act, 16 U.S.C. §§791 (a)-825(r)] for the projects described below. Correspondence with the Applicant on these projects should be addressed to: Mr. A. Gail Staker, President, Continental Hydro Corporation, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109.

The proposed projects are located as follows:

(i) Salamonie Dam Project No. 3353 would be located at the U.S. Army Corps of Engineers' Salamonie Dam and Lake, a flood control project, on the Salamonie River near Huntington, in Wabash County, Indiana.

(ii) Monroe Dam Project No. 3355 would be located at the U.S. Army Corps of Engineers' Monroe Dam and Lake, a flood control project, on the Salt Creek River near Guthrie, in Monroe County, Indiana.

(iii) Mississinewa Dam Project No. 3365 would be located at the U.S. Army Corps of Engineers' Mississinewa Dam and Lake, a flood control project, on the Mississinewa River near Peoria, in Miami County, Indiana.

Projects Descriptions—The three proposed projects would utilize existing U.S. Army Corps of Engineers' dams and reservoirs.

Project No. 3353 would consist of: (1) a penstock extending from the outlet works; (2) a powerhouse located on the east bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the project to be 2.78 MW, and the annual energy output to be 11.1 GWh.

Project No. 3355 would consist of: (1) a penstock extending from the outlet works; (2) a powerhouse located on the east bank of the river; (3) transmission

lines; and (4) appurtenant facilities. Applicant estimates the capacity of the project to be 1.75 MW, and the annual energy output to be 7.0 GWh.

Project No. 3365 would consist of: (1) a penstock extending from the 16" outlet conduit; (2) a powerhouse located on the northwest bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the project to be 4.13 MW, and the annual energy output to be 16.5 GWh.

Purpose of Project—Energy produced at proposed Projects Nos. 3353 and 3355 would be sold to Public Service Company of Indiana, while proposed Project No. 3365 would sell energy to Indiana and Michigan Electric Company.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 36-month permit to prepare a definitive report for each project, including preliminary design and economic feasibility studies, environmental and social studies, and soils and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State, and local agencies are estimated by the Applicant to be $51,000 for Project No. 3353, $49,000 for Project No. 3355, and $57,000 for Project No. 3365.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described applications for preliminary permits.) Copies of the applications may be obtained directly from the Applicants.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 26, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), as amended 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about these applications should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R., § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 26, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The applications are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33991 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80.434]

Duke Power Co.; Order Accepting for Filing and Suspending Revised Fuel Conservation Energy Rate Schedule, Initiating Hearing, and Establishing Procedures

October 24, 1980.

On March 28, 1980, the Commission issued an order in Docket Nos. ER78-229, *et al.*, which established principles regarding the submittal of fuel conservation energy rate schedules to the Commission. The order required the utilities in those dockets to file revised fuel conservation rates in compliance with the established principles. On August 27, 1980, Duke Power Company (Duke) completed its filing [1] of a revised fuel conservation energy rate schedule [2] pursuant to the Statement of Principles set forth in the Commission's March 28, 1980 order.[3]

Notice of Duke's filing was issued on June 9, 1980, with responses due on or before June 30, 1980. No comments, protests or petitions to intervene have been received.

Under the fuel conservation rates proposed by Duke, the charge for energy delivered from Duke's system would consist of the company's out-of-pocket costs, including the estimated costs of transmission losses, plus 10% of such out-of-pocket costs or 2 mills/kWh, whichever is less. Fuel conservation energy delivered from the system of a third party would be priced at cost plus the estimated cost of associated transmission losses. The proposed rate schedule specifies that the estimated cost of transmission losses would be based on average transmission losses and the incremental energy costs of Duke at the time of delivery. The proposed rate schedule also provides that out-of-pocket cost would be based on the greater of the actual fuel cost during the time of delivery or the highest-cost replacement fuel obtained during the 60-day period subsequent to the time of delivery. The out-of-pocket cost determination is to be made on a station or unit basis for the quantity of fuel used by the station or unit with no subsequent adjustments based on changes in fuel cost after the time of delivery.

In addition to the above energy charges, the proposed fuel conservation energy rate schedule includes a facilities charge which is to be developed from a formula and expressed on a per kWh basis when energy is generated on Duke's system as follows:

(1) Capacity charges equal to the then current annualized costs of the generating units employed to deliver fuel conservation energy. Energy delivered would be allocated on an hourly basis to appropriate operating units; capacity charges would then be calculated by taking the sum of the products of allocated kWh's and the annualized costs ($/kWh) on a unit-by-unit basis; plus

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[1] Duke originally submitted its filing on June 2, 1980. The company was notified by letter dated July 23, 1980, that its filing was deficient.

[2] See Attachment A for rate schedule designations.

[3] While Duke has submitted its revised rate schedule in accordance with the March 28, 1980 order, it should be noted that Duke's present fuel conservation energy rate schedules, which became effective January 1, 1974, were not at issue in those dockets.

(2) A transmission facilities charge equal to the then current annualized fully allocated costs of the estimated bulk transmission system. The foregoing transmission charge also would be applicable to third party transactions.

In order to comply with the Statement of Principles contained in the Commission's March 28, 1980 order, Duke has also included language in its rate schedule which describes its proposed dispatch priority and replacement pricing methodology. With respect to dispatch priority of fuel conservation energy, Duke would assign these transactions a priority after all firm requirements and emergency service requirements are met. The company's replacement pricing methodology provides for prices to be based on the highest-cost replacement fuel obtained during the 60-day period subsequent to the time of delivery. Pursuant to the Statement of Principles, the rate schedule provides that corrected billing must be rendered within a specified period (120 days) following the delivery of fuel conservation energy, unless the purchaser agrees to an extension of time.

Discussion

While Duke has provided a sample computation using a rate of return component of 11.03% (15.0% on equity), the formula itself does not provide a clear basis on which a determination can be made as to whether the revenues produced by the formula would be just and reasonable.

The proposed fixed charge rate formula also contains components which are to be stated on a percentage basis, for renewal and replacement expenses, insurance and property taxes. The formula does not specify the bases on which these amounts are to be derived and its does not indicate whether the costs developed are to be associated only with the unit(s) providing the service. Furthermore, the formula does not define the bases for deriving the percentage amount to be included for renewal and replacement expenses. In view of the foregoing, the proposed formula may not properly track the cost of the units directly assigned to fuel conservation energy service.

In addition the proposed fixed charge rate formua provides for the recovery of depreciation expense based on the application of a straight-line depreciation percentage (based on average system depreciation rates) to gross investment in the unit(s) providing fuel conservation energy service. Because the units anticipated to provide fuel conservation energy are the older, more depreciated, if not nearly fully depreciated, units on Duke's system, application of the depreciation percentage to the gross investment cost of these units may result in the over recovery of costs.

Our analysis indicates that the proposed fixed charge rate formula lacks specificity as to the bases upon which several components are derived, that certain formula components may not accurately track the costs associated with the facilities assigned to fuel conservation energy service, and that the rates under the proposed rate schedule may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed fuel conservation rates for filing, suspend them as ordered below, and order a hearing to be convened in this proceeding.

In a number of suspension orders,[4] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledge, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances are presented here. While Duke's present rate schedule was not a part of the proceedings in Docket Nos. ER78-229, *et al.*, the company has voluntarily submitted a revised fuel conservation energy rate schedule in keeping with the spirit of the Commission's principles enunciated in our March 28, 1980 order. We also believe tht the revised rates should be made effective as soon as possible so they they will be in place in the event that a fuel emergency should occur. Additionally, no parties have protested or petitioned to intervene in this docket. In order to ensure refund protection for Duke's affected customers pending further review of the proposed rates, we shall exercise our discretion to suspend the rates for only one day from 60 days after filing, permitting the rates to take effect subject to refund thereafter on October 28, 1980.

[4] *E.g., Boston Edison Co.*, Docket No. ER80-598 (August 29, 1980) (five month suspension); *Alabama Power Company*, Docket Nos. ER80-506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Company*, Docket No. ER80-488 (August 22, 1980) (one day suspension).

The Commission Orders

(A) Duke's fuel conservation energy rate schedule is hereby accepted for filing and suspended for one day from 60 days after filing, to become effective on October 28, 1980, subject to refund pending hearing and decision thereon.

(B) 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, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procecure and the regulations under the Federal Power Act (18 CFR, Chapter I, 1980), a public hearing shall be held concerning the justness and reasonableness of Duke's proposed fuel conservation energy rate schedule.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within thirty (30) days of the date of issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. This conference shall be held for purposes of establishing a procedural schedule, including the submittal of a case-in-chief and supporting materials by Duke. The designated law judge is authorized to establish procedural dates, and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission rules of Practice and Procedure.

(D) The Secretary shall promptly published this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A—Duke Power Company Rate Schedule Designations, Docket No. ER80-434

Designation and Description

(1) Rate Schedule FERC No. 272 (Supersedes Rate Schedule FERC No. 265)—Schedule FCE (Filed 6/10/80).

(2) Supplement No. 1 to Rate Schedule FERC No. 272—Annual Fixed Charge Rate Formula (Filed 8/27/80).

(3) Exhibit A to Rate Schedule FERC No. 272—Computations of the various components of annual FCR portion of FCE schedules.

[FR Doc. 80-33592 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3437]

Hydroelectric Constructors, Inc.; Application for Preliminary Permit

October 24, 1980.

Take notice that Hydroelectric Constructors, Inc. (Applicant) filed on September 4, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3437 to be known as Grand Valley Project located on the Colorado River near the Town of Grand Junction, Mesa County, Colorado. Correspondence with the Applicant should be directed to: Mr. Glen G. Dorman, President, Hydroelectric Constructors, Inc., Box 6, 5353 West Dartmouth Avenue, Denver, Colorado 80227.

Project Description—The proposed project would utilize the existing U.S. Water and Power Resources Service's Grand Valley Diversion Dam and reservoir and would consist of a powerhouse with one or more generating units having a total rated capacity of 1.145 MW, a switchyard and a 1-mile long transmission line. The project would be capable of generating up to 9,630,000 kWh annually saving the equivalent of 15,800 barrels of oil or 4,500 tons of coal.

Purpose of Project—Energy generated at the project would be sold to the Public Service Company of Colorado or other utilities in the area of the project.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, a study of environmental impacts and a study of the project's compatibility with irrigation needs. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), as amended 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 5, 1981. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33993 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-546]

Monongahela Power Co., West Penn Power Co., Potomac Edison Power Co., Virginia Electric & Power Co.; Order Accepting For Filing and Suspending Proposed Rates in Part, Granting Waiver of Notice Requirement, Consolidating Proceedings, and Establishing Procedures

Issued: October 17, 1980.

On July 23, 1980, as completed on August 18, 1980,[1] Allegheny Power Service Corporation (APS) filed on behalf of Monongahela Power Company, Potomac Edison Power Company, and West Penn Power Company—the electric utilities making up the Allegheny Power System—Amendment No. 8 to an Operating Agreement dated January 1, 1973, which provides for interchange services between the Allegheny Power System Companies and the Virginia Electric and Power Company (VEPCO).[2]

Amendment No. 8 provides for an increase in the demand charge for short-term power from $0.070/Kw-week to $0.85/Kw/week and an increase in the demand charge for limited-term power from $3.75/Kw/month to $4.50/Kw/month. Related short-term and limited-term third party transmission charges would be increased from $0.175/Kw-week and $0.74/Kw-month to $0.24/Kw/week and $1.00/Kw/month, respectively. The existing 10% adder to the purchase cost of energy and the 15% adder to the purchase cost of energy supplied by third parties would be limited to 2.0 mills/Kwh and 1.0 mills/Kwh, respectively.

APS has requested the Commission to waive the notice requirements of section 35.3 of the regulations to permit Amendment No. 8 to become effective August 1, 1980.

Notice of the filing was issued on August 4, 1980, with responses due on or before August 22, 1980. No comments, protests, or petitions to intervene were filed.

Discussion

APS's proposed short-term and limited-term demand charges, third party transmission charges, and capped percentage adders are identical to rates and charges previously accepted by the

[1] The Commission's filing requirements were satisfied when Virginia Electrtic and Power Company submitted its certificate of concurrence and cost support for the revised interchange rates.

[2] *See* Attachment for rate schedule designations.

Commission.[3] Similarly, VEPCO's third party transmission charges and capped percentage adders have also been accepted by the Commission.[4] The Commission permitted the previously submitted rates to become effective on August 1, 1980, and we believe that a concurrent effective date for the instant charges will facilitate implementation of the various service schedules among the parties with which APS is interconnected. Thus, we find that good cuse exists to grant waiver of the notice requirements and we shall accept the portions of the instant submittal identified above for filing to become effective August 1, 1980, without suspension.

Our analysis indicates, however, that the short-term and limited-term demand charges proposed by VEPCO suffer from the same inadequacies as the rates recently submitted by VEPCO in Docket No. ER80.485. The company has provided identical cost data in support of the identical short-term demand charge; the proposed limited-term demand charge is based directly on the short-term demand charge (expressed as a per month charge and adjusted to reflect 20% reserves). As in the prior proceeding, we find that these proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept VEPCO's proposed short-time and limited-term demand charges for filing and suspend them as ordered below.

In a number of suspension orders,[5] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that with respect to the same short-term demand charge as that currently proposed by VEPCO, the Commission ordered a one-day suspension in Docket Nos. ER80-484 and ER80-485. We indicated that potentially excess revenues could be offset, in part, by the use of fixed adders, and that the services in question lend themselves to a nominal suspension. Consistent with the suspension period ordered in Docket Nos. ER80-484 and ER80-485, we shall exercise our discretion to suspend VEPCO's short-term and limited-term demand charges for one day permitting that portion of the instant submittal to take effect subject to refund thereafter on August 2, 1980. Moreover, because this docket presents questions of law and fact common to those being considered in Docket Nos. ER80-484 and ER 80-485, we shall consolidate this proceeding with the proceedings in Docket Nos. ER80-484 and ER 80-485.[6]

In addition, our analysis in Docket Nos. ER80-484 and ER 80-485 indicated the VEPCO's use of average system production investment in support of interchange service demand charges was improper because such average system pricing does not track the demand related costs of the marginal units assigned to interchange service. Our order establishing the hearing in those dockets on the proposed demand charge limited the scope of the proceedings to the proper development of the production component of VEPCO's interchange service demand charges. Accordingly, we shall similarly limit the scope of this proceeding to the proper development of the production component of VEPCO's proposed demand charges for short-term and limited-term power.

The Commission Orders

(A) Waiver of the notice requirements of section 35.3 of the Commission's regulations is hereby granted.

(B) APS's proposed short-term, limited-term, and related third party transmission rates (including the associated capped adders) and VEPCO's proposed third party transmission rates (including all of VEPCO's proposed capped adders) are hereby accepted for filing, to become effective August 1, 1980, without suspension.

(C) The short-term and limited-term demand charges proposed by VEPCO in this proceeding are hereby accepted for filing and suspended for one day, to become effective on August 2, 1980, subject to refund pending hearing and decision thereon.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commisssion's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I (1980)], a public hearing shall be held concerning the justness and reasonableness of the short-term and limited-term demand charges proposed by VEPCO in this proceeding. The investigation shall be confined to the limited issue of the proper development of the production component of VEPCO's proposed demand charges for short-term and limited-term power.

(E) This proceeding is hereby consolidated with Docket Nos. ER80-484 and ER 80-485 for purposes of hearing and decision thereon.

(F) The administrative law judge previously designated to preside in Docket Nos. ER80-484 and ER 80-485 shall convene a conference in this consolidated proceeding at the earliest convenience of the parties in order to establish a procedural schedule that will accommodate consolidation of Docket Nos. ER80-546 with the pending proceeding.

(G) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Allegheny Power Service Corporation Rate, Schedule Designations, Docket No. ER80-546

Designation and Description

(1) *Monongahela Power Company,* Supplement No. 6 to Rate Schedule FPC No. 32—Short Term Power.

(2) Supplement No. 7 to Rate Schedule FPC No. 32—Limited Term Power.

(3) *The Potomac Edison Company,* Supplement No. 6 to Rate Schedule FPC No. 33—Short Term Power.

(4) Supplement No. 7 to Rate Schedule FPC No. 33—Limited Term Power.

(5) *West Penn Power Company,* Supplement No. 6 to Rate Schedule FPC No. 31—Short Term Power.

(6) Supplement No. 7 to Rate Schedule FPC No. 31—Limited Term Power.

(7) *Virginia Electric and Power Company,* Supplement No. 6 to Rate Schedule FPC No. 99 (Concurs in (1)-(6) above)—Certificate of Concurrence.

[FR Doc. 80-33984 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[3] *Pennsylvania-New Jersey-Maryland Interconnection, et al.,* Docket Nos. ER80.427, *et al.* (Order issued July 31, 1980).

[4] *Pennsylvania-New Jersey-Maryland Interconnection, and Virginia Electric & Power Co.,* Docket Nos. ER80.484 and ER80.485 (order issued August 21, 1980).

[5] *E.g., Boston Edison Co.,* Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.,* Docket Nos. ER80-506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.,* Docket No. ER80-488 (August 22, 1980) (one day suspension).

[6] A prehearing conference was held in Docket Nos. ER80-484 and ER 80-485 on September 4, 1980, and a procedural schedule has been adopted.

[Project No. 2865]

City of Shawano; Application for Short-Form License (Minor)

Otober 24, 1980.

Take notice that the City of Shawano (Applicant) filed on August 31, 1978, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of an existing water power project to be known as Shawano Project No. 2865. The project is located on the Wolf River near the City of Shawano, Shawano County, Wisconsin. Correspondence with the Applicant should be directed to: Mr. J. Leroy Thilly, Boardman, Suhr, Curry and Field, Attorneys for City of Shawano, Post Office Box 927, Madison, Wisconsin 53701.

Project Description—The existing Shawano project is operated as a run-of-river project and consists of: (1) an existing reinforced concrete dam approximately 150 feet long and 28 feet high, with two earth embankments and a concrete spillway section with six steel Tainter gates, 14 feet by 14 feet; (2) an existing reservoir with a surface area of approximately 197 acres; (3) an existing powerhouse containing a hydroelectric generating unit with an installed capacity of 640 kW; (4) a proposed one mile long by 12,470 volt transmission line to be constructed to connect the project to the distribution system of Shawano; and (5) appurtenant facilities. The estimated annual generation of the project would be 5,500 MWh.

Purpose of Project—The project energy would be distributed to residential, commercial, industrial, and rural customers in the Shawano areas served by the Municipal Electric Utility of Shawano.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—This application was filed as a competing application to Wisconsin Power and Light Company Project No. 710 on the Shawano Hydroelectric Development, under 18 CFR 4.33 (*as amended*, 44 FR 61328, October 25, 1979), and, therefore, no further competing applications or notices of intent to file a competing application will be accepted for filing.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 10, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-33995 Filed 10-30-80;8:45 am]
BILLING CODE 6450-85-M

[Docket No. EL80-15]

Sierra Pacific Power Co. v. Mt. Wheeler Power, Inc.; Declaratory Order

Issued: October 24, 1980.

By a jointly filed letter with an enclosure of correspondence between them, Sierra Pacific Power Co. (Sierra Pacific) and Mt. Wheeler power, Inc. (Mt. Wheeler) on February 20, 1980, petitioned the Commission for an order construing the meaning of a disputed provison of Sierra Pacific's tariff governing transactions with Mt. Wheeler.[1] We view the letter filing to be a joint petition for declaratory order under 18 CFR 1.7 (1980).

Notice of the filing was issued February 29, 1980, with responses due no later than March 24, 1980. On March 24, 1980, Pacific Gas & Electric Co. (PG&E), a customer of Sierra Pacific taking service under a tariff identical to Mt. Wheeler's, filed a petition to intervene. In the petition, PG&E made no allegations in support of or in opposition to the positions of either Sierra Pacific or Mt. Wheeler.

The provision in controversy is paragraph "B. *Billing Demand*" of Schedule R, which reads as follows:

> The billing demand for any period shall be the greater of the measured demand for the current period; or fifty percent (50%) of the highest billing demand established by the Customer during the preceding eleven (11) months.

Sierra Pacific construes the provision to mean that where, for any current billing period, there is no measured demand, and also there is no measured demand during the preceding 11 month period, there nevertheless will be a billing demand for the current billing period if there was a measured demand prior to the 11 month peirod. The billing demand for the current billing period will be a ratcheted percentage (50%) of the highest billing demand set in the preceding 11 month period. Sierra Pacific's construction is based upon its literal reading of the provision and particularly upon the parties' usage in paragraph "B" of the phrase "billing demand" to describe the demand in the preceding 11 month period by which the ratchet is mulitplied to determine the billing demand in the current billing month.

In contrast, Mt. Wheeler interprets Paragraph "B" to mean that where, for any current billing period, there is no measured demand, and also there is no measured demand in the preceding 11 month period, there will be no billing demand for the current billing period. Mt. Wheeler bases this construction upon its translation of the phrase "billing demand," as it is used the second time in paragraph "B", to mean "measured demand." Mt. Wheeler argues that since there is no measured (actual) demand during the preceding 11 month period, there is no demand against which to multiply the ratchet. Sierra Pacific counters this argument by pointing out that the phrase "billing demand," like the phrase "measured demand,"[2] is a term of art specifically defined in Schedule R. Sierra Pacific concludes that Mt. Wheeler's translation

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[1] *Sierra Pacific Power Co.* Rate Schedule FPC No. 11; Schedule R.

[2] Paragraph "C" appearing under the same heading in Schedule R, "Billing Units," under which paragraph "B", "Billing Demand" appears, specifies in pertinent part the definition of the phrase "measured demand":

> C. *Measured Demand:* For the purposes hereof, measured demand shall be defined as maximum measured fifteen-minute average kilowatt load during the billing period. * * *

of the term of art, "billing demand," into another term of art, "measured demand," tortures the intent of the parties as expressed in writing in the tariff sheet.

In construing contractural language, the rule is that the contract language is to be given its ordinary and commonly accepted meaning without regard to a subjective and unexpressed intent of one of the parties.[3] In the tariff sheet here, both phases, "billing demand" and "measured demand," are expressly given specific, separate, and mutually exclusive definitions. These two definitions appear separately, but side-by-side, on the same page of Schedule R. There is no ambiguity and no vagueness about the meaning of these phrases as used in Schedule R. The presence of the definitions of the two phrases indicates that the parties carefully and specifically made the individual meanings of the phrases manifestly clear as terms of art in the tariff. Hence, there is no justification within the four corners of Schedule R for construing the second use of the phrase "billing demand" in paragraph "B" as "measured demand."

Mt. Wheeler asserts that there is no reasonable relation between the operation of paragraph "B" and any legitimate business purpose Sierra Pacific could have for the paragraph. Sierra Pacific responds that the demand charge is established to provide revenue stability from low load customers such as Mt. Wheeler. If Mt. Wheeler wishes to pursue its objections to the justness and reasonableness of the demand charge, it may do so pursuant to the complaint procedures of section 206 of the Federal Power Act. In such a proceeding, Mt. Wheeler would bear the burden of proving the demand charge to be unlawful.

The Commission orders: (A) Pacific Gas and Electric Company is permitted to intervene in this docket subject to the rules and regulations of the Commission, *provided,* however, that participation of the intervenor shall be limited to matters set forth in its petition to intervene, and *provided* further, that the admission of the intervenor shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

(B) The Commission hereby declares that the term "billing demand" as used in the second half of paragraph "B" of Sierra Pacific's Rate Schedule R refers to "billing demand" and not to "measured demand."

(C) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33996 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[3] *Dana Corp.* v. *U.S.*, 470 F.2d 1032, 1041 (Ct. Cl. 1972).

[Project No. 3320]

Sugar River Hydroelectric Power Co.; Application of Preliminary Permit

October 24, 1980.

Take notice that Sugar River Hydroelectric Power Company (Applicant) filed on August 15, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3320 to be known as the Newport Sugar River Project located on the Sugar River in Sullivan County, New Hampshire. Correspondence with the Applicant should be directed to: Mr. William B. Ruger, Jr., Proprietor, Sugar River Hydroelectric Power Company, Box 293, Newport, New Hampshire 03773.

Project Description—The proposed project would consist of works located at three dam sites along a one-mile stretch of the Sugar River in the Town of Newport, New Hampshire, as follows: (1) the existing Caplan Dam, a concrete structure 175 feet long and 20 feet high, which has a reservoir of 7 acres; (2) the currently breached International Shoe Dam which when reconstructed would create a 1.5-acre reservoir; (3) the currently breached Brampton Dam, which when reconstructed would create a 5.0-acre reservoir; and (4) appurtenant facilities. Each development would include a new or refurbished existing powerhouse and appurtenant works. The entire project would have a combined installed capacity of approximately 450 kW. Applicant estimates that the average annual net generation of the project would be 2,000,000 kWh.

Purpose of Project—Project energy would be sold to local public utilities or to local industrial concerns.

Proposed Scope and Cost of Studies Under Permit—Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would perform feasibility, environmental, and marketing studies. Depending upon the outcome of the studies, the Applicant would file an application for FERC license. The Applicant estimates that the total cost of permit studies would be $40,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), (as amended, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirement of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's

Rules. Any comments, protest, or petition to intervene must be filed on or before January 5, 1981. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33997 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP75-127]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc. and Texas Eastern Transmission Corp.; Petition to Amend Further

October 14, 1980.

Take notice that on September 18, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP75-127 a joint petition to amend the order issued in the instant docket on July 18, 1975 [1] as amended, pursuant to Section 7(c) of the Natural Gas Act, by authorizing an additional point of delivery in East Cameron Block 227, offshore Louisiana, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Texas Eastern and Tennessee state that they are parties to a transportation and exchange agreement dated October 17, 1974, as amended, which provides for the transportation and exchange of up to 230,000 Mcf of natural gas at various points.

Tennessee and Texas Eastern propose herein to include in their transportation and exchange agreement natural gas produced from the West Cameron Block 493 Field (WC 493 Field), offshore Louisiana, and to provide for an additional point of delivery by Tennessee to Texas Eastern in East Cameron Block 227, offshore Louisiana, for delivery of said gas pursuant to an amendment to the agreement dated September 9, 1980.

It is stated that Tennessee has secured the right to purchase gas produced from the WC 493 Field, offshore Louisiana, and that by order dated June 26, 1980, in Docket No. CP79-405, it received authorization to construct and operate 29.9 miles of 30-inch pipeline and appurtenant facilities to originate in the WC 493 Field and to extend to an existing subsea side valve on Texas Eastern's 24-inch pipeline in East Cameron Block 227, offshore Louisiana (EC 227 delivery point). It is submitted that the line would enable quantities of gas to be transported from WC 493 to the EC 227 delivery point for delivery to Texas Eastern. It is further submitted that the addition of Tennessee's WC 493 Field gas at the proposed additional delivery point would not increase the existing total contract exchange volume.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 3, 1980, 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 protest 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33985 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP76.370]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc., Natural Gas Pipeline Co. of America; Petition To Amend

October 14, 1980

Take notice that on September 25, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and Natural Gas Pipeline Company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP76.370 a joint petition to amend the order issued April 18, 1980, pursuant to Section 7(c) of the Natural Gas Act so as to authorize two additional delivery points for the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Petitioners state that in the subject docket, they were authorized to construct and operate 9.5 miles of 16-inch pipeline and to exchange of up to 50,000 Mcf of natural gas per day pursuant to the terms of an exchange agreement between the parties dated May 6, 1976.

Petitioners propose herein to add two new delivery points pursuant to the terms of a gas exchange agreement between the parties dated February 11, 1980. It is stated that Tennessee has acquired natural gas produced in West Cameron Block 540 offshore Louisiana, which gas is transported by Texas Eastern Transmission Corporation to Stingray Pipeline Company (Stingray). It is further asserted Stingray would redeliver the gas to Tennessee at a new delivery point proposed herein in West Cameron Block 550.

It is stated that Natural has obtained the right to purchase natural gas produced in Eugene Island Block 321, offshore Louisiana. Petitioners state that the establishment of a new delivery point to Tennessee at Eugene Island Block 302, offshore Louisiana, would serve to implement the delivery of such gas.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 3, 1980, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33986 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP74.94, Phase I, Phase II; Opinion No. 740-C]

United Gas Pipe Line Co. v. Billy J. McCombs, R. James Stillings d.b.a. Gastill Co., David A. Onsgard, Basin Petroleum Corp., Louis H. Haring, Jr., National Exploration Co., E. I. du Pont de Nemours & Co., Bill Forney Sr. and Bill Forney, Inc.; Opinion and Order Affirming Initial Decision on Phase I, Denying Motion To Dismiss, and Partially Affirming Initial Decision on Phase II

Issued: October 24, 1980.

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[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.

I.

We affirm the presiding administrative law judge's Phase I initial decision of March 26, 1976 finding that gas being sold by the McCombs Group [1] to E.I. du Pont de Nemours & Company from the "Butler A" lease in Karnes County, Texas is dedicated to interstate commerce. The Federal Power Commission [2] issued a certificate of public convenience and necessity on December 14, 1954, dedicating gas from oil wells on the Butler A lease to United Gas Pipe Line Company in interstate commerce. Evidence presented presented in the hearings preceding issuance of the administrative law judge's initial decision establishes that the Butler A lease was connected to United's common connection point on January 24, 1955.[3]

The McCombs Group excepts to the administrative law judge's ruling. The McCombs Group acquired the right to sell oil and gas from the Butler A lease on May 19, 1971 when Imperial Investment Company assigned its interests. The McCombs Group alleges that the Butler No. — well, upon which the FPC's 1954 certificate was based, ceased production in May of 1970.[4]

The McCombs Group's argument is that the Commission's certificate of public convenience and necessity has no legal effect beyond the scope of the 1953 contract. The McCombs Group contends that the duration of a certificate is determined by the specifications in the contract. This contention is contrary to the long-standing legal interpretation of the United States Supreme Court concerning the parameters of FPC certificates.[5] The Court has clearly held that the Commission has the authority to issue certificates dedicating the sale of gas to interstate commerce for unlimited duration and that the gas may only be diverted to intrastate commerce with the approval of the Commission. Significantly, when no specification as to time limitation is stated within a certificate of public convenience and necessity, as is true in the instant proceeding, the Supreme Court has ruled that the dedication is for an unlimited period of time regardless of whatever time limitation is provided for in the underlying contract.

While the McCombs Group is correct in stating that the 1953 contract currently in effect describes an expired 1948 leasehold interest, its conclusion that all gas sold from the wells is no longer subject to the Commission's certification conflicts with the ruling in *Hunt* v. *F.P.C.*[6] that "[l]ike the ancient convenant running with the land, the duty to continue to deliver and sell flows with the gas from the moment of first delivery down to the exhaustion of the reserve, or until the Commission, on appropriate terms, permits cessation of service under Section 7(b)." *Sunray Mid-Continent Oil Company* v. *F.P.C.*[7] *similarly expresses the view that there is "a continuing obligation to perform 'service' imposed by the [Natural Gas] Act which outlasts the term of a seller's original contract sale."*

The certificated dedication to interstate commerce extends not only beyond the term of the 1953 contract, but also covers all depths where no depth limitation is specified in the contract. That was the holding regarding the Butler B tract in Opinion No. 740 [8] and the same holding applies to the Butler A tract as well. We reiterate the ruling in Opinion No. 740 that the certificate of public convenience and necessity covers the merchantable natural gas produced from any depth and from all wells drilled on the leaseholds subject to the 1953 Gas Purchase Contract and any subsequent amendment.

This Commission does, of course, possess the authority to implement a remedy in the event of an unauthorized abandonment.[9] The administrative law judge has properly instructed the McCombs Group to repay United in kind the gas which it sold in intrastate commerce, but which was legally dedicated to United in interstate commerce.[10] The judge also properly provided that, if it is later determined that the McCombs Group was under no legal obligation to make deliveries to United, payback in kind from United to the McCombs Group will be required. The McCombs Group and du Pont maintain that it is inequitable to order a retroactive payback because neither party knew that the certification extended beyond the term of the lease, and therefore, the intrastate sales were made in good faith. We pass no judgment upon the motives of the McCombs Group and we are imposing no punitive sanctions upon it. The state of the law is that United is entitled to the gas from the Butler A tract and has been from the date of issuance of the certificate of public convenience and necessity. A payback obligation is an equitable remedy that will be applied to United as well as to the McCombs Group in the event the state of the law is determined to be otherwise. The McCombs Group's argument that United should be required to post bond to assure repayment of the gas is rejected. It is unlikely that United will ever be required to pay back the gas but if it were required to do so, we have no doubt that repayment would be made.

II.

Nor do we find any merit to the contention of the McCombs Group in its August 24, 1979 motion to dismiss Phase I on the grounds the issue is moot due to enactment of the Natural Gas Policy Act which became effective December 1, 1978. The NGPA does not remove this Commission's jurisdiction over pre-NGPA abandonment cases. Section 601(a)(1)(A) of the NGPA removes natural gas from the Commission's jurisdiction if it was not committed or dedicated to interstate commerce on November 8, 1978. The *"Southland* exclusion" in Section 2(18)(B)(iii) of the NGPA provides that certain gas is not considered to be committed or dedicated if the gas was not being sold in interstate commerce on May 31, 1978, and neither person whose action resulted in the gas otherwise being "committed or dedicated," nor that person's affiliates or successors had the rights to the gas on May 31, 1978. The McCombs Group contends that its gas qualifies for the Section 2(18)(B)(iii) exclusion and is therfore removed from the Commission's Natural Gas Act jurisdiction by operation of Section 601(a)(1)(A). However, such removal of jurisdiction operates prospectively only from December 1, 1978. Prior to that date, Commission jurisdiction under Section 7(b) of the NGA is effective.[11]

[1] The McCombs Group consists of Billy J. McCombs, R. James Stillings d.b.a. Gastill Company, David A. Onsgard, Basin Petroleum Corporation, Bill Forney, Sr., and Bill Forney, Inc.

[2] The FPC's functions were transferred to this agency on October 1, 1977.

[3] See Exhibit No. 72 and Transcript at 36.

[4] Ex. 73

[5] *Sunray Mid-Continent Oil Company*, v. *F.P.C.*, 364 U.S. 137 (1960). *Sun Oil Company* v. *F.P.C.*, 364 U.S. 170 (1960). *Atlantic Refining Company* v. *Public Service Commission*, 360 U.S. 378 (1959). *California* v. *Southland Royalty Company*, 436 U.S. 519 (1978). *United Gas Pipe Line, Inc.* v. *McCombs*, 442 U.S. 529 (1979)

[6] 306 F. 2d 334, 342 (5th Cir., 1962), *rev'd on other grounds*, 378 U.S. 515 (1964).

[7] 364 U.S. 137, 153–154 (1960).

[8] *Supra*, 30. Opinion No. 740 states: In the absence of any mention of particular depths, we read that language to include gas produced from any depth and, further, gas produced beyond the term of the contract from wells which were drilled during the term of the contract.

[9] Section 16 of the Natural Gas Act which governs the period of time involved in this case, charges the Commission with the responsibility "to perform any and all acts and prescribe, issue, make, amend, and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this act."

[10] The price of the volumes to be repaid are set forth at footnote 18 herein.

[11] *California, et al.* v. *Southland Royalty Company, et al.* 436 U.S. 519, (1978); *Cox* v. *F.E.R.C.*,

Footnotes continued on next page

The Commission, therefore, possesses authority to order paybacks for violations of the NGA for the period up to December 1, 1978, regardless of whether it lost authority to do so thereafter under the NGPA, where it finds that the public interest requires that the interstate pipeline's customers be made whole. This can best be accomplished by placing those customers in substantially the same position that they would have been in had the McCombs Group delivered the gas to United during the period in question. In our view this is a judicious enforcement policy consistent with the congressional intent referred to in the floor statement made by the Chairman of the Committee of the House of Representatives that drafted the NGPA, Congressman John Dingell:

> With respect to past violations of the Natural Gas Act, it is appropriate that enforcement be accomplished through development of judicious enforcement policies by the Federal Energy Regulatory Commission in consideration of the objectives of the Natural Gas Policy Act.[12]

We have exercised this authority over other pre-NGPA abandonment cases subsequent to the effective date of the NGPA where we determined that the public interest required payback.[13]

A look at the legislative history of the NGPA also shows that the Act was never intended to obviate the Commission's authority in such instances. Congressman Dingell clarified this point in the House debates when he observed that ". . . the bill's provisions are prospective only in their application and do not directly address the question of civil penalties, criminal prosecutions, and obligations for payback for violations of the Natural Gas Act occuring prior to the date of enactment."[14]

As to the second contention of the McComb's Group in the August 24, 1979 filing, that the NGPA has removed our continuing jurisdiction over the Butler A tract since December 1, 1978, we find that the limited record before us is not conclusive. The McCombs Group claims that the Butler A field gas is no longer dedicated to interstate commerce under Section 2(18)(B)(iii) of the NGPA, the so-called "*Southland* exclusion" provision previously discussed. The interest in the Butler A lease which expired in 1970 belonged to Louis H. Haring, Jr. The McCombs Group is composed of the owners of the lease dated February 9, 1971. On May 31, 1978, Haring did not have the right to explore for, develop, produce, or sell natural gas on the Butler A tract, nor was such natural gas being sold in interstate commerce on that date, according to an affidavit filed by him. Therefore, the McCombs Group concludes that the Butler A lease does not fall within the Commission's jurisdiction.

United and the staff in separate filings, dated September 14, 1979, have raised several arguments which call into question the conclusions reached by the McCombs Group.

When the record in this proceeding was developed, the NGPA had not been enacted, and therefore the record was not developed with a view toward resolving the specific problem raised by the NGPA. Accordingly, solely for purposes of determining the nature of the interests of the parties and the applicability of section 2(18)(B)(iii) of the NGPA, we shall reopen the record.

III.

The presiding administrative law judge in his June 16, 1976 initial decision in Phase II of these proceedings ruled on three proposed settlements intended to resolve all disputes between United and producers concerning gas produced from or attributable to the Butler B lease. One of the proposed settlements was submitted by the National Exploration Company (NEC).[15] It provides for a payback of gas to United that was produced but not sold to United after November 1, 1974 whereas Opinion No. 740 provided for a payment of gas produced after August 20, 1975, the date the Opinion was issued. The judge noted that the settlement called for no refund of money based on the difference between emergency sale rates and then applicable large producer rates which would have amounted to less than $160,000, an amount so small in comparison to overall benefits provided by the settlement that the lack of monetary refund is inconsequential. The base price provided is 60 cents per Mcf through November 1, 1975, without Btu adjustment, plus annual one cent escalations. All production taxes paid by NEC are to be reimbursed and the rate shall escalate to whatever applicable general rate may be approved by the Commission for small producers. The administrative law judge expressly stated in the initial decision that no abandonment of any Butler B leasehold interest is allowable under the settlement nor will any be allowed without Commission approval of an abandonment application. This ruling comports with the understanding of NEC, which remains obligated to adhere to the Opinion No. 740 order to deliver 14.205 percent of the gas from the entire unit rather than exclusively from its own Butler B lease interest. We affirm the judge's approval of the NEC settlement with the limitation that the rate for payback attributable to gas diverted on and after July 27, 1976 may not exceed the applicable small producer ceiling rate enunciated in Opinion No. 742-A.

Another settlement was proposed by Haring, *et al*,[16] which provides that Haring will sell to United any future gas it produces from the Butler B field for the same price as that provided by the NEC settlement, 60 cents per Mcf through November 1, 1975, with one cent annual escalations. It also provides for similar tax reimbursement provisions and escalation to any higher applicable general rate approved by the Commission, including the higher rate for small producers. As with the NEC settlement no abandonment is permitted by adoption of the settlement as has been pointed out by the parties and by the administrative law judge. Haring collected royalties on the sale of Butler B gas by the McCombs Group to du Pont in intrastate commerce that should have been made to United in interstate commerce. Therefore, the judge conditioned approval of the settlement upon the excess royalties realized by the intrastate sales being utilized to obtain gas to reduce the McCombs Group's payback obligation to United. However, we approve of the Haring settlement without the judge's proposed condition, and hold the working interest owner is fully responsible for payback of all of the diverted gas irrespective of any excess royalties which may have been paid. The rate for the gas to be sold by Haring will not exceed the applicable ceiling rate.

The third and final proposed settlement dealt with in the initial decision was submitted by the McCombs Group.[17] The administrative

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Footnotes continued from last page
581 F. 2d 449 (1978) *affirming* Opinion No. 1, issued October 26, 1977 and Opinion No. 1-A, issued December 27, 1977.

[12] 124 Cong. Rec. H 13116 (1978).

[13] See *City of Perryton, Texas*, Docket No. CI77-701, order issued August 8, 1979; *J. G. Stone*, Opinion No. 48, Docket No. CI75-277, issued July 27, 1979; and *Atlantic Richfield Company*, Opinion No. 56, Docket No. CI75-201, issued August 3, 1979 and *Texas Oil and Gas Corp.* Docket No. CI79-41, orders issued November 9, 1979 and February 5, 1980. This view has also been expressed in a letter from the Chairman of this Commission to Senator Henry M. Jackson, Chairman of the Senate Committee on Energy and Natural Resources on September 8, 1978.

[14] 124 Cong. Rec. H13115 (1978).

[15] NEC was issued a small producer certificate by order issued February 29, 1972 in Docket No. CS71-484. It was absolved of any payback obligation to United in Opinion No. 740, Ordering Paragraph E, at 36 because it was credited for making emergency sales even though not made pursuant to the certificate herein concerned.

[16] Louis H. Haring, Jr. was issued a small producer certificate April 24, 1972 in Docket No. CS72.778.

[17] Small producer certificates have been issued to the parties comprising the McCombs Group as shown below:

law judge disapproved the proposal because it provided for repayment to United of only 8,500,000 Mcf of gas from specific reserves, including Butler B, whereas the Commission as determined United is entitled to repayment of 15,792,189 Mcf plus all gas diverted elsewhere from the Butler leases, beginning October 31, 1975. The judge also disapproved the settlement because it provided that United's purchase price should be 67.6 cents per Mcf plus adjustments, which he found to be higher than the highest applicable price at the date of diversion. We affirm the reasoning of the judge and the result reached. The arguments raised by the McCombs Group against the judge's ruling are substantially the same as the arguments raised in the Phase I initial decision previously discussed herein and do not merit repeating. The McCombs Group is ordered to make repayment at the highest applicable rate at the time of diversion.[18]

Producer	Docket No.	Order date
B. J. McCombs	CS72-578	4-24-72
R. James Stillings d.b.a. Gas-till Company.	CS72-611	4-24-72
David A. Onsgard	CS72-609	4-24-72
Basin Petroleum Corp.	CS71-1119	11-4-71
Bill Forney	CS72-338	3-10-72
Bill Forney, Inc.	CS76-318	3-24-76

The remaining action of the administrative law judge was to defer any decision on the motion of du Pont to be dismissed from the proceedings on the grounds it is not subject to the Commission's jurisdiction. We agree that the extent of du Pont's liability as a result of its having received gas that was sold in violation of the Natural Gas Act may need to be determined after the McCombs Group has either made United whole or has failed to do so. We therefore affirm this ruling as well.

The Commission orders: (A) The initial decision of March 26, 1976 for the period up to December 1, 1978 is affirmed with the provision that the payback rates shall not exceed the highest applicable rate at the date of diversions as set forth in footnote 18 herein.

(B) The August 24, 1979 motion to dismiss Phase I is denied but the record will be reopened for 60 days from the date of issuance of this Order solely for purposes of permitting the parties to present a statement and supporting documentation to the presiding administrative law judge demonstrating the nature of the interest each of its members and each successor in interest had in the Butler A tract on May 31, 1978. The documentation, if unopposed, shall be admitted in evidence. The administrative law judge is authorized to conduct hearings to resolve material issues of fact regarding the documentation if requested by any party. The judge may then entertain a renewal of the McCombs Group's motion. The administrative law judge shall issue an initial decision regarding the question of the Southland exclusion.

(C) The initial decision of June 16, 1976 is affirmed, with the provision that the rates shall not exceed the lower of the approved settlement rate or the applicable small producer ceiling for NEC or Haring *et al.* The condition attached to approval of the Haring settlement is removed. The initial decision is approved with respect to the McCombs Group with the provision that the payback rate not exceed the highest applicable rate at the time of diversion as set forth in footnote 18 herein.

(D) Within 90 days from the issuance of this Opinion and Order all parties will file with the Secretary of the Commission a report reflecting its compliance with the rulings in the initial decisions affirmed herein.

(E) The Secretary shall cause prompt publication of this Opinion and Order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appearances

Platt W. Davis, III, J. Evans Attwell, Larry J. Gunn, W. DeVier Pierson, Knox Bemis, James M. Costan, Michelle B. Bolton, William B. Cassin, and *James A. Tramuto* for United Gas Pipe Line Company

Stanley L. Cunningham, Terry R. Barrett, Richard F. Generelly for Billy J. McCombs, *et al.*

John T. Miller, Jr. for National Exploration Company

Kenneth Oden and *Bernard A. Foster, III* for Louis H. Haring, Jr.

Jerome Ackerman, Nicholas W. Fels and *Eric A. Eisen* for E. I. du Pont de Nemours and Company

Glenn Letham and *Donald J. Stauber* for the Staff of the Federal Energy Regulatory Commission

[FR Doc. 80-33986 Filed 10-30-80; 8:45 am]

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[18]The 1953 Gas Purchase Contract as amended February 7, 1961 by H. A. Pagenkopf *et al.* and United extends the term to February 7, 1981. The contract price is not being upheld with respect to the NEC and Haring paybacks because they have agreed with United to the new 60 cents per Mcf rate. This renegotiation of price between the parties is provided for in the contract. The record indicates (Tr. 90.562) that United would have renegotiated the contract to include an FPC clause permitting the prices to escalate to the highest applicable FPC large/small producer ceiling prices if requested by the McCombs Group. Thus, we adopt these rates as an appropriate equitable remedy for the illegal diversion. The rates applicable to repayment volumes diverted during each period are as follows:

(A) The applicable base area rates pursuant to Opinion No. 595: 19.0 cents per Mcf at 14.65 psia until October 1, 1973; 20.0 cents per Mcf at 14.65 psia until August 28, 1975.

(B) 130% of above 20.0 cents per Mcf until January 1, 1976 under Opinion No. 742.

(C) 130% of the applicable flowing gas rate prescribed by Opinion No. 749: 23.5 cents per Mcf at 14.73 psia until July 1, 1976; 29.5 cents per Mcf at 14.73 psia until July 27, 1975.

(D) The applicable small producer ceiling rate prescribed by Opinion No. 742-A: 35.0 cents per Mcf at 14.73 psia until December 1, 1978.

(E) $.393 per MMBtu commencing December 1978 with monthly inflation adjustments thereafter pursuant to the NGPA.

[Project No. 3410]

Woods Lake Association; Application for Short-Form License (minor)

October 24, 1980.

Take notice that Woods Lake Association (Applicant) filed on August 27, 1980, an application for license [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-(4)] for continued operation of a water power project to be known as Woods Lake Project No. 3410. The project is located on Lime Creek, tributary to Fryingpan Creek, in Eagle County, Colorado. Corresponsence with the Applicant should be directed to: Russell Scott, Jr., Agent, Woods Lake Association, Post Office Box 4257, Aspen, Colorado 81611.

Project Description—The run-of-the-creek project consists of: (1) a reinforced concrete overflow-type dam 25 feet long and 6 feet high; (2) a reservior having a surface area of 0.018 acres and negligible storage; (3) a gated and screened intake structure and a sluiceway; (4) an 8-inch diameter, 630-foot long cast-iron and steel pipeline; (5) a powerhouse containing a generating unit having a rated capacity of 30-kW operated under a 144-foot head; (6) a short 12-inch diameter pipe tailrace; (7) a 1.02-mile long transmission line, and (8) appurtenant facilities.

Purpose of Project—Project energy is used by the members of the Woods Lake Association. Applicant estimates the annual generation averages about 98,640 kWh.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the Application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), *as amended,* 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), *as amended,* 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 5, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33999 Filed 10-30-80; 8:45 am]

BILLING CODE 6540-85-M

[Project No. 3428]

Worumbo Hydro, Inc.; Application for Preliminary Permit

October 24, 1980.

Take notice that Worumbo Hydro, Incorporated (Applicant) filed on September 5, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3428 to be known as the Worumbo Project located on the Androscoggin River in the Town of Lisbon Falls, Androscoggin County, Maine. Correspondence with the Applicant should be directed to: Mark Issacson, Worumbo Hydro, Inc., P.O. Box 465, Lisbon, Maine 04250.

Project Description—The project now consists of an existing dam, canal, and powerhouse in the Worumbo Mill building containing three 300 kW turbine-generators. Applicant proposes to study the feasibility of the installation of four 3.5 MW turbine-generators in a new powerhouse at the west end of the existing dam. A new tailrace channel would also be constructed. The project would be capable of generating an additional 75,000,000 kWh annually saving the equivalent of 123,000 barrels of oil or 35,000 tons of coal.

Purpose of Project—Markets for the electric energy produced would be determined during the term of the preliminary permit.

Proposed Scope and Cost of Studies Under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $395,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 9, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (*as amended,* 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), (*as amended,* 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests of other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervent must be filed on or before January 5, 1981. The Commission's address is: 825 North Capitol Street, NE, Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33887 Filed 10-30-80; 8:45 am]

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[Volume 306]

Notice of Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: October 27, 1980.

BILLING CODE 6450-85-M

OKLAHOMA CORPORATION COMMISSION

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
-AGGIE OIL CO					RECEIVED: 10/14/80 JA: OK			
*8101685	05665	3510522633	103		EDWARDS #1	NOWATA - CLAGETT	10,0	A-G SYSTEMS LTD
*8101686	05664	3510522632	103		KEATON #1	NOWATA - CLAGETT	75,0	A-G SYSTEMS LTD
-AMAREX INC					RECEIVED: 10/14/80 JA: OK			
8101683	05666	3501700000	102		MARIE SMITH #1	SW EL RENO	290,0	MICHIGAN WISCONSIN P
-AMCOLE ENERGY CORP					RECEIVED: 10/14/80 JA: OK			
8101677	05228	3507321990	102		LEAH M DUNN #1	SOONER TREND	0,0	CONTINENTAL OIL CO
-AMERICAN QUASAR PETROLEUM CO					RECEIVED: 10/14/80 JA: OK			
8101715	05697	3509520207	107		FEDERAL 1-11	SEC 11 T8S-R4E	1825,0	NATURAL GAS PIPELINE
-AMOCO PRODUCTION CO					RECEIVED: 10/14/80 JA: OK			
8101714	05704	3513900000	108		FAST GAS UNIT A #1	GUYMON-HUGOTON	19,6	PHILLIPS PETROLEUM C
-AN-SON CORPORATION					RECEIVED: 10/14/80 JA: OK			
8101682	05662	3505120895	103		ANDERSON A #1	LAVERTY	90,0	PHILLIPS PETROLEUM C
-ANADARKO PRODUCTION COMPANY					RECEIVED: 10/14/80 JA: OK			
8101666	04879	3513921245	102		BIGGS A NO 1	GUYMON	1029,0	PANHANDLE EASTERN PI
-ANDOVER OIL COMPANY					RECEIVED: 10/14/80 JA: OK			
8101644	05703	3501721373	103		GLOBE LIFE B #34-3		185,0	DELHI GAS PIPELINE C
8101643	05708	3501721345	103		GLOBE LIFE D #34-2		185,0	DELHI GAS PIPELINE C
8101645	05701	3501721463	103		XEROX GLOBE LIFE F #34-4		185,0	DELHI GAS PIPELINE C
-ARCO OIL AND GAS COMPANY					RECEIVED: 10/14/80 JA: OK			
8101700	05558	3501921970	103		BOONE-GIBSON #2	HEALDTON	8,0	ARCO OIL & GAS CO
8101696	05243	3505920858	103		CANFIELD GAS UNIT #5	NORTHWEST LOVEDALE	19,0	CITIES SERVICE GAS C
8101668	04642	3504721866	102		DALE WEHLING #1	SOUTH DOUGLAS	92,0	
8101654	04861	3504721860	102		FERN WALKER #1	SOUTH DOUGLAS	73,0	
8101600	05709	3504321010	103		HENRY WAY UNIT #1	PUTNAM	73,0	MICHIGAN WISCONSIN P
8101698	05620	3512120625	103		U S GOVERNMENT #27-2	WILBURTON	365,0	ARKANSAS LOUISIANA G
-B R CARTER					RECEIVED: 10/14/80 JA: OK			
8101687	05663	3513121006	102		HUDSON #2		40,0	DIAMOND S GAS SYSTEM
-B R POLK INC					RECEIVED: 10/14/80 JA: OK			
8101610	05729	3508321104	103		KENDRICK #1	LOVELL	109,0	EASON OIL CO
8101595	05735	3508300000	103		NAVRATIL-STANFORD #1	LOVELL	54,8	EASON OIL CO
8101613	05726	3508321103	103		SADE #1	LOVELL	146,0	EASON OIL CO
8101612	05727	3508321235	103		SADE #2	LOVELL COUNTY	292,0	EASON OIL CO
8101611	05728	3508300000	103		VAVERKA #3A	MARSHALL	18,0	EASON OIL CO
-BLAIK OIL COMPANY					RECEIVED: 10/14/80 JA: OK			
8101704	05482	3504722084	103		ESTILL UNIT #2	SOONER TREND	27,0	EXXON CO USA
8101707	05674	3504722130	103		MARY BETH #2	SOONER TREND	50,0	PHILLIPS PETROLEUM C
-BONANZA PETROLEUM INC					RECEIVED: 10/14/80 JA: OK			
8101602	04675	3500721624	103		SOVEREIGN #1 LAVERTY	LAVERNE	180,0	MICHIGAN WISCONSIN P
-BONRAY ENERGY CORP					RECEIVED: 10/14/80 JA: OK			
8101721	05668	3508320744	103		FILMORE LISTEN #1	HULHALL	150,0	AMINOIL USA INC

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8101709	05671	3504721661	103		JOE FRANKS #1	SW PERRY	150,0	AMINOIL USA INC
8101720	05669	3508320627	103		KIGHTLINGER #1	MULHALL	150,0	AMINOIL USA INC
8101710	05670	3508320755	103		KINCAID A #1	MULHALL	150,0	AMINOIL USA INC
8101722	05667	3508320733	103		KINCAID B #1	MULHALL	150,0	AMINOIL USA INC
*CAYMAN EXPLORATION CORP					RECEIVED: 10/14/80. JA: OK			
8101601	05672	3507322314	103		RIGGS #1		109,5	CONOCO INC
*CHAMPLIN EXPLORATION INC					RECEIVED: 10/14/80 JA: OK			
8101692	05386	3509321714	103		PHILLIPS NO 2		91,3	AMINOIL USA INC
*CHAMPLIN PETROLEUM COMPANY					RECEIVED: 10/14/80 JA: OK			
8101619	04570	3509300000	108		JANTEEN-ROWE #1	E CHANEY DELL	5,0	CHAMPLIN PETROLEUM C
*CHOCTAW GAS CO					RECEIVED: 10/14/80 JA: OK			
8101724	05515	3512120119	108		FEATHERSTON #1	FEATHERSTON #1	13,6	SE TRANSMISSION & CO
*CITIES SERVICE COMPANY					RECEIVED: 10/14/80 JA: OK			
8101708	05673	3506120320	102		TREASURE COVE A #2 (BASAL ATOKA)	NORTH RUSSELLVILLE	54,8	ARKANSAS LOUISIANA G
*CLASSEN OIL AND GAS COMPANY					RECEIVED: 10/14/80 JA: OK			
8101638	05497	3500320718	103		ROSE MEANS #1	S E LAMBERT	250,0	AMINOIL USA
*CONOCO INC					RECEIVED: 10/14/80 JA: OK			
8101648	05658	3507300000	108		HOBBS 30 #2	DOVER-HENNESSEY	14,9	RODMAN PETROLEUM COR
8101647	05659	3507300000	108		HOBBS 30 #6	DOVER-HENNESSEY	9,8	RODMAN PETROLEUM COR
8101646	05661	3505120416	108		LOLA LAWRENCE A #2	E TUTTLE	3,0	MOBIL OIL CO
8101671	05655	3500300000	108		N E CHEROKEE UNIT #13	N E CHEROKEE	0,1	OKLAHOMA NATURAL GAS
8101670	05656	3500300000	108		N E CHEROKEE UNIT #45	N E CHEROKEE	3,3	OKLAHOMA NATURAL GAS
8101672	05654	3504500000	108		PEARL CROOKS #1	MAY	17,0	MICHIGAN-WISCONSIN P
8101649	05650	3501900000	108		VELMA CAMP DEESE UNIT #47	S.E VELMA	0,1	GETTY OIL CO
*8101673	05653	3501900000	108		VELMA CAMP DEESE UNIT #50	S E VELMA	0,1	GETTY OIL CO
*COURT PAPPE JR					RECEIVED: 10/14/80 JA: OK			
8101634	05619	3507322331	103		PAM #1	SOONER TREND	182,5	CITIES SERVICE GAS C
*DALCO PETROLEUM INC					RECEIVED: 10/14/80 JA: OK			
8101706	04853	3507322256	103		MASON #1	SOONER TREND	72,0	CITIES SERVICE GAS C
8101618	04854	3507322197	103		MCKEEVER NO 1	SOONER TREND	72,0	CITIES SERVICE GAS C
*DAVIS OIL COMPANY					RECEIVED: 10/14/80 JA: OK			
8101653	05510	3503900000	103		COMBS NO 1	SOUTH THOMAS	600,0	TRANSOK PIPELINE CO
8101689	05454	3503900000	103		WINGARD NO 4	SOUTH THOMAS	200,0	PUBLIC SERVICE CO OF
*DICK BOGERT INC					RECEIVED: 10/14/80 JA: OK			
*8101652	05574	3504722092	103		BOHN 1-32	SOONER TREND	275,0	UNION TEXAS PETROLEU
8101705	05500	3507322162	103		DOROTHY 1-14	SOONER TREND	60,0	PHILLIPS PETROLEUM C
8101637	05511	3507322433	103		EDITH 1-26	SOONER TREND	215,0	EASON OIL CO
*F C D LTD					RECEIVED: 10/14/80 JA: OK			
8101621	02952	3504721575	103		BLASER 1-18	EAST ENID	107,0	GRACE PETROLEUM CORP
*GULF OIL CORPORATION					RECEIVED: 10/14/80 JA: OK			
8101664	05078	3505930056	108		ROETKER #1	LOVEDALE NW	15,0	MICHIGAN WISCONSIN P
*HELMERICH & PAYNE INC					RECEIVED: 10/14/80 JA: OK			
*8101716	04298	3501520842	102		JENNINGS NO 1-20 01520842		183,0	MICHIGAN WISCONSIN P
*8101718	04248	3501520824	102		KECK A NO 1-A		1460,0	MICHIGAN WISCONSIN P
*8101717	04247	3501520834	102		LARSON NO 1-32		2920,0	MICHIGAN WISCONSIN P
*HENRY H GUNGOLL					RECEIVED: 10/14/80 JA: OK			
8101676	05231	3504721911	103		LUCKERT #2-20	NW ENID	0,0	
*J WALTER DUNCAN JR					RECEIVED: 10/14/80 JA: OK			
8101667	04777	3505100000	102		PARR #1	S E CHICKASHA	1095,0	
*JET OIL COMPANY					RECEIVED: 10/14/80 JA: OK			
8101694	05259	3508320967	103		ANNA PRIESS #3	S E RUSSELL	3,0	SERVICE DRILLING CO
*L G WILLIAMS OIL COMPANY INC					RECEIVED: 10/14/80 JA: OK			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8101684	05644	3501721151	103		CONDRY 1-1	WATONGA TREND	0,0	MICHIGAN WISCONSIN P
8101640	04919	3501721186	103		LAMB #19-3	YUKON	112,8	PHILLIPS PETROLEUM C
*LADD PETROLEUM CORPORATION					RECEIVED: 10/14/80 JA: OK			
8101655	05472	3509321588	103		WATSON NO 2	RINGWOOD	548,0	OKLAHOMA NATURAL GAS
*LION PETROLEUM CO					RECEIVED: 10/14/80 JA: OK			
8101659	05792	3507300000	108		HASLEY #1	WEST EDMOND	17,0	SWAB CORP
*MOBIL OIL CORP					RECEIVED: 10/14/80 JA: OK			
8101607	05839	3503900000	108		TED WEBB UNIT - WELL #1	NORTH CUSTER CITY	9,5	NATURAL GAS PL CO OF
*NORTHERN NATURAL GAS CO					RECEIVED: 10/14/80 JA: OK			
8101598	05711	3500721369	103		BANKER NO 1-34	MOCANE	20,0	NORTHERN NATURAL GAS
8101599	05710	3500721521	103		FLOCK NO 1-19	SOUTH LOGAN	10,0	NORTHERN NATURAL GAS
8101597	05712	3500721349	103		HENRICKS NO 1-18	LOGAN SE	19,0	NORTHERN NATURAL GAS
8101596	05714	3500721458	103		JUDY NO 1-35	MOCANE NE	35,0	NORTHERN NATURAL GAS
8101614	05718	3500721469	103		SENN-HULL NO 1-30	LOGAN NW	10,0	NORTHERN NATURAL GAS
8101642	05719	3505920761	103		STATE #1-19	LOVEDALE	990,0	NORTHERN NATURAL GAS
8101615	05716	3505920762	103		STATE NO 1-28	LOVEDALE	150,0	NORTHERN NATURAL GAS
8101616	05715	3505920736	103		STATE NO 1-29	LOVEDALE	170,0	NORTHERN NATURAL GAS
*OFT EXPLORATION INC					RECEIVED: 10/14/80 JA: OK			
8101605	05842	3515320884	102		NORA MINER 1-29		360,0	NATURAL GAS PIPELINE
*PACIFIC OIL & GAS CO					RECEIVED: 10/14/80 JA: OK			
8101641	04797	3515320563	102		#3 COLLIER	NORTH BOILING SPRINGS	456,3	NORTHERN NATURAL GAS
*PETROLEUM INC					RECEIVED: 10/14/80 JA: OK			
8101691	05426	3504321024	103		TAYLOR UNIT B #1	SE CESTOS	200,0	DELHI GAS PIPELINE C
*PHILLIPS PETROLEUM COMPANY					RECEIVED: 10/14/80 JA: OK			
8101678	05145	3513900000	108		ALFA NO 1	GUYMON HUGOTON	0,0	MICHIGAN WISCONSIN P
8101711	05746	3513700000	108		CULBERSON #9	DOYLE	0,0	AMINOIL USA INC
8101591	05740	3501721322	103		DUDEK A NO 1	YUKON	0,0	PANHANDLE EASTERN PI
8101593	05738	3505120875	103		MCCONNELL A NO 1	UNION CITY	0,0	TRANSOK PIPELINE CO
8101712	05745	3513900000	108		MELLISSA NO 1	GUYMON HUGOTON	20,0	PANHANDLE EASTERN PI
8101594	05737	3509321646	103		REHL A		0,0	PANHANDLE EASTERN PI
8101713	05743	3501720597	108		STOVER A #1	W PIEDMONT	0,0	OKLAHOMA GAS & ELECT
8101592	05739	3501721054	103		TREECE A #1	YUKON	0,0	PANHANDLE EASTERN PI
8101590	05741	3501721284	103		ZUM MALLEN C #1		0,0	PANHANDLE EASTERN PI
*PHOENIX RESOURCES COMPANY					RECEIVED: 10/14/80 JA: OK			
8101622	02522	3504500000	102		PREWETT 29-1	FARGO	150,0	NORTHERN NATURAL GAS
*READING & BATES PETROLEUM CO					RECEIVED: 10/14/80 JA: OK			
8101630	05749	3501900000	108		FRASER LEASE - WELL #1	CADDO	21,0	UNION OIL CO OF CALI
8101719	05748	3501900000	108		FRASER LEASE - WELL #3	CADDO	20,1	UNION OIL CO OF CALI
8101604	05752	3501900000	108	D	NOBLE B LEASE - WELL #1	CADDO	6,3	UNION OIL OF CALIFOR
8101628	05751	3501900000	108	D	NOBLE B LEASE - WELL #3	CADDO	13,0	UNION OIL CO CALIFOR
8101629	05750	3501900000	108		NOBLE B LEASE - WELL #6	CADDO	3,7	UNION OIL CO CALIFOR
*RED EAGLE OIL CO					RECEIVED: 10/14/80 JA: OK			
8101608	05731	3509321662	103		MCKEE NO 1	CHEYENNE VALLEY	9,0	DELHI GAS PIPELINE C
8101609	05730	3509321636	103		SUNDERMAN NO 1	CHEYENNE VALLEY	75,0	DELHI GAS PIPELINE C
*RICKS EXPLORATION CO					RECEIVED: 10/14/80 JA: OK			
8101726	05328	3505120821	102		DUNN #1	SE CHICKASHA	700,0	ARKANSAS LOUISIANA G
8101699	05590	3509321710	103		NEUFELD 10A (PARKER 10A)	DANE	50,0	PHILLIPS PETROLEUM C
8101688	05588	3509321710	103		PARKER 10B	DANE	24,0	PHILLIPS PETROLEUM C
*RIDDLE OIL CO					RECEIVED: 10/14/80 JA: OK			
8101639	05363	3505500000	108		REEVES #1	SE JESTER	3,0	HARLOW CORP
*SAMEDAN OIL CORPORATION					RECEIVED: 10/14/80 JA: OK			
8101626	05612	3505120773	102		OSBORN #1		365,0	TRANSOK PIPELINE CO

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD.	PURCHASER
8101624	05623	3501721252	102		SMRCKA #1		75,0	DELHI GAS PIPELINE C
8101675	05624	3508520270	102		STATE NO 1-4		200,0	AMINOIL USA INC
-SAMSON RESOURCES COMPANY					RECEIVED: 10/14/80 JA: OK			
8101603	04675	3506120329	102		FURROW NO 1	RED OAK	1500,0	ARKANSAS LOUISIANA G
8101660	05777	3506120185	108		QUINTON ET AL NO 1	KINTA	16,5	ARKANSAS LOUISIANA G
8101661	05773	3512120380	108		TREKELL NO 1	KINTA	17,4	ARKANSAS LOUISIANA G
-SHAR-ALAN OIL CO					RECEIVED: 10/14/80 JA: OK			
8101703	05625	3507322265	103		KELLY #1	SOONER TREND	35,0	PHILLIPS PETROLEUM C
-SHAVER PAUL M					RECEIVED: 10/14/80 JA: OK			
8101657	04053	3505920761	102		NORTHERN NATURAL STATE NO 1-19	LOVEDALE	250,0	NORTHERN NATURAL GAS
-SUN OIL COMPANY (DELAWARE)					RECEIVED: 10/14/80 JA: OK			
8101631	05763	3509300000	108		A I RATZLAFF NO 1	RINGWOOD	11,0	UNION TEXAS PETROLEU
8101669	05760	3500700000	108		ALTMILLER WELL #1	COMO S E	7,2	NORTHERN NATURAL GAS
8101627	05758	3505300000	108		SCHMITZ NO 2	WAKITA TREND	4,8	CITIES SERVICE GAS C
8101632	05762	3505920648	108		STATE OF OKLAHOMA O NO 2	MOCANE-LAVERNE	18,0	COLORADO INTERSTATE
-TENNECO OIL COMPANY					RECEIVED: 10/14/80 JA: OK			
8101695	05248	3500721671	103		CARLISLE 14-16 (MORROW)	MOCANE-LAVERNE	154,8	COLORADO INTERSTATE
-TESORO PETROLEUM CORP					RECEIVED: 10/14/80 JA: OK			
*8101650	05649	3509321734	103		STATE OF OKLAHOMA NO 1-36	N E SEILING	164,0	DELHI GAS PIPELINE C
-THE GHK COMPANY					RECEIVED: 10/14/80 JA: OK			
8101656	04840	3500920282	102		1-20 BAKER	SOUTHWEST CARPENTER FIEL	1,4	ARKANSAS LOUISIANA G
-TRANSIERRA EXPLORATION CORP					RECEIVED: 10/14/80 JA: OK			
8101697	05629	3510320924	103		CINNAMON NO 1	TRANSIERRA-CINNAMON FIEL	36,0	AMINOIL USA INC
8101702	05628	3508120981	103		PASCHALL PROPERTIES INC NO 2	SOUTHWEST PRAIRIE GEM FI	34,0	SUN OIL CO
8101690	05448	3504721877	103		RUFUS JAMES NO 3	GARBER	7,0	ATLANTIC RICHFIELD C
-TRIGG DRILLING COMPANY INC					RECEIVED: 10/14/80 JA: OK			
8101658	05828	3512920376	102		TAYLOR #1		350,0	EL PASO NATURAL GAS
8101665	05002	3501120997	102		WOOLMAN #1	WATONGA	600,0	DELHI GAS PIPELINE C
-UNIVERSAL RESOURCES CORPORATION					RECEIVED: 10/14/80 JA: OK			
8101636	05544	3501121022	103		COMBS 1-32	CEDAR SPRINGS	150,0	DELHI GAS PIPELINE C
8101680	05130	3507321473	108		EVANS 2-18	ALTONA	8,0	TRANSOK PIPE LINE CO
8101662	05135	3507321593	108		HUFFMAN 1-10	SOONER TREND	5,0	PHILLIPS PETROLEUM C
8101663	05134	3512900000	108		KIRBIE 1-35	PEEK SOUTH	5,0	PHILLIPS PETROLEUM C
8101681	05131	3507320853	108		KOOKEN 1-16	ALTONA	19,0	PARTNERSHIP PROPERTI
8101679	05132	3507321499	108		MCCANDLESS 1-33	ALTONA	4,0	TRANSOK PIPE LINE CO
8101617	05126	3501720790	108		STINE 1-1	CONCHO NE	12,0	OKLAHOMA GAS & ELECT
-VIERSEN & COCHRAN					RECEIVED: 10/14/80 JA: OK			
8101693	05416	3504722051	103		LITSCHKE-GREER #1	SOONER TREND	120,0	UNION TEXAS PETROLEU
-VULCAN ENERGY CORP					RECEIVED: 10/14/80 JA: OK			
8101620	03994	3507322223	103		JARRELL #1	SOONER TREND	40,0	CITIES SERVICE GAS C
8101723	05637	3504721433	103		PHARES #1	NW ELKHORN	150,0	AMINOIL USA INC
8101674	05636	3504721335	103		REIM #1	SOONER TREND	200,0	AMINOIL USA INC
-WALKER & WITHROW INC					RECEIVED: 10/14/80 JA: OK			
8101651	05648	3501721439	103		MAIKA 9-1	NORTH YUKON	125,0	DELHI GAS PIPELINE C
8101635	05592	3501721384	103		TREECE 4-1	NORTH YUKON	125,0	PHILLIPS PETROLEUM C
-WARREN DRILLING CO INC					RECEIVED: 10/14/80 JA: OK			
*8101701	05537	3500300000	103		EDNA M DUNN #1	RINGWOOD	85,0	UNION TEXAS PETROLEU
-WILLIFORD ENERGY CO					RECEIVED: 10/14/80 JA: OK			
8101633	05647	3501921723	103		APPLE NO 5	HEWITT	24,0	AMINOIL USA INC
8101623	05641	3501921813	103		APPLE NO 6	HEWITT	24,0	AMINOIL USA INC
-WM J OCONNOR					RECEIVED: 10/14/80 JA: OK			
8101606	08720	3500320678	103		MCCRAY #1	OAKDALE	180,0	

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8101625	05616	3515120700	103		SARGENT #1	WEST ALINE	180.0	
8101725	05514	3515121008	103		WARREN #1	WEST CARMEN	180.0	

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WYOMING OIL & GAS CONSERVATION COMMISSION

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-PHILLIPS PETROLEUM COMPANY RECEIVED: 10/14/80 JA: WY

8101727	NG 103-79	4902906039	108		DANKER-A NO 1	BIG POLE CAT	18.0	FRANNIE - DEAVER UTI
8101728	NG-104-79	4902906109	108		STATE POLECAT - A NO 6	BIG POLE CAT	22.0	MONTANA - DAKOTA UTI

OTHER PURCHASERS VOLUME NO 1306

8101650	MICHIGAN WISCONSIN PIPELINE CO
8101652	PANHANDLE EASTERN PIPELINE CO
8101673	AMINOIL USA INC
8101685	CITIES SERVICE GAS CO
8101686	CITIES SERVICE GAS CO
8101701	PANHANDLE EASTERN PIPELINE CO
8101716	PRODUCERS GAS CO
8101717	PRODUCERS GAS CO
8101718	PRODUCERS GAS CO

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceeding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 17, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33984 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

Office of Resource Applications

Davis Pumped Storage Project in West Virginia; Draft Report of Study of Alternatives

AGENCY: Department of Energy DOE.

ACTION: Notice of availability of draft report and request for public comment.

SUMMARY: On or about November 10, 1980, the Department of Energy (DOE) will publish a draft study report on alternatives to the Davis (West Virginia) Pumped Storage Project proposed by Allegheny Power System, Inc. The study examined the energy, economic, and environmental merits of various energy supply and conservation alternatives and compared them with the Davis Project. DOE is requesting comments on the draft report from all interested parties.

DATE: The deadline for written comments is December 10, 1980, or 30 calendar days from the publication date of the draft report, whichever is later.

ADDRESS: Requests for the draft study report and comments on the draft report should be mailed to Virginia Ballengee, U.S. Department of Energy, RA-72, Mail Stop 3344 Federal Building, Washington, D.C. 20461. Hand delivered requests or comments should be delivered directly to Mrs. Ballengee at Room 1113, 1200 Pennsylvania Avenue, N.W., Washington, D.C. Persons already receiving notices of Davis Study Task Force meetings or who have previously requested the draft report will receive the report without making a new request.

Comments submitted in response to this notice may be inspected at the Freedom of Information Reading Room, U.S. Department of Energy, Room 1E190, 100 Independence Avenue, Washington, D.C. 20585, between 8:00 a.m. and 4:00 p.m. on business days after the expiration of the thirty (30) day comment period. Comments on the draft report will be published verbatim in the final report along with DOE's response to the comments. Therefore, only written comments will be accepted.

FOR FURTHER INFORMATION CONTACT:: Virginia Ballengee, Office of Resource Applications, U.S. Department of Energy, (202) 633-8963.

Issued in Washington, D.C. on October 27, 1980.

Ruth M. Davis,

Assistant Secretary for Resource Applications, Department of Energy.

[FR Doc. 80-33883 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180472A; FRL 1613-6]

California Department of Food and Agriculture; Issuance of Specific Exemption for Diazinon

Correction

In FR Doc. 80-29309, at page 63132, in the issue of Tuesday, September 23, 1980, on page 63133, make the following corrections:

(1) In the first column, the first paragraph, correct "diazimnon" to read diazinon".

(2) In the first column, under the "For Further Information Contact:", delete the line which reads "Environmental Protection Programs".

(3) In the first column, under the "Supplementary Information", the first paragraph, the seventh line up, the word "the" preceeding applicant should be capitalized.

(4) In the second column under item number "2.", the first word "Diazinion" is corrected to read "Diazinon" and in the third line "minimim" is corrected to read "minimum".

BILLING CODE 1505-01-M

[PH-ERL 1647-8; PF 155A]

Chevron Chemical Co.; Filing of Pesticide and Food Additive Petitions; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces amendments to the pesticide and food additive petitions on the herbicide diquat submitted by Chevron Chemical Co. The amendments propose to increase tolerances on certain commodities.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-351, 401 M St., SW., Washington, D.C. 20460 (202-755-1397).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of November 9, 1979 (44 FR 65130) that pesticide petition (PP) 9F2265 and food additive petition (FAP) 9H5239 had been filed by Chevron Chemical Co. These petitions proposed that 40 CFR 180.226 (9F2265) and 80P-1048 21 CFR 193.160 (9H5239) be amended to establish tolerances and/or regulation permitting residues of the herbicide diquat [6,7-dihydrodipyrido (1,2-a:2',1'-c) pyrazinediium] dervied from the application of dibromide salt and calculated as cation in or on certain raw agricultural and/or food commodities.

Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804, has submitted amendments to the above petitions increasing tolerances as follows:

Petition number	Commodity	Previously proposed tolerance (part per million)	Proposed amended tolerance (part per million)
PP 9F2265	Eggs	0.01	0.02
	Milk	0.01	0.02
	Meat, fat, and meat by-products of poultry.	0.01	0.02
FAP 9H5239.	Processed potatoes (including potato chips).	0.2	0.5

(Secs. 408(d)(1); 68 Stat. 512, (7 U.S.C. 135); 409(b)(5); 72 Stat. 1786, (21 U.S.C. 3481))

Dated: October 22, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-33930 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-32-M

[W-1-FRL 1649-4]

Connecticut Pretreatment Program Submission

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal to incorporate a pretreatment program into the Connecticut national pollutant discharge elimination system (NPDES) permit program.

SUMMARY: The Connecticut Department of Environmental Protection has submitted a request for approval of its State Pretreatment Program.

DATES: Comments must be received on or before December 1, 1980.

ADDRESSES: Copies of the Connecticut submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Permits Branch, Room 2109, JFK Federal Building, Boston, Massachusetts 02203; and Department of Environmental Protection, Water Compliance Unit, 122 Washington Street, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Stephen J. Silva, Permits Branch, Environmental Protection Agency, Region I, Room 2109, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5061.

SUPPLEMENTARY INFORMATION: The Pretreatment Program required by the Clean Water Act of 1977, governs the control of industrial wastes introduced into Publicly Owned Treatment Works (POTWs). The Connecticut Department of Environmental Protection has submitted a request for approval of its State Pretreatment Program in accordance with the requirements and procedures of the General Pretreatment Regulations (40 CFR Part 403). This request for approval consists of a description of how the State proposes to operate the program. A statement from the Connecticut Attorney General that the State has adequate legal authority to conduct the program, and a Memorandum of Agreement between the State and EPA Regional Office.

EPA is providing an opportunity for public comment on the State's request. Public comments should be sent to EPA at the address indicated above prior to the close of the 30 day comment period. All comments will be considered in the decision on whether or not to approve the program. If there is sufficient public interest, a public hearing will be held, and the time and place of the hearing will be public noticed. All persons submitting comments will be notified of the approval or disapproval of the program by the Administrator.

Dated: October 23, 1980.

Lawrence M. Goldman,

Acting Director, Enforcement Division, Region I.

[FR Doc. 80-33007 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

[A-5-FRL 1649-6]

Koppers Co., Inc., Wickliffe, Ohio; Installation of an Asbestos Handling System

In the matter of the applicability of Title 1, Part A, Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412 *et seq.*, and the Federal regulations promulgated thereunder at 40 CFR Part 61, Subpart A (38 F.R. 8826, April 6, 1973) for National Emission Standards for Hazardous Air Pollutants (NESHAPS), to install an asbestos handling system at Koppers Company, Incorporated in Wickliffe, Ohio.

On June 27, 1980 and August 15, 1980, Koppers Company, Incorporated submitted applications to the U.S. Environmental Protection Agency (U.S. EPA), Region V office, for a determination of applicability of the NESHAPS regulations. Under 40 CFR Section 61.06, it has been determined that the asbestos handling system is subject to the NESHAPS modification regulations.

This application was also submitted for our approval of the modification. Under 40 CFR Section 61.06 the installation of the asbestos handling system is approved.

On September 19, 1980, Koppers Company, Incorporated was notified that they are subject to NESHAPS modification regulations and that their applications were complete and approval to install was granted.

This determination does not relieve Koppers Company, Incorporated of the responsibility to comply with the control strategy of all Federal, State and local regulations which are part of the applicable State Implementation Plan as well as all other Federal, State and local requirements. This determination may now be considered final agency action which is locally applicable under Section 307(b)(i) of the Act and therefore a petition for review may be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with 307(b)(i), petitions for review must be filed 60 days from the date of the this notice. For further information contact Patricia Krause, Air Compliance Section, Enforcement Division, Region V, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 353-2090.

Dated: October 22, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-33009 Filed 10-28-80; 8:45 am]

BILLING CODE 6560-38-M

[A-1-FRL 1649-5]

Vermont Pretreatment Program Submission

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal to incorporate a pretreatment program into the Vermont national pollutant discharge elimination system (NPDES) permit program.

SUMMARY: The Vermont Agency of Environmental Conservation has submitted a request for approval of its State Pretreatment Program.

ADDRESSES: Copies of the Vermont submittal are available for public inspection during normal business hours at the Enviornmental ProtectionAgency, Region I, Permits Branch, Room 2109, JFK Federal Building, Boston, Massachusetts 02203; and the Agency of Environmental Conservation, Heritage One, 81 River Street, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Stephen J. Silva, Permits Branch, Environmental Protection Agency, Region I, Room 2109, JFK Federal Building, Boston, Massaachusetts 02203, (617) 223-5061.

SUPPLEMENTARY INFORMATION: The Pretreatment Program required by the Clean Water Act of 1977, governs the control of industrial waste introduced into Publicly Owned Treatment Works (POTWs). The Vermont Agency of Environmental Conservation has submitted a request for approval of its State Pretreatment Program in accordance with the requirements and procedures of the General Pretreatment Regulations (40 CFR Part 403). This request for approval consists of a description of how the State proposes to operate the program a statement from the Vermont Attorney General that the State has adequate legal authority to conduct the program, and a Memorandum of Agreement between the State and EPA Regional Office. EPA is providing an opportuntiy for public comment on the State's request. Public comments should be sent to EPA at the addrsss indicated above prior to the close of the 30 day comment period. All comments will be considered in the decision on whether or not to approve the program. If there is sufficient public interest, a public hearing will be held,

and the time and place of the hearing will be public noticed. All persons submitting comments will be notified of the approval or disapproval of the program by the Administrator.

Dated: October 23, 1980.

Lawrence M. Goldman,

Acting Director, Enforcement Division, Region I.

[FR Doc. 80-33908 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

[ER-FRL-1650-8]

Notice of Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A-104) U.S. Environmental Protection Agency.

PURPOSE: This notice lists the environmental impact statements (EISS) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This notice includes EIS's filed during the week of October 20, 1980 to October 24, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from October 31, 1980 and will end on December 15, 1980. The 30-day review period for final EIS's as calculated from October 31, 1980 will end on December 1, 1980.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this notice you should contact the Federal agency which prepared the EIS. This notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following source: Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209, (703) 558-8270.

SUMMARY OF NOTICE: This notice sets forth a list of EIS's filed with EPA during the week of October 20, 1980 to October 24, 1980. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number, if available, is listed in this notice. Commenting entities on draft EIS's are listed for final EIS's. All additional information relating to EIS's such as time extensions or reductions of prescribed review periods, withdrawals, retractions, corrections or supplemental reports is also noticed under the appropriate agency.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 (202) 245-3006.

Dated: October 28, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A Admin. Building, Washington, D.C. 20250 (202) 447-3965.

Rural Electrification Administration

Final

JK Smith Power Station Units 1 & 2, transmission, Clark County, Kentucky, October 24; Proposed is the guarantee of a loan for construction and operation of two 650 MW coal-fired electric generating units, with a total generation capacity of 1300 MW gross, at a new plant site to be located near trapp in Clark County, Kentucky. Stack emissions will be controlled by lime-limestone scrubbers, electrostatic, precipitators and boiler design. Condenser cooling will be accomplished by the use of colling towers. Plant water will come from the Kentucky River normaly, or from an onsite water reservoir during periods of extraordinarily low river flow. Cooperating agencies include: EPA, COE, USDI and State of Kentucky. (USDA-REA-EIS (ADM) 80-8-D), Comments made by: EPA, COE, DOI, USDA, State agencies, (EIS Order No. 800813).

Final Supplement

Catawba Nuclear Station Unit 1 (FS-1), York County, South Carolina, October 24; Proposed is the awarding of financial assistance for the purchase of an undivided ownership interest in Catawba Nuclear Station Unit 1 located in York County, South Carolina. Transmission associated with the station will consist of two 230 KV lines now under construction and three existing 230 KV lines to be connected to the Catawba switching station. In conjunction with this filing REA is adopting and supplementing a final EIS issued by NRC, No. 731920, filed 12-11-73. (USDA-REA-(ADM)-80-9-D5) Comments made by: EPA, State Agencies, Individuals, (EIS Order No. 800814).

Soil Conservation Service

Final

Lost-Duck Creek watershed, Kay County, Oklahoma, October 20; proposed is a watershed protection and flood prevention plan for the Lost-Duck Creek watershed in Kay County, Oklahoma. The plan includes the installation of conservation land treatment, 12 floodwater retarding structures, and approximately 12.75 miles of channel work. In addition to the selected plan the alternatives consider: (1) land treatment only and (2) land treatment and a system of floodwater retarding structure. Comments made by: COE, DOC, HHS, DOI, EPA, USDA, State Agencies, Groups, (EIS Order No. 800797).

U.S. Army Corps of Engineers

Contact: Mr. Richard Makinen, Office of the Chief of Engineers, 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

Village Creek flood control plan, Birmingham, Jefferson County, Alabama, October 24; Proposed is a flood control plan for village creek in Birmingham, Jefferson County, Alabama. The preferred alternative would involve: (1) prohibiting development, (2) evacuation, (3) installation of flood warning devices, (4) creation of recreation and open space areas, (5) excavation of channels, and (6) modification and/or replacement of four existing bridges. (Mobile District), (EIS Order No. 800810).

Final

Green Bay drainage district, flood reduction, Lee County, Iowa, October 22; proposed is a flood damage reduction plan for the Green Bay levee and drainage district in Lee County, Iowa. The preferred alternative consists of raising 17.2 miles of existing levee to provide additional protection from flooding of the Lost Creek, the Skunk River and the Mississippi River. Also included is the raising of discharge pipes, crop field and the disruption of life forms on 112 acres to relocation of utility lines and drainage ditches, raising and resurfacing five ramps over the levee, and raising and resurfacing a road on the levee. (Rock Island District). Comments made by: EPA, DOI, DOC, USDA, DOT, HUD, HEW, AHP, State and local agencies. (EIS Order No. 800802).

Draft Supplement

Copper Lake and channels water supply (DS-1), Delta and Hopkins Counties, Texas, October 24; proposed is a multipurpose project for Copper Lake and channels in the Sulphur River Basin, Delta and Hopkins Counties, Texas. This statement supplements a final EIS, #770708, filed 6-24-77. This supplement addresses selection of another alternative as the recommended plan which would involve: (1) construction of a multiple-purpose dam on the South Sulphur River, (2) a 19,305 surface acre water supply pool, and recreation development. (Fort Worth district). (EIS Order No. 800809).

DEPARTMENT OF COMMERCE

Contact: Dr. Robert T. Miki, Acting Deputy Assistant Secretary for Regulatory Policy, Room 7614, Department of Commerce, Washington, D.C. 20230 (202) 377-2482.

National Oceanic and Atmospheric Administration

Final

Taking of marine mammals, tuna purse seining operating regulatory, October 22; the proposed action terminates the current general permit allowing the incidental taking of marine mammals in the tuna fishery in the eastern tropical Pacific and establishes conditions for the reissuance of a general permit for the remainder of 1980 and 1981. It includes a determination that the stock of northern offshore spotted dolphin is depleted. A revised allowable take schedule for nonprohibited species will be permitted. Proposed regulations state accidental take enforcement policy, add to or modify four gear requirements in existing regulations, and modify observer responsibilities and importation documentation requirments. Comments made by: DOI, EPA, DOC, State agencies, groups and businesses. (EIS Order No. 800805).

DEPARTMENT OF DEFENSE, AIR FORCE

Contact: Dr. Carlos Stern, Deputy for Environment and Safety, Department of the Air Force, Room 4C885, Pentagon, Washington, D.C. 20330 (202) 697-9297.

Draft

Consolidated space operations center, several counties, Colorado, New Mexico, and Montana, October 24; proposed is the construction of a consolidated space operations center (CSOC) which would combine the two mission elements of satellite control and space shuttle operations. The satellite control element of CSOC would consist of communications, command and control service functions for orbiting spacecraft. The shuttle element would involve DOD flight planning, readiness and control functions. The sites under consideration are: (1) Peterson AFB, Colorado Springs, Colorado; (2) Kirtland AFB, Albuquerque, New Mexico; and (3) Malmstrom AFB, Great Falls, Montana. (EIS Order No. 800811).

DEPARTMENT OF ENERGY

Contact: Dr. Robert Sterm, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station 4G-064, Forrestal Bldg., Washington, DC 20585 (202) 252-4600.

Draft

Industrial fuel gas demonstration project, Memphis, Shelby County, Tennessee, October 24; proposed is the construction and operation of an industrial fuel gas demonstration plant in Memphis, Shelby County, Tennessee. The facility would utilize 3155 tons/d of high-sulfur coal and produce fuel gas for local pipeline distribution to industrial customers. The alternatives considered involve the following: (1) processes, (2) sites, (3) moth-balling and decommissioning; (4) delay of action, (5) no action, and (6) others. (DOE/EIS-0071-D) (EIS Order No. 800815).

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Clinton Spotts, Region VI, Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270 (214) 767-2716.

Final

WWT facilities construction grant, Santa Fe, Santa Fe County, New Mexico, October 24; proposed is the awarding of a grant for the construction of wastewater treatment facilities for the City and County of Santa Fe, New Mexico. The facilities would consist of 6.5 MGD capacity plant which would utilize an activated sludge process consisting of an oxidation ditch aeration unit preceded by an anoxic denitrification tank for effective nitrogen removal. Wastewater would be discharged to the Santa Fe River. Comments made by: AHP, HUD, DOI, DOT, DOE, State and local agencies, groups, individuals and businesses. (EIS Order No. 800816).

Contact: Mr. Kenneth Bigos, Region IX, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105 (415) 556-8030.

Final

Los Angeles/Orange County metro area sludge management program, Los Angeles and Orange Counties, California, October 24; proposed is the awarding of a grant to the city and county of Los Angeles and Orange County, California, for the purpose of planning, designing, and constructing the proposed sludge management program. The program would involve: (1) for the City of Los Angeles, dehydration and thermal processing for energy recovery at the hyperion treatment plant; (2) for Los Angeles county, dehydration and thermal processing, composting, and landfilling: and (3) for Orange County, composting and air drying of dewatered sludge in the Round Canyon area. Comments made by: AHP, DOI, FERC, USDA, HUD, USAF, DOT, DOC, State and local agencies, groups, individuals and businesses. (EIS Order No. 800808).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Brown, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755-6300.

Final

Wheatstone subdivision, mortgage insurance, Harris County, Texas, October 22; proposed is the issuance of HUD home mortgage insurance for the Wheatstone subdivision located in Harris County, Texas. The area encompasses some 1,200 acres of land. When completed the subdivision would be composed primarily of approximately 4,260 single family dwellings. (HUD-RO6-EIS-80-10F). Comments made by: FEMA, DOE, HEW, USDA, DOI, DOT, AHP, COE, EPA, State agencies. (EIS Order No. 800803).

Department of the 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

Coso known geothermal resource area, lease, Inyo County, California, October 24; Proposed is the issuance of competitive and non-competitive leases on a major portion of the Coso known geothermal resource area in Inyo County, California. The Coso geothermal study area (CGSA) covers 72,640 acres centered on public land and lands within the western side of the China Lake Naval Weapons Center. It is assumed that the geothermal potential within the CGSA is 600 MW, along with a development model of eleven 50 MW generating stations, plus a probable 50 MW plant to be installed under the Navy's geothermal development program. (FES-80-47). Comments made by: USDA, HUD, DOI, DOT, EPA, AHP, COE, USN, State and local agencies, groups, individuals and businesses. (EIS Order No. 80012).

National Park Service

Final

Redwood National Park, general management plan, Del Norte and Humboldt Counties, California, October 24; Proposed is the general management plan for Redwood National Park located in Del Norte and Humboldt Counties, California. The park encompasses approximately 106,000 acres, of which about 25 percent are within three California State parks. The plan contains the visitor use and facility development plan, the cultural resources management plan, and major goals and actions related to natural resources management and rehabilitation. Four alternatives have been discussed with the preferred alternative combining the no action, extended visit, and the restructured visitor use alternatives. (FES-80-45). Comments made by: USDA, COE, DOI, DOT, EPA, State and local agencies, groups and businesses. (EIS Order No. 800807).

Final

Yosemite National Park, general management plan, Tuolumne, Mariposa, and Madera Counties, October 24; This action involves a general management plan for Yosemite National Park, within Tuolumne, Mariposa, and Madera Counties, California, to guide overall park management and development for approximately 15 years, including specific development concept plans for all developed areas inside the park, proposed additions to the wilderness recommendation for the park and boundary adjustments. The alternatives consider varying emphasis on commercial services in relation to the following: Resource-related activities, backcountry use, recreational activities, no action, resource-related activities/reduced accommodations, and relocation of operational facilities. (FES-80-46). Comments made by: AHP, USDA, DOE, DOI, DOT, EPA, USPS, State and local agencies, groups. (EIS Order No. 800806).

Extension: Water Gap National Recreation Area, Pennsylvania and New Jersey, Published FR October 14, 1980, #800763—has been extended from November 24, 1980 to December 8, 1980.

Heritage Conservation and Recreation Service

Extension: Designation of Five California Rivers in the National Wild and Scenic Rivers System, Published FR September 19, 1980, #800695—has been extended from November 5, 1980 to November 20, 1980.

Bureau of Mines

Withdrawal: Horse Draw Oil Shale Research Tract, Published FR August 8, 1980, #800621 Draft—has been officially withdrawn by the Bureau of Mines.

Tennesee Valley Authority

Contact: Dr. Mohamed T. El-Ashry, Director of Environmental Quality, Tennessee Valley Authority, Forestry Building, Norris, Tennessee 37828, (615) 632-6450, FTS 856-6450.

Draft

Watts Bar waste heat utilization demonstration park, Rhea County, Tennessee, October 24; Proposed is granting of an easement for an approximate 400 acre park to be used for the demonstration of commercial waste heat utilization concepts in Rhea County, Tennessee, the park will be known as the Watts Bar waste heat park and would be located adjacent to the Watts Bar nuclear plant. The alternatives considered are: (1) No action, (2) development at another site, and (3) management schemes. (EIS Order No. 800804).

Department of Transportation

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357.

Federal Highway Administration

Draft

Campbell corridor highway improvements, Tucson, Pima County, Arizona, October 21; Proposed are improvements to the Campbell corridor highway from Broadway Road to Valencia Road in the city of Tucson, Pima County, Arizona. The improvements include construction of six miles of roadway, grade separation at the Southern Pacific Railroad, additional ramps at the I-10 interchange, and a bridge over the Tucson diversion channel/Julian Wash. Other components may include an interchange at the intersection of Broadway and Campbell, and either a grade separation or interchange at 22nd Street. There are four location alternatives considered for the north segment and three for the south. The cooperating agency is the State of Arizona. (FHWA-AZ-EIS-80-03D). (EIS Order No. 800800).

Draft

Salisbury bypass/U.S. 50, U.S. 50 to U.S. 13, Wicomico County, Maryland, October 22; Proposed is the construction of the Salisbury bypass/U.S. 50 from U.S. 50 to U.S. 13, in Wicomico County, Maryland. The length of the facility would be 5.0 miles. The alternatives consider: (1) no build; and (2) two options involving the construction of a controlled access, four-lane divided roadway on different alignments. Interchange options have been developed for the Goddard Parkway and Jersey Road intersections. The cooperating agency is the State of Maryland. (FHWA-MD-EIS-80-02-D). (EIS Order No. 800801).

Columbia Road improvement, Gateway Drive to Forks Road, Grand Forks County, North Dakota, October 20; Proposed is the improvement of Columbia Road from Gateway Drive to Forks Road in the city and county of Grand Forks, North Dakota. The improvements will include the construction of a railroad separation structure and street widening and/or street construction. The alternatives consider: (1) no action, (2) improvement of the transit system, and (3) eight build alternatives which examine various alignments and roadway designs. The cooperating agency is the State of North Dakota. (FHWA-ND-DIS-80-02-D). (EIS Order No. 800799).

Extension: The review period for the above EIS has been extended until December 19, 1980. (#800799).

State College bypass system/U.S. 322, Centre County, Pennsylvania, October 20; Proposed is the completion of the State College bypass system/U.S. 322 through the borough of State College, Centre County, Pennsylvania. The two mile section to be completed would include an interchange with PA-26, a four lane local roadway. Completion of the system would also involve construction of an interchange in the previously built section and a spur known as the Park Avenue extension. In addition to no action, six alignments are considered which include two and four lane schemes, two types of interchanges with PA-26 and a half-build alternative. The cooperating agency is the State of Pennsylvania. (FHWA-PA-EIS-80-02-D). (EIS Order No. 800798).

[FR Doc. 80-34038 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-37-M

FEDERAL RESERVE SYSTEM

Asco, Inc.; Acquisition of Bank

Asco, Inc., Rock Rapids, Iowa, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to retain 10.7 and to acquire an additional 43.1 percent of the voting shares of Rock Rapids State Bank, Rock Rapids, Iowa. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 23, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33903 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Mountain States Bancorporation, Inc.; Formation of Bank Holding Company

Mountain States Bancorporation, Inc., Denver, Colorado, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Mountain States Bank, Denver, Colorado. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33901 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Rockford Bancorp, Inc.; Formation of Bank Holding Company

Rockford Bancorp, Inc., Rockford, Illinois, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Illinois National Bank & Trust Co. of Rockford, Rockford, Illinois. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 20, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation

would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33902 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Winters National Corp.; Acquisition of Bank

Winters National Corporation, Dayton, Ohio, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 per cent of the voting shares of The First National Bank of Circleville, Circleville, Ohio. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33904 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Alamosa Bancorporation, Ltd.; Formation of Bank Holding Company

Alamosa Bancorporation, Ltd., Denver, Colorado, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 97.1 percent or more of the voting shares of The Alamosa National Bank, Alamosa, Colorado. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board

[FR Doc. 80-33979 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

American National Sidney Corp.; Formation of Bank Holding Company

American National Sidney Corp., Sidney, Nebraska, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 95 percent or more of the voting shares of The American National Bank of Sidney, Sidney, Nebraska. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33976 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than November 24, 1980.

A. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

Security Pacific Corporation, Los Angeles, California (financing and insurance activities; Florida): to engage through its subsidiaries Security Pacific Finance Corp. and Security Pacific Finance Corp. of Florida, in making or acquiring for its own account or for the account of others, loans and extensions of credit, including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or a consumer finance company and acting as broker or agent for the sale of credit-related life, accident and health insurance and credit-related property and casualty insurance. These activities would be conducted from offices of Security Pacific Finance Corp. and Security Pacific Finance Corp. of Florida, located in Hudson, Florida, serving the State of Florida, and would constitute a relocation of existing offices of Security Pacific Finance Corp. and Security Pacific Finance Corp. of Florida which are currently located in Dade City, Florida.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33977 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Citizens Banco, Inc.; Acquisition of Bank

Citizens Banco, Inc., Westminster, Colorado, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 percent of the voting shares of Citizens Bank, Littleton, Colorado, a proposed new bank. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 26, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33974 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Hawkeye Bancorporation; Acquisition of Bank

Hawkeye Bancorporation, Des Moines, Iowa, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 97 percent or more of the voting shares of Capital City State Bank, Des Moines, Iowa. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33973 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

The Highland Ban-Corp., Inc.; Formation of Bank Holding Company

The Highland Ban-Corp., Inc., Cleveland, Oklahoma, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Cleveland Bank, Cleveland, Oklahoma. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33978 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Metropolitan Bancorporation, Inc.; Formation of Bank Holding Company

Metropolitan Bancorporation, Inc., Minneapolis, Minnesota, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 95 percent of the voting shares of Metropolitan State Bank, Minneapolis, Minnesota. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33981 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Taney County Bancorporation; Formation of Bank Holding Company

Taney County Bancorporation, Kansas City, Missouri, has applied for the Board's approval under § 3(a)(1) of the Bank Holding compnay Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 91.4 percent or more of the voting shares of Security Bank and Trust Company of Branson, Missouri. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33980 Filed 10-30-80; 8:45]

BILLING CODE 6210-01-M

Veis Bankshares, Inc.; Formation of Bank Holding Company

Veis Bankshares, Incorporated, Scobey, Montana, has applied for the Board's approval under § 3(a)(1) of the

Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 91 percent of the voting shares of Citizens State Bank of Scobey, Scobey, Montana. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33975 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-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 October 24, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such 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 frequency with which the information is proposed to be collected.

Written comments on the proposed FTC 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 November 18, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW., Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Federal Trade Commission

The FTC requests clearance of a new, single-time, voluntary mail survey questionnaire. The questionnaire will be sent to members of a consumer mail panel to identify panelists who have recently had eye examinations. The FTC will use the information developed from the survey to assist it in making policy decisions related to regulation of opthalmic goods and services. The questionnaire consists of five yes/no checkoff questions and one question requesting the date of most recent eye examination. The FTC estimates that respondents will number approximately 9,000 and that time to fill out the questionnaire will average 3 minutes.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-33948 Filed 10-30-80; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Personnel Administration

Statement of Organization, Functions and Delegation of Authority

Part A, Chapter AHP, Office of Personnel, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (43 FR 48020, dated October 18, 1978) is amended by revising the functional statements for the Office of Personnel. The Office of Employee Development is changed to the Office of Executive Personnel, and functions are transferred to and realigned within the Office of Personnel Policy and Communications.

The specific changes are as follows:

1. Delete Section AHP.00 *Mission* through Section AHP.20BS and replace with the following:

Sec. AHP.00 Mission. The Office of Personnel directs the development and implementation of broad program plans under which the Department's personnel and training functions are carried out. The office represents the Department in coordination with the Office of Legislation and the Congress in all personnel matters with the Office of Personnel Management, Congress, other Federal agencies, and the public. The office provides guidance and assistance to all personnel offices, staff directors, and managers in the Department. The office assures the effectiveness and integrity of the Department personnel system as it relates to all current and potential employees of the Department.

Sec. AHP.10 Organization. The Office of Personnel is headed by the Deputy Assistant Secretary for Personnel who reports directly to the Assistant Secretary for Personnel Administration and supervises the following components: Office of Personnel Policy and Communications, Employee Systems Center, Office of Personnel Systems Integrity, and Office of Executive Personnel.

Sec. AHP.20 Functions. A. The Office of Personnel provides leadership and directs and manages the Department-wide personnel system and the Departmental payroll system.

B. The Office of Personnel Policy and Communications provides leadership in and coordinates the development, issuance, and interpretation of Department personnel policies, regulations and procedures. Plans for and manages special high-priority policy or program development tasks and projects. Develops and administers programs and provides technical advice and assistance to Principal Operating Components in the areas of staffing, position management, classification, pay administration, employee relations, labor-management relations and training. Coordinates the Department's committee management activities. Develops systems for communicating personnel policies and information.

1. *Committee Management Staff.* Coordinates Department activities concerned with the establishment, management, and continuation or termination of all HHS public advisory committees and the appointment of members thereto. Gives technical advice and assistance to Principal Operating Component staff with respect to committee management activities, prepares annual reports for the Congress, the Office of Management and Budget, and others as required by pertinent statutes, executive orders, or directives; and oversees the assembling and maintenance of records required by Section 552 of Title 5, United States Code.

2. *Division of Policy.* Coordinates and gives direction to the development and issuance of personnel policies, regulations, and instructions throughout the Department. Manages the systems for communicating personnel policies and information about personnel matters. Provides technical advice and assistance on policy, legal, or regulatory matters. Formulates policies and regulations covering employee conduct, conflicts of interest, and implements established policy related to the Privacy Act and the Freedom of Information Act concerning personnel records. Coordinates the development and issuance of policies and requirements concerned with processing personnel and payroll actions.

3. *Division of Compensation.* Formulates and oversees the implementation of Department-wide policies, regulations, and procedures pertaining to position management, classification, salary and wage administration and employee benefits. Serves as the central HHS reference point inquiries, guidance, and interpretation on position management, classification and pay matters, and acts as HHS liaison with the Office of Personnel Management with respect to such matters.

4. *Division of Organization and Employee Development.* Formulates and oversees the implementation of Department-wide policies, regulations, and procedures pertaining to recruitment, staffing, examining, retention, career counseling, employee education programs, and training except executive development. Provides guidance and advisory services to HHS organizations on organizational development. Serves as the central HHS point of contact for inquiries and interpretation for the above-mentioned functions. Serves as a central source of employment information for candidates seeking employment in HHS. Maintains liaison with the Office of Personnel Management and other Departments and agencies.

5. *Division of Labor-Management and Employee Relations.* Formulates and oversees the implementation of Department-wide policies, regulations and procedures pertaining to labor-management relations. Serves as the central HHS reference point for inquiries, guidance, and interpretation on labor-management relations and acts as HHS liaison with the Office of Personnel Management, the Federal Labor Relations Authority and labor unions and other employee organizations at the international and national level. Assists in the formulation of Department personnel and administrative policies, regulations, and procedures affecting working conditions of employees. Develops and gives direction to employee relations programs, including adverse actions, grievances and programs for counseling employees regarding job-related problems.

6. *Performance Management Division.* Formulates and oversees the implementation of Department-wide policies, regulations and procedures pertaining to performance management. Conducts job analyses of occupations or families of positions in order to develop and publish model performance standards, qualification standards, model rating schedules and classification guides. Oversees the administration of the Uniform Selection Guidelines in order to validate the job-relatedness of selection processes. Provides guidance and advisory services to HHS organizations on improvements in employee performance. Maintains liaison with the Office of Personnel Management and with other Departments and agencies.

2. Delete paragraph AHP.20, Section D in its entirety and replace with the following:

D. Office of Executive Personnel is responsible for the Department's personnel management support programs for all executive level positions, including Senior Executive Service, and for the Department's executive development programs; develops Departmental policies and guidance for executive personnel program coordination and direction; and processes actions required to carry out the assigned responsibilities.

1. Executive Search Division is responsible for conducting the search process involved in obtaining talent for the Department's "executive level" positions (i.e. Senior Executive Service, equivalents and statutory level positions, as well as Schedule C positions at GS-15 and below).

2. Executive Resources Management Division is responsible for policy development and implementation for the Department's Senior Executive Service; and Departmental personnel management for Senior Executive Service; and Departmental personnel management for Senior Executive Service and equivalent level, executive level, and Schedule C positions. Personnel operations for the Office of the Secretary for the Senior Executive Service, General Schedule, Supergrade, Executive Level, and Schedule C positions. Provides Department representation to the Office of Personnel Management for all executive personnel matters.

3. Executive Development Division is responsible for providing overview, guidance, policy direction, and technical advisory services to all HHS organizations in executive development, executive development programs involving employee training at institutions of higher learning or governmental schools and seminar centers; the HHS Senior Executive Service Candidate Development Program; and executive training programs offered through the Executive Development Institute.

Dated: October 20, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-33913 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-12-M

Food and Drug Administration

Compilation of Preambles for Over-the-Counter Drugs and Cosmetic Documents; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of the preamble compilation for Over-the-Counter Drugs and Cosmetic regulations. The preamble compilation contains significant preambles of Federal Register documents issued by FDA from March 1936 through March 1978. The Over-the-Counter Drugs compilation is a two volume set. The Cosmetic compilation consists of one volume.

ADDRESS: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Lola Batson, Federal Register Writer's Office (HFC-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: The preamble compilation series has been structured around the current organizational scheme for Food and Drug Administration regulations issued under Chapter I of Title 21 of the Code of Federal Regulations. This compilation is part of a comprehensive effort to make available to the public and the agency a central source for tracing, by subject, the historical development of agency regulations.

The preamble compilation series will be updated annually with cumulative pocket supplements. The agency will publish in the Federal Register a notice of availability for each volume and pocket supplement as they become available.

These preamble compilations may be purchased from the Superintendent of Documents. The price for the Over-the-Counter Drug two volume set is $23.00. To order, reference GPO stock no. 017-015-00171-7. The price for the Cosmetic volume is $11.00. To order, reference GPO stock no. 017-015-00170-9.

Dated: October 23, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33728 Filed 10-30-80; 8 45 am]

BILLING CODE 4110-03-M

[Docket No. 80N-0271]

International Drug Scheduling; Convention on Psychotropic Substances

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration requests interested persons to submit comments concerning a proposal that the Commission on Narcotic Drugs (CND) of the United Nations impose international manufacturing and distribution restrictions, pursuant to international treaty, or certain anorectic drugs (drugs that diminish appetite). The specific treaty involved is the Convention on Psychotropic Substances, to which the United States is a party. The comments received will be considered in preparing the United States position on the proposed international restrictions on these drugs for a meeting of the CND to be held in February 1981. The issuance of this notice requesting comments is required by law.

DATE: Comments by December 1, 1980.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Bureau of Drugs (HFD-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: This notice is being published to afford interested persons an opportunity to comment on international drug control measures that have been proposed by the World Health Organization (WHO) under international treaty. The specific treaty involved is the Convention on Psychotropic Substances, to which the United States is a party. The substances involved are certain anorectic drugs, listed below.

Earlier this year the United States was notified that WHO would make recommendations to the Commission on Narcotic Drugs (CND) whether any changes would be justified in the present scheduling status under the Convention on Psychotropic Substances of the following nine anorectic drugs: amfepramine, benzphetamine, chlorphentermine, chlortermine, fenfluramine, mazindol, phendimetrazine, phenmetrazine, and phentermine. The United States was asked to supply WHO with information and data that would aid WHO in making its recommendations to the CND. The CND, of which the United States is a member, will meet in February 1981 to make international scheduling decisions. Under section 201(d)(2)(A) of the Controlled Substances Act (21 U.S.C. 811(d)(2)(A)), the Department of Health and Human Services (HHS) issued a notice in the Federal Register of July 18, 1980 (45 FR 48254) requesting interested persons to submit relevant comments and data. Comments and information received from the public and from Government agencies were subsequently submitted to WHO, as requested. The WHO's expert committee then met in September 1980 to evaluate the scheduling status of the nine substances.

HHS has now learned from the Department of State that WHO has recommended that the CND control the following four substances in Schedule IV of the Convention on Psychotropic Substances: (1) Benzphetamine, (2) mazindol, (3) phendimetrazine, and (4) phentermine. The information received from the Department of State is on file in the Dockets Management Branch (formerly the Hearing Clerk's office), FDA. This information may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday. Placing these substances in Schedule IV of the Convention on Psychotropic Substances would require each of the member countries (including the United States) to impose controls regarding licensing, prescriptions, recordkeeping and reporting, and government inspections. Because of existing domestic controls now in force for these substances under the Controlled Substances Act (21 U.S.C. 801 et seq.), the proposed CND action, if adopted, would not obligate the United States to reschedule any of these substances domestically. However, the proposed CND action, if adopted, would require additional manufacturer reporting requirements to be promulgated by the Drug Enforcement Administration under section 307(e) of the Controlled Substances Act (21 U.S.C. 827(e)), as amended by Pub. L. 95-633 (Psychotropic Substances Act of 1978).

HHS has also learned that WHO has recommended that the CND not take any scheduling actions under the Convention on Psychotropic Substances with respect to the following five substances: (1) Amfepramine (known in the United States as diethylpropion) (currently in Schedule IV of the Convention); (2) chlorphentermine (currently not controlled under the Convention); (3) chlortermine (known in the United States as clortermine) (currently not controlled under the Convention); (4) fenfluramine (currently not controlled under the Convention); and (5) phenmetrazine (currently in Schedule II of the Convention). These recommendations will also be considered by the CND at its February 1981 meeting.

Therefore, as required by section 201(d)(2)(B) of the Controlled Substances Act (21 U.S.C. 811(d)(2)(B)), the Food and Drug Administration, at the direction of the Assistant Secretary for Health, invites interested persons to submit comments about these proposed CND actions. The comments received will be considered by HHS in its evaluation of the WHO recommendations. HHS will then recommend to the Secretary of State the position which the United States should take when voting on the scheduling proposals at the CND meeting in February 1981.

Interested persons may, on or before December 1, 1980, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Note.—The period for the submission of comments is limited to 30 days so that the United States has adequate time to consider the comments received in reaching a decision on how to vote on these proposals at the upcoming CND meeting.

Dated: October 24, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33726 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80N-0276]

Drugs for Human Use; Drug Efficacy Study Implementation; Conditions for Continued Marketing of Anabolic Steroids for Treatment of Osteoporosis

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces conditions for continued marketing of anabolic steriods for the treatment of osteoporosis.

DATES: Notices of intent to conduct studies or to rely on another firm's studies are due by December 1, 1980. Notification of ongoing studies or other information intended to demonstrate effectiveness must be submitted by December 30, 1980. Protocols are due on or before January 29, 1981, unless manufacturers intend to rely on ongoing studies or other information. Abbreviated new drug applications must be submitted by January 29, 1981.

ADDRESSES: Responses to this notice should be identified with the NDA number, if any, and the following in a box in the upper portion of the cover letter: "Paragraph XIV Drug—Category X (Anabolic Steroids)," directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857:

Requests for guidelines: Judy Cheeseman, Division of Metabolism and Endocrine Drugs (HFD-30), Bureau of Drugs.

Effectiveness information and data, and study protocols: Division of Metabolism and Endocrine Drug Products (HFD-130), Rm. 14B-04, Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Abbreviated new drug applications: Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Samarendra Dutta, M.D., Bureau of Drugs (HFD-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3520.

SUPPLEMENTARY INFORMATION: In a notice (DESI 7630) published in the Federal Register of June 24, 1970 (35 FR 10327), FDA announced its conclusions on the effectiveness of certain anabolic steroids, based on reports received from the National Academy of Sciences-National Research Council. The drugs were classified probably effective as adjunctive therapy in the treatment of senile and postmenopausal osteoporosis. They were also classified probably effective for pituitary dwarfism because growth hormone was not readily available at that time. The products were classified either possibly effective or lacking substantial evidence of effectiveness for their other labeled indications. The following products were listed in the 1970 notice and are covered by this publication.

1. NDA 8-736; Methylandrostenediol Aqueous Suspension containing mathandriol 25 or 50 milligrams/milliliter; Maurry Biological Co., Inc., 6109 South Western Ave., Los Angeles, CA 90047.

2. NDA 10-400; Nilevar Tablets containing 10 milligrams norethandrolone; Searle Laboratories, Inc., P.O. Box 5110, Chicago, IL 60680.

3. NDA 11-019; Nilevar Injection containing 25 milligrams/milliliter norethandrolone; Searle Laboratories.

4. NDA 11-761; Adroyd Tablets containing 2.5, 5, or 10 milligrams oxymetholone; Parke-Davis, Division of Warner-Lambert, 201 Tabor Rd., Morris Plains, NJ 07950.

5. NDA 11-891; Durabolin Injection containing 25 or 50 milligrams/milliliter nandrolone phenpropionate; Organon Inc., 357 Mount Pleasant Ave., West Orange, NJ 07052.

6. NDA 12-226; Dianabol Tablets containing 2.5 or 5 milligrams methandrostenolone; Ciba Pharmaceutical Co., 556 Morris Ave., Summit, NJ 07901.

7. NDA 12-733; Anadrol Tablets containing 2.5 milligrams oxymetholone; Syntex Laboratories, Inc., 3401 Hillview Ave., Stanford Industrial Park, Palo Alto, CA 94304.

8. NDA 12-885; Winstrol Tablets containing 2 milligrams stanozolol; Winthrop Laboratories, Division of Sterling Drug Inc., 90 Park Ave., New York, NY 10016.

9. NDA 13-132; Deca-Durabolin Injection containing 50 milligrams/milliliter nandrolone decanoate; Organon, Inc.,

The June 24, 1970 notice listed three products in addition to those listed above. FDA withdrew approval of NDA 11-638 (listed as 11-683 in the 1970 notice) for Searle's Nilevar Drops (norethandrolone) and NDA 7-630 for Organon's Stenediol Injection (methandriol) for failure to submit required reports (36 FR 14342, 38 FR 3208, respectively). Although these products are not marketed and approval has been withdrawn, final effectiveness decisions on the products listed above would be applicable to them because they are identical or closely related to the products covered by this notice. Winthrop Laboratories' NDA 13-268 for Winsteroid Tablets (stanozolol) and NDA 12-885 for Winstrol Tablets (stanozolol) have been combined because they cover the same product.

In a notice published in the Federal Register of December 14, 1972 (37 FR 26623), amended on February 17, 1978 (43 FR 7044), FDA allowed anabolic steroids to remain on the market labeled for the osteoporosis indication pending completion of studies of their effectiveness in treating that disorder. The pituitary dwarfism indication was permitted to remain until growth hormone became more widely available. The December 14, 1972 notice (category X) covered the following types of anabolic steroids, rather than specific products: Stanozolol, oxymetholone, methandrostenolone, nandrolone, decanoate, nandrolone phenpropionate, and norethandrolone. The notice inadvertently omitted any reference to methandriol. However, methandriol-containing products were listed in the June 24, 1970 notice, are included in category X, and are covered by this notice. This notice also applies to any product not the subject of an approved new drug application which is identical, similar, or related to those listed above. An opinion on the applicability of this notice to a specific product may be obtained from the Division of Drug Labeling Compliance (address given above).

Because of the lack of general agreement on parameters to be measured and the techniques for measurement, FDA has developed guidelines for the clinical study of drugs used to treat osteoporosis. The availability of the guidelines was announced in the Federal Register of June 20, 1980 (43 FR 41705). The guidelines may be obtained from the Division of Metabolism and Endocrine Drug Products (address given above).

Data submitted in support of the anabolic steroids' other indications are currently under review. FDA intends to announce its evaluations of these data in a future notice. Since publication of the December 14, 1972 notice, however, growth hormone has become more widely available, FDA has approved two somatropin (formerly called somatotropin) products as effective in the treatment of pituitary dwarfism: Asellacrin manufactured by Serono Laboratories and Crescormon manufactured by the Kabi Group. Thus, because there is no longer justification for the continued marketing of anabolic steroids with the pituitary dwarfism indication, that indication is to be removed from the labeling of anabolic steroids.

Requirements for Products that Are Subjects of Approved NDA's.

FDA will not begin proceedings to withdraw approval of any NDA that has "deemed approved" status on October 31, 1980, provided that the following conditions are met: 1. *Labeling.* The

manufacturer labels (in the Indications section) the product as follows: "As adjunctive therapy in senile and postmenopausal osteoporosis. Anabolic steroids are without value as primary therapy but may be of value as adjunctive therapy. Equal or greater consideration should be given to diet, calcium balance, physiotherapy, and good general health promoting measures." As required by 21 CFR 201.200, manufacturers shall indicate that FDA classified the drug as "probably effective" for this indication.

2. *Studies.* a. A study in compliance with the guidelines announced in this notice is undertaken. Each manufacturer need not clinically test its own product as long as at least one other manufacturer, or a consortium of manufacturers, is conducting tests on a product to which the same effectiveness conclusions would ultimately apply. Each manufacturer shall notify FDA on or before December 1, 1980, if it intends to conduct a study according to the guidelines or if it intends to rely on a study conducted by another manufacturer.

b. Any manufacturer who intends to conduct a study shall submit a protocol on or before January 29, 1981, for evaluation by FDA. FDA will complete its evaluation of the protocol on or before April 29, 1981.

c. The manufacturer shall begin the study within 180 days after it is notified of FDA's acceptance of the protocol.

d. From the time it begins the study, the manufacturer will be allowed 3 years to complete it and to analyze and submit the results of the study to FDA. (The three-year period is considered necessary for the completion and evaluation of the studies because of the prolonged period of observation necessary to detect changes in the course of osteoporosis.)

e. FDA will review the results of the study within 4 months after they are submitted. If the studies demonstrate the effectiveness of a product in treating osteoporosis, the product will be upgraded to effective for that indication at that time.

f. Some manufacturers have, in the past, conduted clinical studies on the effectiveness of their products in the treatment of osteoporosis and submitted data to FDA. Other manufacturers are currently conducting studies. In addition, manufacturers may be aware of completed relevant studies, published or unpublished. This information may be sufficient to support upgrading the osteoporosis indication to effective. Manufacturers may rely on data previously submitted to FDA, an ongoing study, or published and unpublished studies to demonstrate the effectiveness of their products. Manufacturers who intend to rely on such information shall submit it on or before December 30, 1980. If a manufacturer intends to rely on an ongoing study, it shall submit an interim progress report. FDA will judge the adequacy of the study according to the guidelines announced in this notice. Manufacturers need not resubmit data previously submitted, but if they intend to rely on it shall completely describe the previous submission, and identify when and where it was submitted. FDA will complete its review of the information and notify the manufacturer of its evaluation by April 29, 1981. If FDA finds that the information submitted is inadequate to support upgrading the indication to effective, the manufacturer shall inform FDA within 30 days of receiving FDA's notification if it intends to conduct studies according to the guidelines announced in this notice. The manufacturer shall submit a protocol for evaluation by FDA within 90 days of receiving FDA's notification that the information initially submitted is inadequate, and FDA will evaluate the protocol within 90 days. The manufacturer shall initiate the study within 180 days of FDA's acceptance of the protocol. Manufacturers will be allowed 3 years to complete, analyze, and submit the studies to FDA. FDA will complete its review of the results of the studies within 4 months of its submission to FDA.

Requirements for Products not the Subjects of Approved NDA's

FDA will not begin regulatory proceedings to remove products from the market based upon the absence of an approved NDA or ANDA under section 505 of the Federal Food, Drug, and Cosmetic Act, provided that all of the following conditions are met:

1. *Labeling.* Manufacturers label their productions according to the labeling set forth in this notice.

2. *Studies.* Manufacturers submit protocols and conduct studies in accordance with the requirements and time limits set forth above for "deemed approved" products.

3. *Submission of ANDA's.* Manufacturers submit ANDA's (21 CFR 314.1(f)) on or before January 29, 1981. If the information in the ANDA is complete and satisfactory, FDA will conditionally approve the ANDA pending the results of clinical studies. Such conditionally approved products will have the same legal status as products that are subjects of "deemed approved" applications reviewed in the Drug Efficacy Study; that is, as products for which safety is not in question, but for which effectiveness has not been proven.

4. FDA has not issued a non-approvable or not-acceptable letter to the applicant concerning the ANDA.

5. The ANDA is conditionally approved by July 31, 1981.

Failure of any manufacturer to comply with each of the conditions of exemption of this notice will result in appropriate regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 505, 701, 52 Stat. 1052–1053, as amended, 1055–1056 as amended (21 U.S.C. 355, 371)) and the Administrative Procedure Act (5 U.S.C. 553, 554), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Dated: October 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Analysis.

[FR Doc. 80-33570 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

American Cyanamid Co.; Chlortetracycline Oblong Tablets With Vitamins; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency withdraws approval of a new animal drug application (NADA) providing for use of chlortetracycline oblong tablets with vitamins containing 250 milligrams (mg) of chlortetracycline hydrochloride, 62,500 I.U. vitamin A, 6,250 I.U. vitamin D, and 100 mg nicotinic acid. The sponsor, American Cyanamid Co., requested the withdrawal of approval.

EFFECTIVE DATE: November 10, 1980.

FOR FURTHER INFORMATION CONTACT: David Scarr, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, is the sponsor of NADA 55-026 which provides for the use of chlortetracycline oblong tablets with vitamins for the prevention and treatment of bacterial scours in calves. This application was originally approved on November 30, 1962, under the Food Additive Amendments (72 Stat. 1786 (21 U.S.C. 348(c)(1))). The sponsor has requested by letter dated February 4, 1980, that approval of the NADA be withdrawn because the product is no longer manufactured or marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 55–026 and all supplements thereto for chlortetracycline oblong tablets with vitamins is hereby withdrawn, effective November 10, 1980.

In a separate document published elsewhere in this issue of the Federal Register, § 546.110d *Chlortetracycline hydrochloride tablets* is amended to delete that portion that reflects approval of this NADA.

Dated: October 23, 1980.

Gerald B. Guest,

Acting Director for Veterinary Medicine.

[FR Doc. 80-33873 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

Health Care Financing Administration

Regional Reorganization; Statement of Organization, Functions, and Delegations of Authority

Part F, Chapter FD, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, (43 FR 5574, February 9, 1978 and 44 FR 12767, March 8, 1979), is amended to reflect the reorganization of HCFA's Regional Offices. The reorganization integrates the management of the Medicare and Medicaid programs and aligns Regional Office components with their Central Office counterparts.

1. Delete the functional statement for the *Office of the Regional Administrator (Regions I–X)* and its subordinate organizational elements in their entirety and substitute the following:

Section FQ.10. Organization. Office of the Regional Administrator. The HCFA regional offices are headed by a Regional Administrator who reports to the Administrator, HCFA. The regional offices include:

A. Division of Health Standards and Quality

B. Division of Quality Control

C. Division of Financial Operations

D. Division of Program Operations

Section FQ.20. Functions. Office of the Regional Administrator. Is the principal line official for regional operations of the Health Care Financing Administration (HCFA). Provides executive leadership and guidance on behalf of the Administrator, HCFA, to all components at the regional level. Implements national policy at the regional level. Assures the effective administration of all HCFA programs including Medicare, Medicaid, Professional Standards Review Organizations (PSROs), quality control, and certification of institutional providers in a major geographical area. Participates in the formulation of new policy and recommends changes in existing national policy for all HCFA programs. Develops and implements a professional relations program within the region for all HCFA programs and serves as the principal HCFA contact with all professional organizations such as hospital and medical associations. At the regional level, takes action to implement HCFA national initiatives undertaken to integrate HCFA program operations and is responsible for coordination of HCFA programs with other HHS components and Federal agencies. Coordinates with the HHS Principal Regional Official to assure effective relationships with State and local governments. Manages all administrative activities for the HCFA components and coordinates such activities with the Regional Administrative Support Center. Initiates and directs the implementation of special regional and headquarters projects affecting all HCFA programs. Directs regional responsibilities relating to experimental and demonstration projects. Oversees a beneficiary services program within the region for all HCFA programs. Provides regional perspective to the Administrator, bureau directors, and staff office directors in the development of HCFA policies, programs, and objectives.

A. *Division of Health Standards and Quality.* Under the direction of the HCFA Regional Administrator the Division of Health Standards and Quality assures that health care services provided under Medicare and Medicaid are furnished in the most effective and efficient manner consistent with recognized professional standards of care. Serves as the regional focus for assuring accountability to health care consumers for the quality of health care services. Participates in the formulation and development of health standards and quality policies and programs; interprets and implements health safety standards and evaluates their impact on the utilization and quality of health care services. Insures appropriate review and application of conditions of participation for providers and suppliers of health services under the Social Security Act and other related Federal programs. Exercises authority for approval/denial/termination of all provider/supplier certification actions under the Medicare program. Makes final determination on all initial budget requests submitted by State agencies. Exercises authority on all fiscal matters relating to section 1864 agreements. Resolves conflicts involving the State Survey Agency and Professional Standards Review Organizations (PSROs). Oversees, monitors and evaluates the Medicaid State Agency, State Survey Agencies and PSROs, and recommends corrective actions are taken as required. Maintains liaison with organizations representing health care professionals, providers of health care services, and program beneficiaries.

Interprets and implements policies and procedures for review and utilization control programs under the Social Security Act and other Federal programs. Oversees the negotiation and award of grants and the operation of local PSROs and Professional Standards Review (PSR) State Councils. Performs regional responsibilities relating to experimental and demonstration projects. Develops and implements a program of liaison with organizations representing health care professionals and providers of health care services, and assumes responsibility for associated program training. Provides current feedback to central office on operations, activities, and problems. Provides regional perspective in the development of central office policies, objectives, and work plans. Monitors and assesses performance and provides technical assistance to End-Stage Renal Disease (ESRD) networks by overseeing financial management and compliance with program policies and regulations and insures coordination with States and local planning agencies and PSROs.

B. *Division of Quality Control.* Under the direction of the HCFA Regional Administrator, the Division of Quality Control develops and conducts ongoing HCFA validation and quality control programs at the regional level. Evaluates the effectiveness of HCFA operations, policies and procedures with focus on those that may result in erroneous expenditures. Conducts ongoing reviews/studies of health care providers and of program policy or administrative procedures showing indications of potential fraud, abuse or program mismanagement. Recommends corrective action, including statutory and regulatory changes, to correct problems identified. Documents findings to the extent of calculating overpayments made to specific providers and/or savings which will

accrue as a result of implementing recommended changes in law, regulations, policy or procedures. Conducts and oversees validation programs designed to detect improper expenditures of funds provided through Medicaid and Medicare programs. Monitors contractor/State performance in fulfilling Medicare/Medicaid contract and State plan requirements related to fraud detection and abuse control. Works with PSROs and other peer review bodies to obtain professional case review services and to impose abuse related sanctions. Assumes control of abuse investigations, where warranted, and refers cases of suspected criminal fraud to the Office of Inspector General. Retains independent authority for civil fraud in cases where criminal prosecution is not sought. Has primary responsibility for civil negotiations in all program integrity cases. Works with Medicaid State Agencies and Medicare contractors to ensure that effective systems for detecting and eliminating abuse are in place. Develops and recommends administrative sanctions in cases of fraud or abuse. Monitors the implementation of administrative sanctions imposed by HCFA. Provides information to the HCFA Regional Administrator on improper program expenditures. Operates systematic Medicare and Medicaid quality control programs in a variety of areas such as Early and Periodic Screening, Diagnosis and Treatment (EPSDT), Medicaid eligibility, Medicaid claims processing, Medicaid utilization control, third party liability and Medicare Part B end-of-line bill review. Makes recommendations to the Regional Administrator regarding financial penalties and final decisions concerning Federal/State quality control differences. Assists Medicaid State Agencies and Medicare contractors in improving the management of federally required quality control programs.

C. *Division of Financial Operations.* Under the direction of the HCFA Regional Administrator, the Division of Financial Operations is responsible for financial management, institutional reimbursement, and Automated Data Processing (ADP) systems of Medicare contractors and Medicaid State Agencies. Assures continuing surveillance and appraisal of Medicare contractors regarding the implementation of Medicare institutional reimbursement policy and procedures. Monitors contractor overpayment identification and collection activities; prepares overpayment cases for submission to the Government Accounting Office (GAO) for collection and/or to the Department of Justice for possible prosecution. Identifies problems and initiates action to insure contractor adherence to national Medicare policy and procedures. Directs Medicare regional financial management activities. Directs a program of in-depth surveys to evaluate the effectiveness of the Medicare program with respect to areas of responsibility. Conducts Part A quality assurance program and on-site performance appraisals. Negotiates and approves contractor budgets, modifications to budget allotments and final cost settlements. Coordinates day-to-day contractor financial management activities; reviews and evaluates the cost allocation procedures of contractors.

Plans, manages, and provides federal leadership and assistance to State agencies in implementation, maintenance, and regulatory review of Medicaid State Agency activities with respect to institutional reimbursement, financial management and ADP systems. Interprets Medicaid program and financial policy with respect to institutional reimbursement, financial management, and automated data processing activities. With respect to areas of responsibility, maintains day-to-day liaison with State agencies and monitors their Medicaid program activities and practices by conducting periodic comprehensive on-site program management and financial reviews to assure State adherence to Federal law and regulations. Reviews, approves and monitors State institutional reimbursement plan. Reviews cost allocation plans, determines whether such plans are approvable from the Medicaid standpoint and advises such determinations to Regional Administrative Support Center. Reviews, analyzes, and approves State expenditures for Medicaid contracts. Resolves audits with States. Reviews States' quarterly estimates of expenditures under the Medicaid program and recommends the amount to be estimated in the quarterly grants. Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed. Defers reimbursement action on questionable State claims, reviews the claims for allowability and recommends appropriate action. Issues orders suspending Federal financial participation on behalf of State payments to Title XIX provider institutions and revocation of such suspension orders. Advises, provides technical assistance, supports, and evaluates State management information and claims payment systems. Provides for State and regional input to operational plans, policy, regulations, legislation, and budget formulation with respect to areas of responsibility. Provides current feedback to central office counterparts on operations, activities, and problems. Provides regional perspective in the development of central policy, objectives and work plans related to areas of responsibility.

D. *Division of Program Operations.* Under the direction of the HCFA Regional Administrator, the Division of Program Operations serves as a principal point of contact between the Regional Office and the Medicare contractors and Medicaid State Agencies within the Region. Directs the conduct of liaison and working relationships with these organizations. Directs a program of surveillance and appraisal of Medicaid State Agencies and Medicare contractors to ensure compliance with the Medicaid State Plan and the Medicare contract (respectively). When deficiencies are noted, ensures that corrective action is taken as appropriate. Through the review and approval of Medicaid State Plan material, assures the appropriate use of funds under established policies and conformance with planned objectives of the program. Assures uniformity in Plan changes among assigned States. Directs Title XVIII and Title XIX program coordination to achieve greater uniformity and consistency in assigned contractor and State agency practices and to eliminate unnecessary duplication of effort and cost between the two programs.

Provides support to the Medicaid State Agencies, Medicare contractors and other HCFA components with respect to Medicare/Medicaid policy interpretation and specialized technical assistance. Serves as a State Agency and contractor review and resource point for interpretation of Federal regulations, program objectives and policies. Provides significant recommendations and contributions to national policy development and revision. Provides consultation and assistance to Central Office in the development of new and revised legislation, policy, regulations and guidelines. Participates in the development of long and short range goals and objectives of the agency as well as its policies and directives. Monitors and assesses the performance of Medicaid State Agencies and Medicare contractors in the area of Medicaid and Medicare policy, procedures and instructions. Makes

recommendations where appropriate and ensures corrective action is taken when deficiencies are identified.

Develops and implements a program of liaison with organizations representing program beneficiaries. Provides direction and guidance to State agencies and Medicare contractors concerning services to beneficiaries. In addition, maintains a program of surveillance and appraisal to assure that appropriate standards are met. Where deficiencies are noted, ensures that appropriate corrective action is taken. Provides Medicare orientation, training and day-to-day liaison with direct-dealing providers and Comprehensive Health Centers (CHCs). Conducts on-site reviews of all direct-dealing providers and CHCs on a regular basis. Individually or in concert with other HCFA representatives, represents HCFA in conferring and negotiating with regional and national officials of other HHS agencies and representatives of private and public organizations, in matters of the administration of the Medicare and Medicaid programs and the impact of these programs on beneficiaries. Coordinates with the Social Security Administration, Office of the Regional Commissioner and provides direction and technical assistance to the Social Security District Offices concerning the Medicare entitlement, post-entitlement, and beneficiary education functions they perform under agreement with HCFA. Monitors the performance of these functions and makes appropriate recommendations.

Dated: October 23, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-33912 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-35-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

Applicant: San Diego Zoological Garden, P.O. Box 551, San Diego, California 92112.

The applicant requests a permit to import one male and one female captive born dhole, or Chinese Red Dog (*Cuon alpinus lepturus*) from the Assiniboine Park Zoo, Winnipeg, CANADA for propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-7163. Interested persons may comment on this application on or before December 1, 1980, by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 22, 1980.

Fred L. Bolwahnn,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-34034 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Sparks Nuggett, Inc., 1100 Nuggett Ave., Sparks, NV 89431.

The applicant requests a permit to import one male and one female Asian elephant each two years old for the purpose of propagation and exhibition. The elephants will be obtained from H. B. Knan, Purana Ganj Road Rampour, (U.P.) INDIA. The elephants were not taken from the wild, but were born in captivity in the Indian state of Behar.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-7162. Interested persons may comment on this application on or before December 1, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 27, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-34035 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Denver Zoological Gardens, City Park, Denver, CO 80205.

The applicant requests a permit to import in foreign commerce three captive-bred Bactrian camels (*Camelus bactrianus*) from England for enhancement of propagation and survival.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-7222. Interested persons may comment on this application on or before December 1, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 27, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-34028 Filed 10-30-80; 8:45am]

BILLING CODE 4310-55-M

Bureau of Land Management

[NM 27214]

Notice of Coal Lease Offering by Sealed Bid

Correction

In FR Doc. 80-32435, appearing on page 69052, in the issue of Friday, October 17, 1980, make the following correction.

On page 69052, third column, the third line beneath the heading:

New Mexico Principal Meridian, New Mexico

Now reading "Containing 230.00 Acres." should have read "Containing 320.00 Acres."

BILLING CODE 1505-01-M

Baker District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Baker District Advisory Council will be held on December 2, 1980.

The meeting will begin at 9 a.m. in the Conference Room on the second floor of the Federal Building, Baker, Oregon.

The agenda for the meeting will include:

1. Approve minutes of the September 16 and October 16, 1980 meetings.

2. Work on the Baker Resource Area Management Framework Plan multiple use decisions.

3. Work on the draft Rangeland Management Program Document (RMPD) covering the Baker Resource Area portion of the Ironside Grazing Management Environmental Impact Statement area.

4. Public comments.

5. Arrangements for the next council meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the Council between 2 and 3 p.m., or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Federal Building, P.O. Box 987, Baker, Oregon 97814, telephone 503-523-6391, Ext. 281, by 12 noon, Monday, December 1, 1980. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A report of the Council meeting will be maintained at the District Office and be made available for public inspection and reproduction at the cost of duplication.

Gordon R. Staker,

District Manager.

October 21, 1980.

[FR Doc. 80-33864 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

Salmon, Idaho, District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Salmon District Grazing Advisory Board will be held on December 9, 1980. The meeting will begin at 10:00 A.M. in the conference room of the Bureau of Land Management office on South Highway 93, Salmon, Idaho.

The agenda for the meeting is as follows: (1) To elect a chairman and a vice-chairman, (2) to consider and make recommendations concerning allotment management plans, and (3) to consider and make recommendations concerning the expenditure of range betterment and advisory board funds.

The meeting is open to the public. Anyone may make oral statements to the board 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, P.O. Box 430, Salmon, Idaho, by November 2, 1980.

Summary minutes of the board meeting will be maintained in the District Office and will be available for public inspection within 30 days following the meeting.

Harry R. Finlayson,

District Manager.

[FR Doc. 80-33865 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

[W-72518]

Wyoming; Application

October 23, 1980.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Panhandle Eastern Pipe Line Company of Brighton, Colorado, filed an application for a right-of-way to construct an 8-inch gathering pipeline and related facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyo.

T. 23 N., R. 101 W.,
Secs. 5, 7, and 8.
T. 24 N., R. 101 W.,
Secs. 32 and 33.
T. 23 N., R. 102 W.,
Secs. 12, 13, 14, 22, 32, and 34.
T. 23 N., R. 103 W.,
Secs. 26, 28, 29, and 36.

The proposed pipeline will connect the Davis Treasury Unit #1 Well in Section 33, T. 24 N., R. 101 W., to a point of connection with Mountain Fuel Supply Company's transmission line in Section 29, T. 23 N., R. 103 W., all within 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, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-33863 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

[U-910]

Utah; Deep Creek Mountains Interim Protection Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the interim protection plan for the Deep Creek Mountains in Utah will become available to the public October 30, 1980. A 30 day public comment period concerning the interim protection plan will continue through November 28, 1980, after which the final plan will be implemented.

On or about October 30, a copy of the interim protection plan will be mailed to those on the Deep Creek Mountains mailing list. Copies will also be available at the BLM Utah state office, Richfield and Salt Lake District offices.

All comments should be sent to: Deep Creek Mountains, BLM Utah State Office, 136 East South Temple, Salt Lake City, Utah 84111.

FOR FURTHER INFORMATION CONTACT: Reed Stalder, Utah State Office 801-524-5326.

Dated: October 22, 1980.

Gary J. Wicks,

Director.

[FR Doc. 33909 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

Delegation of Authority to the Director, Bureau of Land Management, Regarding Nondiscrimination Under Trans-Alaska Pipeline Permits

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Delegation of Authority.

SUMMARY: This notice is issued in accordance with the provisions of 5 U.S.C. 552(a)(1). The Secretary of the Interior has delegated authority to the Director, Bureau of Land Management, regarding nondiscrimination under Trans-Alaska Pipeline permits. The Director, BLM is designated the Department of the Interior Compliance Officer to perform functions assigned to such Officer under regulations implementing section 403 of Pub. L. 93-153 (43 CFR 27). The delegation and designation were issued by Manual Release Number 2284 dated July 29, 1980, Part 235, Chapter 4 of the Department of the Interior Manual. The Director has redelegated his authority to the State Director, Alaska.

EFFECTIVE DATE: October 31, 1980.

ADDRESS: Any inquiries should be sent to: Director (840), Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: John Moeller at the above address on 202-343-6825.

Dated: October 24, 1980.

James W. Curlin,

Secretary of the Interior.

[FR Doc. 80-33969 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

Colorado; Termination of Proposed Forest Service Withdrawal Sites and Opening of Lands

The U.S. Department of Agriculture, Forest Service, Rocky Mountain Region, filed withdrawal applications as listed below:

1. Application C-11542 filed September 16, 1970 and published September 30, 1970 as FR Doc. 70-12993 and December 30, 1977 and FR Doc. 77-37092.

New Mexico Principal Meridian-Uncompahgre National Forest

Palmer Roadside Rest

T. 43 N., R. 7 W., Protraction 24A, dated May 5, 1965.

Sec. 20: SE¼, description by metes and bounds as M.S.1909.

Beginnning at Corner No. 1 an iron rod one inch in diameter, two feet long set in a hole drilled in a rock marked 1/1909. Whence, U.S.L.M. E bears S. 8° 42' E., 74 feet. Point on Hayden Mountain bears S. 79° W; thence S. 35° W., 40 feet to intersection with county road, 70 feet to south bank of Red Mountain Creek, 264.5 feet to intersection with line 3-4 of survey number 1910, 540 feet leave east bank of Red Mountain Creek, 564.1 feet to intersection of line 1-2 survey No. 1910, 1150 feet to center of Red Mountain Creek, 1310 feet to witness corner No. 2 a post four feet long set on hard rock in a large mount of stones marked witness corner 2/1909, 1500 feet to corner No. 2 which is inaccessible; thence S. 55° E., 120 feet to center of Red Mountain Creek, 300 feet to corner No. 3 which lies in center of County Road from whence Mt. Elizabeth bears N. 21° 18' E., point of rock on Mt. Abrams bears S. 67° 50' E., thence N. 35° E., 29 feet to witness corner No. 3 a post 4 feet long set in ground as far as rock would permit with mount of stones marked witness corner 3/1909, 950.2 feet to intersetion of line 1-2 survey No. 1910, 1249.8 feet to intersection of line 3-4 survey No. 1910, 1500 feet to corner No. 4 a post 4 feet long with mount of stones marked 4/1909; thence N. 55° W., 85 feet to intersection with Curran Creek, 110.7 feet to intersection with line 4-1 survey No. 304A., 130.9 feet to intersection with line 1-2 of Henderson Lode survey No. 302, 213.1 feet to intersection with line 4-1 of survey No. 302, 287 feet to intersection with Curran Creek, 292.4 feet to intersection with line 1-2 of survey No. 304A., 300 feet to corner No. 1 the place of beginning. 10.27 acres

Emma Lode Roadside Rest

T. 42 N., R. 8 W., Protraction 24B, dated May 5, 1965.

Sec. 11: SE¼ description by metes and bounds as M.S. 20141.

Beginning at Corner No. 1 from which U.S.M.M. Carbon Lake bears S. 17° 59' E. 3927.45 feet; thence N. 36° 49' E. 317.3 feet to intersection with line 5-8 of Snowflake mineral survey No. 4508, 1497.48 feet to intersection with line 5-8 of O.P.P. mineral survey 6998, 1500 feet to corner No. 2 from whence corner No. 8 of Snowflake mineral survey No. 4507 bears S. 46° 37' W., 1214.2 feet; thence N. 53° 11' W., 92.92 feet to intersection with line 7-8 of the O.P.P. mineral survey 6998, 206.67 feet to intersection with line 7-8 of Snowflake mineral survey No. 4507, 600 feet to corner No. 3, from whence corner No. 4 of Swampangel mineral survey No. 15342 bears S. 78° 42' 40" E., 545.22 feet; thence S. 36° 49' W., 112 feet to intersection with Unnamed Creek, 820 feet to intersection with unnamed creek, 1500 feet with corner No. 4; thence S. 53° 11' E., 560 feet to intersection with Silverton R.R., 600 feet to corner No. 1, the place of beginning. 13.95 acres

2. Application C-15142 filed January 14, 1972 and published March 24, 1972 as FR Doc 72-4500 and December 30, 1977 as FR Doc. 77-37175.

Sixth Principal Meridian-Gunnison National Forest

Rivers End Campground

T. 14 S., R 82 W.

Sec. 5: E½NE¼SW¼, NW¼SE¼, N½SW¼SE¼, except the portion included in patented Mineral Survey 8806.

60 acres.

3. Application C-15960 filed March 23, 1972 and published May 11, 1972 as FR Doc. 72-7188 and August 21, 1978 as FR Doc. 78-2330.

New Mexico Principal Meridian-Gunnison National Forest

Williams Creek Campground

T. 42 N., R. 4 W.

Sec. 8: N½NW¼, N½S½NW¼.

120 acres.

Windy Point Overlook

T. 43 N., R. 3 W.

Sec. 18: East 10 chains of Lot 2, NW¼SE¼NW¼, N½SW¼SE¼NW¼.

35 acres.

Hidden Valley Picnic Ground

T. 44 N., R. 2 W.

Sec. 30: W½NW¼NE¼, E½NE¼NW¼.

40 acres.

New Mexico Principal Meridian-Gunnison and San Isabel National Forest

Alpine Tunnel Historic District

T. 51 N., R. 5 E.

Sec. 22: S½SW¼;

Sec. 27: NW¼, N½SW¼;

Sec. 28: NE¼, N½SE¼;

560 acres.

4. Application C-17416 filed December 5, 1972 and not published.

Sixth Principal Meridian-Gunnison National Forest

Taylor Park Sewage Lagoon

T. 14 S., R. 82 W.

Beginning at a point from which Corner No. 9 of Mineral Survey No. 2098 bears S. 45°15' E., 500 feet; thence, S. 57°00' E., 1600 feet; thence, N. 33°00' E., 700 feet; thence, N. 57°00' W., 1600 feet; thence S. 33°00' W., 700 feet to the point of beginning.

25.7 acres.

The applicant agency has cancelled the application in paragraphs one thru four in their entirety.

5. Application C-16210 filed April 27, 1972 published June 21, 1972 FR Doc. 72-9347 and January 5, 1978 FR Doc. 78-115.

New Mexico Principal Meridian-Grand Mesa and Uncompahgre National Forest

Antone Springs Campground

T. 47 N., R. 12 W.

Sec. 15: E½E½SW¼SW¼, W½SE¼SW¼.

30 acres.

Sixth Principal Meridian-Gunnison National Forest

McClure Campground

T. 11 S., R. 89 W.

Sec. 2: S½NW¼SW¼, SW¼SW¼;

Sec. 3: SE¼SE¼, Less 10 acres, more or less, of State Highway 133 roadside zone previously withdrawn under P.L.O. 4579.

90 acres.

The applicant agency has cancelled the application in paragraph five insofar as it affects the lands described.

Therefore, in accordance with the regulations contained in 43 CFR 2091.2-5(b)(1), at 7:45 a.m. on December 1, 1980, the lands described in paragraphs one through five above will be relieved of the segregative effect of the applications and open to such forms of appropriation as may by law be made of National Forest land.

Any questions concerning these lands should be addressed to the undersigned at the Bureau of Land Managment, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, CO 80202.

Robert D. Dinsmore,

Chief, Branch of Adjudication.

[FR Doc. 80-33960 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

Montrose District Advisory Council Meeting

Notice is hereby given in accordance with 43 CFR Part 1780 that a meeting of the Montrose District Advisory Council will be held on December 10, 1980.

The meeting will convene at 9:00 a.m. in the conference room of the Bureau of

Land Management office, Highway 550 South, Montrose, Colorado.

The agenda for this meeting will include: (1) A discussion of the functions of the Council; (2) Orientation to Montrose District programs and issues; and (3) Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:30 p.m. and 2:00 p.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 1269, Montrose, Colorado 81401, telephone 303-249-7791, by close of business on December 3, 1980. Depending on the number of persons wishing to make oral statements, a time limit per person may be established by the District Manager.

Summary minutes of the Council meeting will be maintained at the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Marlyn V. Jones,

District Manager.

[FR Doc. 80-33965 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Cape Cod National Seashore: Off-Road Vehicle Use: Availability of Management Analysis Alternatives; Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of Analysis of Management Alternatives (including Environmental Assessment) for Off-Road Vehicle Use and Notice of Public Meetings.

SUMMARY: The National Park Service has prepared an Analysis of Management Alternatives (including Environmental Assessment) for Off-Road Vehicle Use, Cape Cod National Seashore, Massachusetts. This analysis includes a description of past and present off-road vehicle use within Cape Cod National Seashore, several alternatives for the management of off-road vehicles on the dunes and beaches of the Seashore, and an assessment of the environmental impacts of each alternative. With this Notice of Intent, the National Park Service is seeking comments on the Analysis of Management Alternative and the selection of a preferred alternative. These comments will assist the National Park Service in the preparation of proposed regulations for off-road vehicle use in Cape Cod National Seashore.

DATES: Written comments will be accepted until January 2, 1981. Public meetings will be held at 7:30 p.m. on December 1, 1980, at Faneuil Hall, in Boston, Massachusetts, and at 7:30 p.m. on December 2, 1980, at the Salt Pond Visitor Center, Cape Cod National Seashore, Eastham, Massachusetts.

ADDRESSES: Comments should be directed to: Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663. Copies of the Analysis of Management Alternatives may be obtained from the North Atlantic Regional Office, 15 State Street, Boston, Massachusetts 02109 or the Superintendent's office, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663.

Richard L. Stanton,

Regional Director, North Atlantic Region.

[FR Doc. 80-34045 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 1:30 p.m. CST on November 12, 1980, at the Louisiana Department of Wildlife and Fisheries Building, 400 Royal Street, Room 220, New Orleans, Louisiana.

The Delta Region Preservation Commission was established pursuant to Pub. L. 95-265, Section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, in the development and implementation of a general management plan, and in the development and implementation of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

Matters to be discussed at this meeting include:

1. Workshop Session to review and work on comments of the draft General Management Plan.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-serve basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact James Isenogle, Superintendent, Jean Lafitte National Historical Park, 400 Royal Street, Room 200, New Orleans, Louisiana 70130, telephone area code 504 589-3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Dated: October 24, 1980.

Earl A. Hassebrock,

Acting Regional Director, Southwest Region, National Park Service.

[FR Doc. 80-34044 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-70-M

J. Carver Harris DBA The Castillo Shop; Intention to Negotiate Concession Permit

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that on or before December 1, 1980, the Department of the Interior, through the Regional Director, Southeast Region, National Park Service, proposes to negotiate a concession permit with J. Carver Harris DBA The Castillo Shop, authorizing him to continue to provide an interpretive publications and souvenir sales outlet for the public at Castillo de San Marcos National Monument, St. Augustine, Florida, for a period of five (5) years from January 1, 1981, through December 31, 1985.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Office of the Superintendent, Castillo de San Marcos National Monument, 1 Castillo Drive, St. Augustine, Florida 32084.

The foregoing concessioner has performed his obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1980, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. This provision, in effect, grants J. Carver Harris, as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new permit and a preference in the award of the permit, if, thereafter, the proposal of J. Carver Harris is substantially equal to others received. In the event a responsive proposal superior

to that of J. Carver Harris (as determined by the Secretary) is submitted, J. Carver Harris will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new permit will be negotiated with J. Carver Harris. The Secretary will consider and evaluate all proposals received as a result of this notice.

Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Castillo de San Marcos, 1 Castillo Drive, St. Augustine, Florida 32084 for information as to the requirements of the proposed permit.

Dated: September 24, 1980.

Joe Brown,

Regional Director, Southeast Region.

[FR Doc. 80-34047 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-70-M

Water and Power Resources Service

Amendatory Distribution System Loan Repayment Contract Between the United States and the Kanawha Water District; Availability of Proposed Amendatory Contract for Public Review and Comment

The Department of the Interior, through the Water and Power Resources Service (Water and Power), intends to execute an amendatory repayment contract with the Kanawha Water District (District) which is located near Willows, California. A proposed amendatory contract has been prepared by Water and Power and the District pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), as amended, and the Distribution System Loans Act of July 4, 1955 (69 Stat. 244), as amended.

The primary purpose of the proposed contract is to provide for the payment of interest on a portion of the distribution system loan allocable to municipal and industrial (M&I) service.

A second purpose of the amendatory contract is to make the contract executed in 1972 consistent with Pub. L. 92-487. That law, enacted October 13, 1972, eliminated the need for transferring title of property needed for construction to the United States. Standard articles that are now required, or have been modified subsequent to the execution of the original contract in 1972, have also been included in the proposed amendatory contract.

Following publication of this notice, the proposed amendatory contract will be available for public review and the receipt of written comments for a 30-day period. A copy of the proposed contract may be obtained by writing the Regional Director, Water and Power Resources Service, 2800 Cottage Way, Sacramento, California 95825, or by calling Ms. Cindy Cowden at (916) 484-4540. Public meetings may be held if comments on the proposed contract indicate there is need for clarification or resolution of issues arising during the comment period. Advance notice of such meetings will be provided to parties indicating their interest by written request.

All written correspondence concerning the proposed contract will be made available to the public pursuant to the terms and conditions of the Freedom of Information Act (80 Stat. 388), as amended.

Dated: October 24, 1980.

Aldon D. Nielsen,

Acting Assistant Commissioner of Water and Power Resources.

[FR Doc. 80-33861 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Volume No. 363]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: October 15, 1980.

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Protests (such as were allowed to filings prior to March 1, 1979) will be rejected. A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g.s., unresolved common control, unresolved fitness questions, and jurisdictional problems; we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act.]

In the absence of legally sufficient petitions for intervention, filed on or before December 1, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before December 1, 1980, or the application shall stand denied.

By the Commission, Review Board Number 2, Members: Chandler, Eaton, and Liberman.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

MC 105566 (Sub-223F), filed May 13, 1980, previously noticed in the Federal Register issue of July 17, 1980, and republished this issue. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406, Executive Bldg., 6901 Old Keene Mill Rd., Springfield, VA 22150. Transporting *acids, adhesives, adjusters, alcohols* (except alcoholic liquors), *tanners' bate, cleaning, scouring and washing compounds, fuel oil, pesticides, water clarifying compounds, deodorants, disinfectants, tanners' depilatory, tanning extracts, feeds, feed supplements, paints, plasticizers, solvents, petroleum products, plastics* (other than expanded), *plastic or rubber articles, sizing, acid sludge, and textile softeners* (except in bulk), from the facilities of Rohm and Haas Company, at (a) Los Angeles and Hayward, CA, (b) Calumet City, Morton Grove, and Niles, IL, (c) Louisville, KY, (d) Bristol, Croydon, and Philadelphia, PA, (e) Knoxville, TN, and (f) Dallas and Houston, TX, to points in AL, AR, CT, DE, IA, KS, LA, MD, MA, MS, MO, NE, NJ, NM, NY, NC, ND, OK, PA, SD, VA, WV, and WY. Note: The purpose of this republication is to correct the commodity description.

[FR Doc. 80-33956 Filed 10-30-80; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP1-058]

Motor Carrier; Permanent Authority Decisions; Decision-Notice

Decided: October 24, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 15, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before December 30, 1980 an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill. Member Hill not participating.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 95920 (Sub-68F), filed October 3, 1980. Applicant: SANTRY TRUCKING CO., a Corporation, 10505 N.E. 2nd Ave., Portland, OR 97211. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring

special equipment), between points in the U.S., under continuing contract(s) with Western States Shippers Association, Inc., of Portland, OR.

[FR Doc. 80-33957 Filed 10-30-80; 8:45 am]
BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Armstrong World Industries, Inc., P.O. Box 3001, Lancaster, PA 17604.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

a. Armstrong World Industries Canada Ltd., P.O. Box 919, Station "A", Montreal, Quebec H3C 2W2 Canada.
b. E&B Carpet Mills, Inc., P.O. Box 1288, Arlington, TX 76010.
c. Empire Carpet Corporation, P.O. Box 3000, Teterboro, NJ 07608.
d. GLD Wholesale, Inc., O'Hare Lake Office Plaza, 2350 East Devon Avenue, Des Plaines, IL 60018.
e. Pacific World Wholesale, Inc., 25811 Clawiter Road, Hayward, CA 94545.
f. Thomasville Furniture Industries, Inc., P.O. Box 339, Thomasville, NC 27360.

1. Parent corporation and address of principal office: Bird & Son, Inc., Washington Street, East Walpole, Massachusetts 02032.

2. Wholly-owned subsidiary which will participate in the operations, and address of their respective principal office: Bird Machine Company, Inc., Neponset Street, South Walpole, Massachusetts 02071.

1. Parent Corporation: The Coleman Company, Inc., 250 N. St. Francis, Wichita, Kansas 67201.

(A) Coast Catamaran Corp., 4925 Oceanside Blvd., P.O. Box 1008, Oceanside, California.
(B) O'Brien International Inc., 14615 N.E. 91st St., Redmond, Washington 98052.
(C) The Canadian Coleman Company Limited, 700 Kipling Avenue, Toronto, Canada M8Z5V6.
(D) Coleman International Sales, Inc., 2111 E. 37th St. N., Wichita, Kansas.

1. Parent corporation and address of its principal office: Colt Industries Inc, 430 Park Avenue, New York, NY 10022.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices:

Central Moloney, Inc, 430 Park Avenue, New York, NY 10022.
Colt Industries Operating Corp, 430 Park Avenue, New York, NY 10022.
Crucible Inc, 430 Park Avenue, New York, NY 10022.
Garlock Inc, 430 Park Avenue, New York, NY 10022.
Meñasco Inc, 805 South San Fernando Blvd., Burbank, CA 91510.
Stemco Inc, P.O. Box 1989, Industrial Blvd., Longview, TX 75601.

1. Parent corporation and address of its principal office: Exxon Corporation, 1251 Avenue of Americas, New York, New York 10020.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Reliance Electric Company, 29325 Chagrin Boulevard, Post Office Box 22280, Cleveland, Ohio 44122.
(b) Lorain Products Corporation, 1122 F Street, Lorain, Ohio 44052.
(c) Lorain Telecommunications Electronics Company, Herring Road, Post Office Box 2008, Newnan, Georgia 30264.
(d) Lorain Services, 1122 F Street, Lorain, Ohio 44052.
(e) Reliance Telecommunications Electronics Company, 2100 Reliance Parkway, Post Office Box 919, Bedford, Texas 76021.
(f) PEC Industries Inc., 5780 Carrier Drive, Orlando, Florida 32809.
(g) Osborn Machine Company, 222 South Jared Street, Dubois, Pennsylvania 15801.
(h) Reliable Electric Company, 11333 Addison Street, Franklin Park, Illinois 60131.
(i) Lordel Manufacturing Company, 1107 South Mountain Avenue, Monrovia, California 91016.
(j) Relco Trading Company, 11333 Addison Street, Franklin Park, Illinois 60131.
(k) Kato Engineering Company, 1415 First Avenue N., Mankato, Minnesota 56001.
(l) Kato Engineering International Inc., 1415 First Avenue N., Mankato, Minnesota 56001.
(m) Reliance Electric Export Company, 777 Beta Drive, Mayfield Heights, Ohio 44143.
(n) Power Manufacturing Company, 29325 Chagrin Boulevard, Cleveland, Ohio 44122.
(o) Hayden Electic Service Center, 770 Evans Road, Iveson, Arizona 85713.
(p) Tree Electric Service Company, 1020 South Lipan Street, Denver, Colorado.
(q) Federal Pacific Electric Company, 150 Avenue L, Newark, New Jersey 07101.

1. Parent corporation and address of principal office: Facet Enterpises, Inc., 7030 South Yale Avenue, Tulsa, Oklahoma 74177.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices: (a) Campbell Filter Company, 5310 East 31 Street, Suite 1100, Tulsa, Oklahoma 74101.

(1) Parent corporation and address of principal office: Ruddick Corporation, 2000 First Union Plaza, Charlotte, North Carolina 28282.

(2) Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

(a) American & Efird Mills, Inc., 22 American Street, Mt. Holly, North Carolina 28120.
(b) Harris-Teeter Super Markets, Inc., 4017 Chesapeake Drive, Charlotte, North Carolina 28233.
(c) Jordan Business Forms, Inc., Interstate Highway 85 at Sam Wilson Road, Charlotte, North Carolina 28208.

1. Parent Corporation and address of Principal Office: NAPCO Industries, Inc., 1600 South Second Street, Hopkins, Minnesota.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

Mass Merchandisers, Inc., P.O. Box 790, Harrison, Arkansas 72601.
Banner Wholesalers Inc., Company, 700—106th Street, Arlington, Texas 76010.
Kitchenaides Inc., Box 50999, New Orleans, Louisiana 70150.

1. Parent corporation: National Distillers and Chemical Corp., 99 Park Avenue, New York, New York 10016.

2. Wholly-owned subsidiaries:

(a) U.S. Industrial Chemicals Company, 99 Park Avenue, New York, New York 10016.
(b) Emery Industries, Inc., 1300 Carew Towers, Cincinnati, Ohio 45202.
(c) Holland House Brands, Inc., 1125 Pleasant View Terrace, Ridgefield, New Jersey 07657.
(d) Almaden Vineyards, Inc., 1530 Blossom Hill Road, San Jose, California 95118.

(A) The parent corporation and address of the principal office: Raytheon Company, 141 Spring Street, Lexington, Massachusetts 02173.

(B) Wholly owned subsidiaries which will participate in the operations and address of principal offices:

(1) Amana Refrigeration, Inc., Amana, Iowa 52204.

(2) The Badger Company, Inc., One Broadway, Cambridge, Massachusetts 02142.
(3) Beech Aircraft Corporation, 9709 East Central Street, Wichita, Kansas 67201.
(4) Iowa Manufacturing Company, 916 Sixteenth Street Northeast, Cedar Rapids, Iowa 52402.
(4.1) Division of Iowa Manufacturing Company, El-Jay, 86470 Franklin Boulevard, Eugene, Oregon 97405.
(5) The Kuras-Alterman Corporation, 1578 Route 23, Wayne, New Jersey 07470.
(6) Lexitron Corporation, 9700 Desoto Avenue, Chatsworth, California 91311.
(7) The Machlett Laboratories, Inc., 1063 Hope Street, Stamford, Connecticut 06907.
(8) Modern Maid Company, P.O. Box 1111, Chattanooga, Tennesee 37401.
(9) Raytheon Gulf Systems Company, Hartwell Road, Bedford, Massachusetts 01730.
(10) Raytheon Middle East Systems Company, Hartwell Road, Bedford, Massachusetts 01730.
(11) Raytheon Semiconductor International Company, 350 Ellis Street, Mountain View, California 94042.
(12) Raytheon Service Company, 2 Wayside Road, Burlington, Massachusetts 01803.
(13) Raytheon Marine Sales and Service Company, Sorenson Company, 676 Island Pond Road, Manchester, New Hampshire 03103.
(14) Raytheon Subsidiary Support Company, Inc., Hartwell Road, Bedford, Massachusetts 01730.
(15) Sedco Systems, Inc., 65 Marcus Drive, Melville, Long Island, New York 11747.
(16) Seismograph Service Corporation, 6200 East Forty First Street, Tulsa, Oklahoma 74102.
(17) Speed Queen Company, Shepard and Hall Streets, Ripon, Wisconsin 54971.
(18) Swithcraft, Inc., 5555 North Elston Avenue, Chicago, Illinois 60630.
(19) United Engineers and Constructors, Inc., 30 South Seventeenth Street, Philadelphia, Pennsylvania 19101.

(C) Divisions and Operations of Raytheon Company:

(1) Caloric Corporation, Topton, Pennsylvania 19562.
(1.1) Operation of Caloric Corporation: Glenwood Range Company, 435 Park Avenue, Delaware, Ohio 43015.
(2) Raytheon Data Systems Company, 1415 Boston Providence Turnpike, Norwood, Massachusetts 02062.
(3) D. C. Heath and Company, 2700 North Richardt Avenue, Indianapolis, Indiana 46219.
(4) Electromagnetic Systems Division, 6380 Hollister Avenue, Goleta (Santa Barbara), California 93017.
(5) Equipment Division, 20 Seyon Street, Waltham, Massachusetts 02154.
(6) Microwave and Power Tube Division, Foundry Avenue, Waltham, Massachusetts 02154.
(6.1) Operations of Microwave and Power Tube Division:
(a) Amrad, 2020 North Janice Avenue, Melrose Park, Illinois 60160.
(b) Grafix, 2257 Saw Mill River Road, Elmsford, New York 10523.
(c) Plastic Molded Products Company, 4300 West Bryn Mawr, Chicago, Illinois 60646.
(d) Raytheon Filmamatic, 1120 Federal Road, Brookfield, Connecticut 06804.
(e) Raytheon Medical Imaging, 75 Camp Avenue, Stamford, Connecticut 06907.
(f) Raytheon Nuclear Diagnostics, 70 Ryan Street, Stamford, Connecticut 06907.
(7) Missile Systems Division, Hartwell Road, Bedford, Massachusetts 01730.
(8) Semiconductor Division, 350 Ellis Street, Mountain View, California 94042.
(9) Submarine Signal Division, West Main Road, Portsmouth, Rhode Island 02871.

1. Parent corporation and address of principal office: Steelcase Inc., 1120 36th Street, S.E., Grand Rapids, MI 49501.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Attwood Corporation, Lowell, MI 49331.

(b) Vecta Contract, Inc., Grand Prairie, TX 75051.

1. Parent corporation: Townhouse Penthouse Industries Inc., 7901 Michigan Ave., St. Louis, Missouri 63111.

2. Wholly owned subsidiaries which will participate.

(a) Town House Furn. Ltd. 7901 Michigan Ave. St. Louis, Mo. 63111

(b) Penthouse Furn. Ltd. 2015 Battlefield Rd. Springfield, Mo. 65807

(c) Brittany Furn. Ind. W. Hospital Rd. Paoli, Ind. 47454

(d) Penthouse Amory Ltd. Puckett Drive, Amory, Miss. 38821

(e) Jordan Furn. Ind. Jordan Drive, Booneville, Miss. 38829

I affirm that Townhouse Penthouse Industries is a corporation which directly or indirectly owns 100 percent interest in the subsidiaries participating in compensated intercorporate hauling under U.S.C. 49 10524(b), listed in the attached notice.

1. Parent corporation and address of principal office: Union Camp Corporation, 1600 Valley Road, Wayne, New Jersey 07470.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

Moore Handley, Highway 31 South, P.O. Box 2607, Birmingham, Alabama 35202.

Allied Container Corporation, 1 Allied Drive, Dedham, Massachuetts 02026.

1. Parent Corporation and address of principal office: Westinghouse Electric Corporation, Westinghouse Building—Gateway Center, Pittsburgh, Pennsylvania 15222.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices:

(a) Aires Centralis Westinghouse, Inc., Reparto Industrial, Calle La Playa, Santa Isabel, Puerto Rico 00757.
(b) Ampgard Products, Inc., P.O. Box 336, Plant Rd. 854, Km 4.3, Toa Baja, Puerto Rico 00759.
(c) Ascensores Westinghouse, Inc., Reparto Industrial, Calle La Playa, P.O. Box 726, Santa Isabel, Puerto Rico 00757.
(d) Associated Beverage Company, Inc., 3220 East 26th Street, Vernon,California 90023.
(e) Bryloc, Inc., P.O. Box IW, Road #725, Km 0.4, Bo. Llanso Aibonito, Puerto Rico 00609.
(f) Bryco, Inc., P.O. Box IW, Road #725, Km 0.4, Bo. Llanso Aibonito, Puerto Rico 00609.
(g) Computer and Instrumentation de Puerto Rico, Inc., P.O. Box IW, Road #725, Km 0.4, Bo. Llanos Aibonito, Puerto Rico 00609.
(h) Componentes de Iluminacion, S.A. de C.V., c/o Lighting Divisions, Westinghouse Electric Corporation, 7145 Industrial Avenue, El Paso, Texas 79915.
(i) Componentes Electricos de Lamparas S.A. de C.V., c/o Lamp Divisions, Westinghouse Electric Corporation, Surety Tower, Suite 504, 6044 Gateway East El Paso, Texas 79905.
(j) Componentes Motrices, Inc., P.O. Box 112, Gurabo, Puerto Rico 00658.
(k) Coral Ridge Properties, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(l) Broken Woods Golf & Racquet Club, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(m) Coral Highlands Association, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(n) Coral Ridge-Collier Properties, Inc., 3300 University Drive, Coral Springs, Florida 33065.

(o) Coral Ridge Construction Management Corp., 3300 University Drive, Coral Springs, Florida 33065.
(p) Coral Ridge Realty Corporation, 3300 University Drive, Coral Springs, Florida 33065.
(q) Coral Springs Golf & Tennis Club, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(r) Coral Springs Realty, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(s) Curacao Properties, N.V., 3300 University Drive, Coral Springs, Florida 33065.
(t) Florida National Properties, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(u) Earthmoving & Excavation Company, 3300 University Drive, Coral Springs, Florida 33065.
(v) Highland General Corporation, 3300 University Drive, Coral Springs, Florida 33065.
(w) New Community Development Group Corporation, 3300 University Drive, Coral Springs, Florida 33065.
(x) Ocean Mile Association, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(y) Realty Management Corporation, 3300 University Drive, Coral Springs, Florida 33065.
(z) Royal Continental Hotels Corporation, 3300 University Drive, Coral Springs, Florida 33065.
(aa) Electric Arc, Inc., 4 Saddle Road, Cedar Knolls, New Jersey 07927.
(bb) Electrical Specialty Products Co., P.O. Box 21, Highway 25 South, Montevallo, Alabama 35115.
(cc) Fusibles Westinghouse de Puerto Rico, Inc., P.O. Box F, Road 992, Km 0.4, Luquillo, Puerto Rico 00673.
(dd) Gangloff Corporation, 4 Saddle Road, Cedar Knolls, New Jersey 07927.
(ee) General Control, Inc., P.O. Box 336, Plant Road 854, Km 4.3, Toa Baja, Puerto Rico 00759.
(ff) Half Moon Bay Properties, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(gg) Half Moon Bay Construction, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(hh) Half Moon Bay Lodge, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(ii) Half Moon Bay Realty, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(jj) Diamond point Development Corporation, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(kk) Northwestern Foods, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(ll) Resources Design, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(mm) Hub Electric Company, Inc., 940 Industrial Drive, Elmhurst, Illinois 60126.
(nn) ICO de Puerto Rico, Inc., P.O. Box 889, Road 103, Km 7.4, Industrial Park, Fomento Street, Cabo Rojo, Puerto Rico 00623.
(oo) IVI Manufacturing, Inc., P.O. Box 889, Road 103, Km 7.4, Industrial Park, Fomento Street, Cabo Rojo, Puerto Rico 00623.
(pp) Ideal School Supply Company, 11000 S. Lavergne Avenue, Oak Lawn, Illinois 60453.
(qq) Educational Products, Inc., 11000 S. Lavergne Avenue, Oak Lawn, Illinois 60453.
(rr) Interruptores, Inc., P.O. Box 336, Plant Road 854, Km 4.3, Toa Baja, Puerto Rico 00759.
(ss) Kentucky Lamp Company, 2727 Kentronics Drive, Owensboro, Kentucky 42301.
(tt) LWW, Inc., Washington & Lincoln Streets, Building #S-238-54, Cayey, Puerto Rico 00633.
(uu) Lamparas Electricas, Inc., Industrial Avenue No. 8, P.O. Box 636, Cayey, Puerto Rico 00633.
(vv) Longines-Wittnauer, Inc., P.O. Box 2500, 145 Huguenot Street, New Rochelle, New York 10802.
(ww) Credit Financial Corp., P.O. Box 2500, 145 Huguenot Street, New Rochelle, New York 10802.
(xx) Credit Services, Inc., P.O. Box 2500, 145 Huguenot Street, New Rochelle, New York 10802.
(yy) Stereo Dimensions, Inc., P.O. Box 2500, 145 Huguenot Street, New Rochelle, New York 10802.
(zz) Luxaire, Inc., 875 Greentree Road, Building 7, Sixth Floor, Pittsburgh, Pennsylvania 15220.
(aaa) Materiales Plasticos, Inc., P.O. Box 7765, El Tuque Industrial Area, Ponce, Puerto Rico 00731.
(bbb) Metal Working Systems, Inc., Address Unknown.
(ccc) Millar Elevator Industries, Inc., 501 West 42nd Street, New York, New York 10036.
(ddd) Minex de Westinghouse, Inc., P.O. Box 524, Road 992, Km 0.4, Luquillo, Puerto Rico 00673.
(eee) Motores Electricos de Juarez S.A. de C.V., c/o Small Motor Division, Westinghouse Electric Corporation, 7145 Industrial Avenue, El Paso, Texas 79915.
(fff) Pormetco, Inc., Km 0.4, Route 701, P.O. Box JJ, Salinas, Puerto Rico 00751.
(ggg) Productos Circuitos de Puerto Rico, Inc., c/o Computer & Instrumentation Div., 1200 West Colonial Drive Orlando, Florida 32804.
(hhh) Productos Electronicos, Inc., Building 7-600-62, P.R. Road #1 Munoz Rivera #112, Santa Isabel, Puerto Rico 00757.
(iii) Productos Motrices, Inc., P.O. Box 112, Gurabo, Puerto Rico 00658.
(jjj) Productos Westinghouse, Inc., Guanajibo Industrial Park D-Street, Mayaguez, Puerto Rico 00708.
(kkk) Prorelco de Puerto Rico, Inc., Km 0.6, Route No. 701, P.O. Box 450, Salinas, Puerto Rico 00751.
(lll) Semiconductores Westinghouse, Inc., P.O. Box 127, Carr No. 30, Km 6.0, Barrio Rincon, Gurabo, Puerto Rico 00658.
(mmm) 7-Up Bottling Co., Inc., P.O. Box 38, Insular Road 174, Km 2.0, Minillas Industrial Park, Bayamon, Puerto Rico 00619.
(nnn) Thermo King Caribbean, Inc., P.O. Box 397, Ciales, Puerto Rico 00638.
(ooo) Thermo King Corporation, 314 West 90th St., Minneapolis, Minnesota 55420.
(ppp) Thermo King de Puerto Rico, Inc., P.O. Box H, Arecibo, Puerto Rico 00612.
(qqq) Transformadores, Inc., P.O. Box 127, Road 30, Km 6.0 Barrio Rincon, Gurado, Puerto Rico 00658.
(rrr) Tubos Electronicos Westinghouse, Inc., P.O. Box 127, Road 30, Km 6.0 Barrio Rincon, Gurado, Puerto Rico 00658.
(sss) Western Zirconium, Inc., P.O. Box 3208, Ogden, Utah 84409.
(ttt) Westinghouse Broadcasting Company, Inc., 90 Park Avenue, New York, New York 10016.
(uuu) Group W. Productions, Inc., 90 Park Avenue, New York, New York 10016.
(vvv) W-F Productions, Inc., 90 Park Avenue, New York, New York 10016.
(www) Micro-Relay, Inc., 90 Park Avenue, New York, New York 10016.
(xxx) Radio Advertising Representatives, Inc., 90 Park Avenue, New York, New York 10016.
(yyy) Westinghouse Broadcasting Company, Inc., 90 Park Avenue, New York, New York 10016.
(zzz) PM Magazine Program Service, Inc., 90 Park Avenue, New York, New York 10016.
(aaaa) Westinghouse Construction International, Inc., c/o Westinghouse Electric Corporation, Six Gateway Center, Pittsburgh, PA 15222.
(bbbb) Westinghouse Controls, Inc., P.O. Box 359, Road 14, Km 32.0, Coamo, Puerto Rico 00640.
(cccc) Breakers Incorporated, P.O. Box 359, Road 14, Km 32.0 Coamo, Puerto Rico 00640.
(dddd) Westinghouse Corporation, Six Gateway Center, Pittsburgh, Pennsylvania 15222.
(eeee) Westinghouse Hanford Company, P.O. Box 1970, 1019 Columbia Drive, Richland, Washington 99352.
(ffff) Westinghouse Learning Corporation, Cost Building, 2400

Ardmore Boulevard, Pittsburgh, Pennsylvania 15221.

(gggg) Linguaphone Institute, Inc., Cost Building, 2400 Ardmore Boulevard, Pittsburgh, Pennsylvania 15221.

(hhhh) Westinghouse Learning Corporation (Indiana), Cost Building, 2400 Ardmore Boulevard, Pittsburgh, Pennsylvania 15221.

(iiii) Westinghouse-Sturtevant de Puerto Rico, Inc., Reparto Industrial, Calle La Playa—Box 726, Santa Isabel, Puerto Rico 00757.

(jjjj) Wyoming Mineral Corporation, P.O. Box 3042, Penn Center Boulevard, Pittsburgh, Pennsylvania 15230.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33959 Filed 10-30-80; 8:45 am]

BILLING CODE 7035-01-M

Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this Federal Register notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 88594 M2 F (Republication) Notice of Filing of Petition to Modify Certificate, filed April 25, 1979, published in the FR issue of September 25, 1979, and republished this issue. Petitioner: CARLETON G. WHITAKER, INC., Route 17 Exit 84, Town of Deposit, NY 13754. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. A Decision of the Commission, Review Board Number 2, decided April 28, 1980, served May 16, 1980, finds that the present and future public convenience and necessity require modification of petitioner's Certificate in MC 88594, issued June 22, 1980, and reissued April 23, 1980, to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *foodstuffs* (except commodities in bulk, in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, and (2) *materials, equipment and supplies* used in the manufacture, sale, and distribution of foodstuffs (except commodities in bulk, in tank vehicles), between points in New York (except those in Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Orleans, and Wyoming Counties), on the one hand, and, on the other, New York, NY, points in Nassau, Suffolk, and Westchester Counties, NY, and points in CT, MA, NJ, and RI; that petitioner 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. The purpose of this republication is to reflect petitioner's actual grant of authority.

MC 126305 (Sub-96F), (Correction) (Republication) filed September 7, 1978, published in the FR issues of November 2, 1978, and April 15, 1980 and republished this issue. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., R.D. 1, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. The purpose of this republication is to broaden the commodity description.

MC 138875 (Sub-122F), (Republication) filed December 28, 1979, published in the FR issue of April 6, 1979, and republished this issue. Applicant: SHOEMAKER TRUCKING COMPANY, a Corporation, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). A decision of the Commission, Review Board Number 2, decided February 6, 1980, served February 27, 1980, finds that the present and future public convenience and necessity require operation by applicant as a *common carrier* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum products* (except commodities in bulk), from the facilities of Shell Oil Company in Multnomah County, OR, to points in Malheur County, OR, and those in Idaho in and south of Adams, Valley, and Lemhi Counties; that 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 thereunder. The purpose of this republication is to broaden the territorial description by authorizing service to points in Malheur County, OR.

MC 140024 (Sub-97F) (republication), filed April 14, 1978, published in the Federal Register issue of July 27, 1978, and republished this issue. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Ave., Commerce City, CO 80022. Representative: John F. Decock (same address as applicant). A Decision of the Commission, Division 1, decided June 20, 1980, served June 27, 1980 finds that operations by applicant, as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting: *meats*, in vehicles equipped with mechanical refrigeration, (1) from New York, NY and Philadelphia, PA, to points in IL, IN, KY, MI, and OH; and (2) from Boston, MA, and Mt. Airy, MD, to Chicago, IL; that applicant is fit, willing and able properly to perform the service proposed and to conform to the requirements of the Act and the Commission's rules and regulations. The purpose of this republication is to reflect applicant's actual grant of authority.

MC 140024 (Sub-112F), (republication), filed May 5, 1978, previously noticed in the Federal Register issues of June 6, 1978, August 10, 1978, and republished this issue. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Ave., Commerce City, CO 80022. Representative: John F. DeCock (same address as applicant). A Decision of the Commission, Division 1, decided June 20, 1980, served June 27, 1980, finds that operations by applicant, as a *common carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting: (1)(a) *foodstuffs*, (except in bulk) and (b) *agricultural commodities* otherwise exempt from *economic regulation* under 49 USC 10526(a)(6)(B), when transported in mixed shipments with the commodities in (1)(a) above, in vehicles equipped with mechanical refrigeration, from Philadelphia and Kenneth Square, PA, to points in CA, CO, MN, MO, NE, and TX, restricted to the transportation of shipments having an immediately prior movement by water; that applicant is fit, willing and able properly to perform the service proposed and to conform to the requirements of the Act and the Commission's rules and regulations. The purpose of this republication is to reflect applicant's actual grant of authority.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33968 Filed 10-30-80; 8:45 am]

BILLING CODE 7035-01-M

Agricultural Cooperatives; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: October 24, 1980.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BPO 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change. The name and address of the agricultural cooperative, the location of the records, and the name and address of the person to whom inquiries and correspondence should be addressed, are published here for interested pesons. Submission of information that could have bearing upon the propriety of a filing should be directed to the Commission's Bureau of Investigations and Enforcement, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: American Farmers Cooperative.
Principal Mailing Address (Street No., City, State, and Zip Code): 101 Hampton Road East Crowley, TX 76036.
Where Are Records Of Your Motor Transportation Maintained (Street, No., City, State and Zip Code): 101 Hampton Road East Crowley, TX 76036.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Hamp Scruggs, 101 Hampton Road East, Crowley, TX 76036.

(2) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: American Southern Growers Association, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): 23 B Cooper Place, Bronx, NY.
Where Are Records Of Your Motor Transportation Maintained (Street, No., City, State and Zip Code): 23 B Cooper Place, Bronx, NY.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Arthur Kaplan, 23 B Cooper Place, Bronx, NY.

(3) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Farmers Marine Transportation Cooperative.
Principal Mailing Address (Street No., City, State, and Zip Code): Berth 201, Port of Portland, P.O. Box 3471, Portland, OR 97208.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): Berth 201, Port of Portland, P.O. Box 3471, Portland, OR 97208.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): James H. Sanders, P.O. Box 3471, Portland, OR 97208.

(4) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Friend/Amigo, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): Calle Ignacio Ramirez Ab. Yoli, Empalme Son, Mexico.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): Calle Ignacio Ramirez Ab. Yoli, Empalme Sonora, Mexico.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Federico Sanchez, Ab. Yoli, Kilom, #2, Empalme Son, Mexico.

(5) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Growers Cooperative of Nayarit, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): Apartado Postal #1-123, Mexicali, Baja California, Mexico.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State, and Zip Code): Juarez #101, Victoria de Cortazar, Guanajuato, Mexico
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Carlos V. Courtney, Juarez #101 Victoria de Cortazar, Guanajuato, Mexico

(6) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: International Farmers Union, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): Apdo Postal No. 329, Nogales, Sonora, Mexico.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State, and Zip Code): Apdo Postal No. 329, Nogales, Sonora, Mexico.
Person To Whom Inquiries And Corespondence Should Be Addressed (Name and Mailing Address): Alfonso Cuevas, Apdo Postal No. 329, Nogales, Sonora, Mexico.

(7) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Sinaloa Growers and Producers, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): Apartado Postal #1-133, Mexicali B, CFA Mexico.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State, and Zip Code): Kino 200 Interior, Magdalena Sonora, Mexico.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Manuel Valenzuela A., Kino 200 Interior, Magdalena Sonora, Mexico.

(8) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Veracruz Citrus Growers and Packers, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): Apartado Postal 1-124, Mexicali BC Mexico.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State, and Zip Code): Ave. Rio Nilo #1-39 Fraccionamiento Colinas Del Rio Aguascalientes, AGS Mexico.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Humberto R. Games, Ave. Rio Nilo #1-39, Frac. Colinas Del Rio, Aguascalientes AGS, Mex.

(9) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: World Growers Alliance, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): c/o Luis Gaxiola-Calle I 651, Col Nueva, Mexicali, B.C. Mexico.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State, and Zip Code): c/o Luis Gaxiola-Calle I 651, Col Nueva, Mexicali, B.C. Mexico.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Refugio Rodriguez, 292 Naranjos St., Los Pinos, Mexicali, B.C., Mexico.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33955 Filed 10-30-80; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB.111 (Sub-No. 1F)]

Detroit, Toledo & Ironton Railroad Co.—Abandonment—Between Napoleon and Wauseon, OH; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision entered on March 31, 1980, and the decision of the Commission, Division 1, served September 17, 1980, adopted the decision of the Administrative Law Judge, which is administratively final, stating that, the public convenience and necessarity permit the abandonment by the Detroit, Toledo and Ironton Railroad Company of that portion of its line of railroad from milepost 8.0 near Napoleon, OH to the end of the line at milepost 18.7 at Wauseon, OH, a distance of 10.7 miles, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979), and further subject to the following additional conditions: (1) Applicant shall continue in effect its offer to sell track and right-of-way, including quitclaim and release of appurtenant easements, to Globe-Weis System Company at a cost of $2.00 per foot, (2) applicant shall effectuate a suitable and adequate rail connection between the facilities of Fulton-Landmark, Inc. and Conrail in manner

sufficient to assure alternative uninterrupted rail service to the shipper, and (3) applicant shall not sell, lease, exchange, or otherwise dispose of the right-of-way underlying the track, bridges, and all culverts on the line for a period of 120 days from September 17, 1980 unless said property has first been offered, upon reasonable terms to responsible public authorities or other responsible persons interested in acquiring the property for public use. A certificate of abandonment will be issued to the Detroit, Toledo and Ironton Railroad Company based on the above-described findings on or before December 1, 1980, unless on or before November 17, 1980, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than November 10, 1980; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line together with a reasonable return on the value of such line, or

(b) cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

[FR Doc. 80-33954 Filed 10-30-80 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 54F)

Illinois Central Gulf Railroad Co.—Abandonment—In Pike, Walthall and Marion Counties, MS; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided December 28, 1979, a finding, which is administratively final, was made by the Administrative Law Judge, stating that, the public converience and necessity permit the abandonment by the Illinois Central Gulf Railroad Company of those portions of the line or railroad, and operations thereof, known as ICG's Fernwood District extending from milepost 1.2 near Fernwood, MS, to milepost 32 at Kokomo, MS; and of ICG's Bogue Chitto District from milepost 102 at Lexie, MS, to milepost 105.76 at Tylertown, MS, all in Pike, Walthall, at Marion Counties, MS, and including all yard and sidetracks (101.3), Saunders (110.6) and Fargo (116.8); *provided, however,* that applicant make available to employees the protective conditions set forth in *Oregon Short Line R. Co.-Abandonment Goshen,* 360 I.C.C. 91 (1979); and further that the applicant shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts, for a period of 180 days from September 6, 1980, to permit any state and/or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of abandonment will be issued to the Illinois Central Gulf Railroad Company based on the above-described finding of abandonment, on or before December 1, 1980, unless on or before November 17, 1980, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than November 10, 1980; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on th value of such lines, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commision to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33952 Filed 10-30-80; 8:45 am.]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 20F)]

Missouri Pacific Railroad Co.—Abandonment—and—Abandonment of Trackage Rights—Over Southern Pacific Transportation Co. in St. Mary and Iberia Parishes, LA; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided February 11, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the public convenience and necessity permit the abandonment by the Missouri Pacific Railroad Company of the following portions of a line of railroad known as the New Iberia Subdivision: (a) That portion extending from milepost 47.6 at New Iberia to milepost 47.8 at New Iberia, a distance of .2 miles in Iberia Parish, LA; (b) that portion extending milepost 52.9 at Olivier to milepost 56.5 at Loisel, a distance of 3.6 miles in Iberia Parish, LA, and (c) that portion extending from milepost 73.5 at Oaklawn to milepost

79.8 at Franklin, a distance of 6.3 miles in St. Mary Parish, LA. The total distance of the above segments is 10.1 miles, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Missouri Pacific Railroad Company based on the above-described finding of abandonment, on or before December 1, 1980, unless on or before November 17, 1980, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than November 10, 1980; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost or all of any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96.448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33953 Filed 10-30-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Attorney General

[AAG/A Order No. 56-80]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to modify a system of records (Civil Division Case File System, JUSTICE/CIV-001) maintained by the Civil Division.

The Civil Division Case File System is a system of records for which public notice was published in Volume 45, Number 7 of the Federal Register on January 10, 1980, consistent with provisions of 5 U.S.C. 552a(e)(4). However, the system will be amended to include the storage of selected data, extracted from each case file, on magnetic diskettes. The "Categories of records in the system" as well as the "Storage" and "Retrievability" sections of the system notice have been revised to reflect this change.

The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system modification before it is implemented. Therefore, the public, OMB and the Congress are invited to submit written comments on this system modification. Comments should be addressed to the Administrative Counsel, Justice Management Division, Department of Justice, Room 6315, 10th and Constitution Avenue, NW., Washington, D.C. 20530. If no comments are received on or before December 30, 1980, the system modification will be implemented without further notice in the Federal Register. No oral hearings are contemplated.

A report of the proposed system has been provided to the Director, OMB, to the President of the Senate and to the Speaker of the House of Representatives.

Dated: October 22, 1980.

Kevin D. Rooney,

Assistant Attorney General for Administration.

JUSTICE/CIV-001

SYSTEM NAME:

Civil Division Case File System.

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any and all parties involved in the cases handled by the Civil Division will have identifying data contained in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) The main record of the system is the official case file which is retained on each case under the jurisdiction of the Civil Division except for those cases for which files are maintained in the Civil Division Case File System: *Field Office, Customs Litigation, Commercial Litigation Branch* and the Office of Alien Property File System, and constitutes the official record of the Department of Justice. All record material relating to a case is retained in the file. Each case is assigned a number comprised of the category designation for the subject matter, the code number for the judicial district where the action originated, and the number of cases of that category which have arisen in that district.

(2) Alphabetical and numerical indices are utilized as a means of access to the proper file by the cross-referencing of the names of all parties to a suit with the file number. Forms CV-54 and carbon-interleaf index cards are used in these indices.

(3) An automated record of selected data which has been extracted from each case file is maintained on magnetic diskettes in order to follow the progress of all Division cases and to obtain statistical data for monthly and fiscal reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority to maintain the system is contained in 5 U.S.C. 301 and 44 U.S.C. 3101. The particular system was established in accordance with 28 CFR 0.77(f) and was delegated to the Civil Division pursuant to the memorandum from the Deputy Attorney General, dated July 17, 1974.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Any record pertaining to any case or matter in the Civil Division may be disseminated to any other component of the Department of Justice, including the F.B.I. and the United States Attorneys' Offices, for use in connection with the consideration of that case or matter or any other case or matter under consideration by the Civil Division or any other component of the Department of Justice. A record maintained in this system of records may be disseminated as a routine use of such record as follows: (1) in any case in which there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, the record in question may be disseminated to the appropriate federal, state, local or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law; (2) in the course of investigating the potential or actual violation of any law, whether civil, criminal or regulatory in nature, or during the course of a trial or hearing, or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) a record relating to a case or matter may be disseminated in an appropriate federal, state, local or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice; (4) a record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing; (5) a record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion of such matters as settlement of the case or matter, plea bargaining, or formal or informal discovery proceedings; (6) a record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, or where the agency or officals thereof are a party to litigation or where the agency or officials may be affected by a case or matter, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter; (7) a record relating to a person held in custody pending or during arraignment, trial, sentence or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a federal, state, local or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation, or release of such a person; (8) a record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement; (9) a record may be disseminated to a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency; (10) a record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; (11) a record may be disseminated to the public, news media, trade associations, or organized groups, when the purpose of the dissemination is educational or informational, provided that the record does not contain any information identifiable to a specific individual other than is necessary to identify the matter or where the information has previously been filed in a judicial or administrative office, including the clerk of the court; (12) a record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest; (13) a record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policy making positions to which they were appointed by the President, in accordance with the provisions of 28 C.F.R. 17.60.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 C.F.R. 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) The case files utilize standard file jackets and are retained in electronic, rotary power files; *or in standard file cabinets. (2) The alphabetical and numerical index cards are retained in standard file cabinets. (3) Automated records are maintained on magnetic diskettes.*

RETRIEVABILITY:

The files must be retrieved by file number. The file number can be ascertained from the alphabetical index if the name of any party to the suit is known. Automated records can be retrieved by Department of Justice case number, plaintiff's name, defendant's name, or Civil Division attorney's name.

SAFEGUARDS:

Information contained in the system is unclassified. However, only attorneys who have their names recorded in the File Unit can be issued a case file. Minimal information about a case is provided from the various indices to telephone callers, since there is a problem with indentifying the identity of a caller. If a party desires detailed information, he is referred directly to the attorney of record.

RETENTION AND DISPOSAL:

When a case file is closed by the *responsible attorney*, it is sent to the Federal Records Center for retention in accordance with the authorized Record Disposal Schedule for the classification of the case. Such schedules are approved by the National Archives. After the designated period has passed, the file is destroyed. However, the index and docket cards are not purged.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Civil Division; U.S. Department of Justice; 10th and Constitution Avenue, N.W.; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to: Assistant Attorney General; Civil Division; U.S. Department of Justice; 10th and Constitution Avenue, N.W.; Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

A request for information concerning the cases of the Civil Division should be submitted in writing, with the envelope and letter clearly marked "Privacy Access Request." The request should include the file number and/or the names of any litigants known to the requestor. The requestor should also provide a return address for transmitting the information. Such access requests should be submitted to the System Manager listed above. Requests may also be made by telephone. In such cases the caller will be referred to the attorney of record. The attorney, in turn, may require an official written request.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above. The request should clearly state, what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

All litigants involved in the cases of this Division are sources of information. Such information is either contained in the record material in the case files or has been extracted from that record material and put onto docket and index cards.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80-34081 Filed 10-30-80; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

Consent Decree To Enforce Compliance With Terms of a National Pollutant Discharge Elimination System Permit

In accordance with Departmental policy, 28 CFR § 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree to enforce the terms of a National Pollutant Discharge Elimination System permit, in *United States* v. *City of Twin Falls Idaho, et al.*, Civil No. 1-76-181 has been lodged with the United States District Court for the district of Idaho. The decree imposes on defendant City of Twin Falls certain requirements and compliance dates with respect to the operation of its municipal sewage treatment plant.

The Department of Justice will receive on or before December 1, 1980, written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *City of Twin Falls, Idaho, et al.*, D. J. Ref. 90-5-1-1-629.

The proposed order may be examined at the office of the United States Attorney, District of Idaho, Room 693 Federal Building, 550 W. Fort Street, Boise, Idaho 83724, at the Region X office of the Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101, and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 2644, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Angus MacBeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-33967 Filed 10-30-80; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 80-21]

Herbert Webster Voorhies, Pasadena, Calif.; Hearing

Notice is hereby given that on July 8, 1980, the Drug Enforcement Administration, Department of Justice, issued to Herbert Webster Voorhies, M.D., Pasadena, California, an Order To Show Cause as to why Respondent's applications dated April 28, 1978, and April 23, 1979, for registration as a practitioner with Schedule II-V controlled substances should not be denied.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, November 4, 1980, in Room 324, U.S. Courthouse, 312 North Spring Street, Los Angeles, California.

Dated: October 27, 1980.

Frederick A. Rody, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 80-33937 Filed 10-30-80; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 80-19]

Marshall D. Nickerson, Jr.; Revocation of Registration

On June 20, 1980, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Marshall D. Nickerson, Jr., M.D. (Respondent) why the Drug Enforcement Administration should not revoke the DEA Certificate of Registration AN 6341717 issued to him pursuant to 21 U.S.C. 823, for the reason that on December 11, 1979, Respondent was convicted in the United States District Court for the District of Columbia of one (1) count of knowing and willful distribution of a controlled substance, in violation of 21 U.S.C. 841(a)(1). This is a controlled substance-related felony. In a letter, dated July 21, 1980, Respondent requested a hearing on the issues raised in the Order to Show Cause. The Honorable Francis L. Young, Administrative Law Judge, ordered the filing of prehearing statements, with which the Government complied. Respondent did not file a prehearing statement. On September 15, 1980, the administrative law judge issued a memorandum to parties in which he concluded that Respondent's failure to file a prehearing statement indicates that he has no serious desire to participate in an evidentiary hearing, and that Respondent's failure to file a prehearing statement or otherwise to state issues constitutes a waiver of his opportunity for an evidentiary hearing. The administrative law judge gave the Government the option of submitting to the administrative law judge documentary materials in support of the Government's position, or requesting an

evidentiary hearing for oral presentation of the Government's case. Government counsel submitted documentary evidence to the administrative law judge on October 1, 1980. The administrative law judge submitted his report and certified the record to the Administrator pursuant to 21 CFR 1316.65, on October 9, 1980. Pursuant to 21 CFR 1316.67, the Administrator hereby publishes his Final Order in this proceeding, based upon the findings of fact and conclusions of law set forth below.

The Administrator finds that Respondent pled guilty on December 11, 1979, in the United States District Court for the District of Columbia to one (1) count of knowing and willful distribution of a Schedule II controlled substance. Respondent was sentenced by the Honorable Barrington Parker to six (6) months incarceration at the Allenwood Prison Camp.

The Administrator further finds, based on the Government's Written Allocution Statement and Factual Proffer in Support of Plea, filed at the time of Respondent's plea, that an individual met Respondent at a restaurant in Washington, D.C., in late February or early March, 1977, and discussed with Respondent arrangements for obtaining prescriptions for Dilaudid (hydromorphone). This individual visited Dr. Nickerson at his office, where the doctor told this person that we would write him a prescription for one-hundred (100) tablets of Dilaudid 4 mg. for $300.00. The individual paid Respondent $600.00, and obtained two (2) prescriptions for a total of two-hundred (200) Dilaudid 4 mg. tablets, written in fictitious names. The Administrator finds that Respondent supplied this individual with prescriptions for Dilaudid from the first week of March, 1977 until May, 1977. Respondent would sometimes issue prescriptions in the individual's name, and sometimes in the names of fictitious persons. The individual would either fill prescriptions himself, or give them for other persons to fill, at pharmacies in the District of Columbia and suburban Maryland and Virginia.

The Administrator further finds, based on grand jury testimony, that another individual obtained Dilaudid prescriptions from Respondent during the summer of 1977 by using a third man's identification. Respondent conducted no physical examination on this person at any time. Both this individual and the first individual mentioned sold much of the Dilaudid they obtained from Respondent's prescriptions.

The Administrator further finds, based on computerized records prepared by the Metropolitan Police Department, that Respondent wrote at least 3524 Dilaudid (hydromorphone) prescriptions between June, 1976 and December, 1979. This figure was obtained by audit of pharmacies mentioned in the grand jury testimony. At one pharmacy, Respondent issued eighty-six (86) Dilaudid prescriptions, while other physicians had issued between two (2) and eight (8).

Judge Young found that Respondent has effectively waived his right to an evidentiary hearing by his failure to respond. He cited *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971), where the court held that, where no fact question is involved, a plenary, adversary administrative proceeding is not obligatory. This Administration has held that a Respondent is deemed to have waived his right to a hearing if he fails to respond. *In the Matter of James Waymon Mitchell*, 44 F.R. 71466 (1979). While the *Mitchell* décision involved a revocation based on the suspension of Dr. Mitchell's state medical license, there is no reason why the same logic should not apply if the Respondent is convicted of a controlled substance-related felony, as is Dr. Nickerson. Respondent was afforded an opportunity to present evidence in mitigation. He has, through his silence, chosen not to exercise that opportunity. Therefore, the Administrator finds that he waived his right to an evidentiary hearing.

The Administrator hereby adopts the recommendation of the administrative law judge that Respondent's registration be revoked pursuant to 21 U.S.C. 824(a)(2). Having reviewed the record of this matter in its entirety, and having concluded that the subject registration should be revoked for reason that Respondent was convicted of a controlled substance-related felony, it is the decision of the Administrator that said registration be revoked. Accordingly, pursuant to the authority vested in the Attorney General by Section 824 of Title 21, United States Code, and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that the Certificate of Registration AN6341717, previously issued to Marshall D. Nickerson, Jr., M.D., be, and is, hereby revoked, effective December 1, 1980.

October 27, 1980.

Frederick A. Rody, Jr.,

Acting Administrator

[FR Doc. 80-33035 Filed 10-30-80; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 80-17]

Thomas E. Johnston; Revocation of Registration

On June 4, 1980, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause proposing to revoke the DEA registration of Thomas E. Johnston, D.O. (Respondent), of Overland Park, Kansas. Simultaneously, citing his preliminary finding of imminent danger to the public health and safety, the Administrator ordered the immediate suspension of the Respondent's registration pending a final determination in these proceedings. By letter dated June 10, 1980, the Respondent requested a hearing on the issues raised by the Order to Show Cause.

On June 19, 1980, Administrative Law Judge Francis L. Young directed that counsel for the Government and counsel for the Respondent exchange and file, on or before July 7, 1980, written prehearing statements containing certain specified elements of information, including a statement of issues perceived, identification of witnesses, summaries of the expected testimony of such witnesses, and a listing of all documents and exhibits to be offered at the hearing. Upon motion of Government counsel, the date for filing prehearing statements by both parties was extended to July 23, 1980. The Government filed its prehearing statement in this matter on July 22, 1980. The Respondent has not filed a prehearing statement as of the date of this Order. Indeed, there has been no further correspondence from the Respondent or his attoney since his brief letter of June 10, 1980, in which he requested a hearing.

On July 31, 1980, the Administrative Law Judge, noting that the Government had timely filed a prehearing statement listing witnesses and documentary evidence, and providing other requested information, and further noting that by his failure to file a prehearing statement, the Respondent had not indicated any desire to call witnesses or offer documentary evidence, ordered that the hearing in this matter be held in Washington, D.C., on September 16, 1980. Judge Young further ordered that no documents would be received and that no witnesses would be heard on behalf of the Respondent, except that the Respondent himself would be permitted to testify on his own behalf, if he chose to appear.

On September 2, 1980, counsel for the Government, citing the foregoing circumstances as evidencing a lack of desire on the Respondent's part to

participate in an evidentiary hearing, and for other reasons, requested that the hearing set for September 16, 1980, be cancelled.

On September 4, 1980, the Administrative Law Judge, in a Memorandum to Counsel, granted the Government's request that the hearing be cancelled; ruled that the Respondent's failure to respond to the Order for Prehearing Statements constituted, in effect, a waiver of his opportunity for an evidentiary hearing; and ordered that on or before September 30, 1980, Government counsel was to submit to the Administrative Law Judge documentary materials in support of the Government's position that the Respondent's registration should be revoked. Government counsel complied with this request, submitting a copy of the indictment and a copy of the Judgment and Probation/Commitment Order evidencing the felony conviction which was referred to in the Order to Show Cause.

Section 304(a)(2) of the Controlled Substances Act, 21 U.S.C. 824(a)(2), provides, in pertinent part, that a registration to manufacture, distribute or dispense controlled substances may be suspended or revoked upon a finding that the registrant has been convicted of a felony offense, under either Federal or State law, relating to any controlled substance. The documents submitted by the Government establish that on June 2, 1980, in the U.S. District Court for the District of Kansas, in *United States* v. *Thomas E. Johnston, D.O.*, Docket No. 80-20013-01, the Respondent was convicted, in nine counts, of such felony offenses relating to controlled substances.

After concluding, as a matter of law, that the Government had established that there existed a lawful basis for the revocation of the Respondent's DEA registration, the Administrative Law Judge held that the Respondent had effectively waived his right to an evidentiary hearing, through his failure to communicate with the administrative tribunal, and that under such circumstances, a plenary, adversary administrative proceeding was not required. Accordingly, Judge Young concluded that it is wholly proper for the Respondent's registration to be revoked without a hearing, based upon the investigative file and the record of these proceedings as they now appear, and pursuant to 21 CFR 1301.54(e). He therefore terminated the proceedings then pending before him, certified this matter to the Administrator, and recommended that the Respondent's registration be revoked, effective immediately.

The Administrator has considered the record of this matter, as it today stands, as well as portions of the investigative file, and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that the Respondent has been convicted of felony offenses relating to controlled substances, and further finds that the Respondent has effectively waived his right to a full evidentiary adversary hearing in this case. The Administrator concludes that there is, therefore, a lawful basis for the revocation of the Respondent's registration pursuant to 21 U.S.C. 824(a)(2).

Section 824(a)(2) is couched in discretionary terms. In most cases in which there have been full evidentiary hearings, or written submissions in lieu of such hearings, the Administrator, after finding that there are lawful grounds to support a revocation or denial of registration, is called upon to make a second determination; that is, whether, in light of all of the facts and circumstances in the record, he should revoke or deny the registration. The question generally comes down to whether the Administrator believes that in spite of a conviction a registrant has shown that he or she should nevertheless be entrusted with the authority to prescribe and dispense controlled substances. The burden to make this showing is upon the registrant or respondent. The Administrator today affirmatively states what has long been his policy in deciding these cases in which a registrant has been convicted of a felony offense relating to controlled substances. The establishment of the conviction is, in and of itself, sufficient to support the revocation of a registration. The Administrator then looks to the registrant for mitigation or explanation. The fact of the conviction is a heavy burden to overcome. If, however, the registrant does come forth with sufficient mitigatory evidence, the Administrator will then, and only then, look to the facts behind the conviction or the investigation in order to determine where a proper decision lies.

In this case, the fact of the conviction has been established. The Respondent has failed to come forward to show any reason why his registration should not be revoked. Therefore, the Administrator concludes that the public interest which permeates the statute requires that the Respondent's registration be revoked.

CFR 1316.67 provides that a final order, such as this, shall be effective not less than thirty days after it is published in the Federal Register unless the Administrator finds that the public interest necessitates an earlier effective date, in which case the Administrator must specify the conditions which led him to conclude that an earlier date was required. For this purpose, the Administrator has turned to the indictment and the investigative file. These portray the picture of a physician who, in violation of the high public trust imposed upon members of his profession, prescribed controlled substances without the slightest regard for medical necessity and without regard for the health and well-being of those for whom he prescribed such drugs. Complaints concerning the Respondent's prescribing practices continued almost up to the day on which he was sentenced. The public interest in this matter demands that the order of revocation be effective immediately.

Accordingly, having concluded that there is a lawful basis for the revocation of the Respondent's registration, and having further concluded that such registration ought to be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AJ7877799, previously issued to Thomas E. Johnston, D.O., be, and it hereby is revoked, effective immediately.

Dated: October 27, 1980.

Frederick A. Rody, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 80-33936 Filed 10-30-80; 8:45 am]

BILLING CODE 4410-09-M

Office of Justice Assistance, Research, and Statistics

Publication of the Financial and Administrative Guide for Grants

AGENCY: Office of Justice Assistance, Research, and Statistics, U.S. Department of Justice.

ACTION: Final Guideline Manual.

SUMMARY: The Office of Justice Assistance, Research, and Statistics (OJARS) is publishing the new Financial and Administrative Guide for Grants, M 7100.1B. This manual is a reference source and guide for financial questions arising in the administration of programs funded by the Omnibus Crime Control Act of 1968, as amended; the Justice Systems Improvement Act of 1979, and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The manual includes requirements and suggestions for the general fiscal administration of statutory requirements, award and payment of funds, reporting requirements, cost

allowability principles, procurement and property management standards, grant administration principles and audit requirements.

EFFECTIVE DATE: The guideline becomes effective upon issuance.

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Policy Development and Training Division, Office of the Comptroller, Office of Justice Assistance, Research, and Statistics, U.S. Department of Justice, Washington, D.C. 20531 (202) 724-8269.

SUPPLEMENTARY INFORMATION: Before the guideline manual became final, there was extensive involvement in the development of the manual with the State Criminal Justice Councils (CJCs) and personnel from the Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the National Institute of Justice, and the Bureau of Justice Statistics.

All interested persons were given an opportunity to comment on the proposed guideline manual through a Notice of Proposed Rule Making in the Federal Register. We received 19 responses, including comments from state and local governments, nonprofit organizations, educational institutions and other interested members of the public. These comments were considered in the final revision of the guideline manual.

Appendices 1-5 are not included in this Federal Register publication as they are OMB circulars which have been published previously in the Federal Register. The guideline manual with all appendices will be available upon request to the Office of Justice Assistance, Research, and Statistics, U.S. Department of Justice, 633 Indiana Ave., N.W., Washington, D.C 20531, Attention: Mail Room.

The following is a summary of the major comments and the action taken on each. In addition to the changes described, other changes have been made to improve the clarity and readability of the guideline manual.

Summary of Significant Changes

Significant changes that have been made in the final guideline manual as a result of public comments include:

1. Paragraph 5, Foreword.

a. A sentence has been added to assure flow-through of applicability of OMB circulars. The sentence states that the provisions of OMB circulars are applicable to subgrantees as well as grantees. Examples are given showing which circulars apply in situations where grantees and subgrantees are different types of recipient.

b. The Foreword has been changed to explain that the grantee is the primary recipient and the subgrantee is the ultimate recipient of grant funds.

2. Paragraph 2. This paragraph has been rewritten to prevent additional restrictions from being imposed on subgrantees. The statement that "CJCs and large grantees should incorporate into their localized documents additional fiscal provisions established by state and local laws, regulations and policies" has been deleted.

3. Paragraph 4c. This paragraph has been rewritten to clarify the agency's policy that uncleared audit reports on prior grants can be reason for rejection of a grant application.

4. Paragraph 11d. This paragraph has been rewritten to include:

a. Entitlement jurisdictions' allocations of Part D funds; and

b. Eligibility criteria for receiving funds as an entitlement jurisdiction.

5. Paragraph 12c. This paragraph has been rewritten to include the retention by the Criminal Justice Council of the $50,000 match free administrative funds allocated for the Judicial Coordinating Council.

6. Paragraph 37b. This paragraph has been changed to show that the requirements for separate accounting and identification for compensation of police and other regular law enforcement and criminal justice personnel is only applicable to funds under the Crime Control Act of 1976.

7. Paragraph 38b. The accounting appendix is a sample only. The appendix title has been changed to show that it is a sample to be used for guidance for a grantee who is establishing an accounting system and that its use is not mandatory.

8. Paragraph 52. This paragraph has been rewritten to clarify the applicability of the travel policy for subgrantees receiving funds through the Criminal Justice Councils.

9. Paragraph 59b. The title of the paragraph has been changed to "Acquisition Requirements" to clarify the intent of the paragraph.

10. Paragraph 60b. The paragraph was rewritten to include entitlement jurisdictions' authority to approve preagreement costs for subgrantees.

11. Paragraph 62b. The paragraph has been rewritten to clarify a fringe benefits issue.

12. Paragraph 66a. Reference to "Part B" has been added to the title "Planning Grants" to clarify that the five percent limit on reprogramming without prior approval applies to active planning grants under the Crime Control Act of 1976 and not to administrative funds under Part D formula and Juvenile Justice formula grants.

13. Paragraph 76. The paragraph has been rewritten to provide clarity.

14. Paragraph 87. The paragraph has been rewritten to show that:

a. The requirement for a listing of property applies to nonexpendable personal property not all property.

b. Disposition instructions must be issued within 120 days not 90 days.

c. The due date for a report of nonexpendable personal property has been changed to 90 days after the end date of the grant.

15. Chapter 8. This paragraph has been rewritten to present the same objectives and methods of audit as presented in OMB Circular A-102, Attachment P.

16. Appendix 5. OMB Circular A-122, Cost Principles for Nonprofit Organizations, has been included in the guideline manual as appendix 5.

Suggested Changes Not Considered Necessary

Comment: "A specific definition of officials authorized to act on behalf of the grantor agency would be helpful. Also, it would be helpful if you would designate the program monitor or grant manager, etc., who will be the official to act for the agency."

Response: This guide is not the proper place to designate agency approval officials. The agency official responsible for each grant is identified in the grant award package provided to the grantee.

Comment: Recommend elimination of requirements for "prior approval of the grantor agency" for cash match being on a project-by-project basis and a program-by-program basis.

Response: This is a long established policy of the agency and has been upheld by several legal opinions.

Comment: The JSIA provides the nonfederal share of the cost of any program or project under Part D, E, and F shall be cash. This is not consistent with the provisions in Attachment E of OMB Circular No. A-110.

Response: The requirement of cash match is a statutory requirement and statutory requirements override regulatory requirements.

Comment: Concern with the three-year requirement on assumption of cost.

Response: The agency's policy of a three-year requirement for assumption of cost is the normal required time. If more time is needed, a request can be made to the agency, and additional time can be allowed if the need is justified.

Comment: Recommend a $25,000 dollar amount be added to reprogramming authority (paragraphs 14b and 20b) to read "* * * by more

than 25 percent or $25,000 whichever is greater must be approved by the grantor agency."

Response: The 25% reprogramming allows the CJC flexibility to make changes from one program to another program, and allows the grantor agency to review significant changes which affect the approved Comprehensive Plan. The problem with adding a dollar limitation is that this could allow changes to a small grant program which could greatly alter the scope or objective of the program without the grantor agency's knowledge.

Comment: Suggest allowing the CJCs to reprogram Crime Control funds out of Office of Juvenile Justice and Delinquency and Prevention (OJJDP) programs without OJJDP prior approval provided the State continues to meet the 19.15% maintenance of effort requirement.

Response: This paragraph covers OJJDP requirements for maintenance of effort (MOE). The MOE is 19.15% of the total appropriations for the grantor agency, including administrative and categorical funds expended for Juvenile Justice. A CJC's determination of what program can be counted towards the MOE may differ with OJJDP's determination. Also, a state would have no way of knowing how its decrease of MOE or other states' decreases affect the Agency's total figure for MOE.

Comment: Disagree with the policy that entitlement jurisdictions do not have the authority to reprogram funds without prior approval. Remmend that entitlements be given the same 25% limit on reprogramming without prior approval.

Response: The decision to require review by the CJC of any reprogramming by entitlement jurisdictions is within the Agency's authority to establish rules, regulations and procedures to carry out the Act. The review by the CJC is necessary to ensure that reprogramming by entitlement jurisdictions does not jeopardize their approved applications by violating statutory requirements.

Comment: Recommend elimination of match (salaries of personnel) by specific line item cost. Allowing such is inconsistent with the total cost concept and does not appear to meet the requirements that hard match be "new".

Response: This requirement has been in effect since April 30, 1973 and is supported by grantor agency legal opinions as the way the grantor agency can accept salaries of personnel as "new" funds to meet the statutory match requirement.

Comment: Recommend elimination of the requirement to forward to the grantor agency, for informational purposes, any certification required as a result of reduced or unchanged local investment in law enforcement.

Response: Nonsupplanting is a statutory requirement. Any situation requiring special explanation because of reduced or unchanged local investment in law enforcement should be brought to the immediate attention of the grantor agency.

Comment: The obligation and expenditure time for funds was changed from 3 years to 4 years. The 4-year time frame should be the current policy.

Response: The 3-year use of funds for obligation and expenditure is current agency policy as shown in paragraph 8 of Guideline 7100.4A. The 4-year use of funds for obligation and expenditure is explained in G 7100.4A and shows the additional year is allowed when a request for extension of the obligation and/or expenditure period of a program or set of programs is approved by the grantor agency.

Comment: The retention time of three years for grant records is insufficient period of time based on past experience with LEAA.

Response: The required record retention time of three years is in accordance with requirements of OMB Circular Nos. A-102 and A-110.

Comment: Recommend that language be modified to allow for overtime to be charged exclusively to grantor agency funds, if the overtime costs are determined to arise exclusively as a result of approved project activities. "To require proration of overtime costs to LEAA funded and non-LEAA funded activities when the reason for overtime is due exclusively to LEAA funded activities is unreasonable and inconsistent with accepted accounting principles."

Response: The policy of the grantor agency adheres to the apportionment of cost principles wherein costs are distributed to the objective that incurred the cost. If the project causes all of the overtime, it pays for all such costs. Conversely, if the project causes one-half of the overtime, it only pays one-half of the cost.

Comment: Paragraph 50 places greater restriction on individual travel expenses than OMB Circular A-21. For example, this institution would allow visa, passport, tips and laundry charges as legitimate travel expenses under its institutional travel policy.

Response: OMB Circular A-21 is silent on specific cost items for travel. The agency's policy is that these costs are personal costs and are not allowable.

Comment: Paragraph 58 places greater restrictions on rental or space costs and maintenance and operation costs than OMB Circular A-21.

Response: OMB Circular A-21 states that rental costs are allowable to the extent that the decision to rent or lease is reasonable. The agency has established a reasonable rate and space requirement. Amounts exceeding the established rate may be allowed based upon sufficient justification and, prior approval by the grantor agency.

Comment: "Paragraph 62 places significantly greater restrictions on the costs of professional services. The setting of specific rates for consultants hampers the institution's ability to secure the best service for the government and unduly hampers the negotiating position of the grantee."

Response: OMB Circular A-21 states that costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable when reasonable in relation to the services rendered, and when not contingent upon recovery of the costs from the Government. Therefore, we do not feel the Agency's policy is a conflict.

Comment: "Request paragraph 62 be amended to show maximum rate for consultants of $200 instead of $135 per day. Policy is in conflict with Pub. L. 96-157."

Response: This policy is not in conflict with Pub. L. 96-157 (Section 814) which allows the daily amount for consultants to the maximum of GS-18. This section covers the agency's use of administrative funds used for consultants and does not apply to our policy under grants. The $135 rate is the maximum allowed without justification.

Comment: Recommend elimination of the requirement of notification to grantor agency when Federal funds are expected to exceed the needs of the grantee/subgrantee by more than $5,000 or five percent of award whichever is greater.

Response: The requirement for notification to the grantor agency is in accordance with provisions on budget deviations in OMB Circular Nos. A-102 and A-110.

Comment: "Does paragraph 71 exclude federal employees from part-time work on projects supported by OJARS that is not a dual compensation situation. Does this paragraph exclude federal employees serving on CJC from being reimbursed for costs arising directly from CJC membership."

Response: This paragraph excludes federal employees from receiving salary payments, consultant fees, etc., for part or full-time work performed under grants. Costs, such as travel incurred as

a result of serving on the CJC, would be allowed.

Comment: Objects to the definition of "independent public accountant" that is used in OMB Circular A-102 and A-110.

Response: These circulars are incorporated into the guide and are the basis of Chapter 8. The circular defines an independent public accountant as one who is a CPA or a public accountant licensed on or before December 31, 1970. The definition is an OMB/GAO definition and the grantor agency does not have the authority to alter OMB requirements.

Comment: "It is our opinion that the types of project changes requiring prior approval, as shown as change in project site, changes which decrease the total cost of the project or change in or temporary absence of the project manager/director are the types of issues which have at times strained the "partner" relationship with the grantor agency."

Response: The grantor agency feels that the project changes such as change in project site, changes which decrease the total cost of the project or change in or temporary absence of the project manager/director are the types of changes which can alter the scope or objectives of the approved project and should, therefore, be reviewed prior to implementation.

OJARS Guideline Manual

Financial and Administrative Guide for Grants

United States Department of Justice

Office of Justice Assistance, Research, and Statistics

Distribution: All Grantees; All OJARS, BJS, NIJ & LEAA Prof. Personnel

Initiated By: Office of the Comptroller, Office of Justice Assistance, Research and Statistics

Foreward

1. *Purpose.* This guideline manual has been prepared as a reference source and guide for financial questions arising in the administration of grants awarded pursuant to: (1) Title I of the Omnibus Crime Control and Safe Streets Act of 1968—P.L. 90-351, as amended by the Omnibus Crime Control Act of 1970—P.L. 91-644, and as amended by the Omnibus Crime Control Act of 1973—P.L. 93-83, and (2) Title II of the Juvenile Justice and Delinquency Prevention Act of 1974—P.L. 93-415, as amended by the Fiscal Year Adjustment Act—P.L. 94-273, the Crime Control Act of 1976—P.L. 94-503, the Juvenile Justice Amendments of 1977—P.L. 95-115, and the Justice System Improvement Act of 1979—P.L. 96-157. It identifies the financial management policies and procedures required of grantee organizations to assure their establishment of sound and effective business management systems. Such systems will assure that funds are properly safeguarded and used only for the purposes for which they were awarded. The manual builds upon and complements the grant funding and administrative requirements established in the effective edition of Guideline Manual 4100.1, State Planning Agency Grants and/or 28 CFR Part 31, Formula Grants for Criminal and Juvenile Justice; program announcements for categorical projects and other guidelines. The provisions of this manual are effective upon publication.

2. *Scope.* The provisions of this guideline apply to all grantor agency awards. This guideline is of concern to all grantees and subgrantees.

3. *Cancellation.* Guideline Manual 7100.1A, Financial Guide for Administration of Planning and Action Grants, dated April 30, 1973, with Change 1, dated January 24, 1974; Change 2, dated December 18, 1974; Change 3, dated October 29, 1975; and Change 4, dated November 29, 1978; Instruction 7100.2, Applicability of the Guideline Manual for the Financial Management for Planning and Action Grants, dated July 11, 1974; Guideline 7380.2, Standards for Property Acquired with LEAA Grant Funds, dated August 30, 1976; Guideline 7200.2, LEAA Revolving Fund, dated January 4, 1978, are hereby canceled. This edition of the manual also supersedes financial policy interpretations and directives issued by the former LEAA Regional Offices.

4. *Major Changes.* This edition of the manual updates, as appropriate, all specific policies, procedures and requirements contained in M 7100.1A and Changes 1-4 to the same. The requirements of the Justice System Improvement Act of 1979, OMB Circular A-122, Cost Principles for Non-Profit Organizations, and a new travel policy interpretation for grantees/subgrantees have been included. Of equal significance, major revisions have been made to the format and style of the manual in order to facilitate its use. In addition, the following terms are defined to address current and pending changes:

a. *Grantor Agency* applies to the following:

(1) Office of Justice Assistance, Research, and Statistics (OJARS).

(2) Law Enforcement Assistance Administration (LEAA).

(3) National Institute of Justice (NIJ).

(4) Bureau of Justice Statistics (BJS).

b. *Grants* applies to cooperative agreements as well as to grant awards and all references and requirements concerning grants will apply to cooperative agreements.

5. *Guidance.* The grantor agency views its relationship with the grantee organization as a partnership, with the grantee providing the effort and expertise necessary to carry out approved activities and the grantor agency providing financial assistance under established policies and guidelines. The provisions of OMB circulars apply to subgrantees as well as to grantees. The decision as to which circulars apply is dependent on the ultimate recipient (subgrantee). Examples: When a grant is awarded to the CJC and then subgranted to a nonprofit organization, OMB Circular Nos. A-110 and A-122 would apply; or when a grant is awarded to the CJC and then subgranted to an educational institution, OMB Circular Nos. A-110 and A-21 would apply. Questions concerning the interpretation of policies or the applicability of certain policies to particular programs or projects should be directed to the grantor agency or primary recipient (grantee) as outlined below.

a. *Grantees.* Criminal Justice Councils (CJCs) and categorical grantees funded directly should address their questions to the grantor agency. In addition, the grantor agency will be available to deal with questions not covered by this manual and welcomes suggestions for increasing its utility or clarifying its contents.

b. *Subgrantees.* Subgrantees (ultimate recipients) receiving awards through the grantee (CJC or entitlement jurisdiction) should address their questions to that grantee.

c. *Other Organizations.* Organizations receiving Federal funds via other financial agreements not covered in paragraphs 5 a and b should address their questions to the grantee/subgrantee.

6. *Deviations.* In the event that a grantee determines that a requirement should not or cannot be applied to a program or project, or to a particular circumstance of a program or project, a written request for deviation shall be submitted to the appropriate grantor agency. This request shall specify: the provision(s) that are considered inapplicable to the project, program or circumstance; the reasons why they are considered inapplicable; and, the provision(s) that are intended to be substituted. Action shall not be taken to implement the proposed deviation until written authorization has been received.

7. *Authority.*

a. *Section 1301(a) of the Justice System Improvement Act of 1979*

provides authority for all orders, determinations, rules, regulations, and instructions of the Law Enforcement Assistance Administration which are in effect at the time the Act takes effect to continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Attorney General, the Director of the Office of Justice Assistance, Research, and Statistics, the Director of the Bureau of Justice Statistics, the Director of the National Institute of Justice or the Administrator of the Law Enforcement Assistance Administration with respect to their functions under the Act or by operation of law.

b. *Section 1301(d) of the Justice System Improvement Act* authorizes the Administrator of the Law Enforcement Assistance Administration to approve comprehensive plans for the fiscal year beginning October 1, 1979 in accordance with the provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968.

c. *The Act reauthorizes a formula grant program* to State and local governments for a four year period covering Fiscal Years 1980 through 1983. Although the new Act begins in FY 1980, by the time the Act is enacted and becomes effective, all of the States will have already prepared and submitted their FY 1980 comprehensive plans. Therefore, either the existing guidelines would have to be issued after the Act becomes effective and FY 1980 plans have been submitted. In that event guidelines would also have to be issued for the preparation of a plan supplement document, to be prepared by each State modifying its previously submitted comprehensive plan and showing compliance with the requirements contained in the new Act. Therefore, all existing guidelines, including M 4100.1F, State Planning Agency Grants, remain in effect for FY 1980.

d. *ALL grant funds (obligated or unobligated)* awarded by the grantor agency prior to FY 1981 are governed by the terms, conditions and matching requirements agreed to at the time of award and are not governed by Section 1301(h) of the JSIA.

8. *Order of Precedence.* In the event there are conflicting or otherwise inconsistent policies applicable to Federal grants, the following order of precedence shall apply:

a. Federal legislation.

b. Federal regulations (Refer to Chapter 2, paragraph 19).

c. Terms and conditions of the grant award.

d. Policies issued in this guideline manual.

e. Guideline Manual 4100.1 (effective edition) for planning, action and formula grants or 28 CFR Part 31.

Robert F. Diegelman,

Assistant Administrator, Office of Planning and Management.

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Chapter 1. Introduction and Use of the Manual

1. *Purpose.* This chapter serves as a guide for the interpretation and application of financial management policies contained in the remaining chapters and appendices of this document. It defines the applicability of the guideline manual, its users, its contents and the procedures for locating specific financial management policies. Users are advised to review this chapter before attempting to locate information within this manual.

2. *Application of Policies.* Although the financial management requirements specified in this guideline manual are applicable to all recipients of aid, with the general exception of contractors funded directly by the grantor agency, it is the responsibility of the CJC and other grant recipients to implement the requirements. In this regard, CJCs and large grantees (such as a unit of general local government receiving a sizable mini-block grant) should prepare their own financial management guidelines to implement the regulatory and administrative requirements contained within the guideline manual.

3. *Users of the Manual.*

a. *Organizations.* This document is provided for the use of all grantees of grantor agency funds and their subgrantees. Specific organizations who are to use the guideline manual include:

(1) *CJCs.* All financial management provisions of this guideline are applicable to CJCs. The guideline is to serve as their primary reference for interpretation of Federal grant administration and financial management policies. Requirements of a programmatic and technical nature are contained in the effective edition of M 4100.1, State Planning Agency Grants and/or 28 CFR Part 31, Formula Grants for Criminal and Juvenile Justice.

(2) *Direct Recipients of Categorical Grants.* All categorical grantees funded directly by the grantor agency are to use this guideline manual as their primary reference for interpreting Federal grant administrtion and financial management policy. Requirements of a programmatic and technical nature are contained in program announcements and in grant award packages.

(3) *Implementing Agencies.* Subgrantees (implementing agencies) of CJCs are to adhere to the financial management requirements of this guideline manual and applicable State and local laws and regulations.

(4) *Contractors.* Although this manual is not for the direct use of contractors, grantees should ensure that monitoring of organizations under contract to them is performed in a manner which will enable the grantees to comply with their overall financial management requirements.

b. *Individuals.* Individuals from the above organizations who may make particular use of the guideline manual include: administrators, financial management specialists, grants management specialists, accountants and auditors. These individuals are to use the guideline manual as the financial policy reference in executing their duties under grantor agency-funded programs and projects. Additionally, the document is structured to serve as a training guide for new employees.

c. *Subject Index.* To assist users in locating the finanaicl management policies contained in the guideline manual, a subject index of all the topics covered has been incorporated as appendix 14.

4. *Categorical Application Submission Process.*

a. *General.* Categorical grants maybe awarded to States, units of local government, educational institutions and hospitals or private non-profit organizations, at the discretion of the grantor agency.

b. *Program Announcements.* The grantor agency announces annually the programs which it has developed for funding under its categorical grant program. These announcements are produced and distributed after being published in the Federal Register.

c. *Preparation and Submissions of Applications.* Applications for categorical grants must be processed through the appropriate CJC. This requirement does not apply to the National Institute of Justice (NIJ), Office of Juvenile Justice and Delinquency Prevention (OJJDP) and Community Anti-Crime (CAC) applications. These applications should be submitted directly to the grantor agency. However, since all categorical grants must utilize the same forms and must comply with essentially the same financial and administrative regulations, applicants for NIJ, OJJDP and CAC grants are encouraged to consult with the appropriate CJC prior to preparation and submission of an application.

d. *Types of Categorical Funds* are as follows:

CA Community Anti-Crime
CP Urban Crime Prevention Program
DF Part C Discretionary
ED Part E Discretionary
IN Internship
CD Educational Development
SS Systems and Statistics
TA Technical Assistance
TN Training
PT Prosecutor Training (407)
FR IGA
PR Part B Reobligated
HC High Crime
JS Juvenile Justice (Special Emphasis)
JN Juvenile Justice (OJJDP Institute)
JC Juvenile Justice (Concentrated Federal Effort)
JA Technical Assistance (OJJDP)
NI National Institute
RF Reimbursable
PG Part E. National Priority Grants Program
CJ Part F. General Criminal Justice Grants

IJ National Institute of Justice
BJ Bureau of Justice Statistics
MU Multiple Funded

e. *Uncleared Audit Reports.* It is the policy of the grantor agency that it WILL NOT award a categorical grant to any applicant who has an uncleared audit report on prior grantor agency awards. Every applicant for funding is on notice that unless prior audit reports are cleared, their application can be rejected for that reason. Exceptions to this policy may be granted by the Audit Review Committee under the following situations:

(1) Audit Finding under appeal;

(2) Audit Report has been resolved but not cleared and applicant agrees to correct deficiency, or to make payment; or

(3) Uncleared audit report does not negatively impact the programmatic, administrative and financial capability of the applicant to administer Federal funds and achieve project objectives.

5.7. *Reserved.*

Chapter 2. Program Requirements for General Fiscal Administration

Section 1. Justice System Improvement Act of 1979

8. *General.* THIS SECTION IS APPLICABLE TO PROGRAMS AND PROJECTS FUNDED IN FISCAL YEAR 1980–1983. The section sets forth the program requirements relating the general fiscal administration for grants and contracts and other agreements funded by the grantor agency under the Justice System Improvement Act of 1979 (JSIA). The fiscal and administrative requirements applicable to all grantees, subgrantees, contractors and other organizations under Federal agreements are explained in this section and the organizational structure of the agency is defined. This section also explains the respective fiscal requirements imposed by statutes, Federal grant-in-aid regulations and administrative regulations and the new organizational structure for the agency.

9. *Organizational Structure.* The JSIA provides a four year authorization for justice assistance, research and statistics programs. The JSIA establishes four organizations within the Department of Justice under the general authority and policy control of the Attorney General. The authority of any entity established under the JSIA shall extend to civil justice matters only to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters. These new organizations are:

a. *Office of Justice Assistance, Research and Statistics (OJARS)* which will coordinate the activities and provide staff support for the three new assistance offices.

b. *Law Enforcement Assistance Administration (LEAA)* which is authorized to operate a State and local assistance program of formula grants, a national priorities program, a discretionary program, training and personnel development programs, community anti-crime program, juvenile justice and delinquency prevention program, and public safety officers' benefits.

c. *National Institute of Justice (NIJ)* which will ensure a balance in basic and applied research; evaluate the effectiveness of programs carried out to determine their impact upon the quality of criminal and civil justice systems; test and demonstrate civil and criminal justice programs; disseminate information; and, give primary emphasis to State and local justice systems.

d. *Bureau of Justice Statistics (BJS)* which will provide a variety of statistical services for the criminal justice community; recommend standards for the generation of statistical data; analyze and disseminate statistics; and, provide for the security and privacy of criminal justice statistics.

10. *Source and Nature of Funds.* The JSIA provides a four year authorization for justice assistance, research and statistics programs. Funds are awarded as formula and categorical (i.e., national priority, discretionary, systems and statistics, research and development, etc.) grants, contracts and other agreements.

a. *Formula grants* are awarded to the States to provide assistance to State and local units of government for improvements in and coordination of their criminal justice activities.

b. *Categorical grants* are awarded to States, units of local government or private organizations at the discretion of the grantor agency. Most categorical awards are competitive in nature in that there are limited funds available and a large number of potential recipients.

c. *Contracts* are awarded by the grantor agency, Criminal Justice Councils, entitlement jurisdictions and other grantees or subgrantees to both profit and non-profit organizations. With the exception of a few justified sole-source situations, contracts are awarded via competitive procurement processes.

d. *Other forms of funding* include interagency agreements and purchase of service arrangements, which are usually entered into by two governmental units or agencies. Such funding arrangements are negotiated by the entities involved.

11. *JSIA funds.* The JSIA authorizes the following funds:

a. *Part A—Community Anti-Crime Grants.* Part A funds are awarded as grants to community and citizens groups for the purpose of enabling the community to engage in a process leading to the identification of problems facing that community with respect to crime, conflicts, disputes and other problems that might lead to crime, and to provide for the consideration by the community of plans to alleviate such problems. These funds are awarded as either categorical grants, cooperative agreements or contracts.

b. *Part B—National Institute of Justice Grants.* Part B funds are awarded as grants, cooperative agreements or contracts with public agencies, institutions of higher education, private organizations or individuals. These funds are to provide for and encourage research and demonstration efforts for the purpose of improving Federal, State and local criminal justice systems and related aspects of the civil justice systems; preventing and reducing crime; insuring citizen access to appropriate dispute-resolution forums; improving efforts to detect, investigate, prosecute and otherwise combat and prevent white-collar crime and public corruption, and identifying programs of proven effectiveness, programs having a record of proven success or programs which offer a high probability of improving the functioning of the criminal justice system.

c. *Part C—Bureau of Justice Statistics Grants.* Part C funds are awarded as grants, cooperative agreements or contracts with public agencies, institutions of higher education, private organizations or private individuals. These funds are to provide for and encourage the collection and analysis of statistical information concerning crime, (including white-collar crime and public corruption), juvenile delinquency and the operation and related aspects of the criminal justice system and to support the development of information and statistical systems at the Federal, State and local levels to improve their efforts to measure and understand these levels of crime.

d. *Part D—Formula Grants Program.* Part D funds are awarded as grants to States and units of local government to provide assistance for improvements in and coordination of their criminal justice activities. The grantor agency awards these funds to States on the basis of population or on a four-part formula taking into account population, crime rate, tax rate and criminal justice expenditures of each jurisdiction. The four-part formula only comes into effect

if the Formula Grant appropriation exceeds the FY 1979 appropriation for Parts C and E. Within each State, entitlement jurisdictions (cities, counties and combinations of jurisdictions with a population of 100,000 or more) are entitled to receive grants from the formula grant if the entitlement jurisdiction expends at least .15 percent of the total State and local criminal justice expenditures, and provided that the entitlement jurisdiction would receive at least $50,000. In addition, each State shall provide that at least $50,000 of the Federal funds awarded to it for any fiscal year be made available to the Judicial Coordinating Committee (JCC).

e. *Part E—National Priority Grants Program.* Part E funds are awarded as grants to States, units of local government and combinations of such units for carrying out programs that, on the basis of research, demonstration or evaluation, have been shown to be effective or innovative and to have a likely beneficial impact on criminal justice.

f. *Part F—Discretionary Grants Program.* Part F funds are awarded as grants to States, units of local government, combinations of such units or private non-profit organizations to provide for:

(1) programs to improve and strengthen the criminal justice system;

(2) programs to improve planning and coordination;

(3) programs to assure the equitable distribution of funds among criminal justice components;

(4) programs to prevent and combat white collar crime and public corruption;

(5) court and corrections system improvements;

(6) organized crime programs, and activities to disrupt illicit commerce in stolen goods and property; and,

(7) community and neighborhood anti-crime efforts.

g. *Part G—Training and Manpower Development.* Part G funds are awarded as grants or contracts to provide for prosecutor training and training of criminal justice personnel.

h. *Joint Use of Funds.* Funds awarded under the various parts of the Justice System Improvement Act and the Juvenile Justice Act are to be used for programs and projects in compliance with the legislative intent of each respective part. In addition, there are several instances where, by statute, Congress intends that funds be jointly used.

(1) *Juvenile Justice Maintenance of Effort.* Under Section 1002 of the JSIA, there shall be maintained, for each fiscal year, at least 19.15 percent of total grantor agency appropriations for juvenile delinquency programs with primary emphasis on programs for juveniles convicted of criminal offenses or adjudicated delinquents on the basis of an act which would be a criminal offense if commited by an adult. This 19.15 percent requirement includes both administrative and action funds expended for purposes consistent with the Juvenile Justice Act. These funds are in addition to the funds appropriated under Section 261(a) of the Juvenile Justice Act.

(2) *State Planning.* In conjunction with Part D of the JSIA, formula funds from the Juvenile Justice Act may be used to develop a comprehensive application or for other pre-award activities associated with such a Comprehensive application and to pay that portion of the expenditures which are necessary for efficient administration, including monitoring and evaluation. The amount of Juvenile Justice (JJ) formula funds used for such purpose, however, may not exceed 7½ percent of the total annual allotment.

(3) *Other Federal Programs.* At the discretion of the grantor agency, a State may utilize up to 25 percent of its JJ formula grant funds to meet the non-Federal matching requirement for any other Federal juvenile delinquency program grant excluding grantor agency (LEAA, NIJ or BJS) programs.

12. *Statutory Requirements.* In addition to the broad fiscal provisions of the Justice System Improvement Act, as defined in paragraph 10, there are a number of specific financial requirements to which grantees and subgrantees must adhere. These requirements are identified below:

a. *"Pass-Through" Requirement.* An obligation on the part of the States to make grant funds available to units of local government, or combination of local units. The pass-through requirement is applicable for action funds (Part D formula) for FY 1980 (transition year) and juvenile justice formula funds. The same percentages are required as under the Crime Control and Juvenile Justice Acts. (Refer to Figure 2-2 of this chapter.) The accounting and documentation for State expenditure of the pass-through on behalf of local units of government is also the same. (Refer to paragraph 18a.)

b. *Buy-In.* This requirement is applicable to the total aggregate Part D Formula funds for FY 1980 only which each state is required to pass-through to units of general local government or combination of local units. Each state must provide in the aggregate for FY 1980 (transition year) Part D Formula grants not less than 50 percent of the required non-Federal share. There is no buy-in requirement for FY 1981–1983 funds. This requirement DOES NOT apply to those states granted waivers.

c. *Federal Participation Ratios.* The ratios for Federal participation in the funding of programs or projects out of the Justice System Improvement Act are shown in Figure 2-1.

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Figure 2-1.—*Summary of Match Requirements Under the JSIA*

Fund type	Match requirement	Percentage	Type of match
Part A—Community Anti-Crime	No [1]		
Part B—National Institute of Justice	No [1]		
Part C—Bureau of Justice Statistics	No [1]		
Part D Formula			
Action—State	Yes [1,2,3]	10	(1) Cash on a project by project basis or program by program basis if the Criminal Justice Council (State) or Criminal Justice Advisory Board (entitlement jurisdiction) adopts this more restrictive procedure as a formula; or
Administrative—State (in excess of $200,000 or $250,000)	Yes [1,2]	50	(2) Cash on a combination of the above, if the Criminal Justice Council (State) or Criminal Justice Advisory Board (entitlement jurisdiction) adopts this more restrictive procedure as a formula and with prior approval of the grantor agency; or
Action—Entitlement Jurisdiction (FY 81-83)	Yes [1,2]	10	(3) Cash on a unit of government basis, i.e., by city, county or by Criminal Justice Council.
Administrative—Entitlement Jurisdiction (in excess of $25,000) (FY 1981-83)	Yes	50	
Part E—National Priority	Yes [1,4]	50	(1) Cash on a project by project basis; or (2) Cash on an overall program basis when specific unit of government receives National Priority funds for coordinated program funds
Part F—Discretionary	No [1,4,5]		
Part G—Training and Manpower Development	No [1,4]		
Technical Assistance	No		

[1] A non-Federal share of money, facilities or services can be required by the grantor agency.

[2] No match on FY 1980 action funds and 50% match on planning for waiver states and a 10% match on both action and planning funds for non-waiver states.

[3] Fifty percent match required for formula project if it is a continuation of a construction project funded from block action funds awarded prior to FY 1980.

[4] Required percentage of match for FY 1980 Parts E and F projects will be determined by the grantor agency.

[5] Fifty percent match will be required for projects extended or renewed for the 4th and 5th years.

[6] Educational Development projects require 25% cash or in-kind match on a project by project basis.

(1) *Part A—Community Anti-Crime Funds.* Federal participation may be up to 100 percent.

(2) *Part B—National Institute of Justice Funds.* Federal participation may be up to 100 percent.

(3) *Part C—Bureau of Justice Statistics Funds.* Federal participation may be up to 100 percent.

(4) *Part D—Formula Funds (Action).* Maximum Federal participation is 90 percent for fiscal year 1981–1983. Federal participation is 100 percent for waiver States and 90 percent for non-waiver States for fiscal year 1980.

(5) *Part D—Formula Funds (Administrative).* Maximum Federal participation is 50 percent for fiscal year 1981–1983. Federal participation is 50 percent for waiver States and 10 percent for non-waiver States for fiscal year 1980.

(a) *State.* The State may use an amount up to 7½ percent of its total formula grant for administrative purposes. The Federal share of these funds is provided proportionately out of the State share and balance-of-State share of the formula grant. An additional $200,000 for the State and $50,000 for the Judicial Coordinating Committee (JCC) is allowed for administrative purposes and is match free. CJCs without JCCs will be eligible to retain the $50,000 for use in administering grants to the courts under arrangements agreed to with the courts. (The $200,000 for administrative purposes, match free, applies to the waiver States for fiscal year 1980 and all States for fiscal year 1981–1983.)

(b) *Judicial Coordinating Council (JCC).* The JCC may use an amount up to 7½ percent of its allocation for administrative purposes and this must be matched on a dollar-for-dollar basis. An additional $50,000 is allowed for administrative purposes and is match free.

(c) *Entitlement Jurisdiction.* The entitlement jurisdiction may use an amount up to 7½ percent of its allocation for administration. The first $25,000 of the administrative funds is match free and the remaining funds must be matched on a dollar-for-dollar basis. The entitlement jurisdictions may join a combination and aggregate the match free funds with the $25,000 of the other entitlement jurisdictions.

(6) *Part E—National Priority Funds.* Maximum Federal participation is 50 percent for fiscal year 1981–1983. Federal participation for fiscal year 1980 (transition year) will be determined by the grantor agency.

(7) *Part F—Discretionary Grants.* Maximum Federal participation may be up to 100 percent for fiscal year 1980–1983. Federal participation for fiscal year 1980 (transition year) will be determined by the grantor agency. Fifty percent match will be required for projects extended or renewed for the 4th and 5th years except for management and administration of national nonprofit organizations under Section 602(1).

(8) *Part G—Training and Mampower Development Funds.* Maximum Federal participation may be up to 100 percent. Educational Development funds under Section 705(e) require a grantee match of 25 percent of the total project costs.

d. *Hard Match Requirements.*

(1) *The Justice System Improvement Act provides* that the non-Federal share of the cost of any program or project under Parts D, E and F shall be cash.

(2) *Source and Type of Funds.* Hard match (cash) may be applied from the following sources:

(a) Funds from State and local units of government that have a binding commitment of matching funds for programs or projects.

(b) Funds from the following:

1. Housing and Community Development Act of 1974

2. Appalachian Redevelopment Act

3. General Revenue Sharing Act

4. Part D formula (JSIA) for Parts E and F programs and projects

(c) Funds contributed from private sources.

(3) *Match for Part D Formula Funds.*

(a) *Administrative Funds.* An entitlement jurisdiction MAY use any overmatch in administrative funds to match action funds.

(b) *Action Funds.* An entitlement jurisdiction MAY NOT use overmatch in action funds to match administrative funds.

(4) *Timing of Matching Contributions.* Matching contributions need not be applied at the exact time or in proportion to the obligation of the Federal funds. However, the full matching share must be obligated by the end of the period for which the Federal funds have been made available for obligation under an approved program or project.

(5) *Records for Match.* All grantees must maintain records which clearly show the amount and the timing of all matching contributions. In addition, if a program or project has included within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of them in the same manner as it does the grantor agency funds and required matching shares. For all Part D Formula funds, the CJC or the entitlement jurisdiction has primary responsibility for subgrantee compliance with the requirements. For all Part E and F funds, the grantee and the subgrantee or contractual recipient have shared responsibility for ensuring compliance with the requirements regarding matching shares.

(6) *Waiver of Match.*

(a) Section 401(b) of the JSIA provides that grantor agency programs to Indian tribes or aboriginal groups may be awarded with no required matching contribution where the tribes/groups do not have sufficient funds to meet the matching share. List of Indian entities entitled to apply for waiver are available from the U.S. Department of Interior. The following policies and procedures establish the process to be employed in seeking these special waivers.

1. Individual Waivers. Requests for a waiver of matching funds from Indian tribes or other aboriginal groups must be supported by a formal letter of certification stipulating that match for the application cannot be provided. This certification must be executed in name and title by the recognized leader(s) of the applicant Indian group.

2. Fiscal Year Waivers. The grantor agency may, at its discretion, delegate the authority to grant waivers to the CJC. This may cover some or all of the entities in a State. The waiver authority permits the CJC to approve all applications at 100 percent funding from entities during the fiscal year, provided that a certification is obtained from each applicant and forwarded to the grantor agency in Washington. Requests for fiscal year waivers must be supported by a statement from the CJC Director, and approved by the Governor of the State, that each Indian entity covered by the request is unable to provide non-Federal funding for that fiscal year.

(b) Section 401(b) of the JSIA provides that grantor agency funds may be awarded with NO required matching contribution where a unit of State or local government, due to budgetary constraints, is unable to provide the

match (i.e., hardship case). For the required policies and procedures for requesting waivers for hardship, refer to 28 CFR Part 31.

e. *Personnel Limitation.* As required by Section 404(c)(2), NO Part D formula grant funds may be expended for programs which have as their primary purpose general salary payments for employees or classes of employees within an eligible jurisdiction. Salary payments as part of an approved program under Section 401(a) of the JSIA are allowable.

f. *Equipment Limitation.* As required by section 404(c)(1), NO grant funds awarded under Part D may be used for the purchase of equipment or hardware except as provided in Section 102(7), or the payment of personnel costs, unless the cost of such purchases or payments is incurred as an incidental and necessary part of a program of proven effectiveness, a program having a record of proven success, or a program offering high probability of improving the functioning of the criminal justice system (including bulletproof vests). In determining whether to apply this limitation, consideration must be given to the extent of prior funding from any source in that jurisdiction for substantially similar activities.

g. *Construction Limitation.* As required by Section 404(c)(3) NO Part D formula grant funds may be expended for new construction projects. This limitation does not apply to any construction projects that were funded under the Crime Control Act prior to the passage of the JSIA and which were budgeted in an approved Comprehensive Plan in anticipation of receiving additional Federal funding. This type of construction may continue to be funded under the JSIA for two years. The definition of construction is "the erection, acquisition or expansion of new or existing buildings or other physical facilities and the acquisition or installation of initial equipment therefor, but does not include renovation, repair or remodeling."

h. *Non-Supplanting of State or Local Funds.* The JSIA prohibits the use of Federal funds to supplant State or local funds. Refer to paragraph 18i for procedures and method of accounting for the non-supplanting requirement.

i. *Assumption of Cost.* CJCs and entitlement areas shall develop written policies that specify the duration and ration of Federal continuation support for particular classes of projects. CJC policies shall apply to the projects of State agencies (including the Judicial Coordinating Committee) and balance-of-state localities. Entitlement jurisdiction policies shall apply to the projects they administer. The policies of the CJC and the entitlement jurisdiction shall assure that Part D formula grant assistance for a project does not exceed three years except under certain circumstances. For exceptions to this policy, refer to 28 CFR Part 31.

j. *Adequate Share.* Section 403(a)(5) requires that an adequate share of Part D formula funds shall be allocated to courts, corrections, police, prosecution, and defensive programs. Also, Section 402(c)(4) and (5) requires that entitlement jurisdictions assure adequate funding for courts and correction programs based on their share of courts and corrections expenditures. For details regarding adequate share, refer 28 to CFR Part 31.

k. *Reimbursement For Unused Equipment.* LEAA may require a grantee or other recipient of funds (Parts A, D, E or F) to reimburse LEAA for the federal share of the cost of any unused equipment OR require that appropriate measures be taken to put such equipment into use where:

(1) the purchase was in connection with a program or project funded by LEAA;

(2) the aggregate cost was $100,000 or more; and,

(3) the equipment was not put into use within one year of the date set for commencement at the time of purchase or has not continued in use during its useful life.

13. *Regulatory Requirements.*

a. In addition to statutory requirements, the award and administration of gant and subgrant funds are subject to applicable regulations and policies that have been promulgated by the Office of Management and Budget (OMB), the General Accounting Office and U.S. Treasury. Grantee, subgrantee and contractor organizations should maintain, or have access to, copies of documents which present additional detailed guidance relating to the award and administration of grants, subgrants, and contracts. The following documents are particularly important to grantees, subgrantees and contractors. Contribution rations of grantor agency programs are unaffected by the documents and, where authorizing legislation contains explicit restrictions on the reimbursement of particular costs, such restirictions are also unaffected.

(1) *Code of Federal Regulations (Titles 28 and 41).* These Titles set forth grantor agency program and administrative regulations applicable to all Federal grants.

(2) *Federal Register.* This publication is issued to announce major proposed and final rule making issuances, including announcements of new programs and regulations, as well as policies issued by the Office of Management and Budget and the Federal grantor agency.

(3) *Federal Management Circular (FMC) 73.7,* Administration of College and University Research Grants. This circular establishes policies and procedures for the administration of all research grants awarded to educational institutions.

(4) *Office of Management and Budget (OMB) Circular A.21,* Cost Principles for Educational Institutions. This circular establishes principles for determining costs applicable to grants and contracts with educational institutions. (Refer to Appendix 1)

(5) *Federal Management Circular (FMC) 74.4,* Cost Principles Applicable to Grants and Contracts with State and Local Governments. This circular establishes principles and standards for determining costs applicable to grants and contracts with State and local governments. (Refer to appendix 2)

(6) *Office of Management and Budget (OMB) Circular A.73 (revised),* Audit of Grants-in-Aid to State and Local Governments. This circular sets forth policies to be followed in the audit of Federal grants-in-aid to State and local governments.

(7) *Office of Management and Budget (OMB) Circular A-88 (revised).* Indirect Cost Rates, Audit and Audit Followup at Educational Institutions. This circular provides policies for: establishing indirect cost rates; auditing; correcting systems deficiencies; and, resolving questioned costs applicable to grants, contracts and other agreements with educational institutions.

(8) *Office of Management and Budget (OMB) Circular A-102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. This circular establishes standards for the administration of grants to State and local governments. (Refer to appendix 3)

(9) *Office of Management and Budget (OMB) Circular A-110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations. This circular establishes standards for the administration of grants to institutions of Higher Education, Hospitals and other non-profit organizations. (Refer to appendix 4)

(10) *Office of Management and Budget (OMB) Circular A-111,* Jointly Funded Assistance to State and Local Governments and Non-Profit Organizations. This circular establishes policies and procedures to be followed

in the joint funding of related programs of Federal assistance to State and local governments and non-profit organizations.

(11) *Office of Management and Budget (OMB) Circular A-122,* Cost Principles for Non-Profit Organizations. This circular establishes principles for determining costs of grants, contracts, and other agreements with non-profit organizations. (Refer to appendix 5)

b. Copies of the documents referred to in paragraph 13a(1) through 13a(11) are available in booklet form from the Office of Administration, Publications Units, Room G 236, New Executive Office Building, Washington, DC 20503.

14. *Administrative Requirements.*

a. *Applicability of Circulars.* This requirement is the same as under the Crime Control and Juvenile Justice Acts. Refer to paragraph 20a of this chapter.

b. *Other Administrative Requirements.*

(1) *Prior Approval of Cost Items.* Written approval of grant and subgrant costs is required for specific cost items. Those costs generally requiring grantor agency, CJC or entitlement jurisdiction approval are discussed in detail in Chapter 5.

(2) *Reprogramming of Funds.*

(a) *CJC*

1. The movement of funds from one program to another program contained in an approved State formula award, which results in a cumulative increase or decrease in the budgeted total cost for any program of more than 25 percent must be approved by the grantor agency prior to the expenditure of funds. The grantor agency will consider retroactive approval only in extremely unusual circumstances. When such retroactive approval is not considered warranted, the grantor agency will exercise its option to reduce the grant by the amount of the unauthorized reprogrammed funds. (Refer to paragraph 66b of this guideline manual for prior approval requirements.)

2. Prior OJJDP approval is necessary for *any* reprogramming of Part D formula funds out of juvenile justice programs. In addition, OJJDP must be notified of any reprogramming of funds which increases the juvenile justice maintenance of effort share for a specific state.

(b) *Entitlement Jurisdictions.* The movement of funds from one program to another contained in an approved entitlement jurisdiction award requires the prior approval of the CJC. (Refer to paragraph 66b of this guideline manual for prior approval requirements.)

(3) *Redesignation of Fund Year.* Criminal Justice Councils and entitlement jurisdictions are prohibited from changing Part D formula grant and subgrant awards, and their related obligations and expenditures, from one fiscal year to another fiscal year.

(4) *Commingling of Funds.* The accounting systems of all grantees and subgrantees must insure that grantor agency funds are not commingled with funds from other Federal agencies. In addition, grantees and subgrantees are prohibited from commingling funds on either a program by program basis or a project by project basis. Funds specifically budgeted and/or received for one project cannot be used to support another. Where a grantee's or subgrantee's accounting system cannot comply with this requirement, it is recommended that the grantee or subgrantee establish a system to provide adequate fund accountability for each project which it has been awarded.

15. *Reserved.*

Section 2. Omnibus Crime Control and Juvenile Justice Acts

16. *General.* The section sets forth the program requirements relating to general fiscal administration for grants, contracts and other agreements funded by the grantor agency under the Omnibus Crime Control and Safe Streets Act of 1968 (Crime Control Act), as amended, and the Juvenile Justice and Delinquency Prevention Act of 1974 (Juvenile Justice Act), as amended. This section is applicable to programs and projects funded through fiscal year 1979 for the Crime Control Act and through fiscal year 1980 for the Juvenile Justice Act. The fiscal and administrative requirements applicable to all grantees, subgrantees, contractors and other organizations under Federal agreements are explained in three stages. First, the source and nature of funds awarded are defined. Subsequently, the section explains the respective fiscal requirements imposed by statutes, Federal grant-in-aid regulations, and administrative regulations.

17. *Source and nature of funds.* Federal funds provided for the improvement of law enforcement and criminal justice programs, as authorized and appropriated by the Crime Control Act and the Juvenile Justice Act, may be used for: comprehensive planning; implementing law enforcement and criminal justice action programs; or sponsoring specific training, education, research and demonstration projects. The following subparagraphs explain how the funds are awarded and what they are to be used for.

a. *Basis of Awards.* Funds are awarded as formula and block (planning and action) grants, categorical (i.e., discretionary, technical assistance, research and development, etc.) grants, contracts and other agreements.

(1) *Formula and Block* grants are awarded to the States on the basis of their general population and specific target group populations, such as the number of youths under age 18.

(2) *Categorical* grants and cooperative agreements are awarded to States, units of local government or private (profit/non-profit) organizations at the discretion of the grantor agency. Most categorical awards are competitive in nature.

(3) *Contracts* are awarded by the grantor agency, CJCs, and other grantees or subgrantees to both profit and non-profit organizations. With the exception of a few justified sole-source situations, contracts are awarded via competitive procurement processes.

(4) *Other forms of funding* include interagency agreements and purchase of service arrangements, which are usually entered into by two governmental units or agencies. Such funding arrangements are negotiated by the entities involved.

b. *Funds Available Under the Crime Control Act.* Title I of the Crime Control Act authorizes four types of funds. CJCs may use any of these funds to award subgrants or contracts or to enter into other financial arrangements for the procurement of goods and services. Other grantees/subgrantees may use these funds to award contracts or to enter into other financial arrangements for the procurement of goods and services.

(1) *Part B—Planning Grants.* Planning grants are for the use of States and units of general local government in developing and adopting comprehensive law enforcement and criminal justice plans. The grantor agency awards these funds to the States on a formula basis. Each State then sub-awards a portion of its allocation to units of local government. In addition, each state shall provide that at least $50,000 of the Federal funds awarded to them for any fiscal year be made available to the judicial planning committee.

(2) *Part C—Action Grants for Law Enforcement Purposes.* Grants funded under this Part are for the actual implementation of State and local programs to improve and strengthen law enforcement and criminal justice. The grantor agency awards 85 percent of these funds to the States on a formula basis and the remainder as either categorical grants, cooperative agreements or contracts.

(3) *Part D—Training, Education, Research, Demonstration and Special Grants.* Part D funds are for the development of new methods for the prevention and reduction of crime. The

grantor agency awards these funds as either categorical grants, cooperative agreements or contracts.

(4) *Part E—Action Grants for Correctional Institutions and Facilities.* Grant funds available under this Part are for the construction, acquisition and renovation of correctional institutions and facilities, and for the improvement of correctional programs and practices. The grantor agency awards 50 percent of these funds to the States on a formula basis and the remaining 50 percent as categorical grants to either CJCs or units of general local government.

c. *Funds Available Under the Juvenile Justice Act.* Title II of the Juvenile Justice Act authorizes three types of funds. CJCs may use any of these funds to award subgrants or contracts or to enter into other financial arrangements for the procurement of goods and services. Other grantees/subgrantees may use these funds to award contracts or to enter into other financial arrangements for the procurement of goods and services.

(1) *Part B, Subpart I—Formula Grants.* Funds available under this subpart are used for various general activities to improve the overall juvenile justice system. Seventy-five percent of the funds appropriated for Part B are awarded by the grantor agency to the States on the basis of relative population of youths under age eighteen.

(2) *Part B, Subpart II—Special Emphasis Prevention and Treatment Programs.* Funds available under this subpart are used for the promotion of specific programs designed to develop new approaches for dealing with youths in trouble. Twenty-five percent of the funds appropriated for Part B are awarded directly by the grantor agency as either categorical grants, cooperative agreements or contracts.

(3) *Part C, National Institute for Juvenile Justice and Delinquency Prevention.* Funds made available through the National Institute are used for the collection, preparation and dissemination of useful data and techniques regarding the treatment and control of juvenile offenders. All funds are awarded as either categorical grants, cooperative agreements or contracts.

d. *Joint Use of Funds.* Funds awarded under the various parts of the Crime Control Act and the Juvenile Justice Act are to be used for programs and projects in compliance with the legislative intent of each respective part. In addition, there are several instances where by statute Congress intends that funds be jointly used.

(1) *Juvenile Justice Maintenance of Effort.* Under Section 261(b) of the Juvenile Justice and Delinquency Prevention Act and Section 520(b) of the Crime Control Act of 1976, there shall be maintained for each fiscal year at least 19.15 percent of the total grantor agency appropriations for juvenile delinquency programs. This 19.15 percent requirement may include both administrative and action funds expended for purposes consistent with the Juvenile Justice Act. These funds are in addition to the funds appropriated under Section 261(a) of the Juvenile Justice Act.

(2) *Funding for Corrections.* Funds under both Parts C and E of the Crime Control Act may be used for the improvement of correctional programs and facilities. Under the Part E compliance requirement, however, a State must provide assurance that part E funds will not be used to reduce the Part C funds which a State would normally allocate to corrections.

(3) *State Planning.* In conjunction with Part B of the Crime Control Act, formula funds from the Juvenile Justice Act may be used to develop a State plan or for other pre-award activities associated with such State plan and to pay that portion of the expenditures which are necessary for efficient administration, including monitoring and evaluation. The amount of Juvenile Justice (JJ) formula funds used for administration, however, may not exceed 7½ percent of the total annual allotment.

(4) *Other Federal Programs.* At the discretion of the grantor agency, a State may utilize up to 25 percent of its JJ formula grant funds to meet the non-Federal matching requirement for any other Federal juvenile delinquency program grant excluding grantor agency (LEAA, NIJ or BJS) programs.

18. *Statutory Requirements.* In addition to the broad fiscal provisions of the Crime Control Act and the Juvenile Justice Act, as defined in paragraph 17, there are a number of specific financial requirements which must be adhered to by grantees and subgrantees. These requirements are identified below:

a. *"Pass-Through" Requirement.* An obligation on the part of the States to make grant funds available to local units of government, or combinations of local units, as follows:

Figure. 2.2.—*Summary of Pass-Through to Units of General Local Government*

Fund type	Applicability	Percentage
Part B Planning	Yes	40.
Part C Block	Yes	Variable Pass-Through.
JJ Formula	Yes	66⅔.
All other grantor agency funds.	No	

(1) *Part B-Planning Funds.* Forty percent of a State's Federal planning grant funds must be passed-through to general local units of government, or combinations of local units, unless a waiver has been obtained.

(2) *Part C—Grants for Law Enforcement or Criminal Justice Purposes (Action Funds).* A variable percentage of a State's Federal block action grant funds must be passed through to units of general local government or combinations of local units. This percentage is determined by calculating the ratio of the total non-Federal local expenditures for criminal justice system operation to the total non-Federal expenditures for all operations of the criminal justice system within the State during the preceding fiscal year.

(3) *JJ-Formula Grants.* At least 66⅔ percent of funds received by the State, excluding funds made available to the State advisory group, are to be made available for programs to local units of government or combinations of local units.

(4) *Accounting and Documentation for State Expenditure of Pass-Through Funds on Behalf of Local Units of Government.* CJCs may expend, on behalf of units of general and local government, the "pass-through" portions of Part B planning funds, Part C block action funds and JJ formula funds providing the following conditions are met.

(a) *Prior Approval.* The cost of services provided by the State, or direct outlays by the State on behalf of local units of government, may be charged as funds made available to local units only with the specific prior approval of the CJC and the local unit(s) to which the services will be made available.

(b) *Documentation.* CJC records shall contain explicit documentation of consent for such expenditures. Although no special form of documentation, accounting or recording needs to be used, board meeting minutes, signed certifications or waivers, or written records of local government meetings called for this purpose are recommended.

b. *Buy-In.* This requirement is applicable to the total aggregate Part B and Part C funds which each State is required to pass-through to units of general local government or combinations of local units. Each State must provide in the aggregate for Part B planning and Part C block action grants not less than 50 percent of the required non-Federal share.

Figure 2-3.—*Summary of Buy-in Requirement*

Fund type	Applicability	Required percentage of non-Federal share to be supplied by State
Part B Planning	Yes (1) (2)	50
Part C Block (including construction).	Yes (3)	50
All Other Grantor Agency Funds.	No	—

(1) Applicable only to REQUIRED Pass-Through of 40%
(2) Not applicable to Grants Awarded to Regional Planning Units
(3) Applicable only to REQUIRED Variable Pass-Through for state.

c. *Federal Participation Ratios.* The ratios for Federal participation in the funding of programs and projects are shown in figure 2-4.

(1) *Part B Planning Funds.* Maximum Federal participation is 90 percent. The ratio may go as high as 100 percent funding to regional planning units. (For a definition of regional planning units, refer to the effective edition of Guideline Manual 4100.1, State Planning Agency Grants.)

(2) *Part C and Part E Action Funds.* Maximum Federal participation is 90 percent for Part C and Part E action funds except for construction under Part C block which is 50 percent.

(3) *Part D.* A grant authorized under this part may be up to 100 percent of the total cost of each project for which the grant is made. Grants using educational development funds are funded at 75 percent Federal participation and 25 percent match.

(4) *JJ Formula Funds.*

(a) *For FY 1978 and prior years obligated funds,* the Federal funds awarded may not exceed 90 percent of the costs of programs and projects funded. The non-Federal share of such costs, therefore, must be at least 10 percent.

(b) *For FY 1978 and prior years unobligated funds* (as of October 1, 1978), the Federal funds awarded may be up to 100 percent of the costs of programs and projects. Any required non-Federal share (up to 10 percent of such costs) will be determined by the CJC.

(c) *For FY 1979 and subsequent years funds,* the Federal funds awarded shall be at 100 percent of the costs of projects and programs funded.

(5) *Exceptions.* Federal participation for all construction projects funded by Part C block and juvenile justice grants is limited to 50 percent. Federal participation for all grants awarded to insular areas (i.e., Virgin Islands, Guam, American Samoa, the Trust Territory of

Figure 2-4.—*Summary of Match Requirements Under Crime Control Act and Juvenile Justice Act*

Fund type	March requirement	Percentage	Type of match	Appropriated
Part A—Community Anti-Crime	No			
Part B—Planning	Yes[1]	10	Cash	Aggregated.
Part C—Block:				
Operational	Yes	10	Cash	(1) On a project by project basis or a program by program basis if the CJC adopts this more restrictive procedure as a formula; or (2) On a combination of the above, if the CJC adopts this more restrictive procedure as a formula and with prior approval of the grantor agency; or (3) A unit of government basis, i.e., by city, county, or by CJC.
Construction	Yes	50	Cash	
Part C: Discretionary—Awarded by grantor agency (including construction).	Yes	10	Cash	(1) A project by project basis; or (2) On an overall program basis when specific unit of government receives discretionary funds for coordinated program funds.
Part E—Awarded by grantor agency or state agency: Block & Discretionary (including construction).	Yes	10	Cash	Block—same as Part C block above. Discretionary—Same as Part C discretionary above.
Part D: Research, Development and Evaluation.	No			
Part D: Training	No			
Part D: Education (excluding Curriculum Development).	No			
Part D: Curriculum Development	Yes[2]	25	Cash or in-kind.	A project by project basis.
Part F:				
Systems and Statistics	No			
Technical Assistance	No			
Juvenile Justice—Formula Subgrants to CJCs or Units of Local government:				
For FY 1978 and prior years obligated funds.	Yes[3,4]	10	Cash	(1) On a project by project basis or a program by program basis if the CJC adopts this more restrictive procedure as a formula; or (2) On a combination of the above, if the CJC adopts this more restrictive procedure as a formula and with prior approval of the grantor agency; or (3) Unit of government basis, i.e., by city, county, or by CJC.
For FY 1978 and prior years unobligated funds (as of October 1, 1978).	No[4,5]			
For FY 1979 and subsequent years funds.	No[4]			
Subgrants to Private Agencies:				
For FY 1978 and prior years obligated funds.	Yes[4]	10	Cash	(1) On a project by project basis; (2) On a program by program basis if the CJC adopts this procedure; or (3) On an agency by agency basis if a given private agency is the recipient of support from more than one subgrant.
For FY 1978 and prior years unobligated funds (as of October 1, 1978) and subsequent years funds.	No[4]			
Juvenile Justice—Special Emphasis (Categorical):				
For FY 1978 and prior years obligated funds.	Yes[4,6]	10	Cash	
For FY 1978 and prior years unobligated funds (as of October 1, 1978) and subsequent years funds.	Yes[4,7]			

[1] Federal participation may be up to 100% funding to regional planning units.
[2] Cash or in-kind as determined by the grantor agency.
[3] A required non-Federal share (up to 10 percent hard match).
[4] A required non-Federal share (50% hard match) is required for construction projects.
[5] A non-Federal share (10% hard match) may be required by the CJC on FY 1978 funds.
[6] Cash requirements may be waived by grantor agency in whole or in part and in-kind match substituted.
[7] A required non-Federal share of 10% hard match (money, facilities or services) can be required by grantor agency.

the Pacific Islands, and the Government of the Northern Mariana Islands) shall be at 100 percent.

d. *Hard Match Requirements.* The Crime Control Act provides that the non-Federal share of the cost of any program or project under Parts B, C and E shall be new money appropriated in the aggregate by the State or local unit of government. Individual categorical grant recipients may provide an aggregate amount of cash to be used and applied as Federal grants are received, or may appropriate match for each categorical grant on an individual basis. The following is a discussion of how the matching contribution may be provided.

(1) *Hard Match* may be applied from the following sources:

(a) Funds from State and local units of government, that have been identified in their budgets or appropriations as a binding commitment of matching funds for programs or projects;

(b) Funds from the Housing and Community Development Act of 1974;

(c) Funds contributed from public and private sources;

(d) Funds from Applachian Redevelopment Act; and

(e) Funds from General Revenue Sharing Act.

(2) *New Funds* may be calculated on the basis of:

(a) The amount of increase in cash input to a program or project from the previous year's hard match and non-recurring items; or

(b) The extent to which the current cash input exceeds the previous three years average input, less the previous year's hard match and non-recurring items.

(3) *Salaries of Personnel.* Salaries of personnel transferred to a grantor agency project may not be considered hard match unless the vacancies created by their transfer are filled by personnel whose salaries are from appropriated State or local funds.

e. *Timing of Matching Contributions.* Matching contributions need not be applied at the exact time or in proportion to the obligation of the Federal funds. However, the full grantee and/or subgrantee matching share must be obligated by the end of the period for which the Federal funds have been made available for obligation under an approved program or project. Grantees and subgrantees receiving State appropriated buy-in funds as part of their match may wish to obligate those funds earlier on in the project in order to prevent their lapsing after completion of the State's fiscal year.

f. *Records for Match.* All grantees must maintain records which clearly show the amount and the timing of all matching contributions. In addition, if a program or project has included within its approved budget contributions which exceed the required matching portion, the grantee must maintain records of them in the same manner as he does the grantor agency funds and required matching shares. For all planning and block action funds and for JJ formula funds, the CJC has primary responsibility for compliance with the requirements. For all categorical funds, including JJ Special Emphasis grants, the grantee and the subgrantee or contractual recipient have shared responsibility for ensuring compliance with the requirements regarding matching shares.

g. *Waiver of Match for Indian Applications.* Sections 301(c) and 306 of Title I provide that grantor agency programs or projects to Indian tribes or aboriginal groups may be awarded with no required matching contribution where it is the case that the group does not have sufficient funds available to meet the matching share. Lists of Indian tribes entitled to apply for this wavier are available from the U.S. Department of Interior. The following policies and procedures establish the process to be employed in seeking these special waivers.

(1) *Individual Waivers.* Requests for a waiver of matching funds from Indian tribes or other aboriginal groups must be supported by a formal letter of certification stipulating that match for the Indian application cannot be provided. This certification must be executed in name and title by the recognized Indian leader(s) of the applicant Indian group.

(2) *Fiscal Year Waivers.* The grantor agency may at its discretion delegate the authority to grant waivers to a CJC. This may cover some or all of the Indian entities in a State. The waiver authority permits the CJC to approve all applications at 100 percent funding from Indian entities during the fiscal year, provided that a certification is obtained from each application and forwarded to the grantor agency in Washington. Requests for fiscal year waivers must be supported by a statement from the CJC Director, and approved by the Governor of the State, that each Indian entity covered by the request is unable to provide non-Federal funding for that fiscal year.

h. *One Third Personnel Limitation.* As required by Section 301(d) of the Crime Control Act, not more than one-third of any action grant made under Part C of Title I may be expended for compensation of police and other regular law enforcement personnel exclusive of time engaged in training

programs or in research, development, demonstration, or other short-term projects (6 months or less). It is intended that the use of part C block grant funds for the salaries of personnel whose primary responsibility is to provide assistance, maintenance, or auxiliary components of law enforcement agencies shall not be subject to the limitations set forth in Section 301(d). Expenditures above this one-third limit are not allowable as a charge on Federal funds but may be allowed as a grantee contribution.

(1) *Applicability.* Subgrantees may individually provide for expenditure of more than one-third of Federal funds for compensation of personnel provided that the combined expenditures for all programs and projects supported by the block grant to the CJC do not exceed the limit. This limitation is applicable to categorical grants on an individual basis.

(2) *Exclusions.* In applying the "one-third" limitation, only the wages and salaries of grantee or subgrantee employees need be counted, and not fees or other remuneration of non-employee consultations or personnel costs of private or educational institution contracts providing services to grantees or subgrantees. The limitation does not apply to personnel compensation under Part B planning grants. Replacement or substitute costs for personnel in training are not within the statutory exclusion, but, where Federal funds are used to reimburse the subgrantee for compensation of personnel "undergoing training programs," this is within the exclusion and the resulting savings can often be applied toward replacement manpower.

(3) *Records.* The CJC must maintain records which demonstrate how it is meeting the one-third limitation for law enforcement and criminal justice personnel. The method used shall be considered an integral part of its official records.

(4) *Suggested Format.* The following is offered as a suggested format for documenting the one-third limitation.

(a) Estimated total personnel compensation in all Part C programs, exclusive of time spent in training, research and development of short-term projects: (a) $———.

(b) Estimated total law enforcement and criminal justice personnel compensation in all Part C programs, exclusive of time spent in training, research and development or short-term projects: (b) $———.

(c) Estimated total increases in personnel compensation of implementing agencies, exclusive of same compensation items included in (b): (c) $———.

(d) Estimated expenditures from Federal share for the increased personnel compensation provided in (a) above, exclusive of the same compensation items in (b) and not to exceed 50 percent of (c): (d) $———.

i. *Non-Supplanting of State or Local Funds.*

(1) The Act prohibits the use of Federal funds to supplant State or local funds. Each State must develop procedures to comply with this requirement and maintain these procedures as part of the official records of the State.

(2) Requirement procedures shall account for the non-supplanting requirement in the following manner:

(a) *Certification.* Certifications shall be in writing and should be to the effect that Federal funds have not been used to replace State or local funds that would, in the absence of such Federal aid, be made available for law enforcement and criminal justice. Such certification may be incorporated in prescribed grantee reports and should be provided not less than annually.

(b) *Documentation.* Certifications shall be held in grantee's files for the purposes of Federal audit. Any certifications requiring special explanations because of reduced or unchanged local investment in law enforcement shall be forwarded to the grantor agency for informational purposes.

(c) *Combinations of Local Units.* Where grants are awarded to a combination of local government units, certifications should cover all participating units and their combined law enforcement expenditures.

j. *State Assumption of Costs.* CJCs must demonstrate the willingness of the State and units of general local government to assume the costs of improvements funded by the grantor agency (Crime Control act only) after a reasonable period. The grantor normally defines a "reasonable period" as three years. Accordingly, each State must establish procedures by which subgrantees will specify, in the last year of their grants, what plans have been made for eventual incorporation of some or all project activities into the operation of State or local governmental agencies.

19. *Regulatory Requirements.*

a. *In addition to statutory requirements,* the award and administration of grant and subgrant funds are subject to applicable regulations and policies that have been promulgated by the Office of Management and Budget (OMB), the General Accounting Office and the U.S. Treasury. Grantee, subgrantee and contractor organizations should maintain, or have access to, copies of documents which present additional detailed guidance relating to the award and administration of grants, subgrants, and contracts. The following documents are particularly important to grantees, subgrantees and contractors. Contribution ratios of grantor agency programs are unaffected by the documents and, where authorizing legislation contains explicit restrictions on the reimbursement of particular costs, such restrictions are also unaffected. For a list of the regulatory documents, refer to paragraph 13 of this Chapter.

b. Copies of the documents referred to in paragraph 13a(1) through 13a(11) are available in booklet form from the Office of Administration, Publications Unit, Room G 236, New Executive Office Building, Washington, DC 20503.

20. *Administrative Requirements.*

a. *Applicability of Circulars.* The basic grantor agency focus on the costs principles contained within the circulars referenced in paragraph 13a is the extent to which they contribute to the purposes and execution of the grantor agency programs. Accordingly:

(1) Grantees will each bear their appropriate share of allocated costs as allowable, not only under the appropriate circular, but also under State and local laws or regulations and grantee practices.

(2) Grantees and their subgrantees will accept responsibility for expending and accounting for Federal funds in a manner consistent with:

(a) Pertinent agreements and project and/or program objectives, and

(b) Policies and procedures that apply uniformly both to federally assisted and other activities of the grantee or subgrantee.

(3) Grantees and their subgrantees have the primary responsibility for employing whatever form of organization and management techniques necessary to assure proper and efficient administration and cost allocation, including accounting, budgeting, reporting, auditing and other review controls.

(4) Grantees and subgrantees' costs pertinent to carryiung out functions unrelated to law enforcement programs receiving grant support are not allowable. There can be no recognition of "profit" or other increase above true costs to grantees or subgrantees in executing grants.

B. *Other Administrative Requirements.*

(1) *Prior Approval of Cost Items.* Written approval of grant and subgrant costs is required for specific cost items. This prior approval responsibility is vested in either the CJCs, the entitlement jurisdictions or the grantor agency, depending upon the source of funds and the amount of the cost. Those costs generally requiring grantor agency, CJC, or entitlement jurisdiction approval are discussed in detail in Chapter 5.

(2) *Reprogramming of Funds.*

(a) The movement of funds by the CJC from one program to another program contained in an approved State Comprehensive Plan (latest approved Attachment A), which results in a cumulative increase or decrease in the budgeted total cost for any program by more than 25 percent, must be approved by the grantor agency prior to the expenditure of funds. Such reprogramming will be deemed an amendment of the grant application and award and requires prior grantor agency approval. (Refer to paragraph 66b for prior approval requirements.) The grantor agency will consider retroactive approval only in extremely unusual circumstances. When such retroactive approval is not considered warranted, the grantor agency will exercise its option to reduce the grant by the amount of the unauthorized reprogrammed funds. The 25 percent reprogramming limit will be effective as of the date of this guideline manual and will apply to active block planning and action and juvenile justice formula funds. Reprogramming of FY 1980 and prior years block funds into programs for which the sole or primary purpose is the PURCHASE OF EQUIPMENT OR HARDWARE or into programs for NEW CONSTRUCTION IS PROHIBITED. (Refer to Section 404(c) of the JSIA)

(b) Prior OJJDP approval is necessary for ANY reprogramming of Crime Control funds out of juvenile justice programs. In addition, the OJJDP should be notified of any reprogramming of funds which increases or decreases the juvenile justice maintenance of effort share for a specific State.

(3) *Funds Availability.* Costs of service provided by the State or direct outlays by the State for or on behalf of local units of government may not be charged as funds made "available" to local units without the specific approval of both the CJC's supervisory board and the local units to which the services will be made available. A unit of general local government means any city, county, township, town, borough, parish, village or other general purpose political subdivision of a State or an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior.

(4) *Redesignation of Fund Year.* CJCs are prohibited from changing block action, formula grant and subgrant awards, and their related obligations and expenditures, from one fiscal year to another fiscal year. Refer to the effective edition of Guideline M7100.4, "Block and Juvenile Justice Formula Grant Administration Requirements," for details.

(5) *Comingling of Funds.* The accounting systems of all grantees and subgrantees must insure that grantor agency funds are not comingled with funds from other Federal agencies. In addition, grantees and subgrantees are prohibited from comingling funds on either a program-by-program basis or a project-by-project basis. Funds specifically budgeted and/or received for one project cannot be used to support another. Where a grantee or subgrantee's accounting system cannot comply with this requirement, it is recommended that the grantee or subgrantee establish subsidiary accounts or a system to provide adequate fund accountability for each project which it has been awarded.

21–23. Reserved.

Chapter 3. Award, Payment and Financial Reporting Requirements

24. *General.* All grantees/subgrantees of the Federal grantor agency are bound by uniform award, payment and financial reporting requirements. The purpose of this chapter is to prescribe the procedures which must be followed by grantees/subgrantees in order to properly initiate grant activities, receive Federal advances or reimbursements for expenditures, and report on grant activities. Procedures may vary from one type of grantee/subgrantee to another (e.g., a CJC receiving formula D funds versus a non-profit organization receiving categorical funds).

25. *Conditions of Award and Acceptance*

a. *Award Document.* After completion of the internal review process, grant applications designated for approval are formally awarded by the grantor agency in the form of an issuance of an Award document. This statement identifies the Grantee and Subgrantee (if applicable), the Period of Award, the Type and Amount of Federal Funds and the Award Number. As appropriate, Special Conditions are included which the grantor feels the grantee/subgrantee must meet if he accepts the award. This award notification process is applicable to all grant applications approved for award. All correspondence concerning the award shall refer to the designated Award Number shown on the Award document.

b. *Acceptance Procedures.* The Award document constitutes the operative document obligating and reserving Federal funds for use by the grantee/subgrantee in execution of the program or project covered by the award. Such obligation may be terminated without further cause, however, if the grantee/subgrantee shall fail to affirm its timely utilization of the grant by signing and returning the signed acceptance to the grantor agency WITHIN 45 DAYS from the date of award. No Federal funds shall be disbursed to a grantee/subgrantee until the signed acceptance has been received by the grantor agency.

c. *Special Cancellation Conditions for Subgrants.* The CJC must condition each Part C and E block action and Part D and JJ formula award to include the following cancellation procedures. This condition shall not be placed on CJC awards to entitlement jurisdictions.

(1) *Commencement Within 60 Days.* If a project is not operational within 60 days of the original starting date of the grant period, the subgrantee must report by letter to the CJC the steps taken to initiate the project, the reasons for delay, and the expected starting date.

(2) *Operational Within 90 Days.* If a project is not operational within 90 days of the original starting date of the grant period, the subgrantee must submit a second statement to the CJC explaining the implementation delay. Upon receipt of the 90-day letter, the CJC may cancel the project and redistribute the funds to other project areas. The CJC may also, where extenuating circumstances warrant, extend the implementation date of the project past the 90-day period. When this occurs, the appropriate subgrant files and records must so note the extension.

26. *Payment of Grant Funds.*

a. *Applicability.* The material contained in this section deals with the payment of funds to all grantees. The procedures and regulations discussed are applicable to all grant funds.

b. *Annual Requirement Under $120,000.* Grantees, whose annual fund requirement for all agency grants is less than $120,000, receive Federal funds on a "Check Issued" basis. Upon receipt, review and approval of a REQUEST FOR ADVANCE OR REIMBURSEMENT, H–3 Report, (LEAA Form 7160/3) by the grantor agency, a Voucher and Schedule for Payment is prepared for the amount approved. This schedule is forwarded to the U.S. Treasury requesting issuance and mailing of the check directly to the grantee or its designated fiscal agent. A

request must be limited to the grantee's immediate cash needs and submitted at least monthly. The H-3 Report, along with the instructions for its preparation, is contained in appendix 6.

c. *Annual Requirement Over $120,000.* Grantees, whose annual fund requirement for all types of agency grants exceeds $120,000, generally receive Federal funds by utilizing the "Letter of Credit" procedure. This funding method is a cash management process prescribed by the U.S. Treasury for all major grant-in-aid recipients. All CJCs must utilize the Letter of Credit by virtue of the funny levels contemplated for them under the Act. All forms and instructions for using this method of payments are contained in Appendix 7.

d. *Check Issuance.* All checks drawn for the payment fund requests, either under the "Check Issue" or the "Letter of Credit" process, are prepared and disbursed by the U.S. Treasury and not by the grantor agency.

e. *Termination of Advance Funding.* When a grantee organization receiving cash advances by letter of credit or by direct Treasury check demonstrates an unwillingness or inability to attain program or project goals or to establish procedures that will minimize the time elapsing between cash advances and disbursements; cannot adhere to guidelines requirements or special conditions; engages in the improper award and administration of subgrants or contracts, or is unable to submit reliable and/or timely reports, the grantor agency may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the direct Treasury check method to reimburse the grantee for actural cash disbursement.

27. *Applicability of Cash Requirements to Subgrantees.*

a. *Principle of Minimum Cash on Hand.* Fund requests from subgrantees create a continuing cash demand on grant balances of CJCs. CJCs should keep in mind that idle funds in the hands of subgrantees will impair the goals of the Federal Letter of Credit System. Accordingly, subgrantee requests for funds should conform substantially to the same "as needed" timing as that for CJCs. Grantees who award subgrants, or their fiscal agents, must develop procedures for the disbursement of funds to subgrantees as needed.

b. *Minimum Payments to Subgrantees.* Minimum cash payments of $5,000 to subgrantees, which are consistent with the minimum letter of credit drawdown amount, may be imposed for administrative ease and economy.

28. *Obligation of Funds.*

a. *Federal Obligation Process.* Once a grant award has been signed by the grantor agency, the amount of the award is considered an obligation of the Federal government and is recorded as such in the grantor agency accounting system. Appropriated funds are thereby reserved against the grant until all monies are expended by the grantee/subgrantee or, in case of nonutilization of funds within statutory or other time limits, appropriated funds revert to the grantor agency through deobligation of the unused balance.

b. *Grantee and/or Subgrantee Obligation Process.* Funds are considered obligated by a grantee/subgrantee when a legal liability to pay determinable sums for services or goods is incurred, which will require payment during the same or future period.

c. *Obligation and Expenditure Deadline Dates.* Figure 3-1 represents the maximum deadline for grantee/subgrantee obligation and expenditure of Part B planning funds, Part C and E block action funds, JJ formula funds and part D formula funds.

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Figure 3.1.—*Maximum Obligation/Expenditure Deadline Dates*

Fiscal year	Deadlines	Part B planning	Part C&E action	JJ formula	Part D formula
1977	Obligated	12/31/77	9/30/79	9/30/79	
	Expended	3/31/78	12/31/79	12/31/79	
1978	Obligated	12/31/78	9/30/80	9/30/80	
	Expended	3/31/79	12/31/80	12/31/80	
1979	Obligated	[1]9/30/80	9/30/81	9/30/81	
	Expended	[1]12/31/80	12/31/81	12/31/81	
1980 [2]	Obligated			9/30/82	9/30/82
	Expended			12/31/82	12/31/82
1981	Obligated				9/30/83
	Expended				12/31/83
1982	Obligated				9/30/84
	Expended				12/31/84
1983	Obligated				9/30/85
	Expended				12/31/85

[1] FY 1979 Planning Grant Period Extension from December 31, 1979 to September 30, 1980.
[2] Transition Year.

29. *Grant Periods, Obligation, Expenditure and Extension Information.*

a. *Grant Award Periods.*

(1) *Part B Block Planning Funds for FY 1976 and subsequent years* have a 15 month planning grant period. This period begins October 1 of a fiscal year and ends December 31 of the following fiscal year.

(2) *Part C and E Block Action, JJ Formula Funds for FY 1976 and subsequent years, and Part D Formula Funds* are awarded for the fiscal year in which the grant is awarded (effective the date of the grant award) plus the next two full fiscal years.

(3) *Categorical Grants* are awarded for a specified time, and a particular grant period is established for each categorical award (usually 12 or 18 months).

b. *Obligation of Funds.*

(1) *Part B Block Planning Funds* MUST BE OBLIGATED BY THE CJC within the grant period.

(2) *Part C and E Block Action, JJ Formula, Part D Formula and Categorical Funds* MUST BE OBLIGATED BY THE GRANTEE/SUBGRANTEE within the grant period.

(3) *Any funds in paragraph 29b(1) and (2)* not properly obligated within the grant period will lapse and revert to the grantor agency.

c. *Expenditure of Funds.* Part B block planning, Part C & E block action, Part D formula, JJ formula and categorical funds which have been properly obligated by the end of the grant period will have 90 days in which to be liquidated (expended). Any funds not liquidated at the end of the 90-day period will lapse and revert to the grantor agency.

d. *Grant Award Extensions.*

(1) *Part B Funds for FY 1976 and subsequent years.* As a matter of policy, the obligation and expenditure deadlines for Part B funds shall not be extended. (Refer to the effective edition of G 4100.5 for an exception for FY 1979 planning funds.)

(2) *Part C and E Block Action, Part D Formula and JJ Formula Funds.*

(a) FY 1978 and prior years funds can be granted an extension of the grant period (both obligation and expenditure) upon a written request for an extension fully justifying the need/reason for the

extension. This extension must be approved by the grantor agency.

(b) FY 1979 and subsequent years funds can be granted an extension of the grant period (both for obligation and expenditure) for a program or set of programs if a written request is received by the grantor agency at least 180 days before the end date of the grant. The CJCs must meet the required extension criteria and the request must be approved by the grantor agency. (Refer to the effective edition of G 7100.4 for information on extension criteria and limitations.)

(3) *Categorical Funds* can be granted an extension (both for obligation and expenditure) upon receipt of a written request for an extension stating the need for the extension and indicating additional time required. This request must be submitted at least 40 calendar days before the end date of the grant and requires approval by the grantor agency. (Refer to paragraph 66c of this guideline manual for prior approval requirements.) The maximum extension allowable for any project is 12 months and retroactive extension of project periods cannot be considered. Any exception to this policy will require detailed justification.

30. *Program and Financial Reporting Requirements.*

a. *Program Reports.* These reports are prepared in a narrative fashion in order to present information relevant to the performance of a plan, program, or project.

(1) *Narrative Report for Planning.* This is the Annual Planning Grant Application and its attachments. In addition to describiong anticipated planning activities for the forthcoming period, it serves as a performance report for the previous planning period. Reporting in this manner is applicable to CJC recipients of Part B planning funds. Instructions for the preparation of this report are contained in the PLANNING, ACTION, AND JUVENILE JUSTICE AND DELINQUENCY PREVENTION GRANT APPLICATION KIT. The KIT is produced annually and is available from the grantor agency.

(2) *Narrative Report for Part C and E Block Action and JJ Formula Funds.* This reporting requirement is met through the submission of the Annual Comprehensive Plan and its updates. The Comprehensive Plan serves as the performance report for previously planned activities utilizing Part C, Part E and JJ formula funds. Reporting in this manner is applicable to CJCs of block (Part C &E) and JJ formula funds. States which have received multi-year planning status through the approval of a full Comprehensive Plan in the years 1978 and 1979 may submit only a plan update document in accordance with an approved three year cycle. This reporting requirement for formula funds for fiscal year 1981 and subsequent years will be met by submission of an annual Performance Report. No annual performance report is required for fiscal year 1980. Instructions for the preparation of the Comprehensive State Application are contaned in the effective edition of M 4100.1/28 CFR Part 31 and in the JUVENILE JUSTICE AND DELINQUENCY PREVENTION GRANT APPLICATION KIT. These documents are available from the grantor agency.

(3) *Categorical Grant Progress Report (LEAA Form 4587/1).* This report is prepared on a calendar quarter basis and is used to describe the performance of activities or the accomplishment of objectives as set forth in the approved grant application. Reporting in this manner is applicable to all categorical grantees/subgrantees. Reports are due on the 30th day following the end of each calendar quarter and are designed to supply information on the activities and accomplishments of the grant during that quarter. Exception—the first report is due 30 days after the end of the first FULL calendar quarter. The FINAL report is due 90 days after the end date of the grant. The report for the last calendar quarter may also serve as the final report if it includes, as a minimum, a summary statement of progress toward the achievement of the originally stated aims, a list of the significant results and a list of publications resulting from the grant. An original and two copies must always be submitted using LEAA Form 4587/1. Grantees receiving a categorical grant should forward these reports directly to the grantor agency. All subgrantees receiving their award through a CJC must send their progress reports to the CJC for forwarding to the grantor agency. Under these circumstances, an original and three copies should be sent to the CJC in order for the CJC to retain one copy for its files. Copies of the report form with instructions for filling it out are forwarded to grantees/subgrantees at the timne of award as part of the Award Package.

(4) *Special Reports.* In the review and approval process for plans and applications, it is sometimes necessary for the grantor agency to require that special or unique conditions be met in order for the agency to make an award. These Special Conditions will vary from grant to grant; however, acceptance of the award by the grantee/subgrantee constitutes an agreement that the conditions will be met either prior to initiating the project or during the course of the grant period. When this is the case, Special Reports on the meeting of these conditions are required for submittal to the grantor agency. They are prepared free form; however, the timing, content and process for their submittal are detailed in the Award Package.

b. *Financing Reporting.* In order to obtain financial information concerning the use of Federal funds, the grantor agency requires that grantees/subgrantees of these funds submit timely reports for review. These reports are consistent with the manner of reporting established by OMB Circular Nos. A-102 and A-110 and the Letter of Credit requirements established by the U.S. Treasury Department.

(1) *Financial Status Report, H-1 Report (LEAA Form 7160/1).* (a) This report is required from all grantees for each quarter on a calendar-quarter basis. It is designed to reflect financial information relating to Federal and non-Federal obligations and outlays. A separate report is required for each grant with the EXCEPTION that PART C BLOCK (including Small State Supplements), PART E BLOCK, PART D FORMULA and JJ FORMULA grants may be combined on one H-1 report for each fiscal year. However, in these instances, information relating to each type of funds must be identified separately. A copy of the H-1 Report, along with detailed instructions for its preparation and reporting due dates are contained in appendix 8, attachment 1.

(b) In lieu of using the standard H-1 Report, grantees may satisfy the financial reporting requirements by completing an H-1 Turnaround Document. These documents are facsimiles of the H-1 Financial Status Reports created with information extracted from grantor agency's computer files and sent directly to each grantee. Pertinent information such as grantee name and address, grant number and the previously submitted financial information (if any) is printed on the form by the computer. A copy of the H-1 Turnaround Document, along with detailed instructions for its preparation, are contained in appendix 8, attachment 2.

(c) In addition to reporting outlays and obligations, the CJCs must report to the grantor agency the total Federal funds subgranted to both State agencies and local government (including entitlement jurisdictions) for the grant being reported. This information is required on all block Part C and E, Part D formula and Juvenile Justice formula grants. This requirement shall be

submitted in the Remarks Section, Item 12, of the H-1 Report or the Remarks Section of the Turnaround Document. The total subgranted figure reported in the Remarks Section should agree with the subgrant award information submitted to the Program File (PROFILE).

(2) *Request for Payment on Letter of Credit and Status of Funds Reports (SF-183).* This report is applicable to grantees who are funded under the Letter of Credit system. It is prepared each time a grantee organization requests a drawdown of funds under its Letter of Credit. The reporting format is illustrated and explained in appendix 7, figure 3.

(3) *Daily Status of Federal Funds Report.* This report is applicable to grantees who utilize the Letter of Credit system to obtain Federal funds. It is required on a selective basis as determined by the U.S. Treasury from grantee organization(s) who are to prepare the report(s) for the month(s) specified. The reporting format is illustrated and explained in appendix 7, figure 5.

(4) *Request for Advance or Reimbursement (H-3 Report).* This report is applicable to all grantees who are funded on a "Check-Issued" basis. It is required to document the status of Federal cash when a grantee requests an advance or reimbursement of funds (see paragraph 26b). Refer to appendix 6 for sample of the report.

31. *Specific Subgrant Information Reporting (Profile) Requirements.*

a. *Background.* Thousands of different types of projects have been funded by the grantor agency and the CJCs. As the number and complexity of activities supported by the grantor agency has grown, so also has the need for providing more detailed information concerning the disposition of funds. The agency's Grant Program File (PROFILE) is designed for the automated storage and retrieval of information describing agency programs. PROFILE is operated by agency personnel, and their responsibilities include maintenance of the PROFILE data base from information provided by CJCs and grantor agency project monitors, and the dissemination of information in response to requests from the PROFILE users, Congress, Public Interest Groups and concerned citizens relevant to the agency program.

b. *Participation and Use.* While the PROFILE system is used extensively within the grantor agency, participation in, and use of the system by CJCs and entitlement jurisdictions, is on a voluntary basis. CJCs and entitlement jurisdictions who elect to become users transmit detailed subgrant information to the grantor agency on a monthly basis. This information may be transmitted in either a hardcopy manual format, by a computer tape, or by having a computer communicate directly with the grantor agency computer. Upon receipt, the information is entered into the PROFILE data base and is available for use by the CJCs, the entitlement jurisdictions, and the grantor agency. Using the information contained in the data base, the following types of reports may be produced for use by the participants:

(1) Standard Reports
(2) Periodic Reports
(3) Ad hoc Reports

32.34. *Reserved.*

Chapter 4. Accounting Systems and Financial Records

35. *General.*

a. *Requirement.* All grantees, subgrantees, contractors and other organizations under grants, contracts, cooperative agreements or purchase of service arrangements are required to establish and maintain accounting systems and financial records to accurately account for funds awarded to them. These records shall include both Federal funds and all matching funds of State, local and private organizations.

b. *Purpose.* The purpose of this chapter is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

(1) Complying with the statutory requirements for the awarding, disbursement and accounting of funds.

(2) Comply with the regulatory requirements of the grantor agency, the Office of Management and Budget, and the U.S. Department of the Treasury for the financial management and disposition of funds.

(3) Generating financial data which can be used in the planning, management and control of programs.

(4) Facilitating an effective audit of funded programs and projects (see Chapter 8 of this guideline manual).

c. *References.* The following regulations, directives and reports both supplement the detailed requirements of this chapter for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

(1) *Office of* Management and Budget Circular A-102 (revised), Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. (Refer to appendix 3.)

(2) *Office of Management and Budget Circular* A-110 (revised), Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations. (Refer to appendix 4.)

36. *Supervision and Monitoring Responsibilities.*

a. *Grantee Responsibilities.* All grantees receiving direct awards from the grantor agency are responsible for the management and fiscal control of all funds. Responsibilities include the accounting of receipts and expenditures, the maintaining of adequate financial records and the refunding of expenditures disallowed by Federal or State audits.

b. *Responsibilities for Accounting by Subgrantees.* Where the conduct of a program or one of its components is delegated to a subgrantee, contractor or other organization via an approved comprehensive plan, grant award or other means of prior approval by the grantor agency, the grantee is, nevertheless, responsible for all aspects of the program including proper accounting and financial record-keeping by the subgrantee. These responsibilities also include:

(1) *Reviewing Financial Operations.* Grantees should be familiar with, and periodically monitor, their subgrantee's financial operations, records, systems and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the books of the grantee in summary form. Subgrantee expenditures should be recorded on the books of the grantee, or evidenced by report forms duly filed by the subgrantee. Non-Federal contributions applied to programs or projects by subgrantees should likewise be recorded, as should any program income resulting from program operations.

(3) *Budgeting and Budget Review.* The grantee should ensure that each subgrantee prepares an adequate budget on which its award commitment will be based. The detail of each project budget should be maintained on file by the grantee.

(4) *Accounting for Non-Federal Contributions.* Grantees will ensure, in those instances where subgrantees are required to furnish non-Federal matching shares, that the requirements, limitations and regulations pertinent to non-Federal contributions are applied.

(5) *Reporting Irregularities.* Grantees and their subgrantees are responsible for reporting promptly to the grantor agency the nature and circumstances surrounding any financial irregularities discovered, as specified in the effective edition of Guideline 7140.2, Reporting

LEAA Fund, Misuse, Criminal Activity, Conflict of Interest, or Other Serious Irregularities.

37. *Elements of Accounting Systems—Special Grantor Agency Needs.* Funds may be awarded as block grants, formula grants, or categorical grants. The various financial requirements and formulas of the grantor agency's programs, as well as the need for grantees to separately account for individual awards, require a special program account structure extending beyond normal classification by type of receipts, expenditures, assets and liabilities.

a. *Block and Formula Grant Accounts.* To properly account for block and formula grant awards, CJCs should establish and maintain program accounts which will enable separate identification and accounting for:

(1) Planning grant funds applied to each standard budget category included within each approved planning grant application;

(2) Planning grant funds "passed through" to local programs and projects;

(3) Planning grant funds used for contracted planning services or assistance by non-governmental organizations;

(4) Action grant funds applied to each action program included within each approved comprehensive plan;

(5) Part C action grant funds "passed through" to local programs and projects;

(6) Part C action grant funds used for the compensation of police and other regular law enforcement and criminal justice personnel;

(7) Aggregate State funds provided as the "buy-in" for Part B planning and Part C action grants;

(8) JJ formula funds expended through programs of local government;

(9) JJ formula funds utilized to develop a State plan and to pay that portion of expenditures which are necessary for administration;

(10) Part D formula funds (action) applied to each action program included within each approved application;

(11) Part D formula funds (administrative) utilized for administrative purposes; and

(12) Source, type and timing of matching contributions provided under each planning, action, Part D formula and JJ formula grant.

b. *Categorical Grant.* To properly account for categorical grant awards, all grantees should establish and maintain program accounts which will enable, on an individual basis, separate identification and accounting for:

(1) Receipt and disposition of all funds;

(2) Funds applied to each budget category included within the approved grant;

(3) Expenditures governed by any special and general provisions;

(4) Non-Federal matching contribution, if required; and

(5) Crime Control funds used for the compensation of police and other regular law enforcement and criminal justice personnel.

38. *Accounting System.*

a. *The grantee is responsible for* establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

(1) Presents and classifies projected historical cost of the grant as required for budgetary and evaluation purposes;

(2) Provides cost and property control to assure optimal use of grant funds;

(3) Controls funds and other resources to assure that the expenditure of funds and use of property are in conformance with any general or special conditions of the grant;

(4) Meets the prescribed requirements for periodic financial reporting of operations; and

(5) Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

b. *For an outline of recommended elements to be considered when establishing an accounting system,* refer to appendix 9.

39. *Total Cost Budgeting and Accounting.* Accounting for all funds awarded by the grantor agency shall be structured and executed on a "total program cost" basis. That is, total program costs, including Federal funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

40. *Maintenance and Retention of Records.* In accordance with OMB Circulars A-102 and A-110, all financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants or contracts under grants shall be retained by each organization participating in a program or project for at least three years for purposes of Federal examination and audit. State or local governments may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

a. *Coverage.* The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

b. *Retention Period.* The three year retention period starts from the date of the submission of the final expenditure report or for grants which are renewed annually, from the date of the submission of the annual expenditure report. Exceptions to the three-year requirement, such as for records for nonexpendable property acquired with grant funds and for grants having an audit in process, are contained in OMB Circulars A-102 and A-110.

c. *Maintenance.* Grantees/subgrantees are expended to see that records of different Federal fiscal periods are separately identified and so maintained that information desired can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of records stored should be on hand and ready access should be assured.

41. *Cash Depositories.* Grantees/subgrantees of Federal funds shall deposit these funds in a bank with FDIC coverage and the balance exceeding the FDIC coverage must be collaterally secure. Federal regulations do not require physical segregation or the establishment of any eligibility requirement for cash depositories. Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees shall be encouraged to use minority banks (banks which are owned at least 50% by minority group members).

42. *Project Related Income.* Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below. (For specific requirements

and procedures on project-related income earned on grants/subgrants whose primary function is the acquisition of stolen goods and property, refer to appendix 10, Guideline on the Revolving Fund.)

a. *Interest.* In accordance with section 203 of the Intergovernmental Cooperation Act of 1968 (Public Law 90-577), the States and any agency or instrumentality of a State, including State institutions of higher education and State hospitals shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through the states, the subgrantees are not held accountable for interest earned on advances of project funds. Also, Tribal organizations (pursuant to sections 102, 103 and 104 of the Indian Self Determination Act (P.L. 93-638) are not held accountable for interest earned. All other grantees shall remit such interest to the grantor agency, except where governing programmatic regulations indicate otherwise. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

b. *Program Income.*

(1) *Sale of Property*—the policy and procedures governing the handling of proceeds from the sale of real and personal property purchased with grant funds is contained in Chapter 6, paragraph 87 of this guideline manual.

(2) *Royalties*—the grantee/subgrantee shall retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise or a specific agreement governing such royalties has been negotiated between the grantor and the grantee. Refer to Chapter 6, paragraph 86 and Attachment N of OMB Circular Nos. A-102 and A-110 for further details.

(3) *Registration/Tuition Fees and Other*—these types of program income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions. If the terms and conditions of the project do not specify disposition, the grantee/subgrantee shall select one or a combination of the following options.

(a) Used by the grantee/subgrantee for any purposes that further the objectives of the legislation under which the project was made; or

(b) Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

43-44. *Reserved.*

Chapter 5. Allowability of Costs

Section 1. Applicability

45. *General.* This chapter deals with the rules and principles for determining costs properly chargeable to Part B planning grants; Parts C and E block action grants; Part D formula grants; JJ formula grants; and all categorical grants. The rules and principles are therefore applicable to all grantees and subgrantees for grants awarded from these funds.

46. *Basic Principles.*

a. *Authority.* The material contained in this chapter is based on the standardized cost allocation and allowability principles prescribed for Federal grants-in-aid programs in FMC 74-4, OMB Circulars A-21 and A-122 and the cost-related provisions of grantor agency legislation.

b. *Applicability.* FMC 74-4, Cost Principles Applicable to Grants and Contracts with State and Local Governments, OMB Circular A-21, Cost Principles Applicable to Grants and Contracts with Educational Institutions, and OMB Circular A-122, Cost Principles for Non-Profit Organizations, were promulgated to provide the basis and standards for a uniform approach to the problem of determining costs and also to promote efficiency and better relationships between grantees/subgrantees and their Federal counterparts. The grantor agency has made the circulars applicable to all grantees and subgrantees, who will therefore be guided by these principles in overall administration, audit programs and actions required in making cost determinations. The basic grantor agency focus in determining or examining the allowability of costs within the circulars' framework will be the extent to which cost items contribute to the purpose and execution of the grant program and are so applied. It is assumed that State and local units of government and private non-profit entities receiving funds will each bear their appropriate share of allocated cost as allowable not only under FMC 74-4 and OMB Circulars A-21 and A-122 but also under State and local laws and regulations.

47. *Reserved.*

Section 2. Costs Generally Allowable

48. *General.* This section of the chapter addresses points and questions which have frequently been raised concerning cost allowability. It supplements the detailed listings in FMC 74-4 and OMB Circular A-21 and A-122 for determining the allowability of selected items of cost by the grantor agency, the CJCs or the entitlement jurisdictions, whichever is applicable.

49. *Compensation for Personal Services.*

a. *Two or More Federal Grant Programs.* Where salaries apply to execution of two or more grant programs, proration of costs to each grant must be made. In cases where two or more grants constitute one identified activity or program, salary charges to one grant may be allowable after written permission is obtained from the CJC or grantor agency, as appropriate.

b. *Extra Work.*

(1) A State or local government employee may be employed by a grantee or subgrantee in addition to his full-time job provided the work is performed on the employee's own time and:

(a) The compensation is reasonable and consistent with that paid for similar work in other activities of State or local government;

(b) The employment arrangement is approved and proper under State or local regulations; and

(c) The time and/or services provided is supported by adequate documentation.

(2) To avoid problems arising from overtime, holiday pay, night differential or related payroll regulations, such employment arrangements should normally be made by the grantee or subgrantee directly with the individual, unless there has been a transfer or loan of the employee for which his regular and overtime services provided are to be charged to or reimbursed by the grantee or subgrantee. Overtime and night differential payments are allowed only to the extent that payment for such services is in accordance with the policies of the CJC or unit(s) of local government and has the approval of the CJC, the entitlement jurisdiction or the grantor agency, whichever is applicable. (Refer to paragraph 54.) The overtime premium should be prorated among the various jobs and not charged exclusively to grantor agency funds.

(3) Payment of these premiums will be for work performed by grant or subgrant employees in excess of the established work week (usually 40 hours). Payment of continued overtime is subject to periodic review by the CJCs, entitlement jurisdictions or grantor agency, whichever is applicable.

c. *Grant Purposes and Dual Compensation.* Charges of the time of State and local government employees assigned to grant programs may be reimbursed or recognized only to the extent they are directly and exclusively related to grant purposes or proper for inclusion in indirect costs bases. In no

case is dual compensation allowable. That is, an employee of a unit of government may not receive compensation from his unit or agency of government and from a grant or subgrant for a single period of time (e.g., 1 p.m. to 5 p.m.) even though such work may benefit both activities.

50. *Conferences, Symposia and Workshops.* Charges to a grant may include conference or meeting arrangements, publicity, registration, salaries of personnel, rental of staff offices and conference space. Recording or translation services, postage and telephone charges, and travel expenses (including transportation and subsistence) for speakers or participants. Each of these items, when related to grant purposes, are otherwise allowable costs under FMC 74-4 and OMB Circulars A-21 and A-122. Grant funds may not be used for honoraria (i.e., payments to participating individuals or guests other than for documented professional services actually rendered at reasonable compensation rates), entertainment, sports, visas, passport charges, tips, bar charges, personal telephone calls or laundry charges.

51. *National Guard Grants.*

a. *Any grants/subgrants to National Guard forces* for projects related to acquisition of equipment (see paragraph 12f) or training of personnel shall meet the following requirements.

(1) Such projects will be supportive of State or local law enforcement agencies and will not replace or supplant duties properly assigned to law enforcement agencies;

(2) Such projects will be directly and primarily related to civil disorders or natural disaster responses;

(3) Such funds will not duplicate or supplant funds or equipment available to State National Guard units through the Department of Defense;

(4) The State National Guard Adjutant General shall supply certificiations of compliance with the above requipments.

b. *Service Contracts.* There are no restrictions against contracts with National Guard units for services to local or State law enforcement units, such as training or technical assistance in planning.

52. *Travel for Grants/Subgrants.* Travel costs are allowable for expenses by employees, who are in travel status on official business. Definitions for travel are:

a. *Domestic Travel* includes travel within and between Canada, the United States and its territories and possessions. Prior approval is required for domestic travel (by educational institutions) during any grant that will cause the amount identified for such travel to be exceeded by $500 or 25 percent of the approved budgeted amount, which ever is greater. (Refer to paragraph 67 of this guideline manual.) Grantees may follow their own established travel rates. If a grantee does not have an established travel policy, the grantee must abide by the Federal travel rates. Subgrantees may follow their own established travel rates. If a subgrantee does not have an established travel policy:

(1) The CJC may require a subgrantee of block funds to abide by state rates; or

(2) The subgrantee must abide by the Federal travel rates.

b. *Foreign Travel* includes any travel outside of Canada and the United States and its territories and possessions. However, for a grantee/subgrantee located outside Canada and the United States and its territories and possessions, foreign travel means travel outside that country. Prior approval is required for all foreign travel (refer to paragraph 67 of this guideline manual).

53. *Reserved.*

Section 3. Costs Requiring Prior Approval

54. *Responsibility for Prior Approval.* Prior approval is written permission provided in advance of an act that will result in either (1) the obligation or expenditure of funds or (2) the performance or modification of an activity under a grant/subgrant project, where such approval is required. Consistent with the block grant structure of the program and the primary grant administration responsibilities vested by statute in the CJCs, the administration of regulatory cost principles and standards issued by the Federal Government is vested in the following three authorities:

a. *The Grantor Agency* reviews for approval, all costs identified in this section when the grantee (CJC or direct recipient of categorical grants) is the direct benefactor of the goods or services to be purchased or supplied. This also applies to costs included in the CJC's planning/administrative budget.

b. *The CJC* reviews for approval all costs identified in this section for subgrantees of block planning, block action, Part D and JJ formula and categorical funds where the CJC is the grantee but not the implementing agency.

c. *The Entitlement Jurisdiction* reviews for approval all costs identified in this section for subgrantees of block planning, block action, Part D and JJ formula and categorical funds where the entitlement jurisdiction is the grantee but not the implementing agency.

55. *Prior Cost Approval Requirement.* This section addresses specific types of costs requiring prior approval. Written approval is required in accordance with paragraph 54a-c of this section, as defined, and for any other costs specified in FMC 74-4 and OMB Circulars A-21 and A-122 as "Costs Allowable With Approval of Grantor Agency" or costs which contain special limitations. Where prior approval authority for subgrantees is required in this section, it will be vested in the CJC or entitlement jurisdiction unless specifically specified as being "RETAINED BY THE GRANTOR AGENCY" as identified in paragraph 57a(2) and (3), 59a, 60b and c, 62b, 63, 64, 66a(1), 66c(1)(b) and (i), 66c(2)(c) and 67. Subgrantee requests for GRANTOR AGENCY prior approval should be submitted through the CJC.

56. *Applicability and Procedure.*

a. *Cost Categories and Expenditure Levels.* It is not the agency's intention to require grantor agency approval of all changes within the listed cost categories, but only for those aspects or elements which specifically require prior approval. Also, the establishment of dollar expenditure levels in this section is intended to furnish blanket grantor agency approval for modest grant related outlays. Costs above such levels may also receive approval upon submission of appropriate data and justification.

b. *Procedure for Reguest for Prior Approval.* Requests must be in writing and shall provide justificiation and an explanation to permit review of the allowability. The may be submitted:

(1) Through inclusion in the budget or other component of a grant or subgrant application; or

(2) As a separate written request to the appropriate authority as described in paragraph 54.

57. *Automatic Data Processing (ADP) and Automated Fingerprinting Equipment.* Grants may include provisions for procurement of ADP and Automated Fingerprinting Equipment. The grant applications will be written in a manner consistent with maximum open and free competition in the procurement of hardware and services. Brand name will not normally be specified. Criminal justice information and communication systems accordance with speical requirements for grants involving ADP contained in appropriate guidelines and available by request from the grantor agency.

a. *Requirement.*

(1) Prior approval is NOT REQUIRED for the LEASE or RENTAL of such equipment; nevertheless, assurance must be provided that leases or rentals

greater than $10,000 are obtained in accordance with Federal procurement standards in Attachment O of Circular Nos. A-102 and A-110.

(2) Where the amount of the acquisition exceeds $50,000, prior approval is required for the acquisition of equipment (outright purchase, lease-purchase agreement, or other method for purchase). Such prior approval must be obtained from the GRANTOR AGENCY.

(3) Prior approval is REQUIRED for both the acquisition and lease of all ADP equipment (regardless of cost) which is to be used for the processing and storage of fingerprinting images. Prior approval must be obtained from the GRANTOR AGENCY.

(4) A review of an ADP equipment procurement shall be required and should include a review of the description of the equipment to be purchased. This review shall be documented in writing for the file and shall require the reviewing official (grantor agency, CJC or entitlement jurisdiction) to certify that the procurement is consistent with the following requirements:

(a) The ADP equipment of the type to be purchased was identified within the grant application and is necessary and sufficient to meet the project goals.

(b) The ADP equipment procurement is in compliance with existing Federal/grantor agency, state and local laws and regulations.

(c) A purchase/lease comparison has been conducted demonstrating that it is more advantageous to purchase rather than lease the ADP equipment under consideration.

(d) If software development is involved, it has been demonstrated that computer software already produced and available will not meet the needs of the grant.

(e) If the ADP equipment procurement is to be sole-source, documentation has been submitted to justify the action.

(5) An ADP Procurement Review Form (Suggested Format—Sample Only) is included in this guideline manual as appendix 11. This form is a recommended form for documenting an ADP equipment procurement review and the form is shown as a SAMPLE ONLY.

b. *Definition.* Automatic data processing equipment is defined in 41 CFR, Subpart 1-4.1102-1 as "general purpose commercially available, mass produced automatic data processing components and the equipment systems created from them regardless of use, size, capacity, or price, that are designed to be applied to the solution or processing of a variety of problems or application and are not specifically designed (not configured) for any specific application." This definition includes:

(1) Digital, analog or hybrid computer equipment;

(2) Auxiliary or accessorial equipment such as data communications terminals, source data automation recording equipment (e.g., optical character recognition equipment, and other data acquisition devices), and data output equipment, (e.g., digital plotters, computer output microfilms, etc., to be used in support of digital, analog, or hybrid computer equipment; whether cable connected, wire connected, radio connected or self-standing, and whether selected or acquired with a computer or separately;

(3) PCAM (Punch Card Accounting Machines) whether used in conjunction with or independently of digital analog, or hybrid computers.

c. *Qualifications and Exclusions.*

(1) Analog computers are covered only when being used as equipment peripheral to a digital computer.

(2) Items of ADP equipment that are (a) physically incorporated in a weapon, or (b) manufactured under a development contract are excluded from the above definition.

(3) Accessories, such as tape cleaners, tape testers, magnetic tapes, paper tapes, disc packs and the like are excluded.

58. *Building Space and Related Facilities.*

a. *Rental Cost.* Prior written approval is required when:

(1) The total rental space requirement, including space for file, conference, mail, supply, reproduction, and storage rooms, is in excess of 150 square feet per employee. Space required for intermittent and/or part-time employees may be included in space requirement.

(2) The rental charge exceeds $10 annually per square foot. The grantee/subgrantee shall certify in writing that the requested rental charge is consistent with the prevailing rates in the local area and shall maintain documentation in its files to support such a determination.

b. *Mintenance and Operation.* Prior approval is required where maintenance and operation expenses, as defined in FMC 74-4 and OMB Circulars A-21 and A-122, when added to any space rental costs, are estimated to exceed an aggregate total of $12.50 annually per square foot of space occupied.

c. *Rearrangements and Alterations.* Prior approval is required when the total estimated outlay for rearrangement and alteration under any grant or subgrant is greater than $10,000. For costs in excess of such amount, justification must normally show that:

(1) The building involved is in reasonably good condition with a life expectancy of five or more years;

(2) The costs are true rearrangement or renovation costs as distinguished from new construction or expansion of an existing building, and

(3) The total costs do not exceed 25 percent of the current value of the building.

d. *Depreciation and Use Allowances on Publicly Owned Buildings.* Prior approval is required only when depreciation or use allowances are to be charged on temporarily idle or excess facilities.

e. *Occupancy Under Rental Purchase or Lease with Option to Purchase Agreement.* Prior approval of costs of occupancy under arrangements of this type must be obtained and may require application of special matching share requirements under construction programs.

59. *Equipment and Other Capital Expenditures.* Equipment and other capital assets (refer to paragraph 12f), including repairs which materially increase their useful life, are allowable provided that the procurement receives prior approval. Approval requirements are as follows:

a. *Planning and Administrative Funds.* Prior approval of items to be acquired for exclusive use in authorized CJC and entitlement jurisdiction operations is required for annual equipment expenditures over $10,000. These expenditures normally consist of furniture, office equipment, vehicles, and other items required for the administrative effort of comprehensive application development, implementation and coordination. Prior approval for CJCs must be obtained from the GRANTOR AGENCY. For subgrantees (including entitlement jurisdictions), CJCs may adopt a $5,000 prior approval requirement or may require review of all proposed equipment acquisitions.

b. *All Other Grant Funds.*

(1) *Specific Provisions of the Grant Agreement.* Where expenditures for equipment are not fully justified by the budget and narrative description portion of the grants, the grantor agency, the CJCs, and entitlement jurisdictions may require that the type, quantity estimated, unit price or other information be provided through the issuance of Special Conditions to the grant award.

(2) *Acquisition Requirements.* In reviewing equipment acquisition budgets and proposals, CJCs and entitlement jurisdictions should adhere to the following principles:

(a) No other equipment owned by the grantee/subgrantee is suitable for the effort.

(b) Grant funds are not used to provide reimbursement for the purchase of equipment already owned by the grantee/subgrantee. Exception: Equipment that has been purchased for a common pool and will be charged to the grant at cost value is allowable. Equipment that has already been purchased and charged to other activities of the university would not be an allowable expense to the grant.

(c) Equipment purchased and used commonly for two or more programs has been appropriately prorated to each activity.

(3) *Helicopters and Airplanes.* The acquisition, use, or maintenance cost of helicopters or airplanes for law enforcement purposes is allowable under the Crime Control Act only. Law enforcement purposes are considered to be surveillance, crowd control, airlifting equipment and personnel, patrol, rescue operations, etc.

60. *Preagreement Costs.* Prior approval is required for preagreement costs. Preagreement costs are defined here as those costs which are considered necessary to the project but occur prior to the starting date of the grant period.

a. *Planning and Administrative Funds.* The grant conditions for planning and administrative funds specifically permit charges of otherwise allowable costs incurred for authorized CJC and entitlement jurisdiction activities or for establishment of CJCs and entitlement jurisdictions, even if incurred prior to the date of the Planning, Part D or JJ formula grant period. Thus, awards may be deemed to have approved "preagreement" costs from the beginning of the grant period set forth in the grant award document (i.e., the beginning of the fiscal year of award unless the grantee has elected a later date).

b. *Block Action, Part D Formula Action, and JJ Formula Action Funds.* Costs which were incurred prior to the date of the subgrant period may be charged to the project where the grant or subgrant application specifically requests support for preagreement costs. CJCs and entitlement jurisdictions may approve preagreement costs for subgrantees if incurred subsequent to the beginning of the Federal fiscal year of award. Approval by the GRANTOR AGENCY is required for any preagreement costs incurred prior to the beginning of the Federal fiscal year of award.

c. *Categorical Grants.* Costs which were incurred prior to the start date of the official grant period of the award may be charged to the project only if prior approval is obtained from the GRANTOR AGENCY.

61. *Proposal Costs.* Costs to projects for preparing proposals for potential Federal grants require prior approval.

62. *Professional Services (Including Contractors and Consultants).*

a. *The requirements* with respect to arrangements for services with individuals, other government units and non-government organizations are as follows:

(1) *Arrangements with individuals* must ensure that:

(a) Dual compensation is not involved (i.e., the individual may not receive compensation from his regular employer and the retaining grantee or subgrantee for work performed during a single period of time even though the services performed benefit both).

(b) The contractual arrangement is written, formal, proper and otherwise consistent with the grantee's usual practices for obtaining such services.

(c) Time and/or services for which payment will be made and rates of compensation will be supported by adequate documentation.

(d) Transportation and subsistence cost for travel performed are at an identified rate consistent with the grantee's general travel reimbursement practices.

(2) *Arrangements with other government units* shall ensure that the work or services for which reimbursement is claimed must be directly and exclusively devoted to grant purposes and charged at rates not in excess of actual cost to the "contractor" government agency.

(3) *Arrangements with non-government organizations* shall ensure that:

(a) The arrangement is written, formal, proper and consistent with the usual practice and policies of the grantee or subgrantee in contracting for or otherwise obtaining services of the type required;

(b) Indirect costs or overhead charges in cost-type arrangements are based on an audited or negotiated rate previously approved by a State or Federal agency or are based on an indirect cost submission reflecting actual cost experience during the contractor's last annual or other recently completed fiscal period; and

(c) The customary fixed fee or profit allowance in cost-type arrangements does not exceed 10 percent of total estimated costs.

(d) Not more that 20 percent of the State's total Federal Planning Grant (State and local portions) may be used for contracted planning services or assistance by nongovernmental organizations.

(4) *Compensation* for consultant services is to be reasonable and consistent with that paid for similar services in the market place. Consideration will be given to compensation including fringe benefits for those individuals whose employers do not provide the same. In addition, the policy is that the maximum rate for consultants is $135 (excluding travel and subsistence costs) for an eight (8) hour day. An eight-hour day may include preparation, evaluation and travel time in addition to the time required for actual performance. A request for compensation for over $135 a day, but not to exceed $200 a day requires prior approval and additional justification. The following is the policy in regard to compensation of various classifications of consultants who perform like-type services and are subject to these limitations.

(a) *Consultants Associated with Educational Institutions.* The maximum rate of compensation that will be allowed is the consultant's academic salary projected for twelve months, divided by 260. These individuals normally receive fringe benefits which include sick leave for a full 12-month period even though they normally only work nine months per year in their academic positions.

(b) *Consultants Employed by State and Local Governments.* Compensation for these consultants will only be allowed when the unit of government will not provide their services without cost. In these cases, the rate of compensation is not to exceed the daily salary rate paid by the unit of government.

(c) *Consultants Employed with Profit, Non-Profit and Not-for-Profit Organizations.* These organizations are subject to competitive bidding procedures. Thus, they are not subject to the $135 per day maximum compensation. In those cases where an individual has authority to consult without employer involvement, the rate of compensation should not exceed the individual's daily salary rate paid by his/her employer subject to the $135 limitation.

(d) *Independent Consultants.* The rate of compensation for these individuals must be reasonable and consistent with that paid for similar services in the market place. Compensation may include fringe benefits.

b. *A grantee should not circumvent* the requirements of paragraphs 62a(1), (3) and (4) by contracting for a fixed product which would not be subject to

the professional services fee limitation. This is particularly significant in contracting for the services of individuals. If any of the requirements outlined in paragraph 62a are not met, prior approval must be obtained from the GRANTOR AGENCY, CJC or entitlement jurisdiction, whichever is applicable.

63. *Confidential Expenditures.* Approval by the GRANTOR AGENCY is required for all grantees/subgrantees prior to the use of funds for confidential expenditures. Confidential expenditures, as used here, are defined as funds used for purchase of services, purchases of evidence (physical) and purchase of information. Refer to appendix 12, "Guidelines for Confidential Expenditures," for further details.

a. *Confidential expenditures* will not be considered in grants/subgrants to State law enforcement agencies and law enforcement agencies serving counties and cities with populations in excess of 50,000 upon the submission of special information which includes procedures and assurances established by the grantor agency for proper accounting and administration of this cost item. Guidelines and use instructions for handling confidential expenditures must be supplied to the grantees/subgrantees for all grants/subgrants providing support for confidential expenditures.

b. *A special condition* must be applied to all grants/subgrants involving the expenditure of confidential funds. This condition should state:

"Prior to the expenditure of the $——— allocated for confidential funds, the project director shall sign a certification indicating that he has read, understands and agrees to abide by all of the conditions pertaining to confidential fund expenditures as set forth in the effective edition of Guideline Manual 7100.1, Financial and Administrative Guide for Grants."

c. *Certification for Confidential Funds.*

(1) A signed certification is required by the grantor agency, the CJC or the entitlement jurisdiction from all project directors of grants/subgrants involving the disbursement of monies for confidential expenditures from Federal or matching funds. For a sample of the required certification, refer to appendix 12.

(2) A signed certification must be returned to the grantor agency, the CJC or the entitlement jurisdictional to be placed in the official grant file.

d. *Confidential expenditures and other funds that are seized and revert* to a State or local unit of government as a result of grants which use confidential expenditures, for other than informant fees shall be deemed program income pursuant to OMB Circular No. 1-102 up to the total amount of such confidential expenditures used under such grant. This income will be returned to the primary recipient, the CJC or the entitlement jurisdiction and used to support other projects under the appropriate program.

64. *Medical Research Conducted With Grant Funds.* Medical research conducted by any grantee or subgrantee must receive prior approval from the GRANTOR AGENCY before any funds may be expended for the research. Prior approval requests may be prepared as a separate submission or included in the CJC's Comprehensive Application. Regardless of the type of submission selected, the following information must be included in the request for approval:

a. Type of research;

b. Place and persons conducting the research;

c. Amount of research funds available; and

d. The research methodology, including data on chemical agents or medical procedures, use of human volunteer or animal subjects and a description of anticipated experiments.

65. *Contingency Costs for Construction Projects.* Contingencies will be allowed as part of the budget classification but not as a cost item of the construction application. The contingency will be treated as a prior approval item and release of the contingency must be approved by the CJC, the entitlement jurisdiction or the grantor agency. The maximum contingency rate allowable on construction projects shall be 10 percent of direct construction costs.

66. *Deviations From Approved Budgets.*

a. *Planning Grants (Part B).*

(1) CJCs. In grant applications, CJCs are required only to submit gross cost estimate in five broad expenditure categories—personnel, consultant, services, travel, amount available to local units of government, and other expenses. CJCs may transfer among expenditure categories, a cumulative amount of up to five (5) percent of the grant budget. Transfers exceeding these limitations require prior approval by the GRANTOR AGENCY.

(2) *Subgrantees.* Policies concerning budget deviations by planning subgrantees and the need for prior approval shall be determined by the CJC subject only to adherence to the approval requirements in FMC 74-4.

b. *Block Action, Part D Formula and JJ Formula Grants.*

(1) *CJCs* are currently required to submit only total cost estimates for each program for which an action or Part D or JJ formula grant is requested. Thus, no restrictions exist as to modifications of budgeted costs or expenditures within a program except as may be imposed by the normal cost allowability rules and approval requirements of FMC 74-4. Prior approval for reprogramming of funds is required as described in paragraphs 14b(2) and 20b(2) of this guideline manual.

(2) *Subgrantees.* Policies concerning budget deviations by block action, JJ formula and Part D subgrantees (including entitlement jurisdictions), and the need for prior approval shall be determined by the CJC subject only to adherences to the approval requirements of FMC 74-4 and OMB Circulars A-21 and A-122.

c. *Categorical Grants.* Grantees and subgrantees must request prior approval for certain budget deviations. These deviations include:

(1) *Non-Construction Grants.*

(a) Transfer of funds among direct cost categories for awards in which the Federal share exceeds $100,000 when the cumulative amount of such transfers exceeds or is expected to exceed five percent of the total budget. (Applicable to ALL grantees/subgrantees).

(b) Requirement for grantees/subgrantees to notify the GRANTOR AGENCY promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the grantee/subgrantee by more than $5,000 or five percent of the Federal award whichever is greater. (Applicable to ALL grantees/subgrantees).

(c) Changes in the scope or the objective of the project or program. (Applicable to ALL grantees/subgrantees).

(d) Need for additional Federal funding. (Applicable to ALL grantees/subgrantees).

(e) Transfer of funds allotted for training allowances (direct payments to trainees) to other categories of expense. (Applicable to ALL grantees/subgrantees).

(f) Transfer of amounts budgeted for indirect costs to absorb increases in direct costs. (Applicable to ALL grantees/subgrantees).

(g) Addition of items requiring approval in accordance with the provisions of FMC 74-4. (Applicable to grantees/subgrantees of state and local governments).

(h) Expenditures requiring approval in accordance with OMB Circulars A-21 and A-122. (Applicable to grantees/subgrantees of institutions of higher education, hospitals, and non-profit organizations).

(i) Substantive programmatic work under a grant or other agreement which may be subcontracted or transferred only with prior approval of the GRANTOR AGENCY. (Applicable to grantees/subgrantees of institutions of higher education, hospitals and other non-profit organizations).

(2) *Construction Grants.*

(a) Changes in the scope or the objective of the project or program. (Applicable to ALL grantees/subgrantees).

(b) Increases in the budget amounts of Federal funds needed to complete the project. (Applicable to ALL grantees/subgrantees).

(c) Requirement for grantees/subgrantees to notify the GRANTOR AGENCY promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the grantee/subgrantee by more than $5,000 or five percent of the Federal award, whichever is greater. (Applicable to ALL grantees/subgrantees).

(3) *Construction/Non-Construction Grants.*

(a) Fund or budget transfers between the two types of work (construction to non-construction or vice versa) supported. (Applicable to ALL grantees/subgrantees).

(b) Deviations listed in paragraph 66c (1) and (2) as appropriate.

67. *Travel* costs requiring specific prior approval by the GRANTOR AGENCY are for domestic travel (by educational institutions) exceeding $500 or 25 percent of the approved budgeted amount identified for such travel and for each foreign trip. These costs shall be requested as follows:

a. *Domestic Travel* by a written request for approval.

b. *Foreign Travel* may be incorporated into a grant application at the time of submission of the grant application or as a separate letter requesting approval.

68. *Insurance and Indemnification.* Inclusion of insurance or indemnification costs in the approved grant/subgrant budget or award is normally a precondition for allowability of such costs. However, separate request for approval may also be made. Also prior approval of insurance costs incurred in accordance with standard State and local government policy in the conduct of grantee/subgrantee activities, both federally and non-federally related, and consistent with sound business practices, such as bonding of employees or liability insurance for staff, is required.

69. *Management Studies.* Prior approval of costs of management studies is required if the studies are to be performed by agencies other than the grantee/subgrantee or by consultants.

Section 4. Costs Generally Unallowable

70. *Land Acquisition.* Grantor agency legislation specifies that no Federal grant involving the renting, leasing, or constructing of buildings or other physical facilities shall be used for land acquisition. Accordingly, land acquisition costs are unallowable.

71. *Compensation of Federal Employees.* Salary payments, consulting fees or other remuneration of full-time Federal employees are unallowable costs.

72. *Travel of Federal Employees.* Costs of transportation, lodging, subsistence, and related travel expenses of grantor agency employees are unallowable charges. Travel expenses of other Federal employees for advisory committees or other program or project duties or assistance are allowable if they have been:

a. *Approved by* the Federal employee's department or agency, and

b. *Included as* identifiable item in the funds budgeted for the project or subsequently submitted for approval.

73. *Bonuses or Commissions.* The grantee or subgrantee is prohibited from paying any bonus or commission to any individual for the purpose of obtaining approval of an application for grantor agency assistance.

74. *Military type equipment.* Cost for such items as automatic weapons, armored vehicles, explosive devices, and other items typically associated with the military arsenal are unallowable.

75. *Lobbying.*

a. *No part of any grant* shall be used:

(1) For publicity or propaganada purposes designed to support or defeat legislation pending before legislative bodies;

(2) To pay, directly or indirectly, for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a member of Congress, to favor or oppose, by vote or otherwise, any legislation of appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation (18 U.S.C. 3107).

b. *This provision SHALL NOT* limit the following types of activities:

(1) Testimony before legislative bodies reviewing the effectiveness of grant programs, or

(2) Introduction and support in the State legislature of general statutory reform, such as criminal code revisions, court reform, etc.

76. *Fund Raising.* Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

Section 5. Indirect Costs and Administrative Expenses

77. *Indirect Costs.* These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The costs of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs.

a. *Approved Plan Available.*

(1) The Administration may accept any indirect cost rate or allocation plan previously approved for a grantee by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars.

(2) Where federally-approved rates are used as the basis for charging indirect costs to grant funds, a copy of the Federal agency approval document must be furnished to the grantor agency as part of the grant application.

b. *No Existing Approved Plan.*

(1) Where there is no existing federally-approved rate, indirect costs may not be charged to grant funds on the basis of predetermined fixed rates or a negotiated lump sum unless the rate or sum is approved by the grantor agency. All grantees desiring actual indirect costs and not having a federally-approved rate must submit their proposals to the grantor agency.

(2) In lieu of submitting actual indirect cost proposals, flat amounts not in excess of ten percent of direct labor costs (including fringe benefits) or five percent of total direct costs may be allowed as a predetermined rate. These percentages are based on general experience with respect to minimum overhead support levels required for grantee operations.

(3) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

c. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate and/or cost allocation plan. To do this, the grantee must prepare an indirect cost rate proposal or

cost allocation plan and submit it to the grantor agency. Local units of government need only submit their cost allocation plans or indirect cost proposals if specifically requested by the cognizant Federal agency. The proposal must be submitted in a timely manner (within six months after the end of the fiscal year) to assure recovery of the full amount of allowable indirect cost, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved. For further information concerning the establishment of indirect cost rates, consult the brochures listed below which are published by the Department of Health, Education, and Welfare which describe the procedures involved in the computation of indirect cost rates. Copies of these brochures may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(1) OASC-1 (Rev)—A Guide for Colleges and Universities, Cost Principles and Procedures for Establishing Indirect Cost Rates for Research Grants and Contracts with the Department of Health, Education, and Welfare.

(2) OASC-5 (Rev)—A Guide for Non-Profit Institutions, Cost Principles and Procedures for Establishing Indirect Cost and Other Rates for Grants and Contracts with the Department of Health, Education, and Welfare.

(3) OASC-10—A Guide for State and Local Government Agencies, Cost Principls and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.

78. *Cost Allocation Plans—Central Support Services.* CJCs, other State agencies, and local units of government may not charge to a grant the cost of central support services supplied by the State or local except pursuant to a cost allocation plan approved by the cognizant Federal agency. The rate which is to be applied may be on a provisional, final or predetermined basis.

79. *Reserved.* (Administrative Expenses)

80. *Reserved.*

Chapter 6. Procurement and Property Management Standards

81. *Procurement Standards.*

a. *General.* All grantees/subgrantees must follow the Federal standards in establishing procedures for the procurement of supplies, equipment, construction, and other services with grant funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of OMB Circular Nos. A-102 and A-110 and Executive Orders 11246 andf 11375, entitled "Equal Employment Opportunity." State and local government shall refer to appendix 3, OMB Circular A-102, Attachment 0. Institutions of Higher Education, Hospitals and Other Non-Profit Organizations shall refer to appendix 4, OMB Circular A-110, Attachment 0. Any grantee/subgrantee (state or local) whose procurement system, has been certified by a Federal Agency is not subject to prior approval requirements of Attachments 0, OMB Circular A-102. Grantor agency prior approval will only be required for areas beyond limits of the grantee/subgrantee certification.

b. *Adequate Competition.* All procurement transactions whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition.

c. *Noncompetitive Practices.* The grantee/subgrantee shall be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work and/or RFPs for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. An exemption to this regulation requires the prior approval of the grantor agency and is only given in unusual circumstances such as when a nonprofit organization is acting as the agent for the state or local unit of government. Any request for exemption must be submitted in writing to the grantor agency.

82. *Construction Requirements.* The following policies and procedures relevant to construction are applicable to grantees/subgrantees. For the purpose of determine the appropriate funding ratios for construction projects, refer to Figures 2-1 and 2-4 of Chapter of this guideline manual.

a. *The definitions for construction are:*

(1) Under the Crime Control Act, construction means the erection, acquisition, expansion, remodeling or alteration of existing buildings, and the cost of equipping said facilities. Initial equipment includes heating, plumbing, air conditioning and electrical service and similar fixed equipment items but does not include equipment not inherently a part of the facility, such as office furniture and equipment.

(2) Under the Juvenile Justice and Delinquency Prevention Act, construction means the acquisition, expansion, remodeling and alteration of existing buildings and initial equipment of any such buildings, or any combination of such activities (including architects' fees but not the cost of acquisition of land for buildings). For the definition of initial equipment, refer to paragraph 82a(1).

(3) Under the Justice System Improvement Act, construction means the erection, acquisition, or expansion of new or existing buildings or other physical facilities and the acquisition or installation of initial equipment but does not include renovation, repairs or remodeling. For the definition of initial equipment, refer to paragraph 82a(1).

b. *Qualifications.* When considering the use of grantor agency funds for construction, grantees and subgrantees must be cognizant of the following qualifications as to their use:

(1) Acquisition of non-fixed equipment, feasibility studies, architectural studies and engineering fees, costs of soil borings and the like, may be funded on a 90 percent Federal, 10 percent matching share basis. These costs can be included in one application as a single line item of the budget which shows the 10 percent matching share. The "pure" construction elements (including site preparation) of the budget may then be displayed with their appropriate percentage of Federal participation and matching share.

(2) Grantor agency legislation provides that no portion of Federal grant funds shall be used for the acquisition of land. Grantees/subgrantees should, therefore, consider absorbing land acquisition costs within their share of construction project costs. Land may be used as in-kind match. However, the cost or value of (a) land already beneficially owned by the grantee/subgrantee prior to the fiscal year in which a construction project is approved or (b) which the grantee/subgrantee holds under a grant or patent from the United States for which no consideration was given, may not count as a matching share contribution. Land for which consideration was given to the United States must be valued at acquisition cost.

(3) The total cost of a construction project includes the cost of site preparation, including demolition of existing structures. Any proceeds realized from site preparation activities (e.g., salvage value of structures demolished or the proceeds from sale of timber) shall be applied to the project to reduce the total cost of the construction project.

(4) Payment of relocation costs shall be in accordance with the "Uniform

Relocation Assistance and Real Property Acquisition Policy Act of 1970." Refer to the effective edition of Guideline 4061.1 "Relocation Assistance and Payments," for a detailed explanation of costs for relocation assistance payments.

c. *Special Fiscal Conditions for Construction Projects.* Grant or subgrant funds for construction or facility improvement, which require letting a contract amounting to $100,000 or more to a private company or individual shall require:

(1) *A bid guarantee* equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified after the forms are presented to him.

(2) *A performance bond* on the part of the contractor for 100 percent of the contract price. "Performance bond" means a bond executed in connection with a contract to assure payment is required by law of all persons supplying labor and material in execution of the work provided for in the contract.

(3) *Where the Federal government* guarantees the payment of money borrowed by a grantee or subgrantee, the CJC may, at its discretion, require adequate bonding and insurance if the bonding or insurance requirements of the grantee or subgrantee are not deemed sufficient to protect adequately the interest of the Federal government. In those instances where construction of facility improvements for less than $100,000 are contemplated and the subgrantee does not have any requirements for bid guarantees, performance bonds and payment bonds, the CJC will impose State requirements on the subgrantees.

d. *Exceptions for JJDP Construction Projects.*

(1) *Source and Types of Funds.* Match for construction programs and/or projects awarded to public agencies must consist of cash appropriated by the grantor or contributed by a private agency or individual. This requirement may be waived by the grantor agency, in whole or in part, for grants awarded to private agencies and in-kind match substituted if:

(a) The program and/or project otherwise meets the criteria of the Juvenile Justice Act.

(b) It is consistent with the State Comprehensive Application.

(c) It is meritorious, i.e., it will help alleviate the juvenile delinquency problem.

(d) A demonstrated and determined good faith effort has been made to find a cash match.

(e) No other reasonable alternative exists except to allow in-kind match.

(2) *Use of Funds.*

(a) Construction programs and projects funded under the Juvenile Justice and Delinquency Prevention Act funds are limited to construction of innovative community based facilities for less than 20 people. Facilities include both buildings and parts or sections of a building to be used for a particular program or project.

(b) Erection of new buildings is not permitted with Juvenile Justice and Delinquency Prevention funds.

(c) Use of Juvenile Justice and Delinquency Prevention funds for construction is equally applicable to programs or projects using Formula or Special Emphasis Prevention and Treatment Program funds.

83. *Standards for Property Management.* The standards and procedures contained in this chapter apply to all grantees/subgrantees receiving grantor agency assistance. The standards are based on the property management standards prescribed in Attachment N of both OMB Circulars A-102 and A-110.

a. *Acquisition.* All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. Expenditures of grant funds for the acquisition of new property, when suitable property required for the successful execution of project is already available within the grantee or subgrantee organization, will be considered unnecessary expenditures.

b. *Screening.* Careful screening should take place before acquiring property in order to ensure that it is needed and that the need cannot be met with property already in the possession of the grantee/subgrantee organization. While there is no prescribed standard for such review, grantee/subgrantee procedures might well establish levels of review dependent on factors such as the cost of the proposed property and the size of the grantee or subgrantee organization. The establishment of a screening committee may facilitate the process; however, a grantee or subgrantee may utilize other managment techniques which it finds effective as a basis for determining that the property is needed and that it is not already available within the grant recipient's organization.

c. *Grant Review Responsibilities.* Grantor agency program monitors and CJC grant reviewers must ensure that the screening referenced above takes place and that the grantee/subgrantee has an effective system for property management. Grantees and subgrantees should be informed that if the grantor agency is made aware that the grantee or subgrantee does not employ an adequate property management system grant costs associated with the acquisition of the property may be disallowed.

d. *Loss, Damage or Theft of Nonexpendable Personal Property.* Grantees/subgrantees are responsible for replacing or repairing the property which is willfully or negligently lost, stolen, damaged or destroyed. Any loss, damage, or theft of the property must be investigated and fully documented and made part of the offical grant records.

e. *Accounting Requirements.* Grantees/subgrantees are required to maintain readily identifiable inventory of nonexpendable personal property (with an acquisition cost of $1,000 or more) purchased in whole or in part with grantor agency funds. Results of this physical inventory are to be made a part of the grantee's official records and must be available for review by authorized Federal and State personnel. In addition, the CJC must ensure that this type of inventory is maintained for its subgrants.

f. *Record Keeping Requirements.* Grantees/subgrantees are required to maintain, as part of the financial records of the grant or subgrant, the following types of property management records for all property acquired in whole or in part with grantor agency funds. The CJC may determine at which level, CJC or subgrantee, records shall be maintained for subgrant property. At a minimum, property management records must meet the following requirements:

(1) Records must contain copies of purchase orders and invoices.

(2) The records must include an inventory control listing for nonexpendable personal property and the list must be kept current. The system may be manual or automated, centralized or decentralized; however, the records must contain:

(a) Item description.

(b) Source of property.

(c) Manufacturer's serial number and, if applicable, a control number.

(d) Grantor agency funded cost equity at time of acquisition.

(e) Acquisition date of cost.

(f) Location, use and condition of property.

(g) Ultimate disposition data including sale price or the method used to determine current fair market value.

(3) A physical inventory of nonexpendable personal property (with an acquisition cost of $1,000 or more) shall be taken and the results reconciled with the property record at least once every two years to verify the existence, current utilization and continued need for the property. If the CJC determines that property management records shall be maintained by the subgrantees and that the subgrantee shall perform the physical inventory of property, the results of the inventory must be forwarded to the CJC for review and concurrence. These records shall become part of the official grant file of the CJC.

(4) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage or theft to nonexpendable personal property. Any loss, damage or theft of nonexpendable personal property shall be investigated, fully documented and made part of the official grant file.

(5) Adequate maintenance procedures shall be established to keep the nonexpendable personal property in good condition.

(6) Proper sales procedures which would provide for competition to the maximum extent practicable and result in the highest possible return shall be established for unneeded nonexpendable personal property.

g. *Retention Period.* Records for nonexpendable personal property which has been acquired in whole or in part with Federal grant funds must be retained for three years after final disposition of the nonexpendable personal property.

84. *Policies.* Policies and procedures with respect to the acquisition and disposition of property acquired with grant funds must be based on three primary considerations: the function of a property in facilitating successful execution of a project; the necessity for ensuring that grant funds are properly used and accounted for; and, the desirability of minimizing administrative accounting and reporting requirements. All grantees/subgrantees utilizing grant funds for the acquisition of property are responsible for establishing and maintaining systems for the effective management of such property. Grantees/subgrantees shall apply the same policies, procedures and controls normally applied for all of their other property to property acquired with grantor agency funds, provided that the minimum management standards contained in this guideline are met.

85. *Definitions.* The following definitions apply for the purpose of this guideline.

a. *Real Property.* Real Property means land, land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

b. *Personal Property.* Personal property means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence, such as patents, inventions, and copyrights).

c. *Nonexpendable Personal Property.* Nonexpendable personal property is tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A grantee or subgrantee may use its own definition of nonexpendable personal, provided that such definition includes all tangible personal property as defined above. That is, if the grantee's/subgrantee's property management system defines nonexpendable personal property in terms which include a broader range of property, i.e., $100 per unit cost and encompasses all items which would be so classified in the above definition, a grantee/subgrantee may continue to use its own criteria.

d. *Expendable Personal Property.* Expendable personal property refers to all tangible personal property other than nonexpendable personal property.

86. *Intangible Personal Property.*

a. *Patents, Patent Rights, and Inventions.* If any grant project produces patents, patent rights, or inventions in the course of work aided by Federal grant or CJC subgrant funds, such facts must be promptly and fully reported to the grantor agency. The grantor agency will determine whether protection of such invention or discovery (including rights under any patents issued thereon) is necessary in accordance with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 P.R. 16889).

b. *Copyrights and Copyrightable Material.* Where the Federal grant or CJC subgrant results in a book or other copyrightable material, the author, grantee or subgrantee is free to copyright the work, but the grantor agency reserves as a royalty, free, nonexclusive and irrevocable license to produce, publish, or otherwise use, and authorize others to use, the work for government purposes.

87. *Standards and Procedures Governing Ownership, use and Disposition of Property.* The following requirements concerning property control and management are applicable to all recipients of Federal funds.

a. *Real Property Acquired With Block, Part D or JJ Formula Funds.*

(1) *Land Acquisition.* Block, Part D or JJ formula funds shall not be used for land acquisition.

(2) *Use of Real Property.* The CJC and its subgrantees may use real property acquired in whole or in part with Federal funds for the authorized purpose of the original grant as long as needed whether or not the program or project continues to be supported by Federal funds.

(3) *Disposition.* Initially, title to and accountability for real property acquired in while or in part with block and formula funds is vested either in the grantee or the subgrantee. Upon completion of the subgrant project, subgrantees shall submit a Final Financial Status Report and a Propety Inventory Report. The property report identifies real property acquired in whole or in part with block or formula funds. Upon receipt and review of the property report, a CJC must formally advise subgrantees within 120 days after the end date of the grant, of the determination it has made relative to the use of the real property. In making this determination, a CJC may exercise one of three options:

(a) Permit the subgrantee to retain the property acquired with Federal funds as long as there is a need for the property to accomplish the purpose of the program or project, whether or not the program or project continues to be supported by Federal funds, provided that the use of such property is consistent with those objectives authorized for support by the CJC.

(b) Direct the real property to be transferred to other subgrantees or a criminal justice activity needing the property, provided that use of such real property is consistent with those objectives authorized for support by the CJC.

(c) Return all real property furnished or purchased wholly with Federal funds to the control of the grantor agency. In the case of real property purchased in part with Federal funds, the subgrantee may be permitted to retain title upon compensating the grantor agency for its fair share of the property. The Federal share of the property shall be computed by applying the percentage of the Federal participation in the total cost of the project for which the property was acquired, to the current fair market value of the property. In those instances wherein the subgrantee does not wish to purchase real property originally purchased in part with Federal funds, disposition instructions shall be obtained from the grantor agency.

b. *Real Property Acquired with Categorical Funds* shall be subject to the same principles and standards as outlined in paragraph 87a with the exception that grantees must request the disposition instructions from the grantor agency.

c. *Nonexpendable Personal Property Acquired With Block, Part D or JJ Formula Funds.* When nonexpendable personal property is acquired in whole or in part with block, Part D or JJ formula funds, title will not be taken by the Federal government but shall be vested either in the CJC or its subgrantees. Said vestment of ownership is subject to the following restrictions on the use and disposition of the property.

(1) *Grant Completion.* Upon completion of the subgrant project, each subgrantee must submit a Final Financial Status Report and a Property Inventory Report. This property report identifies property purchased in whole or in part with block, Part D or JJ formula funds. Upon receipt and review of the property report, the CJC shall formally advise the subgrantee within 120 days after the end date of the grant of the determination it has made relative to the use of the property. In this respect, the CJC may exercise one of two options. It may:

(a) Permit the subgrantee that purchased the nonexpendable personal property to retain such property, provided that the subgrantee makes written assurance that it will use the property in the criminal justice system and consistent with those objectives authorized for support by the CJC.

(b) Permit the nonexpendable personal property to be transferred to other subgrantees needing the property, provided that these recipients make written assurance that they will use the property in the criminal justice system and consistent with those objectives authorized for support by the CJC.

(2) *Use of Nonexpendable Personal Property.* CJCs may permit subgrantees of nonexpendable personal property purchased in whole or in part with block, Part D or JJ formula funds to use such property in the following order of priority:

(a) In the subgrant project as long as there is a need for the property to accomplish the purpose of the project, whether or not the project continues to be supported by Federal funds.

(b) In other CJC or grantor agency funded projects requiring the use of such property.

(c) In grants of other Federal agencies needing the property.

(d) In other criminal justice activities needing the property, provided that these activities are consistent with those authorized for support by the CJC.

(3) *Disposition.* When the property is no longer needed as provided for in paragraph 87c, the subgrantee shall request disposition instructions from the CJC. The CJC shall issue disposition instrucitons within 120 days from the subgrantee's request. The property, with the concurrence of the CJC, may be used for the subgrantee's own official activities in accordance with the following standards.

(a) *Nonexpendable personal property with a unit of acquisition cost of less than $1,000.* The subgrantee may use the property without reimbursement to the CJC or the grantor agency or sell the property and retain the proceeds.

(b) *Nonexpendable personal property with a unit acquisition cost of $1,000 or more.*

1. The CJC may permit the subgrantee to retain the property for other uses provided compensation is made to the CJC. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original CJC block, Part D or JJ formula program under which the subgrant was funded to the current fair market value of the property.

2. The CJC may instruct the subgrantee to ship the property elsewhere. The subgrantee shall be reimbursed by the beneficiary with an amount which is computed by applying the percentage of the subgrantee's participation in the cost of the block, Part D or JJ formula program under which the subgrant was funded to the current fair market value of the property, plus any reasonable shipping or storage cost incurred.

3. The CJC may instruct the subgrantee to sell the property and reimburse the CJC an amount which is computed by applying the percentage of Federal participation in the cost of the original block, Part D or JJ formula project under which the subgrant was funded to the current fair market value of the property. The subgrantee is permitted to retain $100 or ten (10) percent of the proceeds, whichever is greater, for selling and handling expenses.

4. Refunds from the sale or purchase of property may be retained by the CJC and used for program purposes when the sale or purchase of property occurs during the period of award of the block, Part D or JJ formula grant under which the property was purchased. If the sale or purchase of property occurs after the termination date of the grant, the proceeds of the sale or purchase must be returned to the grantor agency for forwarding to Treasury for miscellaneous income.

5. When the CJC determines that nonexpendable personal property with an acquisition cost of $1,000 or more is unique, difficult or costly to replace, the CJC may reserve the right to require the subgrantee to transfer the property to the control of the CJC or directly to a third party named by the CJC when such third party is otherwise eligible under existing regulations. Such reservations shall ensure that the property is appropriately identified in the CJC grant agreement or otherwise made known to the subgrantee.

d. *Nonexpendable Personal Property Acquired Under Categorical Grants by a Government Agency, Educational Institution or Hospital.* When nonexpendable personal property is acquired by governmental grantees, educational institutions, hospitals, and non-profit organizations, in whole or in part with grantor agency categorical funds, title will not be taken by the Federal government, but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:

(1) *Grant Completion.* Within ninety (90) days after the end date of the grant, the grantee shall submit a listing of all nonexpendable personal property purchased for the project. Information provided in this listing shall indicate item description, date of purchase of the property, condition (serviceability) of the property and total cost of the property. This information shall be made a part of the official grant file. Property purchased after submission of the listing must also be reported using the format previously described.

(2) *Use.* The grantee/subgrantee shall use the property in the project for which is was acquired as long as there is a need for the property to accomplish the purpose of the project whether or not the project continues to be supported by Federal funds. When no longer needed for the original project, the grantee/subgrantee shall use the property in connection with its other Federally assisted programs in the following order of priority.

(a) Other grants of the grantor agency needing the property.

(b) Grants of a CJC needing the property.

(c) Grants of other Federal agencies needing the property.

(3) *Disposition.* When the grantee/subgrantee no longer needs the property as provided in paragraph 87d(1), the property may be used for other activities of the grantee in accordance with the following standards:

(a) *Nonexpendable personal property with a unit acquisition cost of less than $1,000.* The grantee/subgrantee may retain the property for its own use without reimbursement to the Federal government or sell the property and retain the proceeds.

(b) *Nonexpendable personal property with a unit acquisition cost of $1,000 or more.* The grantee/subgrantee may retain the property for other uses provided that compensation shall be computed by applying the percentage of grantor agency participation in the cost of the original project to the current fair market value of the property. If the grantee/subgrantee has no need for the property, he shall request disposition instructions from the component of the grantor agency which administers the grant.

(c) *Grantor Agency Action.* Upon receipt of notification from a grantee/subgrantee that it has no need for nonexpendable personal property with a unit acquisition cost of $1,000 or more, the component of the grantor agency which administers the grant shall use one of the following options:

1. It may instruct the grantee/subgrantee to ship the property to other agencies needing the property. The grantee/subgrantee shall be reimbursed by the beneficiary with an amount which is computed by applying the percentage of the grantee's/subgrantee's participation in the cost of the project to the current fair market value of the property, plus any reasonable shipping and storage costs incurred.

2. It may instruct the grantee/subgrantee to sell the property and reimburse the grantor agency an amount which is computed by applying the percentage of Federal participation in the cost of the project to the current fair market value of the property. The grantee/subgrantee is permitted to retain $100 or ten [10] percent of the proceeds, whichever is greater for selling and handling expenses.

3. When the grantor agency determines that nonexpendable personal property with an acquisition cost of $1,000 or more is unique, difficult or costly to replace, the grantor agency may reserve the right to require the grantee/subgrantee to transfer property to the control of the grantor agency or directly to a third party named by the grantor agency when such third party is otherwise eligible under existing regulations. Such reservation shall ensure that the property is appropriately identified in the grant agreement or otherwise made known to the grantee/subgrantee.

e. *Replacement of Property.* When an item of nonexpendable personal property with an acquisition cost of $1,000 or more is no longer efficient or serviceable but the grantee/subgrantee continues to need the property in its criminal justice system, the grantee/subgrantee may replace the property through trade-in or sale and subsequent purchase of new property, provided the following requirements are met:

(1) *Similar Function.* Replacement property must serve the same function as the original property and must be of the same nature or character, although not necessarily of the same grade or quality.

(2) *Credits.* Value credited for the property, if the property is traded in, must be related to its fair market value.

(3) *Time.* Purchase of replacement property must take place soon enough after the sale of property to show that the sale and the purchase are related.

(4) *Compensation.* Replacement of property under this paragraph is not a disposition of property. The grantee/subgrantee is not required, at the time of replacement, to compensate the Federal government for the Federal share of the property; rather, the Federal share shall be applied to the replacement cost of the property. The replacement property shall be subject to the same instructions on use and disposition as the property replaced.

(5) *Calculation of Federal Share.* The Federal share of the replacement property shall be calculated as follows:

(a) The proceeds from the sale of the original property or the amount credited for trade-in shall be multiplied by the federal share (percentage) to produce a dollar amount.

(b) The percentage of the dollar amount to the total purchase price of the replacement property shall be the Federal share of the replacement property.

(6) *Prior Approval.* Subgrantees of block and categorical grant funds must obtain the written permission of the CJC to use the provisions of this paragraph prior to entering into negotiation for the replacement or trade-in of nonexpendable personal property.

88–89 *Reserved.*

Chapter 7. Additional Grant Requirements

90. *General.* This chapter sets forth additional administrative standards to be used by grantees/subgrantees in administering grant funds.

91. *Printing.* The term printing shall be construed to include and apply to the process of composition, plate-making, presswork, binding, and microfilm; the equipment as classified in the tables in Title II of the Government Printing and Binding Regulations, published by the Joint Committee on Printing, Congress of the United States, and as used in such processes, or the end items produced by such processes and equipment. Pursuant to the Government Printing and Binding Regulations, no project may be awarded primarily or substantially for the purpose of having material printed for the grantor agency. The Government Printing and Binding Regulations allow:

a. *Issuance.* The issuance of a project for the support of nongovernmental publications, provided such projects were issued pursuant to an authorization of law and were not made primarily or substantially for the purpose of having material printed for the grantor agency.

b. *Publications.* The publication of findings by grantees/subgrantees within the terms of their project provided that such publication is not primarily or substantially for the purpose of having such findings printed for the grantor agency.

c. *Initiation.* The initiation of the procurement of writing, editing, preparation of related illustration material from grantees/subgrantees or the internal printing requirements of the grantee/subgrantee necessary for compliance with the terms of the project. However, the printing of such material for the Government must be accomplished in accordance with printing laws and regulations.

d. *Duplication.* A requirement for a grantee/subgrantee to duplicate less than 5,000 units of only one page, or less than 25,000 units in the aggregate of multiple pages of its findings for the grantor agency will not be deemed to be printing primarily or substantially for the grantor agency (e.g., 5,000 copies of 50 pages, etc.). For the purpose of this paragraph, such pages may not exceed a maximum image size of 10¾ by 14¼ inches.

e. *Production.* A requirement for a grantee/subgrantee to produce less than 250 duplicates from original microfilm will not be deemed to be printing primarily or substantially for the grantor agency. Microfilm is defined as one roll of microfilm 100 feet in length or one microfiche.

92. *Publicity.* Project Directors are encouraged to make the results and accomplishments of their activities available to the public. Prior grantor agency approval is not needed for publishing the results of an activity under a project. Responsibility for the direction of the activity should not be ascribed to the grantor agency. However, an acknowledgement of support must be made through use of the following or comparable footnote:

This project was supported by Grant No. ..... awarded by the LEAA, NIJ, BJS or OJARS (indicate the name of the grantor). The contents do not necessarily reflect the views and policies of this grantor agency.

93. *Copyright.* Except as otherwise provided in the conditions of the award, the author is free to arrange for copyright without approval when publication or similar materials are developed from work under a grantor agency supported project. Any such copyrighted materials shall be subject to the Government's right to reproduce them, translate them, publish them, use and dispose of them, and to authorize others to do so for Government purposes. In addition, communications in primary scientific or professional journals publishing initial reports or research or other activities supported in whole or in part by grantor agency project funds may be copyrighted by the journal with the understanding that individuals are authorized to make or have made by any means available to them, without regard to the copyright of the journal, and, without royalty, a single copy of any such article for their own use.

94. *Conflict of Interest.* Personnel and other officials connected with grantor agency funded programs shall adhere to the requirements given below:

a. *Advice.* No official or employee of a State or unit of local government or of non-government grantees/subgrantees shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which grantor agency funds are used, where to his knowledge he or his immediate family, partners, organization other than a public agency in which he is serving as officer, director, trustee, partner, or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. *Appearance.* In the use of grantor agency project funds, officials or employees of State or local units of government and non-governmental grantees/subgrantees shall avoid any action which might result in, or create the appearance of:

(1) Using his or her official position for private gain;

(2) Giving preferential treatment to any person;

(3) Losing complete independence or impartiality;

(4) Making an official decision outside official channels; or

(5) Affecting adversely the confidence of the public in the integrity of the Government or the program.

95. *Termination of Categorical Projects.* The grantor agency's right to terminate any project will normally be exercised only where it has reason to believe that the grantee/subgrantee is mishandling project funds or is unable to carry out the project properly or where anticipated continuation funds become unavailable. In the event that the project is terminated, the grantor agency will notify the grantee in writing of its decision, specify the reasons therefore, and accord the grantee/subgrantee a reasonable time to terminate project operations or seek support from other sources. A project which is prematurely terminated will be subject to the same requirements regarding audit, recordkeeping, and submission of reports as a project which runs for the duration of the project period. Refer to 28 CFR Part 18 for appeals rights in event of termination.

96. *Changes in Categorical Projects.* All requests for programmatic and/or administrative budget changes must be submitted in a timely manner by the grantee/subgrantee. All requests for changes to the approved grant shall be carefully reviewed by the applicable authority as defined in paragraph 54 for both consistency with this manual and their contribution to project goals and objectives.

a. *Types of Project Changes.* In addition to project changes addressed in paragraphs 29d and 66, there are several other types of changes and/or modifications which require formal approval of the grantor agency. Examples of such changes are:

(1) Change in project site;

(2) Changes which increase or decrease the total cost of the project;

(3) Change in or temporary absence of the project manager/director;

(4) Transfer of Project;

(5) Successor in interest and name change agreements;

(6) Transfer for contracting of project requiring prior approval;

(7) Addition of an item to the project budget requiring prior approval;

(8) Special conditions attainment, if required.

b. *Notification.* All grantees must give prompt notification in writing to the grantor agency of events or proposed changes which may require an adjustment/notification such as those set forth in paragraphs 29d, 66, and 96a. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed change and any other data deemed helpful for grantor agency review.

97. *CJC Supervision and Monitoring Responsibility for Categorical Projects.*

a. *CJCs are responsible* for supervising and monitoring only those projects which have been awarded to them.

b. *When it is the grantee,* the CJC has the responsibility for assuring proper administration of categorical subgrants including responsibility for:

(1) Proper conduct of the financial affairs of any subgrantee or contractor insofar as they relate to programs or projects for which categorical projects funds have been made available; and,

(2) Default in which the CJC may be held accountable for improper use of grant funds.

c. *The CJC should incorporate* categorical grants into its system for subgrant monitoring and supervision and, to the extent appropriate and consistent with the grantor agency guidelines, use the same procedures for supervision of categorical subgrants as are used with block subgrants.

d. *CJC approval is not required for* subgrantees to transfer between direct cost object class budget categories, the cumulative amount of up to 5 percent of the project budget (Federal and non-Federal funds) for project budgets in excess of $100,000.

e. *The CJC has the authority* to approve the changes listed below, provided that the CJC informs the grantor agency in writing of the request, and the action, within 14 calendar days of the CJC action and prior to the original end date of the project. Exceptions to this authority may be made, but will be made known before the CJC has been made the grantee. The areas where a CJC may approve changes for its subgrantees are:

(1) Any cumulative amount of transfers exceeding the limitations set forth in paragraph 97d, if this does not alter the scope or objectives of the approved project.

(2) Extensions of categorical projects up to three months beyond the initial approved duration, not to exceed a total project period of 24 months.

(3) Other minor deviations from categorical projects necessary to assure efficient administration, but not including departures which change the scope or objectives of the approved project or which vary from the project description published in this guideline manual.

f. *Changes exceeding* the authority of the CJCs in paragraph 97e, must receive prior approval from the grantor agency.

g. *In the case of projects for which the CJC is both the grantee and the*

implementing agency, prior approval for grant extensions in paragraph 29d, project changes specified in paragraph 96a, and budget changes beyond those specified in paragraph 97e, must be obtained from the grantor agency.

98. *Financial Evaluation of Categorical Project Applications.*

a. *Financial evaluation* of project applications involves (1) performing a cost analysis of each project application considered for funding by the grantor agency and (2) determining the adequacy of the applicant institution's accounting system to insure that Federal funds, if awarded, will be expended in a judicious manner.

b. *A cost analysis* is the process of obtaining cost breakdowns, verifying cost data, evaluating specific elements of cost, and examining data to determine the necessity, reasonableness, and appropriateness of the proposed cost. The form and extent of such an analysis will be determined by the grantor agency.

c. *Where an applicant* has never received a grantor agency award, the organization's accounting system must be reviewed prior to award or within a reasonable time thereafter to asure its adequacy and acceptability. This review will also apply where known financial or management deficiencies exist. Such a review will be undertaken by or at the direction of the grantor agency. The results of the review will determine the action to be taken by the grantor agency with regard to the award.

99. *Subgranting and Contracting of Categorical Project-Supported Effort.*

a. *None of the principal activities* of the project-supported effort shall be subgranted or contracted out to another organization without specific prior approval by the grantor agency. Where the intention to award subgrants or contracts is made known at the time of application, this approval may be considered granted if these activities are funded as proposed.

b. *All such arrangements* must be formalized in a contract or other written agreement between the parties involved. The contract or agreement must, at a minimum, state the activities to be performed, the time schedule, the project policies and the flowthrough requirements that are applicable to the subgrantee contractor, or other secondary recipient, other policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be used in determining allowable costs. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Government.

100. *Close-Out of Categorical Projects.*

a. *Definition.* Close-out is a process in which the grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor agency.

b. *Grantee Close-Out Requirements.* Within 90 days after the end date of the grant or any approved extension thereof (revised end date) the following documents must be submitted by the grantee to the grantor agency:

(1) *Financial Status Report.* This FINAL report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award amount by the grantor agency. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, shall return unused funds to the grantor agency at the same time they submit the final report.

(2) *Final Progress Report.* This report should be prepared in accordance with instructions provided by the grantor agency.

(3) *Property Inventory Report.* This report reflects ALL real and nonexpendable personal property (useful life of 1 year or more and acquisition cost of $300 or more per unit) purchased with grant funds. This report should include complete descriptions of the property items, dates of purchase, original costs, estimates of current value and condition and the grantee's recommendation for disposing of each item of property. See paragraph 87.

(4) *Invention Report.* All inventions that were conceived or first actually reduced to practice during the course of work under the grant project must be listed on this report.

101–104. *Reserved.*

Chapter 8. Audit Requirements

105. *General.*

a. *Purpose.* The purpose of this chapter is to establish responsibilities for the audit of organizations receiving grantor agency funds. Its intent is to identify grantor agency policies for determining the proper and effective use of public funds, rather than to prescribe detailed procedures for the conduct of an audit. Such detailed procedures are contained in other documents, such as those referenced in paragraph 105e.

b. *Audit Responsibilities.* Pursuant to Office of Management and Budget Circulars A–102, revised "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;" Attachment P, and A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," Attachment F, grantees, subgrantees and subrecipients have the responsibility to provide for an audit of their activities. These audits usually will be made annually, but not less frequently than every two years.

c. *Requirements.* Grantees, as well as their subgrantees, contractors or other organizations under cooperative agreements or purchase of service contracts are to have examinations in the form of audits in conformance with OMB Circulars A–102, Attachment P, or A–110, Attachment F, as applicable. These audits shall be conducted in accordance with the General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Programs (Refer to OMB Circular A–102), any OMB approved compliance supplement and generally accepted auditing standards established by the American Institute of Certified Public Accountants. Additionally, these recipients are subject to other periodic examinations by Federal and State audit organizations. The required audits are to be on an organization-wide basis as opposed to a grant-by-grant basis. This audit must include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with major laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations. These examinations are to determine whether:

(1) There is effective control over and proper accounting for revenues, expenditures, assets and liabilities.

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles.

(3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data; and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of OMB Circular 102.

(4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

d. *Full-Scope Auditing.* In addition to arranging and providing for the required OMB Circulars A-102 and 110 organizational financial compliance audit, individual grantees, subgrantees and subrecipients are encouraged to provide for additional audit coverage, as deemed appropriate. The additional audit coverage that may be provided should be determined based on the circumstances surrounding the particular organization, function, program or activity to be audited, management needs and the available audit capability. Additional audit coverage could involve such determinations as:

(1) Were resources managed and used in an economical and efficient manner?

(2) Were desired results and objectives achieved in an effective manner?

(3) Were the organization's accounting system and system of internal controls acceptable prior to the receipt of grantor agency funds?

e. *References.* The requirements for effective accounting systems and financial records, which will facilitate both program management and auditing, are contained in Chapter 4 of this guideline manual. The following directives, regulations and reports provide specific information regarding the audit of grantees, subgrantees and contractors under grants or subgrants:

(1) *Distribution and Resolution of Audit Reports,* G 7140.1 (effective edition).

(2) *Reporting of Possible LEAA Fund Misuse, Criminal Activity, Conflict of Interest, or Other Serious Irregularities.* G 7140.2 (effective edition).

(3) *Office of Management and Budget Circular A-102,* "Uniform Administrative requirements for Grants-in-Aid to State and Local Governments," Attachment P, (Refer to appendix 3).

(4) *Office of Management and Budget Circular A-110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations, Attachment F, (Refer to appendix 4).

(5) *Standards for Audit of Governmental Organizations, Programs, Activities and Functions,* U.S. General Accounting Office, GPO Stock No. 020-000-00110-1.

(6) *Guidelines for Financial and Compliance Audits of Federally Assisted Programs.* U.S. General Accounting Office (effective edition).

(7) *Applicable Grantor Agency Legislation* (refer to Chapter 2 of this guideline manual) and any OMB approved compliance supplements.

106. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required non-Federal contributions for the purpose of determining whether the recipient has:

a. *Established an accounting system and procedures* integrated with adequate internal fiscal and management controls to provide full accountability over the receipt, expenditure and use of program funds.

b. *Expended and used program funds* in accordance with the requirements set forth by the Acts, the grantor agency, other applicable Federal and State laws, regulations and procedures, and the terms and conditions of the award.

c. *Prepared financial reports* containing accurate, reliable and useful financial data, which are fairly presented.

d. *Managed its financial operations* in accordance with sound management practices.

107. *Audits of the CJC.* In accordance with OMB Circular A-102, Attachment P, and grantor agency legislation, the responsibility for providing the audit function of the agency's grant program is with the State.

a. *OMB Circular A-102 Requirements.* An audit examination shall be conducted with reasonable frequency on a continuing basis or at scheduled intervals, usually annually but not less frequently than every two years. Audits performed of the grant programs should be conducted in accordance with the standards normally used by the State audit agency or independent outside auditor and the GAO Standards for Audit of Governmental Organizations, Programs, Activities and Functions. The audit must be arranged for by the State and must be conducted in accordance with the Guidelines for Financial and Compliance Audits of Federally Assisted Programs and any OMB approved compliance supplements. The grantor agency encourages that this audit be performed by or under the direction of the appropriate State audit organization.

B. *Implementation.* In order to accomplish the purpose of the OMB Circular A-102 requirements, the State will specify its arrangements for the audit of the CJC in a formal policy statement and/or procedure. This would include but not necessarily be limited to, the following:

(1) Audit organizations that will conduct the audit (if other than the State auditor, describe how the State auditor will be involved);

(2) Approximate timing of when the audit will be performed;

(3) Audit coverage to be provided. Where the audit will not provide the coverage requirements, specified in this Chapter, the audit policy or procedures must describe the specific arrangements for obtaining audit services that will meet the requirements;

(4) An identification of the audit standards, if any, with which the State will not comply and the reasons why the State cannot comply with the standard;

(5) Receipt and appropriate distribution of the resultant audit report; and,

(6) Audit resolution policies and procedures to be followed in clearing the audit report.

C. *Audit Coverage.* The necessary coverage is specified in the GAO Guidelines for Financial and Compliance Audits of Federally Assisted Programs and the related compliance supplements referenced in paragraph 105e.

d. *Reporting.* A written report shall be prepared upon completion of the audit and three (3) copies furnished to the CJC's Federal Cognizant Audit Agency or the Office of Justice Assistance, Research, and Statistics (OJARS), when a Federal Cognizant Audit Agency has not been designated. When the report is forwarded to OJARS, because it is the Cognizant Audit Agency or a Cognizant Audit Agency has not been designated, it should be sent to the appropriate Office of Audit and Investigation Field Office as designated in Figure 8-1.

Figure 8-1. Addresses of Grantor Agency Office of Audit and Investigation Field Offices

Field offices	Geographical area responsibility
1 Atlanta: Atlanta Area Audit and Program Review Office, Office of Audit and Investigation, OJARS U.S. Department of Justice, 101 Marietta Street, Suite 2322, Atlanta, Georgia 30323, (Com.) 404/221-5037, (FTS) 8/242-5037	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee, Virgin Islands.
2 Chicago: Chicago Area Audit and Program Review Office, Office of Audit and Investigation, OJARS, Department of Justice, 175 W. Jackson Street, Suite A-1309, Chicago, Illinois 60604 (Com.) 312/353-1203, (FTS) 8/353-1203	Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin.
3 Denver: Denver Area Audit and Program Review Office, Office of Audit and Investigation, OJARS, U.S. Department of Justice, P.O. Box 3119, Denver, Colorado 80201, (Com.) 303/837-2501, (FTS) 8/327-2501	Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming.

Figure 8-1. Addresses of Grantor Agency Office of Audit and Investigation Field Offices—Continued

Field offices	Geographical area responsibility
4. *Sacramento:* Sacramento Area Audit and Program review Office, Office of Audit and Investigation, OJARS, U.S. Department of Justice, P.O. Box 3010, Sacramento, California 95812, (Com.) 916/440-2131; (FTS) 8/448-2131.	Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, Trust Territories of the Pacific Islands, Commonwealth of Northern Mariana Islands.
5. *Washington:* Washington Area Audit and Program review Office, Office of Audit and Investigation, OJARS, U.S. Department of Justice, 633 Indiana Avenue, N.W., Washington, D.C. 20531, (Com.) 301/492-9010; (FTS) 8/492-9010.	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

e. *Resolution and Clearance of Audit Reports.* Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each CJC shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the action taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Federal Cognizant Audit Agency on recommendations and action taken. These policies must be consistent with the provisions contained in the effective edition of OJARS Guideline 7140.1, Distribution and Resolution of Audit Reports in instances in which the grantor agency is the Federal Cognizant Audit Agency.

108. *Audit of Subgrantees.* In accordance with OMB Circulars A-102 and A-110, it is the grantor agency's policy that the CJC require that each of its subgrantees' financial management system provide for an examination in the form of independent audit to ascertain the effectiveness of the financial management system and internal procedures that have been established to meet the terms and conditions of the subgrant (financial and compliance audit). Also, the subgrantees' organization is required to have a systematic method of timely and appropriate resolution of audit findings and recommendations. These requirements are applicable to both subgrants awarded from block, formula and categorical grant funds. These audits must be made in accordance with the General Accounting Office's *Standards for Audit of Governmental Organizations, Programs, Activities and Functions* and the *Guidelines for Financial and Compliance Audits of Federally Assisted Programs* and any compliance supplement approved by the Office of Management and Budget. The audit must be performed not less frequently than every two years and be conducted on an organization-wide basis and include an appropriate sample of Federal subgrant awards.

a. *Requirement.* The State is required to develop the policies, procedures and controls necessary to assure that subgrantee organizations receiving grantor agency funds have the required financial and compliance audits performed.

b. *Reporting.* The State shall make such arrangements as necessary to obtain copies of all reports prepared as a result of the required audits and establish a system and submit such reports to the appropriate Federal Cognizant Audit Agency or, where no subgrantee cognizant audit agency has been assigned, to the appropriate grantor agency OAI area office. Known or suspected violations of any laws encountered during audits, including fraud, theft, embezzlement, forgery or other serious irregularities, must be communicated to the grantor agency's Office of Audit and Investigation (see the effective edition of Guideline 7140.2, Reporting of Possible LEAA Fund Misuse, Criminal Activity, Conflict of Interest, or Other Serious Irregularities). If any grantor agency categorical grants are included in the audits, the related reports must be submitted to the grantor agency's Office of Audit and Investigation consistent with the requirement of the effective edition of Guideline 7140.1.

109. *Categorical Grant Audits.*

a. *Grants Awarded to CJC's.* When grants are awarded to State Agencies and are subgranted to another organization for implementation, the audit requirements as set forth in paragraph 108 of this chapter must be fulfilled.

b. *Direct Awards.* When grants are awarded directly to governmental units (those grants not awarded through the CJC or non-profit organizations), the audit responsibility must be fulfilled by the grantee. Each grantee must provide for an examination in the form of an audit to ascertain the effectiveness of the financial management system and internal procedures that have been established to meet the terms and conditions of the grant (financial and compliance audit). Also, the grantee's organization must provide for the timely and appropriate resolution of audit findings and recommendations.

c. *The audits must be made in accordance with* the General Accounting Office's *Standards for Audit of Governmental Organizations, Programs, Activities and Functions* and the *Guidelines for Financial and Compliance Audits of Federally Assisted Programs* and any compliance supplements approved by the Office of Management and Budget. The audit must be performed not less frequently than every two years and be conducted on an organization-wide basis and include an appropriate sample of Federal grant awards.

d. *When direct awards are subgranted to another organization(s)* for implementation, the audit requirement as set forth in paragraph 108 of this chapter must be fulfilled. A written report shall be prepared upon completion of the audit and three (3) copies furnished to the grantee's Federal Cognizant Audit Agency or, where no cognizant agency has been assigned, to the appropriate OAI Area Office as identified in Figure 8-1. Release of audit reports shall be in accordance with applicable Federal and State laws. The report shall contain narrative statements, tabulations, schedules or other pertinent data disclosing the deficiencies found and recommendations needed to correct and/or prevent recurrence of the deficiencies. In addition, the reports shall identify the officials with whom the contents of the report were discussed and whether or not the officials concurred with the findings. Known or suspected violations of any laws encountered during audits, including fraud, theft, embezzlement, forgery or other serious irregularities, must be communicated to the grantor agency's Office of Audit and Investigation (see the effective edition of Guideline 7140.2, Reporting of Possible LEAA Fund Misuse, Criminal Activity, Conflict of Interest, or other Serious Irregularities).

110. *Technical Assistance.* The Office of Audit and Investigation is available to provide technical assistance to grant recipients in implementing the audit requirements of this Chapter where the grantor agency is the assigned cognizant audit agency or no other cognizant agency has been assigned to a grantee. This assistance is available for areas such as: (i) review of the audit arrangements and/or negotiations; (ii) review of the audit program or guide to be used for the conduct of the audit; and, (iii) on-site assistance using the performance of the audit when deemed necessary as a result of universal or complex problems that arise. In addition, the Office of Audit and Investigation provides training courses

for the performance of audits on Agency grant programs at the State and local levels. Requests for technical assistance or schedules for the training courses should be addressed to the appropriate Office of Audit and Investigation Area Office identified in Figure 8-1.

Appendix 6. H-3 Report, Request for Advance or Reimbursement Report (LEAA Form 7160/3)

Note.—H-3 Report, form and instructions, filed with the Office of the Federal Register as part of the original document.

Appendix 7. Instructions Relating to the Letter of Credit—Treasury Regional Disbursing Office (RDO) System

1. *General.* This appendix incorporates the procedures to be followed under the Regional Disbursing Office (RDO) method of funding a letter of credit (LOC). Under this RDO system, which is the only one used by the grantor agency, a Treasury Regional Disbursing Center directly services and maintains the LOC. The following operating procedures are derived from those appearing in Part 6, Chapter 1, Treasury Fiscal Requirements Manual (TFRM), and Treasury Circular 1075, as published in the Federal Register on December 14, 1977 (FR 42 62627). A state government may designate a state office (e.g., state Treasurer) other than the CJC as the recipient organization for the LOC. Therefore, officials other than those of the CJC may be responsible for carrying out some or all of these procedures. The grantor agency will look to the CJC Director to see that these procedures are implemented and that participating state officials are familiar with and understand the procedures.

a. *Nature of Letter of Credit.* A letter of credit is a monetary commitment prepared and certified by the grantor agency and authorized by the Treasury Department. It specifies a money amount which a CJC or other authorized recipient organization may draw by the issuance of Request for Payment on Letter of Credit and Status of Funds Report, SF 183, hereafter referred to as Request for Payment. Payment on a letter of credit is by delegation of the Treasury Department at the request of the grantor agency through a designated Treasury Regional Disbursing Center.

b. *Requirements for Use.* The Treasury Department requires that the letter-or-credit method of providing cash be used when the grantor agency has, or expects to have, a continuing relationship with a recipient organization for at least one year, involving annual advances aggregating at least $120,000.

c. *Grantee Commitments.* Upon acceptance of a letter of credit, the grantee commits itself to:

(1) initiating cash drawdowns only when actually needed for its disbursements.

(2) timely reporting of cash disbursements and balances as required by the grantor agency.

(3) the imposition of the same standards of timing and amount upon any secondary recipient organizations including the furnishing of reports of cash disbursements and balances.

d. *Cash advances* made by primary recipient organizations (grantees) to secondary recipient organizations (subgrantees) shall conform substantially to the same standards of timing and amount as apply to primary recipient organizations. Grantees are required to develop procedures whereby subgrantees can obtain funds from grantees as needed for disbursements.

e. *The grantee further acknowledges* that its failure to adhere to these provisions may cause the unobligated portion of the LOC to be revoked by the grantor agency or by the Department of the Treasury.

2. *Summary of Procedures.* In order to implement the letter-of-credit method of advancing funds, the following steps are necessary:

a. *Recipient organization selects an address* where checks are to be sent. If checks are to be sent to a bank, the account number and the name and address of the bank must be provided.

b. *Recipient organization obtains signatures* of individuals authorized to sign Requests for Payment against the letter of credit and signature of an official who has authority to designate the individuals so authorized.

c. *The grantor agency issues the letter of credit* SF 1193A (former TFS 7577) (Figure 2).

(1) For CJCs, this authorization will state an annual limitation based on the recipient organization's anticipated needs.

(2) For all other LOC grantees, this authorization will state the total undisbursed balance for all grants at the time of issuance.

d. *Recipient organization establishes accounting records* to ensure accountability for Federal cash advanced.

e. *Recipient organization presents Requests for Payment* periodically to an RDO, according to actual disbursement needs.

f. *Recipient organization submits reports,* on an as requested basis, accounting for cash drawn down under the LOC.

3. *Issuance of Letter of Credit.*

a. *The letter of credit authorizes the RDO* to advance cash to the designated organization on behalf of the grantor agency, upon submission of a Request for Payment, SF 183.

b. *The grantor agency will establish* a letter of credit for an eligible recipient organization upon receipt of the following:

(1) Two originals of Authorized Signature Card for Payment Vouchers on Letter of Credit, SF 1194 (Figure 1). Refer also to paragraph 4.

(2) Name of recipient organization, the Federal employer identification number assigned by IRS, and address where Treasury check is to be sent. Also, account number, name and address of bank if check is to be sent to a bank.

(3) The recipient's estimated annual cash needs from the grantor agency.

c. *The information in 3b must be sent to* the grantor agency at: 633 Indiana Avenue NW., Washington, D.C. 20531.

d. *Upon receipt and review by the grantor agency* of the information requested in paragraph 3b, the LOC will be certified. The original of the LOC and one SF-1194 will be sent to the cognizant RDO (Figure 4), one copy of the LOC and one SF-1194 will be sent to the recipient organization, and the two remaining copies of the LOC will be retained by the grantor agency.

4. *Authorized Signature Cards.*

a. *The signatures of individuals authorized to sign* Requests for Payment must be on file with the LOC at the RDO before Requests for Payment will be honored.

b. *The SF-1194 must contain* the typed name(s) and related manual signature(s) of at least one but not more than four authorized individuals on any one signature card. It is recommended that a minimum of two signatures be shown in order to provide an alternate in the case of illness or emergency and permit flexibility in making drawdowns. If more than four persons are authorized, use additional signature cards. Cross out any signature block which is not used.

Note.—Signatures must not be submitted which have been pasted over, erased, or painted over with correction fluid.

c. *The SF-1194 provides for a countersignature,* if desired, however, the card must be appropriately noted as explained in the instructions (Figure 1). A countersignature is not required by the U.S. Treasury or the grantor agency and need not be used unless required by the recipient organization.

d. *Two new signature cards, SF-1194, must be submitted* to the address in paragraph 3a whenever there is any

change in either the recipient organization's name or in the individual(s) authorized to sign Request for Payment or if any amended LOC is required by paragraph 5a(1) below. A change in the position or title of an individual authorized to sign does not warrant a new card. Transmittal of new SF-1194's to the address in paragraph 3c must include a letter indicating that the previous card is to be revoked and the effective date of revocation. Requests for additional cards may also be sent to the address in paragraph 3c.

e. *Newly designated signers should not sign* SF-183 for at least ten working days after the new card is sent to the grantor agency. This is necessary to allow time for the new card to reach the RDO which honors the Request for Payment.

5. *Amending Letters of Credit:*

a. *An amended letter of credit,* signed by a grantor agency authorized certifying officer, is required:

(1) If there is a change in the information contained in the box entitled, "Treasury Checks To Be Made Payable To:" or the box entitled, "In Favor Of".

(2) If there is an increase or decrease in the amount authorized.

(3) If there is a change in the time designation.

(4) If the authorization for the recipient organization to draw amounts in excess of $5,000,000 is established or rescinded.

Note.—The grantor agency will include a statement on the amending SF-1193 explaining any change which is other than a change in the amount authorized.

b. *In the event a CJC* determines that the balance available on the letter of credit is insufficient to meet anticipated expenditures for the remainder of the fiscal year, a request to increase the letter of credit must be submitted to the address in paragraph 3c.

c. *In the event a non-CJC recipient organization* receives additional grant awards, the grantor agency will amend the letter of credit to meet these additional requirements.

d. *Under normal conditions, the LOC shall not be amended* for amounts under $5,000. Amendments will not interrupt the progression of the numbers assigned to the Requests for Payment by the recipient organization.

e. *If a recipient organization's total balance of funds* under all active grants falls below the annual amount authorized under the LOC, the grantor agency may reduce the annual amount authorized and notify the recipient organization of the new maximum drawdown limitation.

6. *Establishment of Accounting Records.* Control records should be established by the recipient organization to ensure that:

a. *The total monetary amount* of Requests for Payment issued during the fiscal year does not exceed the maximum fiscal year authorization established by the LOC.

b. *Cash drawn in support of the grantor agency* sponsored programs and projects is:

(1) Accurately accounted for; and

(2) Directly traceable to grantor agency fund sources, i.e., as primary grantee.

c. *Internal management control is exercised to:*

(1) Safeguard assets against loss or unwarranted use;

(2) Ensure that only those authorized individuals designated by the recipient organization's direction will receive, deposit, and/or disburse grantor agency program funds; and,

(3) Ensure that controls are established which provide for the separation of responsibility in requesting, receiving, and reporting Federal funds.

d. *The recipient organization is constantly aware* of its cash position as related to its current disbursement needs. The daily maintenance of the suggested Federal Cash Control Register (Figure 6) or a similar document or methodology would enhance this awareness and facilitate the completion of the Daily Status of Federal Funds Report referenced in paragraph 13.

e. *Cash on hand is the minimum needed* for disbursements to be made immediately or within a few days.

f. *Cash advances to a recipient organization* shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursement by the recipient organization for direct program costs and the proportionate share of any allowable indirect costs.

g. *Cash advances made by primary recipient organizations* (those which receive advances directly from the Federal Government) to secondary recipients shall conform to the same standards of timing and amount as apply to advances by the grantor agency to primary recipient organizations, including the furnishing of reports of cash disbursements and balances. Primary recipient organizations are encouraged to develop procedures similar to the Federal letter of credit for use in providing funds to secondary recipients. Secondary recipients can then draw on the primary recipient as funds are needed for disbursement.

h. *When a recipient organization receiving advance funds by a letter of credit* has demonstrated to the grantor agency an unwillingness or inability to establish procedures that will minimize the time elapsing between advances and the disbursement thereof, the grantor agency shall require the recipient organization to finance its operations with its own working capital, and payments to the recipient organization shall be made by Treasury check to reimburse it for actual cash disbursements. The grantor agency, in turn, will process such reimbursements. The grantor agency, in turn, will process such reimbursements expeditiously so as to minimize the time elapsing between disbursement by and payment to the recipient organization.

7. *Planning Letter of Credit Withdrawals.* Recipient organizations are expected to exercise sound financial judgment and planning to ensure that the requirements for maintaining minimum cash balances are met. In carrying out this responsibility, the disbursing pattern and calculated mail time must be ascertained so that withdrawals are timed as closely as is administratively feasible to actual cash disbursements. In preparing the SF-183:

a. *Determine when funds will be needed* considering such key factors as payroll dates, other fixed costs and payments to be made to subgrantees and contractors; and,

b. *Determine the time required* from transmittal of the SF-183 to the Treasury Regional Disbursing Office to the depositing of the Treasury check.

Example. $20,000 will be needed on the 15th of the month in order to meet payroll expenses, pay bills on hand, and provide funds to subgrantees to meet their current disbursing needs. Normal mail time from the date the SF-183 is submitted to the date the Treasury check is received by the bank is seven days. Therefore on approximately the 8th of the month, the recipient organization should mail the SF-183 to the Treasury RDO.

8. *Use of Request for Payment on Letter of Credit and Status of Funds Report, SF-183, To Obtain Federal Funds.*

a. *To obtain Federal funds, a recipient organization will prepare* a Request for Payment, SF 183, and forward it to the appropriate RDO indicated on the LOC. Figure 3 contains a sample form and detailed instructions for completion. Note that Sections I, II, III and IV must

be completed before submission to the RDO.

b. *A supply of SF 183's has been provided* to each grantee operating under the letter of credit procedure. An additional supply of forms may be obtained from the grantor agency.

c. *The distribution of the copies of SF 183,* as shown on the bottom of each copy is as follows:

(1) Original, duplicate, and quintuplicate to the RDO;

(2) Triplicate to the address in paragraph 3c;

(3) Quadruplicate to be retained by the recipient organization.

d. *It is intended that each Request for Payment* will be drawn only in accordance with the grantee's actual immediate or current cash needs. Drawdowns shall not ordinarily be made more frequently than daily, or be in amounts less than $5,000 or more than $5,000,000, unless stated on the letter of credit.

e. *The block "Agency Station Symbol:"* on the SF 183 will show the grantor agency Station Symbol, "15.04.8701."

f. *Each SF 183 drawn will contain* the number identifying the particular Request for Payment document number. The number of the request for Payment will commence with "1" for each letter of credit and will progress in consecutive order. Alphabetical designations will not be used as part of the document number. Amendments to the letter of credit, or rejected requests for payment, do not interrupt the progression of the numbers assigned to the Request for Payment by the drawer.

9. *Deficient SF 183.* If a deficiency on the SF 183 is detected, a deficiency notice will be issued by the RDO and sent to the grantor agency. The grantor agency will then contact the recipient organization. A deficient SF 183 is not ordinarily rejected. However, repeated deficiencies of a similar nature by the same recipient organization may be cause for rejection with the concurrence of the grantor agency. The following are reasons for the issuance of deficiency notices:

a. *There is a difference between the name and address* information of the drawer on the SF 183 and the name and address of the drawer on the SF 1193A.

b. *The address of the payee on the SF 183* is different from the address of the payee on the related SF 1193A.

c. *Any other required information on the SF 183* is incomplete or inaccurate and the grantor agency approved payment.

d. *The cents are left off the amounts* in Section I, II, and/or III.

e. *The Amount Requested in Section I of the SF 183* is less than $5,000 and is not the final drawdown on the available balance.

f. *The signature(s) of the official(s)* authorized to certify requests for payment differs slightly (example: using first two initials and last name instead of the full signature) from the signature(s) on the SF 1194 but otherwise corresponds to the established required signature(s), and the Treasury Disbursing Office approves payment.

10. *Criteria for Rejection of SF 183.* The Request for Payment will also be examined for errors, deficiencies, or omissions of a more severe nature which may necessitate the rejection of the request. There are definitive reasons for the rejection of an SF 183 and the Treasury Disbursing Office will contact the grantor agency prior to any rejection. The reasons for rejection are:

a. *An unauthorized or invalid signature.* (Erasures, painting over with correction fluid, or tapeovers are unacceptable.)

b. *The amount requested in Section I* is greater than the available balance.

c. *The name of the payee to whom* the check is to be issued is not identical to the name of the payee shown in the "Treasury Checks To Be Made Payable To:" block of the related SF 1193A.

d. *The "Amount Requested" block in Section I* is left blank, erased, painted over with correction fluid, or taped over.

e. *Discrepancies exist elsewhere on the SF 183* and the Treasury Disbursing Office cannot obtain correct information from the grantor agency and/or its own file.

f. *If the amount requested is more than $5,000,000* and the grantor agency has not provided an amendment to the related letter of credit authorizing drawdowns of more than $5,000,000.

g. *Excessive funds in the hands of the recipient organization* as determined by Treasury and/or the grantor agency.

h. *A written request from the grantor agency* to withhold payment for a reason other than those listed above. An authorized certifying officer of the grantor agency shall provide written confirmation of this request.

11. *Procedure for Rejecting SF 183.* If there is a reason for rejecting the SF 183 after the Treasury Disbursing Office's examination, the following procedures will generally be implemented:

a. *The Treasury Disbursing Office will contact* the grantor agency prior to any rejection to ask for necessary information and advice on whether payment should be made. If adequate advice is not readily received, the Treasury Disbursing Office places the SF 183 in a "Pending Rejection Status."

b. *Upon being contacted by Treasury,* the grantor agency will notify the grantee and will attempt to resolve the problem.

c. *If the grantor agency does not contact the Treasury Disbursing Office* and instruct it to pay the SF 183 by the close of business of the third workday following the initial call, the SF 183 is automatically rejected upon the opening of business on the following workday.

d. *The original of the rejection notice is sent* directly to the recipient organization by the RDO.

e. *A copy of the rejection notice,* along with the duplicate of the rejected SF 183, is sent to the grantor agency.

12. *Emergency Payment Procedures.* If warranted, emergency payment procedures may be initiated by the RDO at the request of the grantor agency. An emergency situation can generally be said to exist when a requested payment on a letter of credit is not received by the recipient organization two days after the expected receipt date. The use of two days as a guideline should be done only with consideration given to the local history of requesting Federal funds using the U.S. Postal Service. Adhere to the following procedures when an emergency situation arises:

a. *Contact with the Treasury Disbursing Office* is made by the grantor agency and NOT by the recipient organization. Therefore, only the authorized certifying officer of the grantor agency may request that emergency procedures be invoked. The grantees must provide the grantor agency with the following information when there is a need to make an emergency request for funds:

(1) Letter-of-Credit number;

(2) Document number, if available;

(3) Amount requested;

(4) Exact information from block entitled "Make Treasury Check Payable to:" on SF 183;

(5) Date of SF 183 certification; and

(6) Date SF 183 was mailed to the Treasury Disbursing Office (if different from the date of certification).

Note.—The Treasury Disbursing Office will use this information to make a decision on the type of emergency procedure to invoke; therefore, this information must be correct.

b. *If it is determined that the SF 183 has been lost* in transit to the Treasury Disbursing Office, and if time permits the grantor agency contact should request the recipient organization to submit a "Second Original" SF 183. This SF 183 must have the legend "Second Original" affixed at the top of the original and all copies of the form.

c. *If the grantor agency advises* the Treasury Disbursing Office that the issuance of a check in the regular manner will not provide the funds to the recipient organization by the date needed, utilizing the original or the second original of the SF 183, the Treasury Disbursing Office is authorized to effect payment by means of an existing wire transfer technique. The use of the wire transfer technique can be done only after the Treasury Disbursing Office receives either the original or the second original SF 183.

d. *If, in the judgment of the Treasury Disbursing Office,* the emergency payment cannot wait until receipt of the original or a second original SF 183, and the grantor agency requests, payment may be effected outside the letter-of-credit system. Such a payment must be confirmed with an SF 1166, "Voucher and Schedule of Payments," signed by a grantor agency certifying officer authorized to certify regular payments. Wire transfer facilities may be utilized if appropriate and available.

e. *When a payment is effected outside* the letter-of-credit system, it is the grantor agency's responsibility to determine if the additional advance can be offset against a future increase in the letter of credit authorization or if an amendment is necessary to reduce the current letter of credit authorization (SF 1193A).

13. *Reporting Requirements.*

a. *The grantor agency will furnish to Treasury*

(1) These reports are requested on a selected basis by Treaury at least once a year. Treasury determines which organizations will be required to prepare the report(s) and which month(s) will be reported.

(2) Reporting must conform to the format illustrated and explained in Figure 5 to this appendix.

(3) One copy of each requested report must be forwarded by the grantor agency to Treasury within 30 days after the date of the Treasury's request.

b. *LOC grantees* must structure their accounting records to ensure timely compliance with Treasury's request for completion of a Daily Status of Federal Funds Report. The maintenance of a register similar to that illustrated in figure 6 would assist in the preparation of this report.

c. *Treasury and the grantor agency* shall use the information furnished on the Daily Status of Federal Funds Report to evaluate compliance with sound cash management practices and the requirements set forth in this appendix.

Note.—The submission of the Report of Federal Transactions, Attachment H-2 to OMB Bulletin A-102, is no longer required of grantees under the RDO/LOC system.

Note.—Figures 1 through 6 filed with the Office of the Federal Register as part of the original document.

Appendix 8.—Financial Status Report (H-1 Report and H-1 Turnaround Document)

Note.—Contents of Appendix 8 filed with the Office of the Federal Register as part of the original document.

Appendix 9.—Elements of an Accounting System (Suggested Outline—Sample Only)

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and ensuring that an adequate system exists for each of its subgrantees and contractors.

a. *Elements of Accounting System.* Accounting systems are made up of a series of operations which involve classifying, recording, summarizing, and reporting transactions. Elements of the system must consist of an account structure, accounting records, source documents, a system for coding financial transactions, and written procedures prescribing the manner in which and by whom these operations are performed. A grantee's accounting system must include the following:

(1) System coding or classification must permit summarization and reporting of grant expenditures by specific programs, projects, uniform receipt and expenditure classifications, and major steps funded in the approved budget cost categories.

(2) Accounting records should adequately identify the receipt and the expenditures of each grantee, subgrantee or contractor.

(3) Accounting records, which must include a ledger and supporting books of account, should refer to subsidiary records or documentation which support each entry and which can be readily located and identified with the grant.

(4) Accurate, current, and complete financial reporting information.

(5) Systems integration with an adequate system of internal controls to safeguard grant funds and properties, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence by the grantee to prescribe management policies.

b. *Accounting systems* are generally one of three kinds:

(1) *Cash Basis*—Expenses are recorded when cash is spent and revenues are recorded when cash is received. This system provides little information on which to base expenditure planning.

(2) *Obligation Basis*—Where expenses are recorded when the funds are obligated. This system is little used and is not preferred.

(3) *Accrual Basis*—Revenues are recorded when goods or services are delivered and expenses are recorded when goods or services are consumed without regard to the timing of the exchange of cash. This system is preferred because it best matches revenues and expenses with the period in which they are actually earned or accrued. Accrual accounting also contains information on the receipt and disbursement of cash.

c. *Internal Controls.* The grantee must establish and maintain a system of internal controls adequate to safeguard grant funds and resources, check the accuracy and reliability of the grant accounting and financial data, promote the operational efficiency of the grantee, and encourage adherence to the grantee's prescribed managerial policies.

Appropriate internal controls area comprised of a plan of organization (grantee policies, structure, division of staff functions, procedures, staff qualifications, etc.) designed to provide the grantee with effective financial and operational control over both its grant programs or projects.

The degree of internal control is dependent upon the size of the grantee and the funds and resources for which the grantee is responsible. The following criteria are basic to an adequate system of internal control:

(1) Operating policies must be clearly stated; systematically communicated throughout the organization; in conformance with applicable laws and external regulations and policies; and designed to promote the execution of authorized activities effectively, efficiently, and economically.

(2) Organizational structure must define and assign responsibility for the performance of all duties necessary to carry out the functions of the grantee.

(3) Responsibility for assigned duties and functions of the grantees must be classified according to authorization, performance, record keeping, custody of resources, and review, to provide proper internal checks on performance and to minimize unauthorized internal checks on performance and to minimize unauthorized, fraudulent, or otherwise irregular acts.

(4) A system of forward planning, embracing all phases of the grantee's operation, must be developed to determine and justify financial, property, and personnel requirements

and to carry out grant operations effectively, efficiently, and economically.

(5) Grant procedures must be simple, efficient, and practicable, giving due regard to the nature of the grant and applicable legal and regulatory requirements. Feasibility, cost, risk of loss or error, and availability and suitability of personnel are factors that should be considered in formulating the procedures.

(6) An adequate system of authorization, record keeping, and transactions coding procedures must be designed by the grantee to ensure compliance with prescribed grant requirements and restrictions of applicable laws, regulations, and internal management policies; to prevent illegal or unauthorized transactions; and to provide proper accounting records for the expenditure of grant funds.

(7) An adequate and efficiently operated information system must be designed to provide prompt, essential, and reliable operating and financial data to the grantee responsible for decision-making and performance review.

(8) The performance of all duties and functions of grantee personnel must be properly supervised. All performance must be subject to adequate review under an effective internal audit program to determine whether performance is effective, efficient and economical and whether management policies are observed; applicable laws, prescribed regulations, and grant conditions are obeyed; and regulations, and unauthorized, fraudulent, or otherwise irregular transactions or activities are prevented or discovered.

(9) The qualifications of officials and employees with regard to education, training, experience, competence, and integrity must be appropriate for the responsibilities, duties, and functions assigned to them.

(10) Each official and employee must be fully aware of his/her assigned responsibilities and understand the nature and consequences of his/her performance. Each must be held fully accountable for the honest and efficient discharge of his/her duties and functions, including, where applicable, the custody and administration of funds and property, and compliance with grant regulations and legal requirements.

(11) Effective procedures must be implemented for expenditure control to ensure that needed goods and services are acquired at the lowest possible cost; that goods and services paid for are actually received; that quality, quantity, and prices are in accordance with applicable contracts or other authorizations by grant officials and that such authorizations are consistent with applicable statutes, regulations, policies, and grant requirements.

(12) All funds, property, and other resources for which the grantee is responsible must be appropriately safeguarded and periodically inventoried to prevent misuse, unwarranted waste, deterioration, destruction, or misappropriation.

d. *Management System.* The grantees should have a management system meeting the following criteria:

(1) Established State, local government, and organization administrative and fiscal practice and policies must be followed by subordinate bodies in the administration of Federal grant funds.

(2) When no established policies and practices govern, reasonable and prevailing administrative and fiscal practices in the area (preferably adapted from public practice) shall be formally adopted and made a matter of record. The record must contain documentation showing that the standards of reasonableness and prevailing practice have been met.

(3) Administrative and fiscal policies must be applied consistently regardless of the source of funds.

e. *Budget and Accounting.*

(1) Establish indirect cost budgets on a basis consistent with the way resources are to be consumed and accounted for.

(2) Record all applied direct costs in work accounts on a basis consistent with the budgets in a formal system that is controlled by the general books of account.

f. *Analysis by the Grantee.*

(1) Identify at the work account level on a monthly basis using data from, or reconcilable with, the accounting system:

(a) Budgeted cost for work scheduled and budgeted cost for work performed.

(b) Budgeted cost for work performed and applied direct costs for the same work.

(c) Variances resulting from the above comparisons classified in terms of labor, materials, or other appropriate elements together with the reasons for significant variances.

(2) Identify on a monthly basis in the detail needed by management for effective control, budgeted indirect costs, actual indirect costs and variances along with the reasons therefor.

(3) Summarize the data elements and associated variances listed in 1 and 2 above through the grantee organization and to the reporting level specified in the grant.

(4) Identify on a monthly basis significant differences between planned and actual technical performance together with the reasons therefor.

(5) Identify managerial actions taken as a result of the above.

(6) Monitor the effectiveness of actions taken to resolve problems or correct deficiencies.

(7) Based on performance to date and on estimates of future requirements, develop revised estimates of cost at completion for elements identified in the grant and compare these with the grant baseline budgets, with current budgets.

g. Revisions and Access to Data.

(1) Incorporate grant changes in a timely manner recording the effects of such changes in budgets and schedules.

(2) Prohibit retroactive changes to records pertaining to work performed that will change previously reported amounts for applied direct costs, or indirect costs, except for correction of errors and routine accounting adjustments.

(3) Prevent revisions to the grant budget baseline except for Government-directed changes to authorized effort, that is, scope, work, and schedules.

(4) At the time changes occur, advise the grantor agency of any changes to baseline budgets or schedules.

(5) The duly authorized representatives of the grantor agency shall be provided access to all of the foregoing information and records in support thereof.

h. *Personnel and Compensation.*

(1) The organization will operate under a comprehensive plan that includes a scale of rates or ranges based upon the responsibilities of each position and its relationship to other positions.

(2) Compensation paid shall be reasonable. Compensation will be considered reasonable if it is a part of a public compensation plan prescribed for the grantee, or if it is comparable to that paid for similar work in the labor market in which the grantee must compete for the kind of employees involved.

(3) The compensation plan must include provisions concerning weekly hours of work; payment, if any, for overtime work; prior approval of all overtime work; and provisions establishing for each authorized part-time position the number of hours to be served each pay period by the incumbent.

(4) In the absence of an applicable public fringe benefit plan, fringe benefits extended to employees must be reasonable and of general application. Fringe benefits will be considered reasonable if they are comparable to the

benefits extended to employees of similar organizations in the same area.

i. *Safeguarding of Assests.* All funds, property, and other resources for which the grantee is responsible shall be appropriately safeguarded and periodically inventioned under appropriate policies and procedures.

Appendix 10.—LEAA Revolving Funds.

1. *Purpose.* This appendix sets forth the responsibilities and procedures for the operation of the LEAA Relvolving Fund established by Title I, Part F, Section 521(e) of the Omnibus Crime Control and Safe Streets Act of 1968 as amended and by Title I Part H. Section 817(f) of the Justice System Improvement Act of 1979.

2. *Scope.* This appendix applies to a Block Action, Part D formula or Parts E or F Grant that has as its primary function the acquisition of stolen goods and property.

3. *Effective Date.* This appendix applies to all applicable Block Action and Discretionary Grants in operation as of October 15, 1976 or Part D formula or Parts E or F grants awarded thereafter. Any project income realized after October 15, 1976 is subject to this guideline.

4. *Management.* The LEAA Revolving Fund is financially managed by the Comptroller's Office with appropriate program support from the LEAA. However, individual CJCs have the responsibility for identifying Block Action or Part D formula grants subject to this guideline and also for forwarding the pro rata Federal share of project income to the LEAA Revolving Fund.

5. *Procedures for the Operation of the Revolving Fund.* The following steps must be taken by all grantees or subgrantees having project operations.

a. *Property Record.* All grantees or subgrantees will keep a "Property Record" of all stolen goods or property acquired by project operations.

(1) Such records will include, at a minimum, the following information.

(a) Grantee/subgrantee name and grant number.

(b) Type of Property, brand or business name, and identification number(s), e.g., Kodak XL Movie Camera, Serial #206365 or Bank Americard #42327330007350.

(c) Amount of project funds expended to acquire each item of stolen goods or property.

(d) Estimated retail value of each item of stolen goods or property acquired by project operation.

(e) Date stolen goods or property was acquired by the project.

(f) Original owner of stolen property if identified.

(g) Name of insurance company for insured stolen goods or property if identified.

(h) Status of property recovered; e.g., held for evidence; claimed by owner; held for sale of auction; etc.

(2) The grantee or subgrantee will forward a copy of the completed Property Record to LEAA, 633 Indiana Avenue, N.W., Washington, D.C. 20531, within 60 days after the termination date of each separate operation during the life of the grant.

b. *Project Income.* All income generated by the project which includes but is not limited to the income from operation of an undercover front business or the sale of unclaimed stolen property may be RETAINED by the grantee or subgrantee and NOT sent to the LEAA Revolving Fund providing:

(1) The grant (including continuation funding) is still active and has an undercover operation still functioning or being developed;

(2) The grantee or subgrantee is not prohibited by state or local laws or regulations from adding the income back into the grant; and,

(3) The grantee or subgrantee agrees to add the income to the confidential expenditure (buy money) category of the budget.

If a grantee or subgrantee cannot abide by the above criteria, then the income MUST be sent to the LEAA Revolving Fund. Also, income not expended at the termination of the grant and any income received after such termination must be forwarded to the LEAA Revolving Fund. This income should be returned to the LEAA Revolving Fund according to the percentage of Federal funds in the grant.

c. *Royalties.* Funds arising from the sale, by the grantee or subgrantee or project participants in the grant, of publication or film rights resulting from the project, must be submitted to the LEAA Revolving Fund. This applies to royalties earned during the grant period or after the grant is terminated.

d. *Sale of Unclaimed Stolen Goods or Property.* Grantees of subgrantees are responsible for the storage and sale of unclaimed stolen goods or property. The normal expenses incurred by the grantee or subgrantee for the storage and sale of unclaimed stolen goods or property may be deducted from the funds received from the sale. The remaining funds are considered income.

e. *Submitting Funds to the LEAA Revolving Fund.* Funds submitted to the LEAA Revolving Fund should be by checks made out to the "LEAA Revolving Fund" and mailed to the Office of the Comptroller, OJARS, 633 Indiana Avenue, N.W., Washington, D.C. 20531. IT IS IMPORTANT that no other project related documents be included with the check.

f. *Disbursements from the LEAA Revolving Fund.* Monies in the Revolving Fund are disbursed by the award of categorical grants in support of the LEAA Anti-Fencing subprogram.

6. Claims Against Owners of Recovered Stolen Property. Section 521(e) of the Crime Control Act, as amended, and Section 817(f) of the Justice System Improvement Act of 1979, gives the Administrator the authority at his discretion to assert a claim against owners of recovered stolen property in the amount to Federal funds used to purchase such goods or property. This authority is exercised only when the equities and the circumstances property warrant it.

7. *Coordination.* All contact relative to the Revolving Fund or the LEAA Anti-Fencing subprogram, should be made directly to LEAA.

Appendix 11.—ADP Equipment Procurement Review Form (Suggested Format—Sample Only)

CJC: _____
CJC File No: _____
Date: _____
Applicant: _____
Applicant File No: _____

I. Equipment to be purchased:
Description _____
Cost _____
(State)$ _____
(Federal)$ _____

Other ADP Expenditures Under Grant
Description _____
Cost _____
(State)$ _____
(Federal)$ _____
*Total Federal $ _____

II. Review Criteria

1. Has the grantee indicated that ADP equipment of the type to be purchased was identified within the grant application and is necessary and sufficient to meet the project goals? Yes—— No——

2. Has the grantee certified that the ADP equipment procurement is in compliance with existing Federal, state, and local laws and regulations? Yes—— No——

3. Has the grantee conducted a purchase/lease comparison demonstrating that it is more advantageous to purchase rather than lease the ADP equipment under consideration? Yes—— No——

4. If software development is involved, has the grantee demonstrated that computer software already produced and available will not meet the needs of the grant? Yes—— No——

5. If the ADP equipment procurement is to be sole-source, has the grantee submitted adequate documentation to justify the action? Yes—— No——

III. Other Comments:

IV. Recommendations:
Approve: _____
Disapprove: _____
Authorized CJC Official: _____

Date ———
Approve: ———
Disapprove: ———
Authorized Grantor Agency Official ———
Date ———

*If federal grant funds totalling in excess of $50,000 have been used for ADP procurements, then prior approval is required.

Appendix 12.—Guidelines for Confidential Expenditures

Confidential funds are those funds allocated to three types of law enforcement undercover operations.

1. The first category is confidential investigative expenses for purchase of services (P/S) and would include travel or transportation of a non-federal undercover officer or an informant. The lease of an apartment, business front, luxury-type automobiles, a boat or aircraft or similar affects to create or establish the appearance of affluence, credibility and a general atmosphere conducive to the undercover role would also be in this category. Meals, beverage, entertainment and similar expenses for undercover purposes, within reasonable limits, would also be included.

2. The second category is confidential funds for the Purchase of Evidence (P/E). This category would include the purchase of evidence and/or contraband such as drugs, firearms, stolen property, counterfeit tax stamps, etc., required to determine the existence of a crime or to establish the identity of a participant in a crime.

3. The third category is confidential funds for the Purchase of Specific Information (P/I) from informants. All other informant expenses would be confidential investigative expenses (P/S) and would be charged accordingly.

Confidential expenditures are subject to prior approval by the grantor agency. Such approval will be based on a finding that they are necessary and reasonable for proper and efficient administration of the program under which they are to be used. In this conjunction, the grantor agency will make a finding also that the controls over the disbursement are adequate to safeguard misuse of such funds.

1. Confidential expenditures will be authorized for subgrants at the State, county, and city level of law enforcement. For the purpose of this expenditure, a city will be defined as having a population in excess of 50,000.

2. The maximum amount of confidential funds allowable within a grant shall be based upon the following criteria:

(a) Unprogrammed Funds—(funds not committed to specific undercover/investigative operations)—15% of total project amount.

(b) Programmed Funds—(funds committed to specific undercover/investigative operations, e.g., anti-fencing ["store-front"])—limit based upon projected needs for the specific operation or operations.

3. The funds authorized will be established in an imprest fund controlled by a bonded cashier.

4. The supervisor of the unit to which the imprest fund is assigned must authorize all advances of funds up to $500 to agents or officers for the purchase of information. Advances and payments in excess of $500 must be approved by the project director. Such authorization must specify the information to be received, the amount of expenditures, and assumed name of informer.

5. There must be maintained by the investigation unit confidential files of the true names, assumed names, and signature of all informers to whom payments of confidential expenditures have been made. To the extent practicable pictures and/or fingerprints of the informer payee should also be maintained.

6. The cashier shall receive from the agency or officer authorized to make a confidential payment, a receipt for cash advanced to him for such purposes.

7. The agent or officer shall receive from the informer payee a receipt of the following nature:

Figure 1. Receipt From Informer Payee

Receipt

For and in consideration of the sale and delivery to the (State, County, or City of ——— of information or evidence identified as follows:
———
———
———

I hereby acknowledge receipt of $ ——— paid to me by (State, County, or City) of ———
Date: ———
Signature: ———
(Witness, if any)[1]

8. The signed receipt from the informer payee with a memorandum detailing the information received shall be forwarded to the agent or officer in charge. The agency or officer in charge shall compare the signature on the receipt with the confidential file of assumed name signatures. He shall also evaluate the information received in relation to the expense incurred, and add his evaluation remarks to the report of the agent or officer who made the expenditure. A certification of payment to the cashier will serve as support for the expenditure from the imprest fund. The certification will be witnessed by the agent or officer in charge on the basis of the report and informer payee's receipt.

9. Each agent or officer in charge shall prepare a quarterly report showing status and reconciliation of the imprest fund and itemizing each payment, name used by informer payee, information received and use to which information was put. This report must be made part of the files and reviewed quarterly by the head of the law enforcement agency to which the subgrant was made.

10. In each instance when grant funds are used for confidential expenditures, it will be understood that all of the above records, except the true name of the informer, are subject to the record and audit provisions of the grantor agency legislation.

Confidential expenditures from Block Part C or Part D formula funds will be allowable only with the specific prior approval of the grantor agency. Such approval must be obtained from the grantor agency by the CJC or subgrantee. The submission for approval must contain the following information:

1. Identity of subgrant and project, and estimated amount of funds to be used for confidential expenditures;

2. Identity of the agent or officer in charge of investigation and name of the bonded cashier; and

3. A copy of the grantee/subgrantee written procedures to be used to safeguard these funds if they differ from the grantor agency's procedures.

Figure 2. Certification

(Appropriate Office Head)
(Name, Position, Grant Title, Location and Number)
Disbursement of Funds for Confidential Expenditures

This is to certify that I have read, understand and agree to abide by all of the conditions for confidential expenditures as set forth in chapter 5, paragraph 63 and Appendix 12 of the effective edition of Guideline Manual 7100.1, Financial and Administrative Guide for Grants.

Date ———
Signature (Project Director) ———

[1] The witness requirement will not in all instances be mandatory, depending on the nature of the meeting and exchange of funds. A requirement should be in effect that on 25 percent of the contracts, when payments are made, a second agent appear as the witness to the transaction. In addition, on 10 percent of the meetings the agent or officer in charge should be present to verify the payment to the informer.

Appendix 13. Statutory and Regulatory Requirements Applicable to a Criminal Justice Council (CJC)

I. *Statutory and Regulatory Requirements Which Must Be Audited (Mandatory).*

1. *General Fiscal Controls.* Auditors must review, test and evaluate the CJC's:

a. Organizational structure, delegations of authority and functional statements to determine whether fiscal dutie and reponsibilities have been adequately defined and there is an adequate separation of finance and accounting duties and responsibilities.

b. Accounting system and account structure, including the necessary interrelationships with the State's central accounting system, to ensure that the accounting system will provide for:

(1) Receipt, disbursement and expenditure of each grant award, including all matching contributions and, where applicable, program income, interest and refunds from subgrantees, in accordance with grantor agency reporting requirements;

(2) Comparison of actual with budgeted amounts for each grant; and,

(3) Accounting records which are supported by source documentation.

c. Procedures for preparing, verifying and submitting accurate and timely financial reports to the grantor agency.

d. Policies and procedures for supervising and monitoring the financial affairs of its subgrantees insofar as they relate to programs or projects for which Federal funds have been made available. In this regard, the auditor should determine whether:

(1) Adequate fiscal guidelines have been developed and disseminated to inform subgrantees of their responsibilities with respect to accounting for and managing subgrant funds;

(2) Adequate policies, procedures and plans have been developed and implemented for on-site financial monitoring of subgrantees;

(3) Adequate controls have been developed and implemented for the receipt and verification of subgrantees fiscal reports; and

(4) Adequate controls over the purchase, use and disposition of nonexpendable property at the subgrantee level have been developed and implemented.

2. *CJC Fiscal Operations.* Auditors must review, test and evaluate the CJC's fiscal policies, procedures and actual practices, as necessary, to determine compliance with the following requirements.

a. Federal ratios of participation in the funding of programs and projects.

b. Expenditure of funds in accordance with grantor agency guidelines governing the allowability and allocability of costs applicable to agency grants;

c. Expenditure of grant funds in accordance with the applicable budgets approved by the grantor agency;

d. Proper obligation and expenditure of funds within the prescribed grant periods;

e. Drawdown, receipt and deposit of federal funds under the letter of credit authority;

f. Utilization and disposition of nonexpendable property acquired in whole or in part with grant funds; and,

g. Standards for the procurement of supplies, equipment, construction, and other services with grant funds.

3. *Planning Performance and Other Responsibilities Under the Grant.* Auditors must review the CJC's policies, procedures and actual practices, as necessary, to verify the correctness of data contained in its latest grant application submitted to the grantor agency relative to:

a. State assumption of cost;

b. Entitlement vs. non-entitlement;

c. The CJC's strategy for monitoring the implementation, operation, and results of all the projects it supports and for intensively evaluating the results and impact of selected activities;

d. The special planning requirements for CJCs which participate in the JJDPA programs; and,

e. The requirements under Title VI of the Civil Rights Act of 1964 and the equal employment opportunity regulations of the Department of Justice.

4. *Special Requirements to be Met in the Comprehensive Plan.* Auditors must review the CJC's policies, procedures and actual practices, as necessary, to verify the correctness of data contained in its latest comprehensive plan submitted to the grantor agency relative to:

a. Maintenance of effort for juvenile justice under the Crime Control Act;

B. Equitable distribution of funds under the JJDP Act within the state; and

C. Use of at least 75 percent of the JJDP Act funds for support of advanced techniques in the area of juvenile justice.

5. *Special and General Grant Conditions and Assurances.* Auditors must determine, as appropriate, whether the CJC complied with the special and general conditions and assurances imposed on each grant received during the aduit period.

6. *Audit of Subgrantees*—Due to the variability of program structures and agencies receiving subgrant funds, it is not possible to identify all the areas of coverage for all subgrantees. However, certain broad areas of audit coverage are applicable to most subgrantees and the auditor must:

a. Determine the adequacy of the subgrantee's accounting system, with specific emphasis on the following, if applicable:

(1) The accounting system provides for the necessary fiscal controls to safeguard the funds and assets covered;

(2) The accounting system provides the separation needed to adequately identify the receipt of funds under each subgrant awarded and the expenditure of funds for each subgrant;

(3) The accounting system provides for the recording of total expenditures for each subgrant by approved budget categories;

(4) Entries in summary records refer to subsidiary records and/or source documents which can be readily identified and located; and,

(5) The accounting records provide accurate and current financial reporting information.

b. Perform the tests necessary to determine the allowability of costs on the basis of the appropriate local/State and Federal laws and regulations and generally accepted practices.

c. Determine whether the project was carried out in accordance with the programmatic intent as defined in the project's subgrant application.

d. Determine compliance with the special and general subgrant conditions and assurances imposed upon the subgrant award.

e. Determine whether subgrant funds were properly obligated and expended within the approved subgrant period and budget.

f. Determine whether the subgrantee contributed the required matching contributions as stated in the subgrant application.

g. Where applicable, determine whether project income was properly accounted for and applied toward the project goals and objectives.

h. Where applicable, determine whether all procurements (including the purchase of services) made under the project were in accordance with local/State and Federal procurement standards.

i. Where applicable, determine compliance with local/state and Federal property management, control and disposition requirements.

j. Determine whether cash-in-hand was limited to meet the immediate operating needs of the project.

k. Determine compliance with the special grantor agency requirements

relative to the Civil Rights Act and Equal Employment Opportunity Regulations.

1. For audits of subgrantees receiving planning funds, ascertain whether the local/regional planning office has complied with the CJC and grantor agency requirements governing their administrative and functional responsibilities relative to:

(1) Planning;

(2) Monitoring and evaluating, where applicable;

(3) Operations and functions of the local/regional planning councils including any committees thereof; and,

(4) Public accessibility to council and committee meetings and the maintenance of minutes of such meetings.

7. *Follow-up on Prior Audits—Auditors must review the actions taken on the findings and recommendations contained in the previous audit report on the CJC.*

a. Where no corrective actions have been taken, determine whether the problems still exist and whether there is still a need for remedial actions. If so, describe the situations and include appropriate recommendations for remedial actions.

b. Where CJC officials advised the grantor agency that corrective actions have been taken, review the actions taken. Based upon inquiry, observation and test, determine whether the actions taken eliminated the problems. If the problems still exist, describe the situation and indicate what further actions are required.

II. *Statutory and Regulatory Requirements to be Audited as Deemed Necessary and Appropriate by the Auditor.*

1. *CJC Fiscal Operations. Review, test and evaluate the CJC's fiscal policies, procedures and actual practices, as necessary, to determine compliance with the following requirements:*

a. Pass-through of planning and Part C block funds to local units of government;

b. Buy-in of the non-Federal funding required of units of general local government;

c. Source, type and timing of hard match provided under each grant;

d. One-third personnel limitation on use of part C action grant funds;

e. Non-supplanting of State or local funds;

f. Special limitations on funding construction projects; and

g. Twenty percent contract limitation on use of planning funds.

2. *Performance of Planning and Other Responsibilities Under the Grant.* Review the CJC's policies and actual practices, as necessary to verify the correctness of data contained in its latest grant application submitted to the grantor agency relative to the creation, organization, membership (selection/composition), responsibilities and operation of State judicial planning committees and their relationship to the CJC;

3. *Special Requirements to be met in the Comprehensive Plan.* Review the CJC's policies, procedures and actual practices, as necessary, to verify the correctness of data contained in its latest comprehensive plan submitted to the grantor agency relative to:

a. Continuation support for programs funded under the JJDP Act;

b. The CJC's program of technical assistance or services for criminal justice operating agencies within the State.

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[FR Doc. 80-33910 Filed 10-30-80; 8:45 am]
BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-80-101-M]

AMAX Chemical Corp.; Petition for Modification of Application of Mandatory Safety Standard

AMAX Chemical Corporation, P.O. Box 279, Carlsbad, New Mexico 88220 has filed a petition to modify the application of 30 CFR 57.4-27 (fire extinguishers on self-propelled mobile equipment) to its AMAX Mine and Mill located in Eddy County, New Mexico. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of fire extinguishers mounted on electric face equipment.

2. Petitioner has found that stored-pressure fire extinguishers equipped with pressure gauges are best suited to underground equipment as operators can easily check the condition of extinguishers during each start-of-shift inspection.

3. Petitioner has also found that having fire extinguishers mounted on face equipment frequently results in loss of pressure from vibration and/or damage to extinguisher valve mechanisms. This can occur anytime during a shift without the operator's knowledge.

4. In order to better maintain the extinguishers in usable condition, the petitioner proposes an alternate means of providing suitable fire extinguishers readily accessible to operators of self-propelled mobile face mining equipment and electric shuttle cars. This proposal would apply only to equipment powered through trailing cables, with travel distance from a power distribution center limited to the length of cable on each machine.

5. Fire on any of the equipment referred to above will be of electrical origin and the first step by an operator will be to open his or her breaker and disconnect the cable at the power distribution center.

6. As an alternate method, petitioner proposes to maintain one five-pound fire extinguisher at each of the four power distribution centers located along the last open break in each mining section rather than require an extinguisher on each piece of face equipment.

7. Petitioner states that such an arrangement would facilitate maintenance of fire extinguishers in face areas and assure that an extinguisher in usable condition is readily accessible to operators of face equipment at all times.

8. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 1, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 21, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-34009 Filed 10-30-80; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-80-137-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 for hazardous conditions) to its Blacksville No. 1 Mine located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that personnel travel intake and return airways to make examinations for hazardous conditions and conduct methane tests.

2. Due to the deterioration of the roof conditions in the old heading of the mine and the continuing effects of the presence of water, it is becoming hazardous for mine personnel to travel the entries of the mine's 1 North headings.

3. These entries were developed in late 1969 and early 1970 and have only been used as return airways.

4. As an alternate method, petitioner proposes to:

a. Take weekly air and methane readings at the 2 West left return regulator;

b. Take weekly air and methane readings inby spad (survey) stations 94, 92, 90 and 97 which are 3 blocks North of the portal fan;

c. Take weekly air and methane readings at spad station 692, the only other return air that can enter this split of air.

5. Petitioner states that this proposed alternate method will at all times guarantee no less than the same measure of protection to the miners as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 1, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 21, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-34012 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-129-C]

Owl Creek Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Owl Creek Coal Co., Inc., St. Charles, Kentucky 42453 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Owl Creek Mine No. 2 located in Hopkins County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of cabs and canopies on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies on the mines's electric face equipment would result in a diminution of safety to the miners affected because the equipment operator's visibility would be impaired and encumber head clearance. Also, a large portion of the equipment operator's body would hang over the side and protective areas of the machine while in operation.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 1, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 21, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-34010 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-139-C]

Jim Walter Resources, Inc. & Thyssen Mining Construction, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., in conjunction with Thyssen Mining Construction, Inc., P.O. Box 149, Brookwood, Alabama 35444, has filed a petition to modify the application of 30 CFR 77.1914 (permissible electrical equipment) to the Brookwood Mines numbers 4, 5, and 7 located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The contractor, Thyssen Mining Construction, intends to introduce a new innovation in shaft sinking, using a "v mole" technique. This is a vertical full face drill cutting at 23 feet diameter with the cuttings falling through an existing 5 foot pilot hole to the underground working below where they will be disposed of by conveyors, and other means. This is a proven effective method in Germany.

2. With the exception of two KVA transformers, all electrical components, enclosures, motors, controls and switch panels installed on the V mole drill machine will be of a type approved by MSHA. All relevant cables will carry an MSHA approval number.

3. An adequate number of methane monitors with sensors in strategic positions will be mounted on the machine cutting off the main power supply should the methane content of the air rise above the mandatory limit.

4. Eight shafts will be sunk to depths ranging from approximately 1,700 feet to 2,300 feet, all with a finished diameter of approximately 22 feet. All of these shafts will be used for ventilation purposes.

5. Petitioner proposes the use of two 630 KVA transformers which have not been approved by MSHA as permissible. In support of this proposal, petitioner states that:

a. The two 630 KVA transformers will be air cooled and mounted on the v mole machine;

b. The ventilation of the shaft will be such that a minimum of 9,000 cubic feet per minute of fresh air will pass over the transformers at all times. At no time will contaminated return air pass over the transformers.

c. There will be an adequate supply of fire protection provided for the transformers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before (December 1, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 21, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-34011 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-43-M

Office of the Secretary

[TA-W-7498, 7499, 7499A]

Americana Glass Co., Inc., Queens China Co., Inc., and Americana Art China Co., Inc., Sebring, Ohio; Affirmative Determination Regarding Application for Reconsideration

On September 14, 1980, an official of the United Paperworkers International Union requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of the Americana Glass Company, Incorporated, Queens China Company, Incorporated, and Americana Art China Company, Incorporated, Sebring, Ohio. The determination was published in the Federal Register on July 18, 1980 (45 FR 48289).The applicant for reconsideration claims that increased imports of decals are causing declines in jobs in the Company's artistry department, and that loss of jobs due to increased Company imported pottery to fill orders which were normally filled with products made at Queens China, Incorporated, such as

mugs and other items, has caused a discontinuance of items produced at the plant.

Conclusion

After review of the application, I conclude that the Union Official's claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 17th day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-34022 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

American Biltrite (URW), 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 workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 10, 1980.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 10, 1980.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petitoin	Petition No.	Articles produced
American Biltrite (URW)	Trenton, NJ	10-09-80	10-06-80	TA-W-11,319	Tile floor.
Arcos Corp. (USWA)	Philadelphia, PA	10-10-80	10-07-80	TA-W-11,320	Welding rods and wire.
Bendix Corp. (UAW)	Elyria, OH	10-10-80	9-25-80	TA-W-11,321	Braking devices for trucks.
Bonney Forge Division (union)	Allentown, PA	10-14-80	10-08-80	TA-W-11,322	Stainless steel.
Brookside Corp. (USWA)	McCordsville, IN	10-10-80	10-07-80	TA-W-11,323	Air moving equipment.
Freightliner Corp. (workers)	Chino, CA	10-10-80	10-06-80	TA-W-11,324	Freightline Trucks.
Mordine-Division of Dayton-Walther (IAMAW)	Dayton, OH	10-14-80	10-05-80	TA-W-11,325	Cut metal and assembly wheels and drums.
Douglas and Lomason Inc. (UAW)	Marianna, AR	10-14-80	10-06-80	TA-W-11,326	Auto seat frames.
Ex-Cello-O Tool andd Abrasive Products Division (workers)	Pendleton, IN	10-14-80	10-08-80	TA-W-11,327	Honing abrasives used in manufacturing auto engines.
Pilot Knob Pellet (USWA)	Ironton, MO	10-10-80	10-07-80	TA-W-11,328	Iron ore pellets.
Industrial Strainer (workers)	Plymouth, MI	10-10-80	10-02-80	TA-W-11,329	Auto small parts.
Interlake Inc. (USWA)	Chicago, IL	10-10-80	10-08-80	TA-W-11,330	Steel products.
Interlake Inc. (USWA)	Riverdale, IL	10-14-80	10-08-80	TA-W-11,331	Steel products, strapping materials.
Island Creek Coal Co. (workers)	Paintsville, KY	10-09-80	10-06-80	TA-W-11,332	Metallurgical coal.
Joslyn Manufacturing and Supply Co. (USWA)	Fort Wayne, IN	10-10-80	10-07-80	TA-W-11,333	Cold and dot stainless steel bars.
Lamson and Sessions Co. (Co.)	Cleveland, OH	10-14-80	10-06-80	TA-W-11,334	Threaded screws and nuts.
Marcil Manufacturing (Co.)	Hoboken, NJ	10-14-80	10-07-80	TA-W-11,335	Outerwear.
Pickford Mills (workers)	Brooklyn, NY	10-10-80	5-19-80	TA-W-11,336	Sweaters, Shirts, and dresses.
Sewell's Manufacturing Co. (workers)	Temple, GA	10-10-80	10-07-80	TA-W-11,337	Men's suits and pants.
Simon Ellis Inc. (workers)	New York, NY	10-14-80	10-07-80	TA-W-11,338	Skirts, jackets, and jackets.
Sintered Metals North (workers)	Gloucester, MA	10-14-80	10-10-80	TA-W-11,339	Machine parts.
Anaconda Copper Co. (AMT)	Anaconda, MT	10-14-80	10-06-80	TA-W-11,340	Copper ore anodes.
Anaconda Copper Co. (carpenters)	Great Falls, MT	10-14-80	10-08-80	TA-W-11,341	Refined copper, zinc, and lead.
Frank Saltz and Sons, Inc. (workers)	New York, NY	10-14-80	10-08-80	TA-W-11,342	Pants and vests.
McInerney Spring and Wire Co. (UAW)	Grand Rapids, MI	10-15-80	10-06-80	TA-W-11,343	Rough construction seating for autos.
Ralph Edwards Sportswear Inc. (workers)	Puxico, MO	10-14-80	10-08-80	TA-W-11,344	Leather jackets and vests.
Reynolds Metals Co. Listerhill Co. Listerhill Reduction Plant (AWIU)	Sheffield, AL	10-14-80	10-06-80	TA-W-11,345	Molten metal for die castings.
Rud-Shaw Manufacture Inc. (workers)	Brooklyn, NY	10-14-80	10-08-80	TA-W-11,346	Sports jackets and suit jackets.
Arista Knitwear Manufacturing Corp. (workers)	New York, NY	10-14-80	10-11-80	TA-W-11,347	Knitting yarn.
Barth Ind. Inc. (workers)	Cleveland, OH	10-14-80	9-26-80	TA-W-11,348	Machines.
Colorado City Manufacturing (workers)	Colorado, TX	10-14-80	10-09-80	TA-W-11,349	Women's clothes.
Fiber-Tex Inc. (workers)	Benzonia, MI	10-15-80	10-10-80	TA-W-11,350	Fiberglass.
Grigg Box Co. (workers)	Detroit, MI	10-14-80	10-07-80	TA-W-11,351	Glass.
Textile Pierce Dying Co. (union)	Paterson, NJ	10-14-80	10-06-80	TA-W-11,352	Textile and dyes.
B&G Fabricating Co., Inc. (union and non-union)	Carnegie, PA	10-15-80	9-29-80	TA-W-11,353	Equipment for steel producers.
Eric Scot Sportswear Inc. (workers)	Farmingdale, NY	10-15-80	10-10-80	TA-W-11,354	Sweaters.
Freddie-Gail (ILGWU)	Hoboken, NJ	10-14-80	10-08-80	TA-W-11,355	Ladies coats.
Gare Long Island Co. (ILGWU)	Long Island, NY	10-14-80	10-08-80	TA-W-11,356	Ladies coats.
Interlake Inc. (workers)	Wilder, KY	10-14-80	10-07-80	TA-W-11,357	Coil and pipe.
M. Frenville Co. Inc. (workers)	Gloversville, NY	10-16-80	10-07-80	TA-W-11,358	Finish leather.
Storms Drop Forge (union)	Springfield, MA	10-15-80	10-10-80	TA-W-11,359	Forgings for tools and aircraft.
Trolley Car Inc. (ILGWU)	New York, NY	9-30-80	9-24-80	TA-W-11,360	Ladies dresses.
U.S. Steel Works Geneva Works (USWA)	Provo, UT	10-06-80	10-01-80	TA-W-11,361	Steel products.
Union Metal Co. (workers)	Macedonia, OH	10-16-80	10-10-80	TA-W-11,362	Storage rackings for auto industry.
Allied Chemical Corp. Auto Division (Co.)	Mt. Clemens, MI	9-15-80	9-11-80	TA-W-11,363	Seat belts.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No	Articles produced
Chemserve Corp. (workers)	Detroit, MI	10-16-80	10-13-80	TA-W-11,364	Caustic soda, acid and sodium.
Dunn Steel Products (UAW)	Plymouth, MI	10-16-80	9-19-80	TA-W-11,365	Ball joints.
Hoover Universal, Inc. (Co.)	Mansfield, OH	7-23-80	7-17-80	TA-W-11,366	Plating of parts for autos.
Jacks Glove (workers)	Gloversville, NY	10-14-80	10-06-80	TA-W-11,367	Contracts cutting and sewing of gloves.
McKnight Road Dodge Inc. (workers)	Pittsburgh, PA	10-14-80	10-10-80	TA-W-11,368	Sale and service of Dodge cars and trucks.
Mt. Vernon Mills Inc. Columbus Division (Co.)	Columbus, SC	10-16-80	10-13-80	TA-W-11,369	Numbered ducks.
Altamont Garment Co., Modern Textiles (ILGWA).	Altamont, IL	10-15-80	10-09-80	TA-W-11,370	Children's clothing.
Bethlehem Steel Corp (workers)	Terminal Island, CA	10-16-80	10-09-80	TA-W-11,371	Ship repair yard.
Hayes Albion Corp. (AFL-CIO)	Bryan, OH	7-29-80	7-23-80	TA-W-11,372	Automotive door frames.
Kamp Togs, Modern Textiles (ILGWU)	Clarksville, MO	10-15-80	10-09-80	TA-W-11,373	Children's clothing.
Lansford Apparel Co. (ACTWU)	Lansford, PA	10-16-80	10-15-80	TA-W-11,374	Children's dresses.
Martha Manning Co. (ILGWU)	Mascoutah, IL	10-15-80	10-09-80	TA-W-11,375	Dresses, sportswear.
General Motors Corp. Rochester Products Division (workers).	Tuscaloosa, AL	10-14-80	10-08-80	TA-W-11,376	Carburetors.
General Motors Corp. AC-Delco Division (workers).	Atlanta, GA	10-07-80	10-01-80	TA-W-11,377	Distribution of service parts.
General Motors Corp. GM Part Division (UAW).	Detroit, MI	10-14-80	9-03-80	TA-W-11,378	Distribution of service parts.
General Motors GM Parts Division (UAW)	St. Louis, MO	10-14-80	9-03-80	TA-W-11,379	Distribution of service parts.
General Motors GM Parts Division (UAW)	Atlanta, GA	10-14-80	9-03-80	TA-W-11,380	Distribution of service parts.
General Motors GM Parts Division (UAW)	Cheektowaga, NY	10-14-80	9-03-80	TA-W-11,381	Distribution of service parts.
GM-Parts Division (UAW)	Lenexa, KS	do	do	TA-W-11,382	Do.
GM-Parts Division (UAW)	Willow Run, MI	do	do	TA-W-11,383	Do.
GM-Parts Division (UAW)	Cleveland, OH	do	do	TA-W-11,384	Do.
GM-Parts Division (UAW)	Jacksonville, FL	do	do	TA-W-11,385	Do.
GM-Parts Division (UAW)	Omaha, NE	do	do	TA-W-11,386	Do.
GM-Parts Division (UAW)	Bethpage, NY	do	do	TA-W-11,387	Do.
GM-Parts Division (UAW)	Livonia, MI	do	do	TA-W-11,388	Do.
GM-Parts Division (UAW)	Westwood, MA	do	do	TA-W-11,389	Do.
GM-Parts Division (UAW)	Denver, CO	do	do	TA-W-11,390	Do.
GM-Parts Division (UAW)	New Orleans, LA	do	do	TA-W-11,391	Do.
GM-Parts Division (UAW)	Indianapolis, IN	do	do	TA-W-11,392	Do.
GM-Parts Division (UAW)	Beaverton, OR	do	do	TA-W-11,393	Do.
GM-Parts Division (UAW)	Bloomfield, NJ	do	do	TA-W-11,394	Do.
GM-Parts Division (UAW)	Englewood, NJ	do	do	TA-W-11,395	Do.
GM-Parts Division (UAW)	Sandston, VA	do	do	TA-W-11,396	Do.
GM-Parts Division (UAW)	King of Prussia, Pa	do	do	TA-W-11,397	Do.
GM-Parts Division (UAW)	Sante Fe Springs, CA	do	do	TA-W-11,398	Do.
GM-Parts Division (UAW)	Drayton Plains, MI	do	do	TA-W-11,399	Do.
GM-Parts Division (UAW)	Sharonville, OH	do	do	TA-W-11,400	Do.
GM-Parts Division (UAW)	Louisville, KY	do	do	TA-W-11,401	Do.
GM-Parts Division (UAW)	Dallas, TX	do	do	TA-W-11,402	Do.
GM-Parts Division (UAW)	Houston, TX	do	do	TA-W-11,403	Do.
GM-Parts Division (UAW)	Oakland, CA	do	do	TA-W-11,404	Do.
GM-Parts Division (UAW)	Martinsburg, WV	do	do	TA-W-11,405	Do.
GM-Parts Division (UAW)	Lansing, MI	do	do	TA-W-11,406	Do.
GM-Parts Division (UAW)	Reno, NW	do	do	TA-W-11,407	Do.

[FR Doc. 80-34013 Filed 10-30-80; 8:45 am]
BILLING CODE 4510-28-M

E. I. du Pont (UAW), 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 workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 10, 1980.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 10, 1980.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 14th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix.

Petitioner: Union workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
E. I. Dupont (UAW)	Toledo, Ohio	10-6-80	9-30-80	11,236	Automotive paint.
Florsheim Shoe Co. (ACTWU)	Mexico, Mo	10-6-80	9-29-80	11,237	Men's shoes.
F.M.C. Specialty Chemical Division (ICWU)	Buffalo, N.Y	10-6-80	9-29-80	11,238	Sodium perborate.
Jodie Dress Inc. Company (Co.)	New York, N.Y	10-6-80	9-26-80	11,239	Ladies garments.
Kentucky Pants Co. Plant 2 (Co.)	Glasgow, Ky	10-7-80	10-3-80	11,240	Men's and boy's work pants.
Mason Mfg. Co. (Workers)	Providence, R.I	10-6-80	10-3-80	11,241	Metal disposable spools.
Reidboard Brothers Co. (workers)	Elkins, W. Va	10-6-80	9-30-80	11,242	Men's work shirts and jeans.
United Tech. Auto. Division (workers)	Dearborn, Mich	10-6-80	8-29-80	11,243	Automotive.
Washington Overall Mfg. Co. (company)	Scottville, Ky	10-7-80	10-3-80	11,244	Men's and boy's work pants.
Caterpillar Tractor Company (workers)	Milwaukee, Wis	10-2-80	9-25-80	TA-W-11,245	Components for tractors.
Detroit Steel Products (UAW)	Morristown, Ind	10-3-80	9-30-80	TA-W-11,246	Steel leaf springs.
Fairfield Glove Co. (ACTWU)	Fairfield, Iowa	10-6-80	8-29-80	TA-W-11,247	Work gloves.
Fairfield Glove Co. (ACTWU)	Bonaparte, Iowa	10-6-80	8-29-80	TA-W-11,248	Work gloves.
General Electric, Silicone Products Division (IUE).	Waterford, N.Y	10-3-80	9-11-80	TA-W-11,249	Small appliances.
Harry Fisher Corp. (ACTWU)	Philadelphia, Pa	10-6-80	9-23-80	TA-W-11,250	Men's outercoats.
Priscilla Dress Corp. (workers)	Bronx, N.Y	9-26-80	9-16-80	TA-W-11,251	Ladies' pants and dresses, skirts.
S. B. Penick Corp. (ICWU)	Newark, N.J	8-5-80	7-31-80	TA-W-11,252	Organic chemicals.
Starbuck (company)	San Francisco, Calif	10-3-80	9-10-80	TA-W-11,253	Luggage, handbags, etc.
White Automotive Corp. (ACTWU)	Colorado Springs, Colo	10-6-80	10-1-80	TA-W-11,254	Jeep tops and accessories.
Athalon Products, Ltd. (company)	Denver, Colo	10-3-80	9-30-80	TA-W-11,255	Soft sided luggage.
CWC Textion (workers)	Muskegon Hts., Mich	10-3-80	9-29-80	TA-W-11,256	Gray iron castings for automotive industry.
Extractors, Inc., #1 Deep Mine (UMWA)	Wyoming County, W. Va	10-3-80	9-30-80	TA-W-11,257	Metallurgical coal.
Kerr-McGee Nuclear Corp. (workers)	Glenrock, Wy	10-3-80	9-29-80	TA-W-11,258	Uranium ore.
Murray Corp. (UAW)	Eastlake, Ohio	10-3-80	10-1-80	TA-W-11,259	Automobile parts and clutches.
Northwest Cedar, Inc. (company)	Sedro Wooley, Wash	10-6-80	9-30-80	TA-W-11,260	Cedar shakes.
Ohio Truss Mart (workers)	Walled Lake, Mich	10-3-80	9-4-80	TA-W-11,261	Trusses.
Our Darling Sportswear Co. (workers)	New York, N.Y	10-3-80	10-2-80	TA-W-11,262	Ladies swim suits.
Willow Run Rubber Lining (workers)	Farmington, Mich	10-3-80	10-1-80	TA-W-11,263	8-cyl distributor caps.
Carla Leather, Inc. (workers)	New York, N.Y	10-6-80	10-2-80	TA-W-11,264	Leather suede shearling.
Fox Point Sportswear, Inc. (ACTWU)	Port Washington, Wis	10-6-80	9-17-80	TA-W-11,265	Ladies' sportswear.
Hoover Universal, Inc. (Int'l Brotherhood of Boilermakers).	Solon, Ohio	10-6-80	10-1-80	TA-W-11,266	Cold drawn carbon and alloy bar and wire.
J.H. Apparel (workers)	Freeport, N.Y	10-6-80	10-2-80	TA-W-11,267	Boy's, childrens slacks, shirts, sweaters.
Jomac Products, Inc. (workers)	Murphysboro, Ill	10-6-80	9-30-80	TA-W-11,268	Industrial gloves.
Leathermark Sportswear (workers)	New York, N.Y	10-6-80	9-29-80	TA-W-11,269	Jackets.
Merry Olds GMC Trucks (workers)	Rochester, Mich	9-24-80	9-16-80	TA-W-11,270	New car and truck sales.
New Jersey Zinc Company (USWA)	Austinville, Va	10-6-80	10-1-80	TA-W-11,271	Zinc lead concentrates.
Thermo Electron Corp. (workers)	Livonia, Mich	10-6-80	10-2-80	TA-W-11,272	Heat treating and steel mill furnaces.
Willens & Michigan (workers)	Detroit, Mich	10-6-80	9-24-80	TA-W-11,273	Graphics and various printed material.
Anaconda-Arco Co. (Int'l Brotherhood of Boilermakers).	Denver, Colo	10-7-80	10-2-80	11,274	Copper cathodes.
Anaconda-Arco Co. (Int'l Brotherhood of Boilermakers).	Great Falls, Mont	10-7-80	10-2-80	11,275	Copper wire bars.
Anacona-Arco (Int'l Brotherhood of Boilermakers).	Anacona, Mont	10-7-80	10-2-80	11,276	Copper fillets.
Apco Knitwear Inc. (ACTWU)	Brodhead, Wis	10-6-80	9-17-80	11,277	Knit shirts.
Crescent Brick Co. (USWA)	Falls Creek, Pa	10-7-80	9-29-80	11,278	Ladle bricks.
Jim Gunning Ford Inc. (company)	Xenia, Ohio	10-6-80	9-30-80	11,279	Sales of cars and trucks.
Patasco & Back Rivers Railroad Co. (UTU)	Sparrows Points, Md	10-6-80	10-2-80	11,280	Carbon steel, pipes, tubing, wire.
Star Debs (workers)	New York, N.Y	10-6-80	9-24-80	11,281	Dresses.
Union City Body Co. (UAW)	Union City, Ind	10-7-80	9-29-80	11,282	Trucks.
W. Va. Birmingham Bolt Co. (Int'l Brotherhood of Boilermakers).	Nitro, W. Va	10-8-80	9-29-80	11,283	Roof support bolts.
AMF/Harley-Davidson Motor Co. Inc. (AIW)	Milwaukee, Wis	10-3-80	10-1-80	TA-W-11,284	Motorcycles and golfcarts.
AMF/Harley-Davidson Motor Co. Inc. (AIW)	Wauwatosa, Wis	10-3-80	10-1-80	TA-W-11,285	Motorcycles and golfcarts.
Lynchburg Foundry Co. Archer Creek Plant (USWA).	Campbell County, Va	10-6-80	10-1-80	TA-W-11,286	Ductile and gray iron castings.
Lynchburg Foundry Co. Radford Plant (USWA).	Radford, Va	10-6-80	10-1-80	TA-W-11,287	Ductile and gray iron castings.
M & R Timber (IWA)	Port Angeles, Wash	10-7-80	9-26-80	TA-W-11,288	Lumber.
McCord Corp. Gasket Div. (workers)	Wyandotte, Mich	10-8-80	10-6-80	TA-W-11,289	Gaskets and seals.
Remington Arms Co. Inc. (workers)	Ilion, N.Y	10-8-80	10-6-80	TA-W-11,290	Firearms.
Saginaw Sheet metal Parts Corp. (workers)	Saginaw, Mich	10-8-80	10-2-80	TA-W-11,291	Fenders.
Tecumseh Products Co. (IBEW)	Somerset, Ky	10-8-80	9-26-80	TA-W-11,292	Compressors.
Hilti Inc. (workers)	Cleveland, Ohio	10-8-80	10-5-80	TA-W-11,293	Personnel and payroll.
Julius Resnick Inc. (ILGP & NWU)	Syracuse, N.Y	10-8-80	10-4-80	TA-W-11,294	Ladies handbags.
Lady Arrow Brantley Plant (ACTWU & Co.)	Brantley, Ala	10-8-80	10-1-80	TA-W-11,295	Ladies blouses.
Lady Arrow Evergreen Plant (ACTWU & Co.)	Evergreen, Ala	10-8-80	10-1-80	TA-W-11,296	Ladies blouses.
South Haven Rubber Co. (UAW)	So. Haven, Mich	10-8-80	10-6-80	TA-W-11,297	Manufacturing molded rubber products.
RPM Products, Inc. (workers)	Roseville, Mich	10-8-80	10-3-80	TA-W-11,298	Metal stamped and roll formed components.
RPM Products Inc. Croswell Div. (workers)	Croswell, Mich	10-8-80	10-3-80	TA-W-11,299	Metal stamped and roll formed components.
SISCO Inc. (workers)	Cleveland, Ohio	10-8-80	10-5-80	TA-W-11,300	Repair molds in slag pots.
Wausau Homes Inc. (workers)	Wausau, Wis	10-7-80	10-3-80	TA-W-11,301	Prefabricated houses.
Wausau Homes Inc. (workers)	Oscoda, Mich	10-7-80	10-3-80	TA-W-11,302	Prefabricated houses.
Wausau Homes Inc. (workers)	Lansing, Mich	10-7-80	10-3-80	TA-W-11,303	Prefabricated houses.
Alatex Inc., Andala Plant (ACTWU & company).	Andala, Ala	10-8-80	10-1-80	TA-W-11,304	Men's dress shirts.
Atalex Inc. Andalusia Plant (ACTWU & Co.)	Andalusia, Ala	10-8-80	10-1-80	TA-W-11,305	Men's dress shirts.
Alatex Inc. Enterprise Plant (ACTWU & Co.)	Enterprise, Ala	10-8-80	10-1-80	TA-W-11,306	Men's dress shirts.
Alatex Inc. Montgomery Dis. Center (ACTWU & Co.).	Montgomery, Ala	10-8-80	10-1-80	TA-W-11,307	Men's dress shirts distribution center.
Alatex Inc. Pike Plant (ACTWU & Co.)	Troy, Ala	10-8-80	10-1-80	TA-W-11,308	Men's dress shirts.
Alatex Inc. Troy Plant (ACTWU & Co.)	Troy, Ala	10-8-80	10-1-80	TA-W-11,309	Men's dress shirts.
Bostrom Division of Universal Oil Products (workers).	Cudahy, Wis	9-22-80	7-27-80	TA-W-11,310	Truck van earth moving seats.
Mercury Products Div. of Dyneer (IAM)	Canton, Ohio	10-8-80	10-3-80	TA-W-11,311	Clutches, brakes, pulleys.
O & S Mfg. Division Gulf & Western Mfg. Co. (UAW).	Whitmore, Mich	10-8-80	9-30-80	TA-W-11,312	Steering tie rods.
Verhoven Chevrolet Inc. (workers)	Detroit, Mich	6-16-80	6-12-80	TA-W-11,313	Auto dealership.
Enro Shirt Company (company)	Louisville, Ky	10-10-80	10-7-80	TA-W-11,314	Men's dress shirts.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Jonathan Logan Dresses (workers)	Philadelphia, Pa	10-3-80	10-1-80	TA-W-11,315	Suits and dresses.
Kelly Springfield Tire Company (URW)	Fayetteville, N.C	10-9-80	10-7-80	TA-W-11,316	Passenger car tires.
Kennecott Corp. (workers)	McGill, Nev	10-9-80	10-1-80	TA-W-11,317	Copper products.
Valcraft, Div. of Valeron Corp. (workers)	East Tawas, Mich	10-9-80	9-29-80	TA-W-11,318	Build high speed steel cutting tools.

[FR Doc. 80-34023 Filed 10-30-80; 8:45 am]

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[TA-W-7474]

Eltra Corp., Prestolite Wire Division, Rose City, Mich.; Negative Determination Regarding Application for Reconsideration

By letter dated August 7, 1980 (copy attached), two workers of the Prestolite Wire Division requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers producing automotive ignition were harnesses at Eltra Corporation's Prestolite Wire Division plant in Rose City, Michigan. The determination was published in the Federal Register on July 18, 1980, (45 FR 48289).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determinaton of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The workers claim that (1) imports and sales of vehicles contained a like product, causing a substantial decrease in orders from customers for ignition wire assemblies manufactured at Prestolite Wire Division; (2) that workers in a company manufacturing a similar product for the American automotive industry were "approved" adjustment assistance, while the subject firms's workers were denied; and (3) that the Department's investigation revealed that during 1979 and 1980, the Prestolite Wire Division's Rose City plant produced wire assemblies for *one* customer while the plant actually supplied *two* customers.

The Department's review shows that the workers of the Prestolite Wire Division plant in Rose City, Michigan did not meet the "contributed importantly" test of the Trade Act of 1974. First, with respect to the allegation that increased imports of vehicles and decreased sales of domestic vehicles caused a substantial decrease in customers' orders from Prestolite for ignition wire harnesses, automobiles cannot be considered to be like or directly competitive with ignition wire harnesses. Imports of ignition wire harnesses must be considered in determining import injury to workers producing ignition wire harnesses at Prestolite Wire Division.

Secondly, the applicants for reconsideration allege that workers employed at a firm which produced a similar product were certified eligible to apply for adjustment assistance while workers at Prestolite were denied adjustment assistance. The major customer in both these investigations was the same customer (an auto maker). A review of the other case revealed that the customer of that supplier firm did indeed import some wire harnesses. However, that certification was based, in part, on increased import purchases during the period unde investigation, and those imports represented a substantial proportion of the customer's total purchases of that type of wire harnesses. A further review of the customer survey in the Prestolite Wire Division investigation revealed that the customer's purchases of wire harnesses, either from domestic or foreign sources were determined on the basis of part numbers, and that the customer's purchases of imported wire harnesses of the type produced by Prestolite represented less than one percent of its purchases of that type of wire harness in 1979 and in the first three months of 1980. Thus, on the basis of that customer survey, adjustment assistance for TA-W-7474 was denied.

Thirdly, the workers allege the Department's investigation revealed that Prestolite produced for only one customer when, in fact, the Company produced wire harnesses for two customers. The results of the Department's customer survey indicated that the one customer that was surveyed represented 100 percent of Prestolite's sales in 1979 and 95 percent of sales in the January–February 1980 period. Therefore, any import purchases of wire harnesses from Prestolite by the second customer would have been insignificant for purposes of an adjustment assistance determination.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 20th day of October 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-34024 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9562-63, 9566, 9569]

General Motors Corp., Detroit, Mich.; 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. It is determined in this case that all of the requirements have been met.

The investigation was initiated on July 28, 1980 in response to a petition which was filed by the United Automobile, Aerospace and Agricutural Implement Workers of America on behalf of workers at the component parts plants of General Motors Corporation listed in the appendix.

In order to determine if increased imports contributed importantly to production and employment declines at General Motors Corporation component parts plants, the Department sought to determine the degree to which each

facility was integrated into the production of General Motors cars, trucks, vans, and general utility vehicles which have been subject to import injury. Where substantial integration was established the Department considered imports of "like or directly competitive" cars, trucks, vans and general utility vehicles in determining import injury to workers producing component parts at the plants.

The Department has determined that increased imports contributed importantly to the decline in sales or production and to total or partial separations of workers at 19 of General Motors Corporation's car and truck assembly plants (TA-W6783, 6917, 6999-7000, 7009, 7015-16, 7059, 7071, 7073-76, 7078-82 and 8613). Workers at these plants are engaged in production of one or more of the following car or truck lines: Mid-size, standard and luxury/specialty cars, pick-up trucks, vans, and general utility vehicles.

During the course of the investigation, it was established that each of the component parts plants listed in the appendix produced a significant proportion of its output for use in the GM car and truck lines which have been subject to import injury.

Because U.S. auto manufacturers redesigned most of their automobiles and/or introduced completely new models from MY 1979 to MY 1981, the composition and distinguishable features of each market class of vehicles has changed substantially. As a result, the continuation of the recent impact of import competition that existed in MY 1979 and 1980 may not continue in MY 1981.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increase of imports of articles like or directly competitive with mid-size, standard and luxury/specialty automobiles, vans, utility vehicles and pick-up trucks produced at final assembly plants of General Motors Corporation contributed importantly to the decline in sales or production and to the total or particl separation of workers at the component parts plants listed in the appendix. In accordance with the provisions of the Act, I make the following certification:

All workers of the component parts plants of General Motors Corporation listed in the appendix who became totally or partially separated from employment on or after the impact date listed in the appendix and before November 15, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day October 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

Appendix

	Plant and location	Impact date
TA-W-9562	Chevrolet Motor Division, Muncie, Indiana.	Jan. 1, 1980.
TA-W-9563	Fisher Body Division, Grand Rapids Plant #1 Grand Rapids, Michigan.	Dec. 1, 1979.
TA-W-9566	Hydra-Matic Division, Ypsilanti, Michigan.	Nov. 1, 1979.
TA-W-9569	Central Foundry Division, Massena, New York.	Nov. 1, 1979.

[FR Doc. 80-34025 Filed 10-30-80; 8:45 am]
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[TA-W-9564 and 9565]

General Motors Corp., Fisher Body Division, Lordstown, Ohio; and New Departure-Hyatt Bearings Division, Bristol, Conn.; 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.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely.

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The investigation was initiated on July 28, 1980 in response to a petition which was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) on behalf of workers at the Lordstown, Ohio plant of the Fisher Body Division and the Bristol, Connecticut plant of the New Departure-Hyatt Bearings Division of General Motors Corporation. Workers at the Lordstown plant produce automotive stampings. Workers at the Bristol plant produce bearings and clutch parts.

The investigation revealed that criterion (3) has not been met.

In order to determine if increased imports contributed importantly to production and employment declines at General Motors Corporation component parts plants, the Department sought to determine the degree to which each facility was integrated into the production of General Motors cars, trucks, vans, and general utility vehicles which have been subject to import injury. Where substantial integration was established the Department considered imports of "like or directly competitive" cars, trucks, vans and general utility vehicles in determining import injury to workers producing component parts at the various plants.

The value of production, adjusted for inflation, increased at both plants in model year (MY) 1979 compared with MY 1978. Average employment also increased at both plants in MY 1979 compared with MY 1978. Neither plant was substantially integrated into the production of trade-impacted vehicles during the first 10 months of MY 1980.

The predominant proportion of production at the Lordstown plant during the first 10 months of MY 1980 consisted of body stampings and assemblies used in subcompact and mid-size GM car lines which have not been subject to import injury. Employment increased in the first 10 months of MY 1980 compared to the same period of MY 1979.

At the Bristol plant, a substantial proportion of plant output consisted of bearings which are sold to customers unaffiliated with General Motors. The value of these outside sales, adjusted for inflation, increased in MY 1979 compared with MY 1978 and in the first 3 quarters of MY 1980 compared with the same period in MY 1979.

Conclusion

After careful review, I determine that all workers of the Lordstown, Ohio plant of the Fisher Body Division (TA-W-9564) and the Bristol, Connecticut plant of the New Departure-Hyatt Bearings Division (TA-W-9565) of General Motors Corporation are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of October 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-34019 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

General Tire & Rubber Co. et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA-W-7449, 7928, and 8639; General Tire & Rubber Co., Waco, TX, Mt. Vernon, IL, and Mayfield, KY

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7607; Sheller Globe Corp., Paramount Fabricating Co., Detroit, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7683; Goodyear Allospace Corp., Akron, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7831; Dura Corp., Toledo, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9423; Modern Clothing Co., Inc., Hammonton, NJ

Investigation revealed that criterion (3) has not been met. The investigation revealed that sales by manufacturers for which the subject firm produced under contract did not decline.

TA-W-7654; Eltra Corp., Prestolite Wire Div., Port Huron, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7777; Quality Spring Products, Div. of Kuhlman Corp., Coldwater, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7786; Soley Manufacturing Co., Roseville, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8001; Eaton Corp., Athens, AL

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-8036; The Stanley Works, Stanley Hydraulic Tools Div., Milwaukee, OR

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8354; Reeves Brothers, Inc., Curon Div., Auburn, IN

Investigation revealed that criterion (3) has not been met. U.S. imports of polyurethane foam are negligible.

TA-W-8361; Estan Manufacturing Co., Madison Heights, MI

Investigation revealed that criterion (3) has not been met. U.S. Imports of oil dipsticks are negligible.

TA-W-7815 and 8632-38; Aetna Industries, Inc., Center Line, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-9525; Unit Parts Co., Oklahoma City, OK

Investigation revealed that criterion (3) has not been met. The worker's firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-10,290; Platers Service, Inc., Englewood, OH

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-10,612; Doran Advertising, Inc., Cincinnati, OH

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-7456; Cyclops Corp., Empire Steel Div., Portsmouth, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7748; Toledo Stamping & Manufacturing Co., Toledo, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7834; Pivot Manufacturing Co., Detroit, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-7944; All Products Co., Farewell, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8008; Ex-Cell-O Corp., McCord-Winn Div., Winchester, MA

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8365; Dana Corp., Edgerton, WI

The investigation revealed that criterion (3) has not been met. U.S. imports of truck axle assemblies are negligible.

TA-W-9113; Western Electric Co., Inc., Indianapolis, IN

Investigation revealed that criterion (3) has not been met. Production at the Indianapolis plant increased in 1979 and in the first seven months of 1980 compared to the first seven months of 1979. Layoffs at the plant in mid-1980 resulted when the expected continued increased in consumption of telephone sets failed to materialize.

TA-W-9288; Schlegel Corp., Schlegel Tennessee, Inc., Maryville, TN

The investigation revealed that criterion (3) has not been met. U.S. imports of auto weather stripping are negligible.

TA-W-10,545; Toledo Pickling & Steel Service, Inc., Toledo, OH

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-8270; Borg-Warner Corp., Sterling Heights, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-8049; Russellville Sportswear, Inc., Russellville, AL

Investigation revealed that criterion (3) has not been met. Separations from the subject firm resulted from a transfer of production to other domestic facilities.

TA-W-8861; Anchor Fasteners, Inc., Bedford Heights, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9729; Sterns Ferguson Co., Inc., Flat Rocks, MI

Investigation revealed that criterion (3) has not been met. Separations from the subject plant resulted from a transfer of production by the company to another domestic facility.

TA-W-10,572; Aero-Detroit, Inc., Oak Park, MI

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

Affirmative Determinations

TA-W-7852; Alphonse Knoedler Co., Inc., Lancaster, PA

A certification was issued covering all workers of the firm separated on or after March 20, 1979.

TA-W-8749; International Shoe Co., St. Louis, MO

A certification was issued applicable to all workers at the subject firm separated on or after March 24, 1980.

I hereby certify that the aforementioned determinations were issued during the period October 20-24, 1980. Copies of these determinations are available for inspection in Room S-5314, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: October 27, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-34018 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10-249]

Kay Industries, Inc., Detroit, Mich.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 18, 1980 in response to a worker petition received on July 29, 1980 which was filed by the United Auto Workers on behalf of workers and former workers producing marine/ordinance exhaust systems at Key Industries, Incorporated, Detroit, Michigan.

In a letter dated September 25, 1980, the petitioner requested that the petition be withdrawn. On the basis of this withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 20th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-34020 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8076]

Mida Manufacturing, Inc., Philadelphia, Pa.; Affirmative Determination Regarding Application for Reconsideration

On September 4, 1980, a worker representative requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Mida Manufacturing, Incorporated, Philadelphia, Pennsylvania. The determination was published in the Federal Register on August 8, 1980 (45 FR 52971).

The application for reconsideration claimed that in its reference to criterion (3), that imports of costume jewelry decreased in value, the Department overlooked the fact that while the value of imports may have decreased, the quantity of imports of costume jewelry—due to much lower prices of these items—increased. The applicant also claims that while Mida designed and created new lines of costume jewelry which received great consumer acceptance, these lines were soon duplicated by foreign manufacturers and

imported into this country and sold at prices which were below Mida's cost of production.

Conclusion

After review of the application, I conclude that the applicant's claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 22nd day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-34021 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7513 and TA-W-7963]

Louis Marx & Co. Girard, Pa., Glen Dale, W. Va.; Negative Determination Regarding Application for Reconsideration

By letter dated September 15, 1980, the Retail, Wholesale and Department Store Union requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers producing children's toys at the Louis Marx and Company plants in Girard, Pennsylvania and Glen Dale, West Virginia. The determination was published in the Federal Register on August 26, 1980 (45 FR 56953).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of the facts or of the law justifies reconsideration of the decision.

The union official applying for reconsideration indicated that the United States toy industry as a whole has been losing out to imports, and that a large number of toys produced by the Louis Marx and Company went through a drastic reduction in production resulting in loss of jobs to the plants' work force. The applicant also stated that workers in another U.S. firm making the same products as Louis Marx were certified eligible to apply for adjustment assistance. In addition, the applicant asked that the long-term history of the Company's operations be considered.

A review of the investigative file shows that the Department's negative determination was based on the fact that workers in the Louis Marx and Company's plants in Girard, Pennsylvania and Glen Dale, West Virginia did not meet the "contributed importantly" test of the Trade Act of 1974. Each case must be evaluated on its own merits. The fact that another group of workers was certified in early 1978 cannot affect the determination in this case. The Department agrees that imports of Miscellaneous Toys increased both absolutely and relative to domestic production from 1975 through 1979. However, the Department disagrees with the applicant's claim that the decline in production of a large variety of toys produced at Louis Marx was due importantly to increased import competition, and, that if the investigation had been conducted in an earlier period, the workers would have been eligible to apply for adjustment assistance. The findings of the investigation clearly show that sales, production and employment increased in 1978 compared to 1977 and increased again in 1979 compared to 1978 in each of the above mentioned plants which included the qualifying periods to be considered for eligibility for adjustment assistance in this case, i.e. the period beginning one year prior to the date of the petition. Under the Act a certification could not apply to any layoffs occurring more than one year prior to the petition date. Thus, given, the facts of this case and the one-year rule, eligibility ought not be be based on a long time frame of the history of the firm as suggested by the applicant.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therfore, denied.

Signed at Wasshington, D.C., this 20th day of October 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-34008 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7739]

N.I.D. Shake Co., Humptulips, Wash.; Revised Determination on Reconsideration

On September 3, 1980, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the N.I.D. Shake Company, Humptulips, Washington. This determination was published in the Federal Register on July 7, 1980 (45 FR 45740).

The application for reconsideration claimed that the Department's customer survey is in error because the N.I.D. Shake Company official saw imported shingle shakes in the yard of her shingle broker's customer. This customer did not report any foreign purchases on the Department's customer survey.

The Department's review indicated that workers of the N.I.D. Shake Company at Humptulips, Washington were denied because they did not meet the "contributed importantly" test of the Trade Act of 1974. The denial was based on a customer survey.

The Department found in its reconsideration investigation of the broker's customer that the customer decreased its purchases from the broker in 1979 and also decreased its purchases of imports. However, that customer continued to decrease its purchases of cedar shakes from all domestic sources in the first four months of 1980 compared to the same period in 1979, and increased its import purchases substantially in the first four months of 1980 compared to the same period in 1979.

Conclusion

After careful review of the facts obtained on reconsideration, it is concluded that increased imports of cedar shakes contributed importantly to the total or partial separation of workers and former workers at the N.I.D. Shake Company, Humptulips, Washington. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers at the N.I.D. Shake Company, Humptulips, Washington, who became totally or partially separated from employment on or after January 1, 1980, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-34014 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9516]

Tiechon Industries, Inc., Troy, Mich.

Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 21, 1980 in response to a petition received on July 9, 1980 which was filed by a company official on behalf of workers at Tiechon Industries, Inc., Troy, Michigan. The workers machine castings.

The petitioning company official requested in a letter that the petition be withdrawn. On the basis of this request, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 20th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-34014 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7613]

Vail Knitting Mills, Ltd., Copaigue, N.Y.; Negative Determination Regarding Application For Reconsideration

By letter of September 16, 1980, Marvin R. Morrison, Attorney At Law, requested administative reconsideration of the Department of Labor's Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers producing men's and women's sweaters of Vail Knitting Mills, Limited, Copaigue, New York. The determination was published in the Federal Register on June 20, 1980 (45 FR 41722).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The applicant for reconsideration stated that the Department's findings "that imports of men's and boys' and women's knitted sweaters and shirts decreased *absolutely* in 1979 compared to 1978" was based solely upon Bureau of Labor Statistics. The applicant believed that those data are incorrect. Applicant further believes that contrary to the Department's findings, customers purchasing men's and women's sweaters did not decrease their reliance on foreign contractors or foreign sources. Applicant further states that the information, including customer survey responses should be made available for scrutiny by the Petitioner because failure to do so and/or take sworn testimony is a procedural deprivation of due process which amounts to a substantive loss as well. The applicant further alleges that workers employed by another manufacturer of women's sweaters were certified eligible to apply for adjustment assistance.

A review of the investigative file shows that U.S. imports of men's and boys' sweaters decreased absolutely and relative to domestic production in 1979 compared to 1978 and decreased absolutely in the first six months of 1980 compared to the same peirod in 1979. Men's and boys' sweaters represented the major proportion of Vail's production. U.S. imports of women's, misses' and children's sweaters decreased both absolutely and relative to domestic production in 1979 compared to 1978, but increased absolutely in the first six months of 1980 compared to the same period in 1979. The sources for these data in terms of imports are from the U.S. Department of Commerce, *U.S. Imports for Consumption*, TSUSA Commodity By Country, IM, Washington, D.C.

A further review of the Department's survey of Vail Knitting Mill's customers (knit apparel manufacturers) revealed that customers representing 100 percent of Vail's sales in 1978, 1979, and 1980 increased their purchases of men's sweaters from Vail while decreasing their purchases of imports in 1979 compared to 1978. While these same customers decreased their purchases from Vail and other domestic sources in the first three months of 1980 compared to the same period in 1979, the percent decrease in purchases of imported men's sweaters was much greater during the same period.

Two of the customers (manufacturers) represented 95 percent of Vail's contract work for men's sweaters in 1978. A secondary survey of those manufacturers' customers was conducted by the Department. Purchases of men's foreign-made sweaters by these customers fell by a relatively greater amount than their purchases of U.S.-made sweaters.

The survey of Vail's customers of women's sweaters representing 100 percent of sales indicated that contracts with manufacturers increased by over 350 percent in 1979 over 1978 and that no contract work for women's sweaters was performed for any manufacturer in the first quarter of 1979 or 1978 by Vail. None of the manufacturers of women's sweaters contracted off shore. A primary importer of women's sweaters whose imports increased in 1979 compared to 1978 and in the first quarter of 1980 compared to the same peirod in 1979 contracted a small amount of work to Vail in 1979 only, and this represented less than one percent of Vail's 1979 total sales. Since sales increased for all manufacturers of women's sweaters with whom Vail did contract work, no secondary customer survey was conducted.

With respect to the applicant's claim that another company was certified which produced articles similar to Vail's, a review of that case revealed that the firm produced sweaters and many other articles of apparel for women, and that customers of that company representing a large percent of its sales decline increased their purchases of imports while reducing purchases from the firm. Almost two-thirds of Vail's production was sweaters for men. The balance consisted of sweaters for women. The customer survey in that case did support a certification.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of facts or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 21st day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-34016 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8837, 8837A, B, C, 8838, 8839]

Zimco Industries, New York, N.Y. and Roanoke, Va.; Royalad Manufacturing Co., Peekskill, N.Y.; Southeastern Garment Co., Clinton, N.C.; Marbert Manufacturing Co., Bridgeport, Conn.; Romar Manufacturing Co., South Norwalk, Conn.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding

certification of eligibility to apply for worker adjustment assistance.

The investigation was initiated on June 16, 1980 in response to a petition which was filed on behalf of workers at Zimco Industries Incorporated, New York, New York; Romar Manufacturing Company, South Norwalk, Connecticut; and Marbert Manufacturing Company, Bridgeport, Connecticut. The workers produced men's and boys' suits, trousers, jackets, rainwear and outerwear.

The investigation was subsequently expanded to include Zimco's Roanoke, Virginia warehouse and other manufacturing facilities, Royalad Manufacturing Company, Peekskill, New York; and Southeastern Garment Company, Clinton, North Carolina.

U.S. imports of men's and boys' tailored dress coats and sportcoats increased both absolutely and relative to domestic production from 1977 to 1978. Imports of men's and boys' tailored suits increased relatively in 1979 compared to the 1975–1978 average. Imports of men's and boys' dress and sport trousers and shorts increased absolutely and relatively in 1978 compared to 1977.

Imports of men's and boys' outercoats and jackets increased relatively in 1978 compared to 1977. Imports men's and boys' woven and knit water repellent rainwear increased both absolutely and relatively to domestic production in 1978 compard to 1977.

Zimco Industries and its manufacturing facilities were certified eligible for Firm Trade Adjustment Assistance by the Commerce Department in August, 1979.

The Department of Commerce surveyed customers of Zimco Industries, Incorporated in 1979. Surveyed customers representing a significant portion of sales declines decreased purchases of men's and boys' suits, trousers, jackets, rainwear and outerwear from Zimco Industries and increased imports from 1977 to 1978.

The Department of Labor surveyed customers of Zimco Industries, updating the Department of Commerce's survey. Some customers responding to the survey decreased purchases from Zimco Industries and increased imports from 1978 to 1979.

Royalad, Southeastern, Marbert, and Romar were closed at the end of 1979. Zimco Industries is currently involved in bankruptcy proceedings. Southeastern was reopened in February 1980. There are no plans to reopen Royalad, Marbert, or Romar.

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 and boys' suits, trousers, jackets, rainwear and outerwear produced at Zimco Industries, Inc., New York, New York and Roanoke, Virginia; Royalad Manufacturing Company, Peekskill, New York; Southeastern Garment Company, Clinton, North Carolina; Romar Manufacturing Company, South Norwalk, Connecticut; and Marbert Manufacturing Company, Bridgeport, Connecticut, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Zimco Industries Incorporated, New York, New York and Roanoke, Virginia; Royalad Manufacturing Company, Peekskill, New York; Southeastern Garment Company, Clinton, North Carolina; Marbert Manufacturing Company, Bridgeport, Connecticut, and Romar Manufacturing Company, South Norwalk, Connecticut who became totally or partially separated from employment on or after May 27, 1979 and before February 1, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 22th day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-34017 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL CREDIT UNION ADMINISTRATION

Summary of Statutory Enforcement Actions

AGENCY: National Credit Union Administration.

ACTION: Disclosure of statutory enforcement actions, January 1, 1980–June 30, 1980.

SUMMARY: National Credit Union Administration has prepared a written summary of all statutory enforcement actions which have taken place between January 1, 1980 and June 30, 1980. This action is taken pursuant to a Joint Statement of Policy on Disclosure of Statutory Enforcement Actions of the Federal Financial Institutions Examination Council dated January 29, 1980 (45 FR 6648). The summary is available to members of the public upon request.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, Assistant General Counsel, Office of the General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 200456. Telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION: On January 29, 1980 the National Credit Union Administration, in conjunction with the other members of the Federal Financial Institutions Examination Council (the "Agencies"), issued a Statement of Policy of Disclosure of Statutory Enforcement Actions. The Statement defined circumstances in which each agency would disclose to the public information concerning statutory enforcement proceedings brought against regulated institutions or other persons subject to the Agencies' enforcement authority. The policy statement applies to proceedings commenced by written notice, to formal supervisory written agreements entered into pursuant to statute, and to proceedings which, though not commenced by a written notice, result in a final agency order.

The Agencies recognized that it was in the public interest to make known the substantive standards used in taking statutory enforcement actions. At the same time, concern was expressed for the need to preserve the confidentiality of information where disclosure might infringe upon the right of privacy, or impair the soundness of a financial institution or the ability of the Agencies to examine the institution efficiently and effectively. Both elements of the public interest have long been recognized and protected by Congress, the Agencies, and the courts.

In order to reconcile and implement these policies, the Agencies determined that, effective January 1, 1980, each Agency woud prepare, at least on a semi-annual basis, a written summary of every final cease and desist, suspension, removal, civil money penalty, and insurance termination order as well as every formal supervisory written agreement issued pursuant to statute after that date. Each summary would describe the essential facts pertinent to agency action in the case and would set forth, in detail, the action taken by the reporting Agency. Names of financial institutions, of other respondents, and of any other persons involved in the matter, and, to the extent feasible, consistent with the objective that a summary contain essential facts, any information that might lead to identification of any persons or companies, would not be disclosed in any summary. All summaries prepared pursuant to this Joint Statement of Policy would be made available by the

Agencies to members of the public upon request.

Pursuant to the Statement, the National Credit Union Administration has prepared a summary of all statutory enforcement actions which have taken place between January 1, 1980 and June 30, 1980. Copies of the summary may be obtained by writing to Mr. Robert Fenner at the above address.

Dated: October 22, 1980.

Lawrence Connell,

Chairman, National Credit Union Administration Board.

[FR Doc. 80-33031. Filed 10-30-80; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Babcock and Wilcox Water Reactors; Meeting

The ACRS Subcommittee on Babcock and Wilcox Water Reactors will hold a meeting on Wednesday, November 12, 1980, starting at 8:30 a.m. in Room 1046, 1717 H St., NW., Washington, DC. This meeting has been rescheduled from October 30–31, 1980, and all items remain the same as published in the Federal Register on October 16 (45 FR 68817).

Additional information regarding this meeting may be obtained by a prepaid telephone call to the Designated Federal Employee, Mr. John C. McKinley, (telephone 303/634–3265) between 8:15 a.m. and 5:00 p.m. EST.

Dated: October 28, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-33890 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on the General Electric Test Reactor; Meeting Time Change

The meeting time for the ACRS Subcommittee on The General Electric Test Reactor has been changed to 1:00 p.m., Tuesday, November 4, 1980 (instead of 8:30 a.m., Tuesday, November 4, 1980).

All other items regarding this meeting remain the same as stated in the Federal Register notice published Monday, October 20, 1980 (45 FR 69320).

Dated: October 28, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-33891 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses to Export/Import Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public Notice of Receipt of an Application", please take notice that the Nuclear Regulatory Commission has received the following application(s) for export/import licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H St., N.W., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed on or before December 1, 1980. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for license to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported.

Dated this day October 27, 1980, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James R. Shea,

Director, Office of International Programs.

Name of applicant, date of application, date received, and application number	Material type	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Nissho-Iwai, 10/06/80, 10/08/80, XMAT0144	1,000 Kgs Heavy Water as moderator in FUGEN Reactor.				Japan.
Transnuclear, 10/01/80, 10/02/80, ISNM80013	88.1% enriched uranium	1.591	1.402	Return of material from XSNM01345 not accepted by Ontario Hydro.	From Canada.
Transnuclear, 10/01/80, 10/02/80, XSNM01744	3.35% enriched uranium	15,901.000	533.033	Reload fuel for Stade Reactor	West Germany
Transnuclear, 10/01/80, 10/02/80, XSNM01345 (01)	93.3% enriched uranium	Add'l 1.60	Add'l 1.49	Fuel for Bruce Generating Stations.	Canada.
Transnuclear, 10/06/80, 10/06/80, XSNM01745	3.4% enriched uranium	10,794	367	Reload fuel for Doel 2	Belgium.
Exxon Nuclear, 10/02/80, 10/06/80, XSNM01746	2.95% enriched uranium	9,000	225	Storage and eventual sale to a utility for power reactor fuel needs.	West Germany
Exxon Nuclear, 10/02/80, 10/06/80, XSNM01747	2.95% enriched uranium	2,670	76	Fuel for KAHL Reactor	West Germany.
Exxon Nuclear, 10/02/80, 10/06/80, XSNM01748	2.85% enriched uranium	15,350	370	Fuel for Gundremmingen B or C Reactor.	West Germany
U.S. Department of Energy, 09/26/80, 10/07/80, XSNM01749	19.77% enriched uranium	37.200	7.354	Fuel for TRIGA research reactor Pitesti.	Romania.
Westinghouse, 10/08/80, 10/14/80, XSNM01750	3.6% enriched uranium	305,283	9,464	Initial cores, three reloads each and 4 spare assemblies for KNU-7 & 8.	South Korea.
Edlow International, 10/15/80, 10/17/80, XSNM01752	3.55% enriched uranium	19,865	695	Routine reload Forsmark Unit II	Sweden.

[FR Doc. 80-33896 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 51 to Facility Operating License No. DPR-23 issued to Carolina Power and Light Company (the licensee), which revised the license for operation of the H. B. Robinson Stream Electric Plant, Unit No. 2 (the facility), located in the Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment modifies License No. DPR-23 to include a requirement to maintain a Safeguards Contingency Plan to be fully implemented in accordance with 10 CFR 73.40(b), within 30 days of this approval by the Commission.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this 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.

The licensee's filing dated August 1, 1980 is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 51 to License No. DPR-23, and (2) the Commission's related letter dated October 6, 1980. Both 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 Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550. A copy of these items may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 6th day of October 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 80-33892 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power and Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 50 to Facility Operating No. DPR-23, issued to Carolina Power and Light Company, which revised the license and Technical Specifications for operation of the H. B. Robinson Unit No. 2 (the facility) located in Darlington County, South Carolina. The amendment is effective as of the date of issuance.

This amendment changes the license to provide for standard provisions for special nuclear, source and byproduct materials, and adds a Technical Specification for the testing and surveillance of sources.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determied 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 the issuance of this amendment.

For further details with respect to this action, see (1) the application amendment dated December 18, 1974, as supplemented Setember 20, 1979 and July 14, 1980, (2) Amendment No. 50 to License No. DPR-23, 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 Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 30th day of September, 1980.

For the Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 80-33893 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 62 to Provisional Operating License No. DPR-20, issued to Consumers Power Company (the licensee) which revised the Technical Specifications for operation of the Palisades Plant (the facility) located in VanBuren County, Michigan. The amendment is effective as of its date of issuance.

The amendment revises the limiting condition for operation for the auxiliary feedwater system.

The application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 31, 1979, (2) Amendment No. 62 to License No. DPR-20 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49000. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 20th day of October, 1980.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch #5, Division of Licensing.

[FR Doc. 80-33895 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282-OLA and 50-306-OLA]

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2); Order dismissing Proceeding

October 24, 1980.

On March 12, 1980, the Nuclear Regulatory Commission published in the Federal Register a notice of proposed issuance of amendment to facility operating license (45 FR 16056-57) in connection with the application of Northern States Power Company (Licensee) to expand the storage capacity of the spent fuel pools at its Prarie Island Nuclear Generating Plant. In response to that notice, the State of Minnesota, by its Minnesota Pollution Control Agency and by its Attorney General (the Petitioner), filed a Request for Hearing and Petition for Leave to Intervene dated April 9, 1980. On April 24, 1980, the Petitioner filed a supplement to its Petition for Leave to Intervene setting forth three contentions on which a hearing was requested and on July 21, 1980, submitted its Amended Contentions 1 and 2 and Withdrawal of Contention 3.

At a prehearing conference held pursuant to Licensing Board order on August 6, 1980, in St. Paul, Minnesota, counsel for the parties and the Petitioner advised the Board that Petitioner, Licensee and the NRC Staff had reached an agreement which called for the withdrawal by the Petitioner of its remaining contentions, the withdrawal of its Request for Hearing and Petition for Leave to Intervene, the termination of this proceeding, and the inclusion of certain language in the license amendment should the NRC authorize its issuance. The Board was further advised that the agreement was subject to approval by the Minnesota Pollution Control Agency and by the Attorney General of the State of Minnesota and that such agreement was contingent upon termination of this proceeding by the licensing Board.

In a joint motion filed on September 24, 1980, Licensee, Staff and Petitioner have informed the Board that the Minnesota Pollution Control Agency and the Attorney General have approved the agreement and moved the Board (1) to approve Petitioner's withdrawal of its Contentions 1 and 2 and withdrawal of its "Request for Hearing and Petition for Leave to Intervene", dated April 9, 1980, as supplemented by its "Supplement to Its Petition to Intervene" dated April 24, 1980, and amended by its filing dated July 21, 1980; and (2) to enter an order terminating this proceeding.

Petitioner's request for leave to withdraw its Petition for Leave to Intervene is pursuant to the Stipulation which has been duly executed by Licensee, Staff and Petitioner and filed as an appendix to the pending joint motion. While we do not expressly pass upon the terms of the Stipulation, we observe that it appears to meet Petitioner's basic concerns as set forth in its Petition for Leave to Intervene. We note further, that aside from the general policy of administrative law favoring harmonious settlement of contested issues, the provisions of 10 CFR 2.759 of the Commission's Rules of Practice specifically encourage the fair and reasonable settlement of outstanding issues in licensing proceedings. Accordingly, in light of the docketed Stipulation, the Board hereby grants the request by Petitioner for leave to withdraw its Petition for Leave to Intervene and its Contentions 1 and 2. Therefore, the Board accepts the withdrawal of the Petitioner in this proceeding.

In view of the withdrawal of the Petitioner, there are no longer any matters in controversy in this proceeding, and, consequently, there is no issue to be heard by the Board. Dismissal of this proceeding is consistent with the Commission's regulations which do not comtemplate a hearing on an application for an operating license, or an amendment thereto, in the absence of any matters in controversy, 10 CFR §§ 2.104, 2.105, 50.58(b), and 50.91 and with the general powers of the presiding officer in § 2.718. Therefore, the joint motion to terminate the proceeding will be granted and the proceeding before this Board will be dismissed.

Accordingly, it is ordered, that the proceeding before this Board, noticed in the Commission's "Proposed Issuance of Amendment to Facility Operating License" dated March 12, 1980, be, and it hereby is, dismissed.

Dr. David L. Hetrick and Dr. Quentin J. Stober, members of this Board, join in this Order.

Dated at Bethesda, Maryland, this 24th day of October, 1980.

For the Atomic Safety and Licensing Board.

Robert M. Lazo, *Chairman.*

[FR Doc. 80-33894 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Connecticut light & Power Co., the Hartford Electric Light Co., Western Massachusetts Electric Co., and Northeast Nuclear Energy Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 69 to Provisional Operating License No. DPR-21, issued to Northeast Nuclear Energy Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, and Connecticut Light and Power Company (the licensees), which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 1 (the facility) located in Waterford, Connecticut. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to allow the count rate on the Source Range Monitor (SRM) channels to go below three (3) counts per second under certain circumstances.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this action was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 4, 1980, and supplement thereto dated September 24, 1980, (2) Amendment No. 69 to License No. DPR-21, 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 Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 9th day of October 1980.

For the Nuclear Regulatory Commission.

Dennis M. Crutchield,

Chief, Operating Reactors Branch #5, Division of Operating Reactors.

[FR Doc. 80-33897 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co., Ohio Edison Co., and Pennsylvania Power Co.; Issuance of Amendment To Facility Operating License

The U.S. Nuclear Rdegulatory Commission (the Commission) has issued Amendment No. 34 to Facility Operating License No. DPR-66 issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), which revised Technical Specifications for operation of the Beaver Valley Power Station, Unit No. 1 (the facility) located in Beaver County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment revises Table 3.7-4 of Radiological Technical Specification 3.7.8.12 by removing nine hydraulic snubbers from this list.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 17, 1980, (2) Amendment No. 34 to License No. DPR-66 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 B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md, this 20th day of October 1980.

For The Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 80-33898 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co., Ohio Edison Co., and Pennsylvania Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 33 to Facility Operating License No. DPR-66 issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), which revised Technical Specifications for operation of the Beaver Valley Power Station, Unit No. 1 (the facility) located in Beaver County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment revises the Radiological Technical Specifications related to the response time required for isolation of the control room ventilation system and for isolation of certain containment penetrations.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 30, 1980, (2) Amendment No. 33 to License No. DPR-66 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 B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 15th day of October 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 80-33900 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-466 CP]

Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1); Order Scheduling Second Prehearing Conference

October 27, 1980.

Pursuant to 10 CFR 2.752(a) and in accord with the Memorandum and Order of October 3, 1980, on December 2, 1980, and continuing through December 3, 1980, if necessary, a second prehearing conference will be held at the following location: Holiday Inn, Medical Center, 6701 South Main Street, Houston, Texas 77030.

The sessions will begin at 9:00 AM and will recess at 5:00 PM.

The Board will consider the factors set forth in § 2.752(a) (exclusive of the setting of a hearing schedule) only insofar as environmental matters are concerned. The public is invited to attend this conference. However, limited appearance statements will not be received, but will be received at the beginning of the evidentiary hearing.

It is so ordered.

Dated at Bethesda, Md., this 27th day of October 1980.

For the Atomic Safety and Licensing Board.

Sheldon J. Wolfe,

Chairman.

[FR Doc. 80-33899 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR OVERSIGHT COMMITTEE

Open Meeting

October 28, 1980.

The Nuclear Safety Oversight Committee (NSOC) will meet from 9:00 am to 12:30 pm and 1:45 pm to 4:30 pm on November 17, and from 9:00 am to 11:30 am and 1:00 pm to 4:00 pm on November 18 in Room 7008 of the New

Executive Office Building (NEOB). The NEOB is located on the northeast corner of 17th Street and Pennsylvania Avenue, N.W. in Washington, D.C. The public entrance to the building is on 17th Street between Pennsylvania Avenue and H Street, N.W.

The Committee was established by Executive Order 12202 on March 18, 1980, in response to the recommendations of the President's Commission on the Accident at Three Mile Island (the Kemeny Commission). Generally, the Committee is responsible for monitoring the progress of the utilities and their suppliers, the Nuclear Regulatory Commission, other federal agencies, and state and local authorities in implementing the Kemeny Commission's recommendations and in improving the safety of nuclear power. The Committee will report periodically to the President.

Thus far the Committee has held five meetings: on May 18, 1980 in Pasadena, California; and on July 28 and 29, August 18 and 19, September 16 and 17, and October 7 and 8, 1980 in Washington, D.C. The Committee has heard testimony and had discussion in a number of areas including:

The nature of the Committee's responsibilities as set forth in Executive Order 12202;

The Nuclear Regulatory Commission's (NRC) "Action Plan Developed as a Result of the TMI-2 Accident," designated NUREG-0660 and available through the Document Management Branch, Division of Technical Information and Document Control, NRC, Washington, D.C. 20555;

The procedure utilized in the federal decision-making process as it relates to nuclear safety, and public and private participation;

FEMA's Report to the President (June 1980), and procedures for emergency planning;

The statues of generic safety issues; the analysis and evaluation of operational data;

The NRC budget and allocation of its staff resources to implement the "Action Plan" and how that will affect other NRC functions;

NRC's inspection and enforcement program;

Backfitting and standardization of plant design;

The regulatory relationship between FEMA and NRC.

During the next meeting the Committee will receive testimony and, when appropriate, written materials and documents, concerning the following matters;

The effect of NRC's Action Plan on safety design;

Backfitting and standardization of plant design, and warranty coverage for design deficiencies;

Safety research and training programs;

Quality control in plant design;

Labor-management problems, training programs, and the union's role in safety programs;

Two panels will discuss nuclear safety research, including status, needs, opportunities, and institutional arrangements.

Testimony on these matters will be received from a number of individuals specifically invited by the Committee.

The meeting will be open to public observation. Written Comments or statements may be submitted at anytime before or after the meeting and should be related to the substantive matters identified above. Approximately 60 seats will be available for the public on a first come, first served basis. The Committee meeting will be recorded and the transcript may be examined in the Committee's office at 1133 15th Street, N.W., Suite 307, Washington, D.C.

For further information contact Margo von Kaenel at (202) 653-8468.

Margo W. von Kaenel,

Executive Assistant.

[FR Doc. 80-34043 Filed 10-30-80; 8:45 am]

BILLING CODE 6820-01-M

PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH

Change of Meeting Place

Notice is hereby given that the location of the fifth meeting of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, previously announced, has been changed from Room 2010 of the New Executive Office Building, 1726 Jackson Place, N.W., Washington, D.C. to the John Hay and Colonial Room, Lower Level, Hay Adams Hotel, 800 16th Street, N.W., Washington, D.C. from 9:00 a.m. to 5:30 p.m. on Friday, November 7, 1980 and from 8:30 a.m. to 4:00 p.m. on Saturday, November 8, 1980.

For further information, contact Andrew Burness, Public Information Officer, at (202) 653-8051.

Alexander M. Capron,

Executive Director.

[FR Doc. 80-33920 Filed 10-30-80; 8:45 am]

BILLING CODE 6820-AV-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-17253; File No. SR-Amex-80-25]

American Stock Exchange, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1979), notice is hereby given that on October 16, 1980 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange proposes to amend Article V, Section 6 of the Exchange Constitution to (1) extend the period of retained disciplinary jurisdiction over former members from 60 days to one year immediately following termination of membership status or receipt by the Exchange of writtten notification of such termination, whichever occurs later, and (2) expand the scope of such jurisdiction to cover member organizations.

The Exchange's Statement of Purpose and Basis

The Constitutional amendments expanding the period and the scope of the Exchange's retained disciplinary jurisdiction will enhance the Exchange's ability to discharge its self-regulatory responsibilities and conform the Exchange's retained disciplinary jurisdiction to that of other major SROs.

The proposed amendments are consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(5) and 6(b)(6) in particular in that they are designed to enhance the Exchange's ability to appropriately discipline former members and their associated persons for violations of the Exchange Act or rules of the Exchange committed during the period of their membership or association with a member.

Comments Received From Members, Participants, or Others on Proposed Rule Change

No comments were solicited or received with respect to the proposed rule change.

Burden on Competition

The Exchange has determined that no

burden on competition will be imposed by the proposed rule change.

Within thirty-five days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submission should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted November 21, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 27, 1980.

[FR Doc. 80-34007 Filed 10-30-80; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Senior Executive Service Performance Review Board; Appointment of Members

Announcement is made of the appointment of the following persons as members of the SES Performance Review Board for the Selective Service System: James G. Bond, Chairman, David A. Cox, Edward A. Frankle, Herbert C. Puscheck, and Raymond F. Wisniewski.

The announcement of March 28, 1980 (45 FR 23101) is canceled.

Dated: October 27, 1980.

Bernard Rostker,

Director of Selective Service.

[FR Doc. 80-33960 Filed 10-30-80; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

Region III Advisory Council Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting at 9:30 a.m., Thursday, November 20, 1980, at the Sheraton Inn, 153 West Main Street, Clarksburg, West Virginia, 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 Arthur J. Glick, District Director, U.S. Small Business Administration, 109 North Third Street, Clarksburg, West Virginia 26301—(304) 622-6601.

Dated: October 24, 1980.

Michael B. Kraft,

Director, Office of Advisory Councils.

[FR Doc. 80-33914 Filed 10-30-80; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of San Antonio, Texas, will hold a public meeting at 9:00 a.m., Friday, November 21, 1980, at the Federal Building, 727 East Durango, Room B-120, San Antonio, Texas, 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 Julio Perez, District Director, U.S. Small Business Administration, 727 E. Durango, Room A-513, San Antonio, Texas 78206—(512) 229-6105.

Dated: October 24, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-33915 Filed 10-30-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/337]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Working Group on International Multimodal Transport and Containers of the Safety of Life at Sea Subcommittee will conduct an open meeting at 9:30 a.m. on November 13, 1980 in Room 8334 of the Department of Transportation Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The purpose of this meeting is to dicuss matters germane to multimodal transport and containers. The following specific issues will be addressed:

De-briefing and discussion on May 8-27, 1980, UN Conference on a Convention on International Multimodal Transport.

De-briefing and discussion on the June 9-13, 1980, meeting of the Group of Experts on Combined Transport (ECE).

Discussion of the US position for the meeting of the 22nd Session of the IMCO Subcommittee on Containers and Cargoes to be held in London on January 26-30, 1981.

Other matters.

For further information contact Mr. Charles Hochman, USCG (202-426-1577) or Mr. Paul B. Larsen, Department of Transportation (202-426-4710).

Dated: October 23, 1980.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 80-33938 Filed 10-30-80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/338]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Working Group on Bulk Chemicals of the Safety of Life at Sea Subcommittee will conduct an open meeting at 9:30 a.m. on November 13, 1980, in Room 1103 at the Department of Transportation's Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20593.

The purpose of the meeting will be to discuss the eighth session of the IMCO Subcommittee on Bulk Chemicals. Major items on the agenda are:

The application of segregated ballast requirements to chemical tankers carrying Annex I oils.

Carriage of mixtures of Annex I and Annex II products.

Review and updating of the Bulk Chemical Code.

Harmonization of the Bulk Chemical and Gas Carrier Codes.

Safety requirements for ships carrying substances for the purpose of incineration at sea.

Inert gas requirements for chemical tankers.

For further information contact: Mr. Frits Wybenga, US Coast Guard (G-MHM-1), Wash., D.C. 20593; Telephone (202) 426-1217.

Dated: October 23, 1980.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 80-33939 Filed 10-30-80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/339]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Working Group on Standards of Training and Watchkeeping of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9:30 a.m. on Wednesday, November 18, 1980, in room 7200 of the Nassif Building, Department of Transportation, 400 7th Street, SW., Washington, D.C.

The purpose of the meeting will be to finalize notes on the agenda items (listed below) for submission to the Fourteenth Session of the IMCO Subcommittee on Standards of Training and Watchkeeping to be held in London, January 19, 1981:

Manning of seagoing ships.

Training in the use of automatic radar plotting aids (ARPA).

Training in radar observation and plotting.

Training, qualifications and operational procedures for maritime pilots.

Training and qualifications of crews serving on mobile offshore units.

Training and qualifications of officers and ratings in the handling of hazardous or noxious dry chemicals in bulk.

Security of certificates of competency.

For further information contact Captain R. A. Sutherland, USCG Headquarters (G-MVP/14), 2100 2nd Street, SW., Washington, D.C. 20593. Telephone: (202) 426-1500.

The Chairman will entertain comments from the public as time permits.

Dated: October 23, 1980.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 80-33940 Filed 10-30-80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/340]

Oceans and International Environmental and Scientific Affairs Advisory Committee; Open Meeting

The General Panel of the Oceans and International Environment and Scientific Affairs Advisory Committee will meet at 9:15 a.m. on Monday, November 10, 1980 in Room 250, National Academy of Science, Washington, D.C.

At this meeting, officers responsible for scientific and environmental affairs in the Department of State and members of the Advisory Committee will discuss U.S. dependence on foreign countries for critical non-fuel minerals and preparations for the UN Conference on New and Renewable Sources of Energy. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and may be given the opportunity to participate in discussions according to the instructions of the Chairperson.

Due to last minute complications in preparation of agenda documents, it was impossible to publish this notice within the statutory fifteen day limit. Requests for further information on the meeting may be directed to Bronson Percival of the OES Policy Assessment Staff, Department of State. He may be reached by telephone on (202) 632-2764.

Thomas R. Pickering,

Chairman.

[FR Doc. 80-34051 Filed 10-30-80; 8:45 am]

BILLING CODE 4710-07-M

SYNTHETIC FUELS CORPORATION

Initial Solicitation of Project Proposals

AGENCY: United States Synthetic Fuels Corporation.

ACTION: Notice.

SUMMARY: Section 127 of the United States Synthetic Fuels Corporation Act of 1980 (Part B, Title I, Pub. L. 96-294) directs the Corporation to issue its first solicitation for proposals from concerns interested in the construction or operation, or both, of synthetic fuel projects not later than the end of this calendar year. The Corporation has prepared a draft solicitation for applications for projects requiring financial assistance. The Corporation invites public comment on this draft solicitation.

COMMENTS BY: November 14, 1980. Comments should be submitted to the address set forth below.

FOR FURTHER INFORMATION CONTACT: Larry E. Ruff, United States Synthetic Fuels Corporation, 1200 New Hampshire Avenue, N.W., Washington, D.C. 20036, (202) 653-4400.

SUPPLEMENTARY INFORMATION: Public Law 96-294 establishes a national goal of achieving from domestic resources a synthetic fuel production capability equivalent to at least 500,000 barrels per day of crude oil by 1987 and at least 2,000,000 barrels per day of crude oil by 1992. The Corporation's mandate is to assist in attaining this goal by providing financial assistance under Subtitle D, Part B, Title I, Pub. L. 96-294, to include price guarantees, purchase agreements and loan guarantees, loans and joint ventures in conjunction with private sources of capital.

An Energy Security Reserve of $20 billion has been established, of which a portion is available to fund eligible projects under this initial solicitation. Public Law 96-294 requires the Corporation's initial solicitation to be issued not later than the end of this calendar year, after review by an Advisory Committee composed of the Secretaries of Treasury, Defense, Interior and Energy, and the Administrator of the Environmental Protection Agency, as established by Section 123, Pub. L. 96-294. To maintain the momentum of the program, the Corporation intends, if practicable, to issue the final solicitation on December 1, 1980.

Because of the significance of the synthetic fuels industry and its potential impact on the Nation's welfare, environment and security, the Corporation desires to receive maximum public comment currently with the Advisory Committee review, even though receipt of public comment is not required by law. The Corporation will review and consider all comments received by November 14, 1980 in preparing the final solicitation.

All comments should be marked "Comments on Initial Solicitation" and mailed to the United States Synthetic Fuels Corporation, 1200 New Hampshire Avenue, N.W., Washington, D.C. 20036. Persons wishing to be on the mailing list for the final solicitation should so indicate in their comments.

The text of the draft solicitation follows:

John C. Sawhill,

Chairman of the Board.

Draft Initial Solicitation for Proposals for Financial Assistance for Synthetic Fuels Projects

To All Interested Parties: The United States Synthetic Fuels Corporation invites the submission of proposals for financial assistance from concerns interested in the construction and/or operation of synthetic fuel projects, in accordance with the United States Synthetic Fuels Corporation Act of 1980. The Act establishes a national goal of achieving a synthetic fuels production capability from domestic resources equivalent to at least 500,000 barrels per day of crude oil by 1987 and at least 2,000,000 barrels per day of crude oil by 1992. The Corporation will provide financial assistance, in conjunction with private sources of capital, to help attain these goals.

The Corporation will carry out its responsibilities free of rigid, detailed procedural requirements and with maximum flexibility. The Corporation encourages the submission of the broadest range of synthetic fuel projects involving a diversity of

technologies. Proposals may request any one or more of the methods of financial assistance which the Corporation is authorized to provide—loan guarantees, price guarantees, and purchase agreements; loans; and joint ventures, in that priority.

Submission of Proposals. This initial solicitation consists of a two-phase process for the submission and evaluation of proposals for financial assistance to synthetic fuel projects.

The Phase One, which will open December 1, 1980 and close March 31, 1981, interested parties are invited to present proposals for all types of synthetic fuel projects for basic evaluation by the Corporation. Applicants should adequately describe their financial resources and expertise for the project; their proposed project, including the technology and plant input and output, their scheduling timetable and risks with respect to completion; their ability to deal with environmental considerations and regulatory requirements; socioeconomic impacts; and their financing plan.

In Phase One, the Corporation is not requiring proposals to meet detailed specifications. The Corporation wishes to have the benefit of the experience and expertise of project sponsors. The Corporation recognizes that in order to attain the goals set by Congress even with assistance from the Corporation, private sector commitments of capital and management and technological effort of a magnitude not previously attempted in the United States are essential. To facilitate these commitments, the Corporation will be flexible and will cooperate fully with project sponsors, financial institutions, investment bankers and other private sector interests that are involved in synthetic fuel projects.

In Phase Two, promising proposals selected under Phase One for further evaluation will be invited to submit detailed, supplemental technical, business and financial information. On the basis of such submissions the Corporation will decide whether to negotiate definitive financial assistance.

Forms of Available Financial Assistance. The Corporation offers, in order of priority, the following general categories of financial assistance: loan guarantees, price guarantees and purchase agreements; loans; and joint ventures. Financial assistance awarded by the Corporation is intended to encourage and supplement, rather than to compete with or supplant, private investment capital which otherwise would be available to a proposed synthetic fuel project. In order to qualify for assistance, a party submitting a proposal must demonstrate the capability to undertake successful completion of the design, construction and/or operation of the project.

All proposals must meet the necessary conditions and requirements of the Act before they may receive financial assistance, and interested parties should familiarize themselves with the Act in preparing their proposals. Copies of the Act are available upon request.

Factors to be Considered. Among the factors which will be considered in awarding financial assistance to a particular proposal are the diversity of its technology from existing projects; the potential unit production cost; the long-term potential of the technology, considering the extent of the natural resources required and their geographic distribution; and the compliance of the technology with applicable regulatory requirements. In addition, the Corporation is obligated to give due consideration to promoting competition in the synthetic fuels industry. In the case of projects involving companies whose rates are regulated, the Corporation may consider whether the rate-making agencies are likely to protect the financial interests of investors and the Corporation. The Corporation will give priority consideration to proposals to be sited in a state which will expedite regulatory, licensing and other governmental activities related to such project.

Address for Submission. Ten copies of each proposal should be submitted to the Corporation before March 31, 1981, addressed to:

Public Summary. Each proposal should contain a separate summary for public release and distribution to interested parties as well as the Govenors of the States in which projects are to be located.

Questions concerning this solicitation may be submitted to the Corporation at any time.

United States Synthetic Fuels Corporation.

For the Board of Directors.

John C. Sawhill,

Chairman.

[FR Doc. 80-33886 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 213
Friday, October 31, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 10 a.m. (eastern time), Tuesday, November 4, 1980.

PLACE: Commission conference room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open to the public:

1. Recommendation and Selection of Proposed ABAR Contracts.
2. Technical Changes to EEOC Order 365.
3. Report on Commission Operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:
Treva I. McCall, Acting Executive Officer, Executive Secretariat, at (202) 634-6748.

Notice issued October 28, 1980.

[S-2000-80 Filed 10-29-80; 10:39 am]

BILLING CODE 6570-06-M

2

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 71037, October 28, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 29, 1980.

CHANGE IN MEETING: The following items have been added:

Item Number, Docket Number and Company

CAP-9. E-9606, North Carolina Electric Membership Corp., Four County Electric Membership Corp., ElectriCities of North Carolina, and the Cities of Bennettsville and Camden, South Carolina v. Carolina Power & Light Co.

CP-10. CP80-455, Consolidated Gas Supply Corp.

Kenneth F. Plumb,
Secretary.

[S-1999-80 Filed 10-29-80; 10:23 am]

BILLING CODE 6450-85-M

3

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 45, 209, 7103910, October 27, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 30, 1980.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:
Mr. Marshall (202-377-6677).

CHANGES IN THE MEETING: The following items have been added to the open meeting:

Increase in Accounts of an Insurable Type—Larned Savings & Loan Association, Larned, Kansas, into Western Savings Association, Pratt, Kansas.

Application for Bank Membership and Insurance of Accounts—Superior Savings & Loan Association, Los Angeles, California.

No. 412, October 29, 1980.

[S-2002-80 Filed 10-29-80; 2:24 pm]

BILLING CODE 6720-01-M

4

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., November 5, 1980.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Monthly Report of actions taken pursuant to authority delegated to the Managing Director.
2. Docket No. 79-94: All Frieight Packers & Forwarders, Inc.—Independent Ocean Freight Forwarder License Application—Consideration of Petition for Reconsideration.
3. Discussion of Trade Studies Program.
4. Discussion of Standards of Approvability under Section 15 of the Shipping Act, 1916.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-1991-80 Filed 10-29-80; 9:49 am]

BILLING CODE 6730-01-M

5

FEDERAL RESERVE SYSTEM: Board of Governors.

TIME AND DATE: 11 a.m., Friday, October 31, 1980.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Continuation of proposals involving internal personnel procedures relating to the System's employee benefits program. (This matter was orginally announced for a meeting on October 22, 1980.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 29, 1980.

Theodore E. Allison,
Secretary of the Board.

[S-2003-80 Filed 10-29-80; 3:38 pm]

BILLING CODE 6210-01-M

6

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 3, 1980, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, November 4, 1980, at 10 a.m. and on Wednesday, November 5, 1980, following the 10 a.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings

may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 522b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Commissioners Loomis, Evans, and Friedman determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 4, 1980, at 10 a.m., will be:

Formal orders of investigation.
Access to investigative files by Federal, State, or Self-Regulatory authorities.
Litigation matters.
Regulatory matters bearing enforsement implications.
Regulatory matter regarding financial institutions.
Institution of administrative proceeding of an enforcement nature.
Institution of injunctive action.
Freedom of Information Act appeal.
Opinion.

The subject matter of the closed meeting scheduled for Wednesday, November 5, 1980, following the 10 a.m. open meeting, will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, November 5, 1980, at 10 a.m., will be:

1. Consideration of whether to grant the appeal of Walter R. Davis from the decision of the Commission's Freedom of Information Act Officer denying Mr. Davis' request for confidential treatment of a transcript of investigative testimony given by him in the course of a private Commission investigation. For further information, please contact David Knight at (202) 272-2454.

2. Consideration of whether to grant the application of Geoffrey P. E. Clarkson for relief pursuant to Rule 242(a)(5)(v) of the Securities Act of 1933. For further information, please contact Thomas J. Baudhuin at (202) 272-2644.

3. Consideration of whether or not to delegate authority to the Director of the Office of Opinions and Review to rule on (1) motions to stay final Commission orders in disciplinary proceedings pending appeal to the federal courts; (2) motions to stay disciplinary action taken by a self-regulatory organization pending review of that action by the Commission; and (3) requests for oral argument in appeals from disciplinary or exclusionary action taken by self-regulatory organizations. For further information, please contact William Stern at (202) 272-2754.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272-2092.

October 28, 1980.

[S-2001-80 Filed 10-29-80; 1:24 pm]
BILLING CODE 8010-01-M

Reader Aids

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INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

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202-783-3238	Subscription orders and problems (GPO)
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202-523-5022	Washington, D.C.
312-663-0884	Chicago, Ill.
213-688-6694	Los Angeles, Calif.
202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
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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/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the Federal Register 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

COMMUNITY SERVICES ADMINISTRATION

64940 10-1-80 / Cost principles; grantee financial management

ENVIRONMENTAL PROTECTION AGENCY

61617 9-17-80 / Steam electric power generating point source category; amendment to BPT variance clause

GENERAL SERVICES ADMINISTRATION

67659 10-14-80 / Contract financing, transfer of policies and procedures

INTERIOR DEPARTMENT

Fish and Wildlife Service—

65132 10-1-80 / Red Lechwe (Kobus Leche) listed as threatened species

JUSTICE DEPARTMENT

Immigration and Naturalization Service—

66451 10-7-80 / Statement of organization—field service; addition of Saunderstown as a Class A Port of Entry

Rules Going Into Effect Saturday, November 1, 1980

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

63479 9-25-80 / Imported filberts; changes in quality provisions

68912 10-17-80 / Irish potatoes grown in Colorado (area No. 2); handling regulation

FEDERAL DEPOSIT INSURANCE CORPORATION

60865 9-15-80 / Securities of insured State nonmember banks

FEDERAL EMERGENCY MANAGEMENT AGENCY

67666 10-14-80 / Purchase of insurance and adjustment of claims

FEDERAL RESERVE SYSTEM

65184 10-2-80 / Securities disclosure provisions

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner—Office of Assistant Secretary—

59857 9-11-80 / Revision to thermal requirements for HUD Minimum Property Standards (MPS) for one- and two-family dwellings

[Corrected at 45 FR 62795, 9-22-80]

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development—

66414 10-6-80 / Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

LABOR DEPARTMENT

Mine Safety and Health Administration—

23990 4-8-80 / Respirable dust; mandatory health standards for underground mines

TRANSPORTATION DEPARTMENT

Coast Guard—

29588 5-5-80 / Lifesaving equipment and exposure suits for Great Lakes vessels

[Originally published at 45 FR 24471, 4-10-80]

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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72404 Part II—HHS/FDA:
Certain Biological Products and Human Blood and Blood Products; Changes in Proper Names, Proposed Labeling Requirements and Reorganization and Revision of Regulations

72430 Part III—Labor/ESA:
Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

72464 Part IV—OFR:
Incorporation by Reference; Approvals, Extensions, and Corrections

72465 Part V—Interior/OSMRE:
Partial Approval/Disapproval of the Permanent Program Submission From the State of Illinois Under the Surface Mining Control and Reclamation Act of 1977

72508 Part VI— Interior/ HCRS:
1981 Action Program—Identification of Nationwide Recreation Issues

72512 Part VII—HHS/PHS:
Health Maintenance Organizations; Employees' Health Benefits Plans

72524 Part VIII—HHS/PHS:
Requirements for a Health Maintenance Organization

72538 Part IX—HHS/HCFA:
Medicare Program; Qualifying Conditions and Reimbursement of Health Care Prepayment Plans

72552 Part X—DOE/ERA:
Domestic Crude Oil Entitlements

72582 Part XI—HHS/FDA:
Therapeutically Equivalent Drugs; Availability of List

72610 Part XII—EEOC:
Guidelines on Discrimination Because of Religion

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Part II

Department of Health and Human Services

Food and Drug Administration

Certain Biological Products; Changes in Proper Names, and Human Blood and Blood Products; Proposed Labeling Requirements and Reorganization and Revision of Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 606, 610, 620, 630, 640, 660

[Docket No. 80N-0053]

Changes in Proper Names of certain Biological Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the biological regulations by: (1) Changing the proper names for certain biological products, (2) updating all applicable regulations in Part 600 et seq. to reflect these new names, and (3) updating and reorganizing § 610.53(a) (21 CFR 610.53(a)) for clarity. The proper names are being changed to reduce the length of the name, more accurately identify the product, and eliminate many inconsistencies between the United States Pharmacopeia (USP) and the biologics regulations.

DATE: Comments by December 30, 1980. FDA proposes that any final regulation issued under this proposal be effective 180 days after the date of publication of the final regulation for products initially introduced or initially delivered for introduction into interstate commerce. For blood and blood components, however, FDA proposes that the effective date be 1 year after publication of a final regulation issued under the proposed uniform blood labeling regulation published elsewhere in this issue of the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, Pike, Bethesda MD 20857.

FOR FURTHER INFORMATION CONTACT: Paul Hiranaka, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations by: (1) Changing the proper names of certain biological products, (2) updating all applicable regulations in Parts 600 through 660 to reflect these new names, and (3) updating and reorganizing § 610.53(a) (21 CFR 610.53(a)) for clarity. The agency has been cooperating with the United States Adopted Names Council (USAN) to improve the proper names of many biological products. USAN is sponsored by the American Medical Association, the United States Pharmacopeial Convention (USP), and the American Pharmaceutical Association. USAN assigns nonproprietary names to new drugs as they are developed, establishes principles for designating names, and conducts a continuing review of product names to ensure that the names concisely and accurately identify specific products. Suitable nonproprietary names serve important functions because they properly identify the substances to which they apply, facilitate better communication between physicians and other professionals, and may be used without restriction by the public at large, as opposed to restrictions imposed upon the use of trademark names. The names that USAN develops or accepts from other agencies are likely to achieve worldwide recognition.

Name Change Amendments

FDA considered changes in the proper names of biological products to more accurately identify the product, to shorten the proper names, if appropriate, and to eliminate inconsistencies between names for products found in the USP and the biologics regulations. Consistent with USAN principles for designating meaningful and distinctive nonproprietary names, FDA proposes to amend the biologics regulations to change the proper names of certain blood products, viral products, bacterial products, antivenins, and allergenic extracts, as follows:

Proposed name	Present name
Blood Products	
1. Albumin	Normal Serum Albumin (Human)
2. Antihemophilic Factor	Antihemophilic Factor (Human)
3. Cryoprecipitated AHF	Cryoprecipitated Antihemophilic Factor (Human)
4. Factor IX Complex	Factor IX Complex (Human)
5. Fibrinolysin	Fibrinolysin (Human)
6. Immune Globulin	Immune Serum Globulin (Human)
7. Mumps Immune Globulin	Mumps Immune Globulin (Human)
8. Measles Immune Globulin.	Measles Immune Globulin (Human)
9. Pertussis Immune Globulin.	Pertussis Immune Globulin (Human)
10. Plasma	Single Donor Plasma (Human)
11. Plasma Fresh Frozen	Single Donor Plasma (Human), Fresh Frozen
12. Plasma Liquid	Single Donor Plasma (Human), Liquid
13. Plasma Platelet Rich	Single Donor Plasma (Human), Platelet Rich
14. Plasma Protein Fraction	Plasma Protein Fraction (Human)
15. Platelets	Platelet Concentrate (Human)
16. Rabies Immune Globulin.	Rabies Immune Globulin (Human)
17. Reagent Red Blood Cells.	Reagent Red Blood Cells (Human)
18. Red Blood Cells	Red Blood Cells (Human)
19. Red Blood Cells Deglycerolized.	Red Blood Cells (Human), Deglycerolized
20. Red Blood Cells Frozen	Red Blood Cells (Human), Frozen
21. Rho(D) Immune Globulin.	Rho(D) Immune Globulin (Human)
22. Source Plasma	Source Plasma (Human)
23. Source Plasma Liquid	Source Plasma (Human), Liquid
24. Source Plasma Pooled	Source Plasma (Human), Pooled
25. Source Plasma Salvaged.	Source Plasma (Human), Salvaged
26. Tetanus Immune Globulin.	Tetanus Immune Globulin (Human)
27. Vaccinia Immune Globulin.	Vaccinia Immune Globulin (Human)
28. Whole Blood	Whole Blood (Human)
29. Whole Blood Platelets and/or Cryoprecipitate Removed.	Whole Blood (Human), Modified
Viral Products	
1. Measles Virus Vaccine Live.	Measles Virus Vaccine, Live Attenuated
2. Measles, Mumps and Rubella Virus Vaccine Live.	Measles, Mumps, and Rubella Virus Vaccine, Live
3. Measles and Rubella Virus Vaccine Live.	Measles and Rubella Virus Vaccine, Live
4. Measles-Smallpox Vaccine Live.	Measles-Smallpox Vaccine, Live
5. Mumps Virus Vaccine Live.	Mumps Virus Vaccine, Live
6. Poliovirus Vaccine Live Oral, Trivalent.	Poliovirus Vaccine Live, Oral, Trivalent
7. Poliovirus Vaccine Live Oral, Type I.	Poliovirus Vaccine Live, Oral, Type I
8. Poliovirus Vaccine Live Oral, Type II.	Poliovirus Vaccine Live, Oral, Type II
9. Poliovirus Vaccine Live Oral, Type III.	Poliovirus Vaccine Live, Oral, Type III
10. Poliovirus Vaccine Inactivated.	Poliomyelitis Vaccine
11. Rubella and Mumps Virus Vaccine Live.	Rubella and Mumps Virus Vaccine, Live
12. Rubella Virus Vaccine Live.	Rubella Virus Vaccine, Live
13. Adenovirus and Influenza Virus Vaccines Combined Adsorbed.	Adenovirus and Influenza Virus Vaccines Combined Aluminum Phosphate Adsorbed
Bacterial Products	
1. Anthrax Vaccine Adsorbed.	Anthrax Vaccine, Adsorbed
2. Diphtheria and Tetanus Toxoids and Pertussis and Poliovirus Vaccines Inactivated, Adsorbed.	Diphtheria and Tetanus Toxoids and Pertussis and Poliomyelitis Vaccines Adsorbed
3. Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed and Poliovirus Vaccine Inactivated.	Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed and Poliomyelitis Vaccine
4. Tetanus and Diphtheria Toxoids Adsorbed for Adult Use.	Tetanus and Diphtheria Toxoids Adsorbed (For Adult Use)
Antivenins	
1. Antivenin Rattlesnake, Copperhead and Moccasin.	Antivenin (Crotolidae) Polyvalent
2. Antivenin Widow Spider	Antivenin (Lactrodectus mactans)
3. Antivenin Coral Snake	Antivenin (Micrurus fulvius)
Allergenic Extracts	
Allergenic Extracts Adsorbed.	Allergenic Extractrs, Alum Precipitated

FDA is proposing amendments in the proper names to:

1. Delete the word "Human" from the name of blood products intended for human use because all of these products are now derived from human sources. In the past, certain blood products were derived from bovine as well as human sources. Since there is no longer any reason to distinguish between sources, and because the products are recognized

by the medical community as originating from humans, the word "Human" may now be deleted from the proper name of the products.

2. Delete the words "Normal" and "Serum" from the proper name of Normal Serum Albumin (Human). The term "Normal" is confusing because it may be interpreted incorrectly to mean that serum albumin may also be produced from abnormal serum. The word "Serum" is being deleted because, during the last 28 years, the albumin has been derived primarily from plasma (serum plus the blood clotting elements), with a very small percentage of albumin being derived from plasma of the placental origin.

3. Change the proper name of Cryoprecipitated Antihemophilic Factor (Human) to Cryoprecipitated AHF because it will reduce the length of the name. The revised name will clearly distinguish this product (a blood component of Single Donor Plasma prepared in the blood bank) from Antihemophilic Factor (a blood derivative prepared by fractionation from pools of human plasma).

4. Delete the term "Concentrate" from the proper name of Platelet Concentrate. The word "Concentrate" used in the proper name is derived from the method of platelet collection, which involves separation from the plasma and concentration by additional centrifugation. Because this concentration procedure is the usual method of processing, however, FDA believes that the deletion of the term "Concentrate" will not confuse the identity of the product. This proposed proper name change would be consistent with the proper name of the product Red Blood Cells which is not called a concentrate, even though it consists of the red cell portion of blood.

5. Delete the words "Single Donor" from the proper name of Single Donor Plasma (Human), which is plasma primarily intended for intravenous injection. The types of single donor plasma, such as platelet rich or fresh frozen, shall be designated by the proper descriptive modifier following the proper name, e.g., Plasma Platelet Rich. Similarly, varieties of Source Plasma (plasma which is intended for further manufacturing) shall be designated by the proper descriptive modifier following the name, e.g., Source Plasma Liquid.

6. Revise the proper names for Whole Blood (Human) and Red Blood Cells (Human), by preceding the proper name with the name of the specific anticoagulant used. For example, Whole Blood (Human) and Red Blood Cells (Human), collected in anticoagulant citrate phosphate dextrose (CPD) solution shall be called CPD Whole Blood and CPD Red Blood Cells, respectively.

7. Revise the proper name Whole Blood (Human) Modified, to Whole Blood Platelets and/or Cryoprecipitate Removed, in order to more accurately identify the product. The proper name shall be preceded by the name of the anticoagulant used.

8. Change the proper name of Poliomyelitis Vaccine to Poliovirus Vaccine Inactivated to be consistent with the nomenclature of other viral vaccines which indicate the name of the virus producing the vaccine, rather than the name of the disease. As a result of this proposed change, the proper name of the mixed vaccines containing Poliomyelitis Vaccine would be changed accordingly. (See the listing of proper name changes of Bacterial Products.)

9. Delete the word "Attenuated" from the proper name of Measles Virus Vaccine, Live, Attenuated, to make it consistent with the proposed proper names of other live virus vaccines, such as Poliovirus Vaccine Live Oral, Mumps Virus Vaccine Live, or Rubella Virus Vaccine Live.

10. Change the proper name of Adenovirus and Influenza Virus Vaccines Combined Aluminum Phosphate Adsorbed to Adenovirus and Influenza Virus Vaccines Combined Adsorbed; and Allergenic Extracts, Alum Precipitated to Allergenic Extracts Adsorbed. The names of these two products are being changed to be consistent with the names of other adsorbed products which do not contain the name of the adsorbing agent.

11. Revise the proper names for licensed antivenin products. The proposed name changes for the three licensed antivenins follow a uniform format and provide a method for naming future Antivenin products. The proper name Antivenin is followed by the common name of the animal or group of animals producing the venom, but does not include the taxonomic genus and species name. The common name identifies the product and is, therefore, more easily recognized by untrained personnel or others who may need to use the product. The word Antivenin precedes the common names so that all the Antivenins may be properly alphabetized and readily found in any index on antivenins.

Under current license requirements, the package label for each antivenin must include its animal source. In addition, the package insert must include the taxonomic genus and species of the animal or group of animals producing the venom. The package insert must also identify and include the taxonomic genus and species of the animal or animals against whose venom the product is effective and those for which the product is known or suspected to be ineffective.

Miscellaneous Amendments

FDA is also proposing miscellaneous amendments to:

12. Delete commas from the proper names of most biological products, unless the product name contains three or more separate entities and use of a comma is grammatically correct. Removing the commas from the names of most products will not affect their specific identification and will provide a consistent guideline for naming future products. However, commas will continue to be used in proper names when they are needed for clarification.

13. Delete in § 610.53 the 10-year dating period for Normal Serum Albumin (Human), when the product is packaged is hermetically sealed metal containers, because Normal Serum Albumin (Human) is no longer being packaged in such containers. Therefore, a specified dating period is not needed for this kind of packaging.

14. Delete in § 610.53 certain products and their dating periods because they are no longer licensed, and to codify existing dating periods for licensed products which have not been previously listed for which data establish that period beyond which the product cannot be expected beyond reasonable doubt to yield its specific results and retain its safety, purity, and potency. The appropriate data to support these dating periods are on file with the Dockets Management Branch.

The following products would be deleted from the list in § 610.53:

(1) Adenovirus and Influenza Virus Vaccines Combined Aluminum Hydroxide Adsorbed.

(2) Aggregated Radio-Iodinated (I^{131}) Albumin (Human).

(3) Anti-Human Chorionic Gonadotropic Serum.

(4) Blood Grouping Serum Anti-Xg[a].

(5) Cobra Venom Solution.

(6) Cobra Venom Solution with Silicic and Formic Acids.

(7) Diphtheria and Tetanus Toxoids and Poliomyelitis Vaccine.

(8) Diphtheria Toxoid and Pertussis Vaccine.

(9) Fibrinogen (Human).

(10) Fibrinogen with Antihemophilic Factor (Human).

(11) Diphtheria Toxoid and Pertussis Vaccine Adsorbed.

(12) Gas Gangrene Polyvalent Antitoxin.

(13) Haemophilus Influenzae Typing Serum.

(14) Histamine Azoprotein.

(15) Lymphogranuloma Venereum Antigen.

(16) Modified Plasma (Bovine).

(17) Mumps Vaccine.

(18) Poliomyelitis Vaccine Adsorbed.

(19) Polyvalent modified bacterial antigens with "No U.S. Standard of Potency."

(20) Pseudomonas Polysaccharide.

(21) Radio-Chromated (Cr^{51}) Serum Albumin (Human).

(22) Radio-Iodinated (I^{125}) Serum Albumin (Human).

(23) Radio-Iodinated (I^{131}) Serum Albumin (Human).

(24) Reagent Blood Group Specific Substances A and B.

(25) Rocky Mountain Spotted Fever Vaccine.

(26) Russell Viper Venom.

(27) Schick Test Control.

(28) Staphylococcus Antitoxin.

(29) Tetanus and Gas Gangrene Polyvalent Antitoxin.

(30) Trichinella Extract.

The following products would be added to the list in § 610.53:

(1) Anti-Carcinoembryonic Antigen Serum.

(2) Asparaginase.

(3) Blood Grouping Serum Anti-Co^b.

(4) Hepatitis B Immune Globulin.

(5) Meningococcal Polysaccharide Vaccine Group A.

(6) Meningococcal Polysaccharide Vaccine Group C.

(7) Meningococcal Polysaccharide Vaccine Group A and C Combined.

(8) Pertussis Vaccine Adsorbed.

(9) Pneumococcal Vaccine Polyvalent.

(10) Rabies Immune Globulin.

(11) Red Blood Cells Deglycerolized.

15. Update the dating period for freeze-dried Allergenic Products in § 610.53 to reflect the minimum dating period currently approved as part of a manufacturer's license application. The minimum dating period for such products will be 4 years from the date of manufacture.

16. Change the heading or § 610.53 from "Dating periods for specific products," to "Dating periods for biological products." The dating periods prescribed in § 610.53 apply to general types of bioloical products, rather than to the manufacturer's brand of each product. "Specific product" can be misinterpreted to mean the manufacturer's brand.

17. Change in § 610.53 the dating period for Tuberculin, Purified Protein Derivative, diluted (used for the Mantoux test) to 6 months, based on stability data submitted to the agency. The stability data are on file with the Dockets Management Branch.

18. Revise and reorganize § 610.53 to facilitate interpretation by clearly identifying the dating periods during and after manufacturer's storage and revoke §§ 610.51 and 610.52. As a result of the revision of § 610.53, §§ 610.51 and 610.52 will no longer be necessary.

To permit manufacturers sufficient time to comply with the requirements of any final regulation issued under this proposal the agency proposes that the effective date of the final regulation, except for blood and blood components, be 180 days after the date of its publication in the Federal Register for biological products initially introduced or initially delivered for introduction into interstate commerce. For blood and blood components, FDA proposes that the effective date be 1 year after publication of a final regulation issued under the proposed uniform blood labeling regulation published elsewhere in this issue of the Federal Register.

The agency has determined under 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 321, 351, 352, 360, and 371); the Public Health Service Act (secs. 351, 351, 353, and 361, 58 Stat. 702 and 703 as amended, 81 Stat. 536 (42 U.S.C. 262, 263, 263a, 264)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

A. In Part 600:

§ 600.13 [Amended]

1. In § 600.13 by changing the proper names "Whole Blood (Human); Cryoprecipated Antihemophilic Factor (Human); Platelet Concentrate (Human); Red Blood Cells (Human); Single Donor Plasma (Human); and Source Plasma (Human)" to read "Whole Blood; Cryoprecipitated AHF; Platelets; Red Blood Cells; Plasma; and Source Plasma".

2. In § 600.15 by revising paragraph (a), to read as follows:

§ 600.15 Temperatures during shipment.

The following products shall be maintained during shipment at the specified temperatures:

(a) *Products.*

Product	Temperature
Cryoprecipitated AHF	−18° C or colder.
Measles, Mumps and Rubella Virus Vaccine Live.	10° C or colder.
Measles and Rubella Virus Vaccine Live.	Do.
Measles-Smallpox Vaccine Live.	Do.
Measles Virus Vaccine Live	Do.
Mumps Virus Vaccine Live	Do.
Platelets	Between 1° and 10° C if suspended in 20 to 30 mL of plasma or all reasonable methods to maintain the temperature as close as possible to a range between 20° to 24° C, if suspended in 30 to 50mL of plasma.
Plasma	−18° C or colder.
Plasma Fresh Frozen	Do.
Plasma Liquid	1° to 10° C.
Plasma Platelet Rich	Between 1° and 10° C or all reasonable methods to maintain the temperature as close as possible to a range between 20° and 24° C.
Poliovirus Vaccine Live Oral, Trivalent.	0° C or colder.
Poliovirus Vaccine Live Oral, Type I.	Do.
Poliovirus Vaccine Live Oral, Type II.	Do
Poliovirus Vaccine Live Oral, Type III.	Do.
Red Blood Cells Frozen	−65° C or colder.
Red Blood Cells (liquid product).	Between 1° and 10° C.
Rubella and Mumps Virus Vaccine Live.	10° or colder.
Rubella Virus Vaccine Live	Do.
Smallpox Vaccine (liquid product).	0° C or colder.
Source Plasma	−5° C or colder.
Source Plasma Liquid	10° C or colder.
Whole Blood	Between 1° and 10° C.
Yellow Fever Vaccine	0° C or colder.

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PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

§ 606.120 [Amended]

B. In Part 606 by revising the heading and by amending § 606.120 in paragraph (b)(2) by changing the proper name "Source Plasma (human)" to read "Source Plasma", and in paragraph (b)(9) by changing the proper names "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF", and "Source Plasma (Human)" to read "Source Plasma".

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

C. In Part 610:

§ 610.11 [Amended]

1. In § 610.11(g) by changing the proper names "Whole Blood (Human);

Red Blood Cells (Human); Cryoprecipitated Antihemophilic Factor (Human); Platelet Concentrate (Human); and Single Donor Plasma (Human)" to read "Whole Blood; Red Blood Cells; Cryoprecipitated AHF; Platelets; and Plasma".

§ 610.12 [Amended]

2. In § 610.12(g)(4) by changing the proper names, "Whole Blood (Human); Cryoprecipitated Antihemophilic Factor (Human); Platelet Concentrate (Human); Red Blood Cells (Human); Single Donor Plasma (Human); and Source Plasma (Human)" to read "Whole Blood; Cryoprecipitated AHF; Platelets; Red Blood Cells; Plasma; and Source Plasma," and in paragraph (g)(7) by changing the proper names "Normal Serum Albumin (Human) and Plasma Protein Fraction (Human)" to read "Albumin and Plasma Protein Fraction"; and by deleting reference to Fibrinogen (Human).

§ 610.13 [Amended]

3. In § 610.13(a)(2)(ii) by changing the proper names, "Measles Virus Vaccine, Live, Attenuated; Measles-Smallpox Vaccine, Live; Rubella Virus Vaccine, Live; and Antihemophilic Factor (Human)" to read "Measles Virus Vaccine Live; Measles-Smallpox Vaccine Live; Rubella Virus Vaccine Live; and Antihemophilic Factor"; in paragraph (a)(2)(iii) by deleting the reference to Modified Plasma (Bovine) and Fibrinogen (Human); in the introductory text of paragraph (b) by changing the proper names, "Cryoprecipitated Antihemophilic Factor (Human); Single Donor Plasma (Human); and Source Plasma (Human)" to read "Cryoprecipitated AHF; Plasma; and Source Plasma"; in paragraph (b)(1)(i) by deleting the phrase "and at least 30 milligrams for Fibrinogen (Human)"; and in paragraph (b)(1)(ii) by deleting the names "Aggregated Radio-Iodinated (I^{131}) Albumin (Human); Radio-Chromated (Cr^{51}) Serum Albumin (Human); Radio-iodinated (I^{125}) Serum Albumin (Human); and Radio-Iodinated (I^{131}) Serum Albumin (Human)".

§ 610.15 [Amended]

4. In § 610.15(a) by changing the proper name "Poliovirus Vaccine, Live, Oral" to read "Poliovirus Vaccine Live Oral".

§ 610.51 [Deleted]

5. By deleting § 610.51 *Periods of cold storage.*

§ 610.52 [Deleted]

6. By deleting § 610.52 *Dating period.*

7. By revising § 610.53, to read as follows:

§ 610.53 Dating periods for licensed biological products.

(a) *General.* The following dating periods are based on data relating to usage, clinical experience, or laboratory tests that establish the period beyond which the product cannot be expected beyond resonable doubt to yield its specific results and retain its safety, purity, and potency, provided the product is maintained at the recommended temperatures. The standards prescribed by the regulations in this subchapter, designed to ensure continued safety, purity, and potency of the products, are based on the dating periods set forth below, and package labels shall recommend storage at the appropriate temperatures.

(b) *When the dating period begins.* The dating period for a product shall begin on the date of manufacture, as prescribed in § 610.50. The dating period for a combination of two or more products shall be no longer than the dating period of the component with the shortest dating period.

(c) *Table of dating periods.* In using the following table, a product in column A may be stored by the manufacturer at the prescribed temperature and length of time in either column B or C, plus the length of time in column D. The dating period in column D shall be applied from the day the product leaves the manufacturer's storage, provided the product has not exceeded its maximum storage period, as prescribed in column B or C. If a product is held in the manufacturer's cold storage beyond the period prescribed, the dating period shall be reduced by a corresponding period.

A Product	B Manufacturer's storage period 1°-5° C (unless otherwise stated)	C Manufacturer's storage period 0° C or colder (unless otherwise stated)	D Dating period after leaving manufacturer's storage 2°-8° C (unless otherwise stated)
Adenovirus and influenza virus vaccines combined adsorbed.	Six months	Not applicable	Six months.
Adenovirus vaccine	Six months	do	Six months.
Albumin	Three years	do	(a) Five years, provided labeling recommends storage between 2° and 10° C, or (b) Three years, provided labeling recommends storage at room temperature, no warmer than 37° C.
Allergenic extracts.			
1. With 50 percent or more glycerin.	Three years	do	Three years.
2. With less than 50 percent glycerin.	Eighteen months	do	Eighteen months.
3. Products for which cold storage conditions are inappropriate.	Not applicable	do	Eighteen months (from date of manufacture), provided labeling recommends storage at 30° C or colder.
4. Powders and tablets	Not applicable	do	Five years (from date of manufacture), provided labeling recommends storage at 30° C or colder.
5. Freeze-dried products:			
a. Unreconstituted	do	do	Four years (from date of manufacture).
b. Reconstituted	do	do	Eighteen months (cannot exceed 5 year unreconstituted dating period).
Allergenic extracts adsorbed	Eighteen months	do	Eighteen months.
Anthrax vaccine adsorbed	Two years	do	One year.
Antibody to hepatitis B surface antigen iodinated (125.)	Six months	do	Six months.
	Not applicable	do	Forty-five days (from date of manufacture).
Anti-carcinoembryonic antigen serum.	do	do	One year (from date of manufacture) at 4°-8° C.

A Product	B Manufacturer's storage period 1°–5° C (unless otherwise stated)	C Manufacturer's storage period 0° C or colder (unless otherwise stated)	D Dating period after leaving manufacturer's storage 2°–8° C (unless otherwise stated)
Antihemophilic factor	do	do	One year (from date of manufacture).
Anti-human serum:			
1. Liquid	One year	Two years	One year.
2. Dried	do	do	Five years.
Antirabies serum	do	do	Two years.
Antivenom coral snake	do	do	Five years with an initial 10 percent excess of potency
Antivenom rattlesnake, copperhead and moccasin.	do	do	Five years with an initial 10 percent excess of potency, provided labeling recommends storage at 37° C or colder.
Antivenom widow spider	do	do	Five years with an initial 10 percent excess of potency.
Asparaginase	Not applicable	do	Eighteen months from the date of the last valid potency test.
BCG vaccine	One year	Not applicable	Six months.
Blood grouping serums—Anti-A:			
1. Liquid	One year	Two years	One year.
2. Dried	do	do	Five years.
Anti-A[1]	do	do	One year.
Anti-A, B:			
1. Liquid	do	do	One year.
2. Dried	do	do	Five years
Anti-B:			
1. Liquid	do	do	One year.
2. Dried.	do	do	Five years.
Anti-C:			
1. Liquid	do	do	One year.
2. Dried	do	do	Five years.
Anti-c	do	do	One year.
Anti-CD:			
1. Liquid	do	do	One year.
2. Dried	do	do	Five years.
Anti-CDE	do	do	One year.
Anti-C[w]	do	do	One year.
Anti-Co[b]	do	do	One year.
Anti-D			
1. Liquid	do	do	One year.
2. Dried	do	do	Five years.
Anti-DE	do	do	One year.
Anti-Di[a]	do	do	One year
Anti-E			
1. Liquid	do	do	One year.
2. Dried	do	do	Five years.
Anti-e	do	do	One year.
Anti-Fy[a]	do	do	One year.
Anti-Fy[b]	do	do	One year.
Anti-I	do	do	One year.
Anti-Jk[a]	do	do	One year.
Anti-Jk[b]	do	do	One year.
Anti-Js[a]	do	do	One year.
Anti-K	do	do	One year.
Anti-k	do	do	One year
Anti-Kp[a]	do	do	One year.
Anti-Kp[b]	do	do	One year.
Anti-Le[a]:			
1. Liquid	do	do	One year.
2. Dried	do	do	Five years.
Anti-Le[b]			
1. Liquid	do	do	One year.
2. Dried	do	do	Five years.
Anti-M	do	do	One year.
Anti-M[u]	do	do	One year.
Anti-N	do	do	One year.
Anti-P[1]	do	do	One year.
Anti-S	do	do	One year.
Anti-s:			
1. Liquid	do	do	One year.
2. Dried	do	do	Five years.
Anti-U	do	do	One year.
Blood group substance AB	do	do	Two years.
Blood group substance A	do	do	Two years.
Blood group substance B	do	do	Two years.
Botulism antitoxin	do	do	Five years with an initial 20 percent excess of potency.
Cholera vaccine	do	Not Applicable	Eighteen months.
Coccidiodin	do	do	Three years.
Collagenase	Not applicable	do	Four years (from date of manufacture) provided labeling recommends storage at 37° C or colder.
Cryoprecipitated AHF	do	do	Twelve months from the date of collection of source blood, provided labeling recommends storage at 18° C or colder.

A Product	B Manufacturer's storage period 1 -5 C (unless otherwise stated)	C Manufacturer's storage period 0 C or colder (unless otherwise stated)	D Dating period after leaving manufacturer's storage 2 -8 C (unless otherwise stated)
Diphthena antitoxin:			
1. Liquid	One year	Two years	Five years with an initial 20 percent excess of potency
2. Dried	do	do	Five years with an initial 10 percent excess of potency
Diphthena and tetanus toxoids and pertussis and poliovirus vaccines inactivated, adsorbed.	Two months	Not applicable	Four months.
Diphtheria and tetanus toxoids and pertussis vaccine adsorbed and poliovirus vaccine inactivated:			
1. If all components are mixed when issued.	Two months	do	Four months.
2. If the pertussis and poliovirus components are unmixed when issued.	One year	do	One year
Diphthena and tetanus toxoids and pertussis vaccine.	One year	do	Eighteen months.
Diphtheria and tetanus toxoids and pertussis vaccine adsorbed.	do	do	Eighteen months.
Diphtheria and tetanus toxoids	do	do	Two years.
Diphthena and tetanus toxoids adsorbed.	do	do	Two years.
Diphtheria toxin for Schick test	do	do	One year
Diphthena toxoid	do	do	Two years.
Diphtheria toxoid adsorbed	do	do	Two years.
Factor IX complex	Not applicable	do	One year (from date of manufacture).
Fibrinolysin	One year	Two years	Two years.
Fibrinolysin and desoxyribonuclease combined (bovine).	do	do	Three years, provided labeling recommends storage at 30 C or colder.
Fibrinolysin and desoxyribonuclease combined (bovine) with chloramphenicol.	do	do	Three years, provided labeling recommends storage at 30 C or colder
Hepatitis B immune globulin	Not applicable	Not applicable	One year
Hepatitis B surface antigen	Six months	do	Six months.
1. Unlyophilized coated red blood cells.	Not applicable	do	Fourteen days (from date of manufacture)
2. Iodinated (125,) product	do	do	Forty-five days (from date of manufacture).
Histoplasmin	One year	do	Two years.
Immune globulin	Three years	do	Three years.
Influenza virus vaccine	One year	do	Eighteen months.
Leukocyte typing serum (dried)	Not applicable	Not applicable	Two years (from date of manufacture)
Anti-HL-A 1	do	do	Do
Anti-HL-A 2	do	do	Do
Anti-HL-A 3	do	do	Do
Anti-HL-A 5	do	do	Do
Anti-HL-A 7	do	do	Do
Anti-HL-A 8	do	do	Do
Anti-HL-A 9	do	do	Do
Anti-HL-A 10	do	do	Do
Anti-HL-A 11	do	do	Do
Anti-HL-A 12	do	do	Do
Anti-HL-A 13	do	do	Do
Limulus amebocyte lysate	Not applicable	Not applicable	Eighteen months (from date of manufacture).
Measles, mumps and rubella virus vaccine live.	do	One year (20 C or colder)	One year
Measles and mumps virus vaccine live.	do	One year (20 C or colder)	One year
Measles and rubella virus vaccine live.	do	One year (20 C or colder)	One year
Measles immune globulin	Three years	Not applicable	Three years.
Measles-smallpox vaccine live	Not applicable	do	One year (from date of manufacture)
Measles virus vaccine live	do	One year (20 C or colder)	One year
Meningococcal polysaccharide vaccine group A,			
1. Final bulk powder	do	Eighteen months (20 C or colder)	Not applicable
2. Final container	Not applicable	Not applicable	Six months (20 C or colder)
Meningococcal polysaccharide vaccine group C:			
1. Final bulk powder	do	Eighteen months (20 C or colder).	Not applicable
2. Final container	do	Not applicable	Six months.
Meningococcal polysaccarde vaccine groups A and C combined.	do	do	Six months (20 C or colder)
Mumps immune globulin	Three years	do	Three years (from date the dried or frozen bulk product is placed in final solution).
Mumps skin test antigen	One year	do	Eighteen months.

A Product	B Manufacturer's storage period 1°-5° C (unless otherwise stated)	C Manufacturer's storage period 0° C or colder (unless otherwise stated)	D Dating period after leaving manufacturer's storage 2°-8° C (unless otherwise stated)
Mumps virus vaccine live	Not applicable	One year (−20° C or colder).	One year.
Normal horse serum	One year	Two years	Five years.
Pertussis immune globulin	Three years	Not applicable	Three years from date the dried or frozen bulk product is placed in final solution.
Pertussis vaccine	One Year	do	Eighteen months.
Pertussis vaccine adsorbed	do	do	Eighteen months.
Plague vaccine	do	do	Eighteen months.
Plasma	Not applicable	do	Five years from date of collection of source blood (−18° C or colder).
Plasma fresh frozen	do	do	One year from date of collecton of source blood (−18° C or colder).
Plasma liquid	do	do	(a) Twenty-six days from date of collection of source blood. (b) 40 days from the date collection of source blood only when CPDA-1 solution is used as the anticoagulant (between 1° and 6° C).
Plasma platelet rich	do	do	Seventy-two hours from time of collection of source blood (20° to 24° C or between 1° and 6° C).
Plasma protein fraction	One year	do	(a) Five years. (b) Three years (provided labeling recommends storage at 30° C or colder).
Platelets	Not applicable	do	Seventy-two hours from time of collection of source blood, provided labeling recommends storage at 20°-24° C or between 1° to 6° C.
Pneumococcal vaccine polyvalent:			
1. Final bulk powder	do	Fifteen months after potency assay (−20° C or colder).	Not applicable.
2. Final container	do	Not applicable	Two years (after date of manufacture).
Poliovirus Vaccine inactivated	One year	do	One year.
Poliovirus vaccine live oral, trivalent:			
1. Frozen	Not applicable	One year (−10° C or colder).	One year, provided labeling recommends storage at a temperature which will maintain ice continuously in a solid state.
2. Liquid	do	Not applicable	Thirty days, provided labeling recommends storage between 2° and 8° C and container has been unopened.
Poliovirus vaccine live oral, type I:			
1. Frozen	do	One year (−10° C or colder).	One year, provided labeling recommends storage at a temperature which will maintain ice continuously in a solid state.
2. Liquid	do	Not applicable	Thirty days, provided labeling recommends storage between 2° and 8° C and container has been unopened.
Poliovirus vaccine live oral, type II:			
1. Frozen	do	One year (−10° C or colder).	One year, provided labeling recommends storage at a temperature which will maintain ice continuously in a solid state.
2. Liquid	do	Not applicable	Thirty days, provided labeling recommends storage between 2° and 8° C and container has been unopened.
Poliovirus vaccine live oral, type III:			
1. Frozen	do	One year (−10° C or colder).	One year, provided labeling recommends storage at a temperature which will maintain ice continuously in a solid state.
2. Liquid	do	Not applicable	Thirty days, provided labeling recommends storage between 2° and 8° C and container has been unopened.
Polyvalent bacterial antigens with "No U.S. standard of potency":			
1. Liquid	One year	Not applicable	Eighteen months.

A Product	B Manufacturer's storage period 1°–5° C (unless otherwise stated)	C Manufacturer's storage period 0° C or colder (unless otherwise stated)	D Dating period after leaving manufacturer's storage 2°–8° C (unless otherwise stated)
2. Dried	do	do	Five years.
Polyvalent bacterial vaccines with "No U.S. standard of potency":			
1. Liquid	One year	do	Eighteen months.
2. Dried	do	do	Five years.
Rabies immune globulin	One year	Not applicable	One year.
Rabies vaccine:			
1. Dried	One year	Two years	Eighteen months.
2. Liquid	Three months	Not applicable	Six months.
Reagent red blood cells	Not applicable	do	Thirty-five days from earliest date of collection.
ACD red blood cells	do	do	(a) Twenty-one days from date of collection of source blood provided labeling recommends storage between 1° and 6° C and the hermetic seal is not broken during processing. (b) Twenty-four hours after plasma removal, provided labeling recommends storage between 1° and 6° C, if the hermetic seal is broken during processing.
CPD red blood cells	do	do	(a) Twenty-one days from date of collection of source blood provided labeling recommends storage between 1° and 6° C and the hermetic seal is not broken during processing. (b) Twenty-four hours after plasma removal, provided labeling recommends storage between 1° and 6° C, if the hermetic seal is broken during processing.
CPDA-1 red blood cells	do	do	(a) Thirty-five days from date of collection of source blood provided labeling recommends storage between 1° and 6° C and the hermetic seal is not broken during processing. (b) Twenty-four hours after plasma removal, provided labeling recommends storage between 1° and 6° C, if the hermetic seal is broken during processing.
Red blood cells deglycerolized	do	do	Twenty-four hours after removal from storage at −65° C or colder provided labeling recommends storage between 1° and 6° C.
Red blood cells frozen	do	do	Three years from date of collection of source blood, provided labeling recommends storage at −65° C or colder.
Rh(D) immune globulin	Six months	do	Six months.
Rubella and mumps virus vaccine live.	Not applicable	One year (−20° C or colder).	One year
Rubella virus vaccine live	Not applicable	One year (−20° C or colder).	One year
Smallpox vaccine:			
1. Liquid	Not applicable	Nine months (−10° C or colder), if product is maintained as glycerinated or equivalent vaccine in bulk or final containers.	Three months, provided labeling recommends storage at 0° C, or colder
2. Dried	Six months	Not applicable	Eighteen months
Source plasma	Not applicable	do	In lieu of an expiration date the collection date shall appear on the label as prescribed in § 640.70(a)(6) of this chapter
Staphylococcus toxoid	One year	do	Two years.
Streptokinase	do	Two years	Eighteen months.
Streptokinase-streptodornase:			
1. Dried	do	Not applicable	Two years.
2. Tablets	Six months	do	Eighteen months provided labeling recommends storage at 0° C or colder
Tetanus and diphtheria toxoids adsorbed for adult use.	One year	do	Two years
Tetanus antitoxin:			
1. Liquid	do	Two years	Five years with an initial 20 percent excess of potency.

A Product	B Manufacturer's storage period 1°-5° C (unless otherwise stated)	C Manufacturer's storage period 0° C or colder (unless otherwise stated)	D Dating period after leaving manufacturer's storage 2°-8° C (unless otherwise stated)
2. Dried	do	do	Five years with an initial 10 percent excess of potency.
Tetanus immune globulin	do	Not applicable	Three years with an initial 10 percent excess of potency.
Tetanus toxoid	do	do	Two years.
Tetanus toxoid adsorbed	do	do	Two years.
Thrombin	do	Two years	Three years.
Tuberculin:			
1. Purified protein derivative, concentrated containing at least 50 percent glycerin.	One year	Not applicable	Two years.
2. Purified protein derivative, diluted.	Six months	do	One year.
3. Old or purified protein derivative, dried on multiple puncture device.	One year (not to exceed 30° C. Do not refrigerate.	do	Two years, provided labeling recommends storage at a temperature not to exceed 30° C. Do not refrigerate.
Typhoid vaccine	One year	do	Eighteen months.
Typhus vaccine	One year	do	Eighteen months.
Vaccinia immune globulin	Three years	do	Three years.
ACD whole blood	Not applicable	do	Twenty-one days from date of collection, provided labeling recommends storage between 1° and 6° C.
CPD whole blood	do	do	Twenty-one days from date of collection, provided labeling recommends storage between 1° and 6° C.
CPDA-1 whole blood	do	do	Thirty-five days from date of collection, provided labeling recommends storage between 1° and 6° C.
Heparin whole blood	do	do	Forty-eight hours from date of collection, provided labeling recommends storage between 1° and 6° C.
Yellow fever vaccine	do	One year (−20° or colder)	One year, provided labeling recommends storage at 5° C or colder.

(d) *Exemptions.* Exemptions or modifications shall be made only upon written approval, in the form of an amendment of the product license, issued by the Director, Bureau of Biologics.

PART 620—ADDITIONAL STANDARDS FOR BACTERIAL PRODUCTS

D. In Part 620:

§ 620.4 [Amended]

1. In § 620.4(g) by changing the proper name "Poliomyelitis Vaccine" to read "Poliovirus Vaccine Inactivated".

Subpart C—[Heading Amended]

§ 620.20 [Amended]

2. In the heading of Subpart C and the heading and text of § 620.20 by changing the proper name "Anthrax Vaccine, Adsorbed" to read "Anthrax Vaccine Adsorbed."

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

Subpart A—[Heading Amended]

E. In Part 630:

1. In the heading of Subpart A by changing the proper name "Poliomyelitis Vaccine" to read "Poliovirus Vaccine Inactivated."

§ 630.1 [Amended]

2. In the heading of § 630.1 and in the text of paragraphs (a) and (c) by changing the proper name "poliomyelitis Vaccine" to read "Poliovirus Vaccine Inactivated."

§ 630.2 [Amended]

3. In the heading of § 630.2 and in paragraph (e)(3) by changing the proper name "Poliomyelitis Vaccine" to read "Poliovirus Vaccine Inactivated."

§ 630.3 [Amended]

4. In the introductory paragraphy of § 630.3 by changing the words "poliomyelitis vaccine" to read "poliovirus vaccine".

§ 630.4 [Amended]

5. In § 630.4(b)(1), by changing the words "poliomyelitis vaccine" to read "poliovirus vaccine" and in paragraph (e)(5)(ii) by changing the word "poliomyelitis" to read "poliovirus."

§ 630.6 [Amended]

6. In § 630.6 by changing the proper name "Poliomyelitis Vaccine" to read "Poliovirus Vacine Inactivated."

Subpart B—[Heading Amended]

7. In the heading of Subpart B by changing the proper name "Poliovirus

Vaccine, Live, Oral" to read "Poliovirus Vaccine Live Oral."

§ 630.10 [Amended]

8. In the heading of § 630.10 and in paragraphs (a) and (b)(2) by changing the proper name "Poliovirus Vaccine, Live, Oral" to read "Poliovirus Vaccine Live Oral."

§ 630.12 [Amended]

9. In § 630.12(a)(1) and (b) by changing the proper name "Poliovirus Vaccine, Live, Oral" to read "Poliovirus Vaccine Live Oral."

§ 630.13 [Amended]

10. In the heading of § 630.13 by changing the proper name "Poliovirus Vaccine, Live, Oral" to read "Poliovirus Vaccine Live Oral."

§ 630.18 [Amended]

11. In § 630.18 by changing the proper name "Poliovirus Vaccine, Live, Oral" to read "Poliovirus Vaccine Live Oral."

Subpart D—[Heading Amended]

12. In the heading of Subpart D by changing the proper name "Measles Virus Vaccine, Live, Attenuated" to read "Measles Virus Vaccine Live."

§ 630.30 [Amended]

13. In the heading of § 630.30 and in paragraphs (a) and (b)(2) by changing the proper name "Measles Virus Vaccine, Live, Attenuated" to read "Measles Virus Vaccine Live."

§ 630.36 [Amended]

14. In § 630.36(d) by changing the proper name "measles Virus Vaccine, Live, Attenuated" to read "Measles Virus Vaccine Live."

§ 630.37 [Amended]

15. In § 630.37 by changing the proper name "Measles Virus Vaccine, Live, Attenuated" to read "Measles Virus Vaccine Live."

Subpart F—[Heading Amended]

16. In the heading of Subpart F by changing the proper name "Mumps Virus Vaccine, Live" to read "Mumps Virus Vaccine Live."

§ 630.50 [Amended]

17. In the heading of § 630.50 and in paragraphs (a) and (b)(2) by changing the proper name "Mumps Virus Vaccine, Live" to read "Mumps Virus Vaccine Live."

§ 630.51 [Amended]

18. In § 630.51 by changing the proper name "Mumps Virus Vaccine, Live" to read "Mumps Virus Vaccine Live."

§ 630.52 [Amended]

19. In the heading of § 630.52 by changing the proper name "Mumps Virus Vaccine, Live" to read "Mumps Virus Vaccine Live."

§ 630.56 [Amended]

20. In § 630.56(b) and (e) by changing the proper name "Mumps Virus Vaccine, Live" to read "Mumps Virus Vaccine Live."

§ 630.57 [Amended]

21. In § 630.57 by changing the proper name "Mumps Virus Vaccine, Live" to read "Mumps Virus Vaccine Live."

Subpart G—[Heading Amended]

22. In the heading of Subpart G by changing the proper name "Rubella Virus Vacine, Live" to read "Rubella Virus Vaccine Live."

§ 630.60 [Amended]

23. In the heading of § 630.60 and in paragraphs (a) and (d) by changing the proper name "Rubella Virus Vaccine, Live" to read "Rubella Virus Vaccine Live."

§ 630.61 [Amended]

24. In § 630.61 by changing the proper name "Rubella Virus Vaccine, Live" to read "Rubella Virus Vaccine Live."

§ 630.62 [Amended]

25. In § 630.62(b) by changing the proper name "Rubella Virus Vaccine, Live" to read "Rubella Virus Vaccine Live."

§ 630.66 [Amended]

26. In § 630.66 (b) and (d) by changing the proper name "Rubella Virus Vaccine, Live" to read "Rubella Virus Vaccine Live."

§ 630.67 [Amended]

27. In § 630.67 by changing the proper name "Rubella Virus Vaccine, Live" to read "Rubella Virus Vaccine Live."

Subpart I—[Heading Amended]

28. In the heading of Subpart I by changing the proper name "Measles-Smallpox Vaccine, Live" to read "Measles-Smallpox Vaccine Live."

§ 630.80 [Amended]

29. In the heading of § 630.80 and in paragraph (a) by changing the proper name "Measles-Smallpox Vaccine, Live" to read "Measles-Smallpox Vaccine Live."

§ 630.84 [Amended]

30. In the introductory paragraph of § 630.84 by changing the proper name "Measles-Smallpox Vaccine, Live" to read "Measles-Smallpox Vaccine Live."

§ 630.87 [Amended]

31. In § 630.87 by changing the proper name "Measles-Smallpox Vaccine, Live" to read "Measles-Smallpox Vaccine Live."

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

F. In Part 640:

Subpart A—[Heading Amended]

In the heading of Subpart A by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

§ 640.1 [Amended]

2. In the heading and text of § 640.1 by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

§ 640.2 [Amended]

3. In § 640.2(a) by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

§ 640.3 [Amended]

4. In § 640.3 (a) through (f) by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

§ 640.4 [Amended]

5. In § 640.4 (c) and (h) by changing the proper name "Whole Blood (Human)" to read "Whole Blood"; and in paragraph (i) by changing the items "Platelet Concentrate (Human)" and "Platelet Concentrate" to read "Platelets."

§ 640.5 [Amended]

6. In § 640.5 (a) through (e) by changing the proper name "Whole Blood (Human)" to read "Whole Blood"; and in paragraph (c) by changing the item "Anti-Rh (Anti-D) Typing Serum" to read "Anti-D Blood Grouping Serum."

§ 640.6 [Amended]

7. In the heading and in the introductory paragraph of § 640.6 by changing the proper name "Whole Blood (Human)" to read "Whole Blood"; and in paragraph (c) by changing the proper name "Whole Blood (Human), Modified" to read "Whole Blood Platelets and/or Cryoprecipitate Removed."

§ 640.7 [Amended]

8. In the introductory text of § 640.7(g) by changing "Whole Blood (Human), Modified" to read "Whole Blood Platelets and/or Cryoprecipitate Removed"; and in paragraph (g)(1) by changing the word "Modified" to read "Platelets and/or Cryoprecipitate Removed."

Subpart B—[Heading Amended]

9. In the heading of Subpart B by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells."

§ 640.10 [Amended]

10. In the heading and text of § 640.10 by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells.".

§ 640.11 [Amended]

11. In § 640.11 by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells."

§ 640.12 [Amended]

12. In § 640.12 by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells."

§ 640.13 [Amended]

13. In § 640.13 by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

§ 640.15 [Amended]

14. In § 640.15 by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells."

§ 640.16 [Amended]

15. In § 640.16 by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells."

§ 640.17 [Amended]

16. In § 640.17 by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells"; and by changing the proper name "Red Blood Cells (Human), Frozen" to read "Red Blood Cells Frozen."

§ 640.18 [Amended]

17. In the introductory paragraph of § 640.18 by changing the proper name"Red Blood Cells (Human)" to read "Red Blood Cells"; in paragraph (a) by changing the proper name "Whole Blood (Human)" to read "Whole Blood"; in paragraph (b) by changing the proper names"Red Blood Cells (Human), Frozen " and "Red Blood Cells (Human), Deglycerolized" to read "Red Blood Cells Frozen" and "Red Blood Cells Deglycerolized"; and in paragraph (d) by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

Subpart C—[Heading Amended]

18. In the heading of Subpart C by changing the proper name "Platelet Concentrate (Human)" to read "Platelets."

§ 640.20 [Amended]

19. In the heading of § 640.20 and in paragraphs (a) and (b) by changing the proper name "Platelet Concentrate (Human)" to read "Platelets."

§ 640.22 [Amended]

20. In § 640.22(a) by changing the proper name "Platelet Concentrate (Human)" to read "Platelets."

§ 640.23 [Amended]

21. In § 640.23(a) by changing the proper name "Platelet Concentrate (Human)" to read "Platelets."

§ 640.24 [Amended]

22. In § 640.24(a) and (e) by changing the proper name "Platelet Concentrate (Human)"to read "Platelets"; in paragraphs (b) and (d) by changing the name "platelet concentrate" to read "platelets"; and in pargraph (b) by changing the word "is" to read"are".

§ 640.25. [Amended]

23. In § 640.25(a), in the introductory text of (c) and in (c) (1) and (2) by changing the proper name "Platelet Concentrate (Human)" to read "Platelets."

Subpart D—[Heading Amended]

24. In the heading of Subpart D by changing the proper name "Single Donor Plasma (Human)" to read "Plasma."

§ 640.30 [Amended]

25. In the heading of § 640.30 and in paragraphs (a) and (b) by changing the proper names "Single donor Plasma (Human)" to read "Plasma" and in paragraph (b)(2) by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

§ 640.32 [Amended]

26. In § 640.32(a) by changing the proper names "Single Donor Plasma (Human), Platelet Rich" to read "Plasma Platelet Rich"; "Single Donor Plasma (Human)" to read "Plasma"; "Single Donor Plasma (Human), Fresh Frozen" to read "Plasma Fresh Frozen"; and "Single Donor Plasma (Human), Liquid" to read "Plasma Liquid."

§ 640.33 [Amended]

27. In § 640.33(b) by changing the proper name "Single Donor Plasma (Human)" to read "Plasma."

§ 640.34 [Amended]

28. In § 640.34(a) by changing the proper names "Single Donor Plasma (Human)" to read "Plasma" and "Single Donor Plasma (Human), Liquid" to read "Plasma Liquid"; in paragrah (b) by changing the proper name "Single Donor Plasma (Human), Fresh Frozen" to read "Plasma Fresh Frozen"; in paragraph (c) by changing the proper name "Single Donor Plasma (Human), Liquid" to read "Plasma Liquid"; in paragraph (d) by changing the name "Single Donor Plasma (Human), Platelet Rich" to read "Plasma Platelet Rich"; in the introductory text of paragraph (e) by changing the proper name "Single Donor Plasma (Human)" to read "Plasma" and by changing the proper names "Platelet Concentrate (Human)" to read "Platelets", and "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF"; in paragraph (e)(1) by changing the proper names "Platelet Concentrate (Human)" to read "Platelets", and "Single Donor Plasma (Human), Fresh Frozen" to read "Plasma Fresh Frozen"; in paragraph (e)(2) by changing the proper names "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF", and "Single Donor Plasma (Human)" to read "Plasma"; in pargraph (e)(3) by changing the proper names "Platelet Concentrate (Human)" to read "Platelets", "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF", and "Single Donor Plasma (Human)" to read "Plasma"; and in paragraph (g)(2) by changing the proper names "Single Donor Plasma (Human), Platelet Rich" to read "Plasma Platelet Rich" and "Single Donor Plasma (Human), Liquid" to read "Plasma Liquid."

§ 640.35 [Amended]

29. In the introductory paragraph of § 640.35 by changing the proper name "Single Donor Plasma (Human)" to read "Plasma"; and in paragraph (s) by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

Subpart F—[Heading Amended]

30. In the heading of Subpart F by changing the proper name "Cryoprecipitated Antihemophilic Factror (Human)" to read "Cryoprecipitated AHF."

§ 640.50 [Amended]

31. In the heading of § 640.50 and in paragraphs (a) and (b) by changing the proper name"Cryoprecipitated Antihemophilic Factor (Human)" to read"Cryoprecipitated AHF."

§ 640.52 [Amended]

32. In § 640.52(a) by changing the proper names"Cryoprecipitated Antihemophilic Factor (Human)" to read"Cryoprecipitated AHF" and "Platelet Concentrate (Human)" to read "Platelets."

§ 640.53 [Amended]

33. In § 640.53 (a) and (c) by changing the proper name "Cryoprecipitated

Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF."

§ 640.54 [Amended]

34. In § 640.54(a)(3), (b)(1), and (b)(3) by changing the proper name "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF."

§ 640.55 [Amended]

35. In § 640.55 by changing the proper name "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF".

§ 640.56 [Amended]

36. In § 640.56 paragraphs (a), (b), and (c)(1) by changing the proper name "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF."

Subpart G—[Heading Amended]

37. In the heading of Subpart G by changing the proper name "Source Plasma (Human" to read "Source Plasma."

§ 640.60 [Amended]

38. In the heading and text of § 640.60 by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.63 [Amended]

39. In § 640.63(a) by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.64 [Amended]

40. In the heading of § 640.64 and in paragraphs (a) and (c) by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.67 [Amended]

41. In § 640.67 by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.68 [Amended]

42. In § 640.68(a), (b) and (c) by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.69 [Amended]

43. In § 640.69(a), (b) and (c) by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.70 [Amended]

44. In the introductory text of § 640.70(a) by changing the proper name "Source Plasma (Human)" to read "Source Plasma" and in paragraph (b) by changing the proper names "Source Plasma (Human)" and "Source Plasma (Human), Salvaged" to read "Source Plasma" and "Source Plasma Salvaged", respectively.

§ 640.71 [Amended]

45. In § 604.71, in the introductory text of paragraphs (a) and (b), and paragraph (b)(1) and (2), by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.72 [Amended]

46. In § 640.72(a)(1) and (b) by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.74 [Amended]

47. In the heading of § 640.74 and in paragraph (a) by changing the proper name "Source Plasma (Human)" to read "Source Plasma" and in paragraph (b) by changing the proper name "Liquid Source Plasm (Human)" to read "Source Plasma Liquid."

§ 640.75 [Amended]

48. In § 640.75 by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.76 [Amended]

49. In § 640.76(a), (b), and (c) by changing the proper name "Source Plasma (Human)" to read "Source Plasma" and by changing the proper name "Source Plasma (Human), Salvaged" to read "Source Plasma Salvaged."

Subpart H—[Heading amended]

50. In the heading of Subpart H by changing the proper name "Normal Serum Albumin (Human)" to read "Albumin."

§ 640.80 [Amended]

51. In the heading of § 640.80 and in paragraph (a), introductory text of (b) and (b)(1) by changing the proper name "Normal Serum Albumin (Human)" to read "Albumin."

§ 640.81 [Amended]

52. In § 640.81 (e) and (g) by changing the proper name "Normal Serum Albumin (Human)" to read "Albumin."

§ 640.82 [Amended]

53. In § 640.82(f) by changing the proper name "Normal Serum Albumin (Human)" to read "Albumin."

§ 640.85 [Amended]

54. In the introductory paragraph of § 640.85 by changing the proper name "Normal Serum Albumin (Human)" to read "Albumin."

§ 640.86 [Amended]

55. In § 640.86 by changing the proper name "Normal Serum Albumin (Human)" to read "Albumin."

Subpart I—[Heading Amended]

56. In the heading of Subpart I by changing the proper name "Plasma Protein Fraction (Human)" to read "Plasma Protein Fraction."

§ 640.90 [Amended]

57. In the heading of § 640.90 and in paragraph (a), introductory text of (b), and (b)(1) by changing the proper name "Plasma Protein Fraction (Human)" to read "Plasma Protein Fraction."

§ 640.91 [Amended]

58. In § 640.91 (e) and (g) by changing the proper name "Plasma Protein Fraction (Human)" to read "Plasma Protein Fraction."

§ 640.92 [Amended]

59. In § 640.92(f) by changing the proper name "Plasma Protein Fraction (Human)" to read "Plasma Protein Fraction."

§ 640.95 [Amended]

60. In the introductory paragraph of § 640.95 by changing the proper name "Plasma Protein Fraction (Human)" to read "Plasma Protein Fraction."

§ 640.96 [Amended]

61. In § 640.96 by changing the proper name "Plasma Protein Fraction (Human)" to read "Plasma Protein Fraction."

Subpart J—[Heading amended]

62. In the heading of Subpart J by changing the proper name "Immune Serum Globulin (Human)" to read "Immune Globulin."

§ 640.100 [Amended]

63. In the heading of § 640.100 and in paragraphs (a) and (b) by changing the proper name "Immune Serum Globulin (Human)" to read "Immune Globulin."

§ 640.101 [Amended]

64. In § 640.101(e)(3) by changing the proper name "Measles Virus Vaccine, Live, Attenuated" to read "Measles Virus Vaccine Live"; and in paragraph (f) by changing the proper name "Immune Serum Globulin (Human)" to read "Immune Globulin."

§ 640.102 [Amended]

65. In the heading of § 640.102 and in paragraph (d) by changing the proper name "Immune Serum Globulin (Human)" to read "Immune Globulin."

§ 640.104 [Amended]

66. In § 640.104(b)(2) by changing the proper name "Measles Virus Vaccine, Live, Attenuaed" to read "Measles Virus Vaccine Live."

Subpart K—[Heading Amended]

67. In the heading of Subpart K by changing the proper name "Measles Immune Globulin (Human)" to read "Measles Immune Globulin."

§ 640.110 [Amended]

68. In the heading of § 640.110 and in paragraphs (a) and (b) by changing the proper name "Measles Immune Globulin (Human)" to read "Measles Immune Globulin."

§ 640.112 [Amended]

69. In the heading of § 640.112 and in paragraph (e) by changing the proper name "Measles Immune Globulin (Human)" to read "Measles Immune Globulin."

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

G. In Part 660:

§ 660.23 [Amended]

1. In § 660.23(a) by changing the proper name "Reagent Red Blood Cells (Human)" to read "Reagent Red Blood Cells."

2. In § 660.25 by revising paragraph (a)(5)(iii), to read as follows:

§ 660.25 Potency test without reference preparations.

(a) * * *

(5) * * *

(iii) For Anti-U, Anti-Kp^a, Anti-Kp^b, Anti-Js^a, Anti-Fy^b, Anti-N, Anti-Le^a, Anti-Le^b, Anti-Di^a, Anti-M^g, Anti-Jk^b, and Anti-Co^b, at least 2+ reaction with undiluted serum.

* * * * *

3. In § 660.28 by revising paragraph (d) to read as follows:

§ 660.28 Labeling.

* * * * *

(d) *Names of antibodies.*

Blood group designation for container label	Optional synonym for package label and package insert
Anti-A	None.
Anti-A$_1$	Do.
Anti-B	Do.
Anti-A,B	Do.
Anti-Di^a	(Anti-Diego^a).
Anti-Fy^a	(Anti-Duffy^a).
Anti-Fy^b	(Anti-Duffy^b).
Anti-I	None.
Anti-Jk^a	(Anti-Kidd^a).
Anti-Jk^b	(Anti-Kidd^b).
Anti-K	(Anti-Kell).
Anti-k	(Anti-Cellano).
Anti-Kp^a	(Anti-Penney).
Anti-Kp^b	(Anti-Rautenberg).
Anti-Le^a	(Anti-Lewis^a-).
Anti-Le^b	(Anti-Lewis^b).
Anti-M	None.
Anti-N	Do.
Anti-M^g	(Anti-Gilfeather).
Anti-P$_1$	None.
Anti-D	(Anti-Rh$_o$).
Anti-CD	(Anti-Rh$_o'$).
Anti-DE	(Anti-Rh$_o''$).
Anti-CDE	(Anti-Rh$_o'''$).
Anti-C	(Anti-rh').
Anti-E	(Anti-rh'').
Anti-c	(Anti-hr').
Anti-e	(Anti-hr'').
Anti-C^w	(Anti-rh^w).
Anti-S	None.
Anti-s	Do.
Anti-U	Do.
Anti-Js^a	(Anti-Sutter).
Anti-Co^b	None.

Interested persons may, on or before December 30, 1980 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Dockets Management Branch docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Dated: October 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33509 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Parts 606 and 640

[Docket No. 80N-0120]

Current Good Manufacturing Practice for Blood and Blood Components; Uniform Blood Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the biologics regulations by revising the labeling requirements for blood and blood components. The proposed revisions simplify and reduce the amount of information required on the container label. Machine-readable encodement of the critical information on the container label would be required. This document also announces the availability of a guideline describing the specifications for a uniform container label complying with the proposed rules. The proposed revisions and guidelines were developed in response to the recommendations of the American Blood Commission's Committee for Commonality in Blood Banking Automation.

DATE: Comments by December 30, 1980. FDA proposes that any final regulation issued under this proposal be effective 1 year after the date of publication of the final regulation. The final regulation would apply to the labeling for all blood and blood components collected on or after the effective date.

ADDRESS: Written comments and requests for a single copy of the guideline to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION:

Introduction

In 1974, members of the private sector, including representatives of blood banks and the medical community, developed a long-term plan to implement the Department of Health and Human Services' (DHHS) National Blood Policy (NBP). This plan, the NBP, and related documents were published in the Federal Register of May 28, 1974 (39 FR 18614). Both the implementation plan and NBP set the regionalization of blood banks and transfusion services as a high priority to enhance regional and interregional resource-sharing and to more efficiently collect, process, distribute, and utilize a region's blood supply. Regionalization involves the increased centralization of blood collection and processing and consequent growth in the work-load of regional centers. These factors predispose toward the development and implementation of an automated data processing system to achieve rapid and accurate product distribution.

particularly for components such as platelets and granulocytes with dating periods measured in hours. To efficiently implement blood banking computerization, a nationally compatible system of encoding label information is necessary. The development of compatible equipment for the automation of blood banking requires the uniform placement of the encoded information, and, to assist in the gradual conversion to automation, the uniform placement of the analogous eye-readable information.

Blood and blood components are biological products subject to regulation under section 351 of the Public Health Service Act (42 U.S.C. 262) and are also drugs within the meaning of section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)). The products are governed by the applicable provisions of Parts 600 through 680) of the biologics regulations. Section 606.120 (21 CFR 606.120) prescribes the labeling requirements applicable to all licensed and unlicensed blood and blood component products. Part 640 (21 CFR Part 640) includes additional labeling requirements for specific blood products. Many blood establishments have printed custom labels which, while fully in compliance with the regulations, vary significantly in format and wording. This disparity in the wording and positioning of information, when considered in conjunction with the amount of information required on the container label, significantly decreases the readability of the label, and may be confusing to a user who is unfamiliar with an individual manufacturer's labels. Also, FDA and members of the private sector agree that the large amount of required information on the container label may obscure information that is absolutely necessary for the proper processing and administration of the product.

With extensive cooperation and support from the private sector, FDA has developed the revised labeling requirements now being proposed. FDA believes that the proposed regulations and the guideline now being made available will provide for the continued safe handling and administration of the products so labeled. In addition, the use of uniform labeling by all blood establishments will facilitate regional and interregional sharing of the Nation's blood supply, thereby promoting the efficient use of this valuable resource.

Background

In June 1974, the Committee for Commonality in Blood Banking Automation (CCBBA) was created with volunteers from all areas of the medical community with personnel from FDA participating. In 1975 the CCBBA was incorporated as a task force within the American Blood Commission (ABC). As part of its efforts, the task force undertook to: (1) Review the container label requirements for blood and blood components and recommend a revised simplified container label suitable for use by all blood establishements; (2) select the machine-readable code most serviceable for the blood service industry; and (3) select the key information for inclusion in both eye- and machine-readable form on the container label.

In its deliberations, the CCBBA recognized that an important benefit of simplified uniform labeling would be to decrease the incidence of human error due to the mislabeling or misreading of a blood product's container label, thereby decreasing the probability of an incompatible blood transfusion, a major danger in hemotherapy. Similarly, development of an automated data processing system would permit, at each step of the blood collection/administration process, computer confirmation of the information necessary for the safe and compatible transfusion of the product.

With these factors in mind, CCBBA created a prototype label. Samples of this label, modified to meet FDA regulations, were sent to 16 blood establishments for their use and comment. Revised final label recommendations were then presented to FDA for approval. The CCBBA kept the interested public informed of its progress by newsletter, lecture, and other media forms. Also, representatives presented their findings to the Bureau of Biologics advisory committee, the Panel on Review of Blood and Blood Derivatives. This proposal and the guideline being made available are based on CCBBA's recommendations as contained in its Final Report. Copies of CCBBA's Final Report, printed in seven volumes, are available from the American Blood Commission, 1901 North Ft. Meyer Drive, Suite 300, Arlington, VA 22209 and are also on file for public inspection with the Hearing Clerk, FDA.

Availability of Guideline

Members of the Nation's blood services complex are voluntarily participating in a program to convert from custom labels to a standardized container label format suitable for automated data processing. This format is intended for use by all blood establishments, licensed and unlicensed, in labeling blood and blood components. To assist in this conversion, the Bureau of Biologics at FDA is making available "Guidelines for the Uniform Labeling of Blood and Blood Components." This guideline describes in detail a standardized container label that is suitable for all blood and blood components intended for transfusion and that is in compliance with the revised labeling requirements proposed in this document. Instructions for the printing and use of the preferred bar-code system selected by CCBBA are described in the guideline. Standard ink colors are identified for use in printing the container label and other auxiliary labels, and for color coding the ABO blood group on the blood grouping portion of the container label.

FDA is encouraging voluntary compliance with the revised labeling requirements proposed in this document; therefore, the guideline may be used immediately in printing new standardized labels. However, the guideline may be revised at the time of publication of the final rule in response to comments received or any changes in the labeling requirements contained in the final rules. FDA urges that, by the effective date of the final rules, all establishments labeling blood and blood components convert to the standard label described in the final guideline. Instructions for obtaining a copy of the guideline and for the submission of comments are given at the end of this document.

The Proposed Rules

Throughout the remainder of this document, including the proposed rules, blood and blood products will be identified by their new proposed proper names. The new proper names are proposed elsewhere in this issue of the Federal Register, along with new proper names for other biological products. In many cases, such as for Whole Blood (Human), the proper name has been revised only by deleting the parenthetical word "Human"; however, for several products more extensive revisions to the proper names were proposed. For example, in this document, Whole Blood (Human), Modified is identified as "Whole Blood Platelets and/or Cryoprecipitate Removed"; Single Donor Plasma (Human) as "Plasma Frozen"; Single Donor Plasma (Human), liquid as "Plasma Liquid"; Platelet Concentrate (Human) as "Platelets"; and Cryoprecipitated Antihemophilic Factor (Human) as "Cryoprecipitated AHF."

In its review of the container label, the CCBBA task force evaluated each required label element to determine whether:

(a) It contributed to safety in the processing of the product, or

(b) Provided a necessary, immediate, and essential caution in the administration of the product.

Those elements meeting the above criteria are proposed for inclusion on the container label in § 606.121. The remaining elements will be either required in the instruction circular, as prescribed in proposed § 606.122, or omitted entirely if the information was determined to be obsolete, or not necessary for the proper use of the product.

Some new or revised elements are proposed for inclusion on the container label. As discussed earlier, the paramount objective of the CCBBA task force was to develop an automated data processing system serviceable to the blood banking community. Proposed § 606.121(c)(12) (i) through (v) prescribes the information the task force determined should be in both eye- and machine-readable form. The "collection center identifier" is based on the establishment's registration number, assigned by FDA. Space is reserved on the uniform container label for the inclusion of an encoded collection date, which may be useful for computerized facilities in inventory control. Because inexpensive on-site bar-code printers are not yet widely available, the encoding of the collection date will be optional. Although not required, establishments may encode information on the labels of blood or plasma products intended for further manufacturing use. Proposed § 606.121(c)(13) permits the submission of other encoding plans to the Director, Bureau of Biologics; however, the agency emphasizes that the full benefit of automated data processing is contingent on the nation-wide use of a uniform encoding system. FDA recognizes that rapid obsolescence is intrinsic in a developing technology such as automated data processing and will continue to review existing labeling procedures to ensure that blood product labeling requirements remain in step with modern technology.

In several cases, labeling requirements are being revised to reflect proposed amendments to the Whole Blood additional standards (21 CFR Part 640, Subpart A), published elsewhere in this issue of the Federal Register. A provision of that proposal would require that the blood of previously pregnant or transfused donors be tested to detect significant unexpected antibodies. Section 606.121(e)(1)(iii), (2)(ii), and (4) would require that any significant unexpected antibodies found be listed on the container labels of Whole Blood, Plasma and Red Blood Cells (except for the frozen, deglycerolized or wasahed Red Blood Cell products) prepared from that donor. Should no unexpected antibodies be found, this label element may be omitted.

Proposed § 606.121(c)(11) (i), (ii), and (iii) describe the criteria for labeling a product with the Rh group of the donor. As proposed, all blood and blood components intended for transfusion must be labeled with the Rh blood group. Previously, Rh group labeling was not required for Plasma and Cryoprecipitated AHF, because it was not generally considered essential for the safe transfusion of these products. On rare occasions when small amounts of red cell remnants are present, the transfusion of Rh positive Plasma to Rh negative persons has been reported to result in Rh allo-antibody production. Therefore, some clinicians believe that only Rh negative units should be used for transfusion patients, such as potentially child-bearing Rh negative females, for whom the consequinces of immunization are most serious. In addition, the uniform blood group labels described in the guideline include both ABO and Rh information on one label; therefore, it would be more burdensome for the user to delete the Rh portion than to include the Rh group which, under § 640.5(c) (21 CFR 640.5(c)), is already known for the donor. The wording of the provision is revised to reflect the revised Whole Blood standards which would require the testing of D-negative blood for the D^u antigen variant.

Proposed § 606.121(d)(1) would require a standard printing scheme for designating Rh positive and negative blood. The printing of the Rh positive and negative groups in contrasting forms will provide an additional safeguard against the mislabeling or misreading of this important information.

In proposed § 606.121(d)(2), a revised color scheme is prescribed for optional use in differentiating ABO blood groups. As noted by the CCBBA, the current color scheme does not correspond with the optional color scheme described for Blood Grouping Sera in § 660.28(a) (21 CFR 660.28(a)) and may be confusing to individuals handling both types of products. The proposed color scheme is more closely correlated to that used for Blood Grouping Sera. To forestall confusion, FDA is proposing in § 606.121(d)(3) that there be an interim transition period during which no color coding would be permitted. This will allow the introduction of the revised color codes without overlap or conflict with the color coding now in use. The transition period would be for 1 year beginning on the effective date of the final rules. The final rules would become effective 1 year after the date of publication in the Federal Register. Thus, the proposed color coding could be optionally introduced 2 years after the date of publication of the final rules in the Federal Register.

Proposed § 606.121(d)(4) would require that the colors used for the optional ABO group color coding be a visual match to specific color samples designated by the Director, Bureau of Biologics. The colors were selected from a coloring system readily available to printers. The colors are identical to the shades of blue and yellow previously selected for use in the Blood Grouping Serum color coding system. The coloring system and the selected colors are identified in the guidelines and in a separate memorandum filed under the docket number of this document and are available upon request from the Hearing Clerk, Food and Drug Administration. Colors in other coloring systems will be visually matched and identified upon request and submission of the coloring system to the Director, Bureau of Biologics.

The guideline describes a number of special labels recommended for use in simplying with the labeling requirements proposed under § 606.121 (f), (h) and (i) and for other purposes not addressed in the proposed regulations. For each special label described, the guideline recommends a specific color as an aid in identifying the type of special label being used. Under proposed § 606.121(d)(5), persons using color-coded special labels must either use the color coding system described in the guidelines or, prior to use, obtain the approval of the Director, Bureau of Biologics for the use of alternative color coding. By this means, FDA intends to prevent the use of color schemes conflicting with those described in the guidelines, and which may result in the misidentification on a special label.

Proposed § 606.121(h) prescribes the special labeling instructions for products shipped in an emergency situation, prior to completion of the required tests. This special label is revised from that previously required under § 640.7(f) (21 CFR 640.7(f)). In the proposed revisions to the Whole Blood standards, revised criteria are prescribed for the emergency shipment of blood, including a requirement that the shipping facility document in writing the circumstances necessitating the emergency shipment. Because this written record includes the name of the receiving facility, this information need no longer be on the container label. Previously, the

statements "Do not use until test results received from (name of licensee)" and "Perform crossmatch" were required on the special label for blood shipped in an emergency. In lieu of the former statement, the special label would include the results of any tests completed before shipment and an indication of those tests not completed before shipment. The wording is revised in recognition that the attending physician may determine that it is necessary to transfuse the blood before all test results are received. However, all tests results must be forwarded as soon as testing is completed. The statement "Perform Crossmatch" has been deleted as unnecessary because, under § 606.151(e) (21 CFR 606.151(e)), the receiving facility's standard operating procedure for compatibility testing must describe the procedures to expedite transfusions in life-threatening emergencies, including the procedures for performing a crossmatch.

The proposed revised Whole Blood standards permit the collection of blood for autologous use from patients failing to meet one or more donor suitability requirements, providing certain criteria are met. Proposed § 606.121(i) prescribes labeling which would differentiate blood collected from these patients, which is only suitable for autologous use, from blood collected from suitable donors for autologous purposes but which is equally suitable for homologous use. In the latter case, only a tie-tag or other special label need be used to identify the patient, date of collection, and the blood's intended autologous use. Blood from a patient failing to meet the donor suitability requirements or that is positive for hepatitis B surface antigen (HBsAg), must be permanently labeled on the final container with the statement "FOR AUTOLOGOUS USE ONLY" to preclude the erroneous use of the product for a homologous transfusion.

FDA advises that some of the provisions cross-referenced in proposed § 606.121(h) and (i) are being revised and redesignated in the proposed revised Whole Blood standards. Section 606.121(h) and (i) will be amended as appropriate in the final rules to reference the new, redesignated provisions.

For final products intended for transfusion, the information required for inclusion in the instruction circular is prescribed in proposed § 606.122. Many of the items proposed for this section were previously required on the container label, and per CCBBA's recommendations would now be required in the instruction circular. In addition, several new cautions or instructions to the user are proposed where the agency has determined that the additional information is necessary to insure that the products are used according to best current medical practice.

Although the requirements of this section are separated according to product, all the required information may be integrated into one common circular for use with all blood and blood component products. Such a circular has been jointly prepared by the American Association of Blood Banks and the American National Red Cross. This *Circular of Information for the Use of Human Blood and Blood Components* is approved for use by the agency and is becoming the voluntary, uniform standard for the blood service community.

Several other amendments are proposed for clarity and continuity. Revised § 606.120 contains only previously existent requirements concerning the general procedures for labeling blood and blood components. The sections of Part 640 pertaining to the labeling of blood and blood components are being deleted. Section 640.70, concerning the labeling requirements for Source Plasma, is being amended to exempt Source Plasma from the labeling requirements of this proposal.

Because this proposed rule represents a substantial revision from the labeling currently required, the agency proposes that any final regulation issued under this proposal be effective 1 year after the publication of the final regulation. The final regulation would apply to the labeling for all blood and blood components collected on or after the effective date.

FDA is permitting the immediate voluntary use of labels and instruction circulars complying with this proposed regulation except that the proposed ABO blood group color coding under § 606.121 (d)(3) may not be used until the specified effective date. The new container label is intended for use only in conjunction with a revised instruction circular meeting the requirements of proposed § 606.122. Therefore, the revised instruction circular must be available concurrent with the use of the new container label. Licensed establishments may begin using the new label without its prior review and approval by FDA, provided the label is printed in accordance with the specifications described in the guideline. Concurrent with its use, licensed establishments should submit the revised label and instruction circular to the Director, Bureau of Biologics as an amendment to their product license(s).

Pertinent background data on which the agency relies in proposing these amendments are on public display in the Dockets Management Branch, Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

The agency has determined that under proposed § 25.24(d)(13) (published December 11, 1979, 44 FR 71742), this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 701, 52 Stat. 1040–1042 as amended, 1049–1050 as amended, 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 351, 352, 371)) and the Public Health Service Act (sec. 351, 361, 58 Stat. 702 as amended, 703 (42 U.S.C. 262, 264)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Parts 606 and 640 are amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICES FOR BLOOD AND BLOOD COMPONENTS

1. In Part 606:

a. By revising § 606.120 to read as follows:

§ 606.120 Labeling, general requirements

(a) Labeling operations shall be separated physically or spatially from other operations in a manner adequate to prevent mixups.

(b) The labeling operation shall include the following labeling controls:

(1) Labels shall be held upon receipt, pending review and proofing against an approved final copy, to assure accuracy regarding identity, content, and conformity with the approved copy.

(2) Each type of label representing different products shall be stored and maintained in a manner to prevent mixups, and stocks of obsolete labels shall be destroyed.

(3) All necessary checks in labeling procedures shall be utilized to prevent errors in translating test results to container labels.

(c) All labeling shall be clear and legible.

b. By adding new §§ 606.121 and 606.122, to read as follows:

§ 606.121 Container Label.

(a) The following container label requirements are designed to facilitate the use of a uniform container label for blood and blood components (except Source Plasma) by all blood establishments. "Guidelines for the

Uniform Labeling of Blood and Blood Components" is available upon request from the office of the Hearing Clerk, Food and Drug Administration.

(b) The label provided by the collecting facility and the initial processing facility shall not be removed, altered, or obscured, except that the label may be altered to indicate the proper name and other required labeling information for the contents remaining in a container after blood components have been removed.

(c) The container label shall include the following information as well as other specialized information, as required in this section for specific products:

(1) The propoer name of the product in a prominent position.

(2) The name, address, and, if licensed, the license number of each manufacturer.

(3) The donor, pool, or lot number relating the unit to the donor.

(4) The expiration date, including the day and year, and, if applicable, the hour.

(5) The appropirate donor classification statement, "paid donor," or "volunteer donor," in no less prominence than the proper name of the product.

(i) A paid donor is a person who receives monetary payment for a blood donation.

(ii) A volunteer donor is a person who does not receive monetary payment for a blood donation.

(iii) Benefits, such as time off from work, membership in blood assurance programs, and cancellation of nonreplacement fees that are not readily convertible to cash, do not constitute monetary payment within the meaning of this paragraph.

(6) For Whole Blood, Plasma, Platelets, and partial units of Red Blood Cells, the volume of the product, accurate to within ±10 percent.

(7) The recommended storage temperature.

(8) If the product is intended for transfusion, the statements:

(i) "Caution: Federal law prohibits dispensing without prescription".

(ii) "See circular of information for indications, contraindications, cautions, and methods of infusion".

(iii) "Properly identify intended recipient".

(9) The statement: "This product may transmit the agent of hepatitis".

(10) The name and volume of source material, when applicable.

(11) The statement: "Caution: For Manufacturing Use Only", when applicable.

(12) If the product is intended for transfusion, the ABO and Rh groups of the donor shall be designated conspicuously. The Rh group shall be designated as follows:

(i) If the test using Anti-D Blood Grouping Serum is positive, the product shall b labeled: "Rh positive".

(ii) If the test using Anti-D Blood Grouping Serum is negative but the test for D^u is positive, the product shall labeled: "Rh positive".

(iii) if the test using Anti-D Blood Grouping Serum is negative and the test for D^u is negative, the product shall be labeled: "Rh negative".

(13) For products intended for transfusion, the container label shall bear encoded information in the form of machine-readable symbols approved for use by the Director, Bureau of Biologies. Machine-readable symnbols are optional for products intended only for further manufacturing use. The encoded information shall adequately identify the following:

(i) Proper name of the product.

(ii) Type of anticoagulant (for whole blood and red blood cell products only).

(iii) Collection center identifier.

(iv) Unit number.

(v) ABO and Rh blood group of the donor.

(d) The paper of the container label shall be white and print shall be solid black, with the following exceptions:

(1) The Rh blood group shall be printed as follows:

(i) Rh positive: Use black print on white background.

(ii) Rh negative: Use white print on black background.

(2) The name of the product, the donor classification statement, and the statement "properly identify intended recipient" shall be printed in solid red.

(3) On or before (2 years after date of publication of final rule in the Federal Register), a color scheme may not be used on the container label for differentiating ABO blood groups; after that date, the following color scheme may be used:

Blood group	Color of label paper
O	White.
A	Blue.
B	Yellow.
AB	Green.

(4) Ink colors used for the optional color coding system described in paragraph (3) above shall be a visual match to specific color samples designated by the Director, Bureau of Biologics.

(5) Special labels, such as those described in paragraphs (h) and (i) of this section, may be color coded using the colors recommended in the guideline (see § 606.121(a)), or colors otherwise approved for use by the Director, Bureau of Biologics.

(e) Container label requirements for particular products or groups of products.

(1) Whole Blood labels shall include:

(i) The volume of anticoagulant.

(ii) The name of the applicable anticoagulant, immediately preceding and of no less prominence than the proper name and expressed as follows: (*a*) ACD, (*b*) CPD, (*c*) Heparin, or (*d*) CPDA-1.

(iii) If tests for unexpected antibodies are positive, blood intended for transfusion shall be labled: contains (*name of anitibody*).

(2) Red Blood Cells labels shall include:

(i) The volume and kind of Whole Blood, including the type of anticoagulant, from which the product was prepared.

(ii) It tests for inexpected antibodies are positive, Red Blood Cells intended for transfusion shall be labeled: contains (*name of anitibody*) (except that this requirement shall not apply to the frozen, deglycerolized, or washed Red Blood Cell products).

(3) Labels for Red Blood Cells Deglycerolized, Plasama Platelets, Granulocytes, and any product prepared in an open system shall bear the hour of expiration.

(4) If tests for unexpected antibodies are positive, Plasma intended for transfusion shall be labeled: contains (*name of anitibody*).

(5) Recovered plasma labels shall include:

(i) In lieu of an expiration date, the date of collection of the oldest material in the container.

(ii) The statement: "Caution: For Manufacturing Use Only" or "Caution: For Use in Manufacturing Noninjectable Products Only", as applicable.

(iii) For recovered plasma not meeting the requirements for manufacture into licensable products, the statement: "Not For Use in Products Subject to License Under Section 351 of the Public Health Service Act."

(f) Blood and blood components determined to be unsuitable for transfusion shall be prominently labeled: "NOT FOR TRANSFUSION", and the label shall state the reason the unit is considered unsuitable.

(g) Blood and blood components which are reactive for Hepatitis B Surface Antigen, but which are intended for further manufacturing, shall be labeled as required under § 610.40 of this chapter.

(h) The following additional information shall appear on the labeling for blood or blood components shipped in an emergency, prior to completion of required tests, in accordance with § 640.2(f) of this chapter.

(1) The following information shall appear on a special label or tie-tag attached to the container:

(i) The statement: "EMERGENCY USE ONLY."

(ii) Results of any tests prescribed under §§ 610.40 and 640.5(a), (b), or (c) of this chapter completed before shipment.

(iii) Indication of any tests prescribed under §§ 610.40 and 640.5(a), (b), or (c) of this chapter and not completed before shipment.

(2) The label may not bear the name or any other identification of the intended recipient.

(i) The following additional information shall appear on the labeling for Whole Blood or red Blood Cells intended for autologous infusion.

(1) The following information shall appear on a special label or tie-tag attached to the blood container:

(i) Information adequately identifying the patient. (e.g. name, blood group, hospital, identification no.)

(ii) Date of donation.

(iii) The statement: "FOR AUTOLOGOUS USE ONLY:"

(2) Units of blood originally intended for autologous use, except those labeled as prescribed under paragraph (i)(3) of this section, may be issued for homologous transfusion provided the container label complies with all applicable provisions of § 606.121 (b) through (e). In such case, the special label or tie-tag required under paragraph (i)(1) of this section shall be removed.

(3) In place of the blood group label, each container of blood intended for autologous use and obtained from a donor who fails to meet any of the donor suitability requirements under § 640.3 of this chapter or who is reactive in the hepatitis tests prescribed under § 610.40 shall be prominently and permanently labeled: "FOR AUTOLOGOUS USE ONLY."

§ 606.122 Instruction circular.

An instruction circular shall be available for distribution if the product is not intended for further manufacturing. The instruction circular shall provide adequate directions for use, including the following information:

(a) Instructions to mix the product before use.

(b) Instructions to use a filter in the administration equipment.

(c) The statement "Do Not Add Medications" or an explanation concerning allowable additives.

(d) Known sensitizing substances.

(e) A description of the product, its source and preparation, including the name and proportion of the anticoagulant used in collecting the Whole Blood from which each product is prepared.

(f) Statements that the product was prepared from blood that was nonreactive when tested for hepatitis B surface antigen by an FDA required test and nonreactive when tested for syphilis by a serological test for syphilis (STS).

(g) The statements: "Warning. The risk of transmitting hepatitis is present. Careful donor selection and available laboratory tests do not eliminate the hazard".

(h) The names of cryoprotective agents and other additives that may still be present in the product.

(i) The names of all tests performed and results when necessary for safe and effective use.

(j) The use of the product, indications, contraindications, side effects and hazards, dosage and administration recommendations.

(k) For Whole Blood Platelets and/or Cryoprecipitate Removed, instructions not to use the unit of blood for patients requiring platelets or antihemophilic factor (whichever is applicable).

(l) For Red Blood Cells, the instruction circular shall contain:

(1) Instruction to add a suitable plasma volume expander if Red Blood Cells are substituted for Whole Blood.

(2) A warning not to add Lactated Ringer's Injection (U.S.P.) solution to Red Blood Cell products.

(m) For Platelets, the instruction circular shall contain:

(1) The approximate volume of plasma the Platelets were prepared from.

(2) Instructions to use as soon as possible but not more than 4 hours after entering the container.

(n) For Plasma, the instruction circular shall contain:

(1) A warning against further processing of the frozen product if there is evidence of breakage or thawing.

(2) Instructions to thaw the frozen product at a temperature between 30° and 37° C.

(3) When applicable, instructions to use the product within 6 hours after thawing.

(4) Instructions to administer to ABO group compatible recipients.

(5) A statement that this product has the same hepatitis risk as Whole Blood; other plasma volume expanders without this risk are available for treating hypovolemia.

(o) For Cryoprecipitated AHF, the instruction circular shall contain:

(1) The statement: "Average potency is 80 or more units of antihemophilic factor."

(2) The statement: "Usually contains at least 150 mg of fibrinogen"; or, alternatively, the average fibrinogen level determined by assay.

(3) A warning against further processing of the product if there is evidence of breakage or thawing.

(4) Instructions to thaw the product for 15 minutes at a temperature of 37° C.

(5) Instructions to store at room temperature after thawing and use as soon as possible but not more than 4 hours after entering or pooling and within 6 hours after thawing.

(6) A statement that saline is the preferred diluent.

(7) Adequate instructions for pooling to ensure complete removal of all concentrated material from each container.

(8) The statement: "Good patient management requires monitoring treatment responses to Cryoprecipitated AHF transfusions with periodic plasma factor VIII or fibrinogen assays in hemophilia A and hypofigrinogenemic recipients, respectively."

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

2. In Part 640:

§§ 640.7, 640.18, 640.26, 640.35 and 640.57 [Deleted]

a. Be deleting §§ 640.7, 640.18, 640.26, 640.35, and 640.57.

b. By revising the introductory text of § 640.70(a) to read as follows:

§ 640.70 Labeling.

(a) In addition to the labeling requirements of § 610.62 of this chapter, and in lieu of the requirements in §§ 606.121, 610.60, and 610.61 of this chapter, the following information shall appear on the label affixed to each container of Source Plasma:

* * * * *

The guideline is available for public examination between 9 a.m. and 4 p.m., Monday through Friday in the Dockets Management Branch (address below). Interested persons may obtain a single copy of the guideline by writing the Dockets Management Branch and identifying the document with the Dockets Management Branch document number found in brackets in the heading of the document.

Interested persons may, on or before December 30, 1980 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food

and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal and the guideline. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Dockets Management Branch docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33508 Filed 10-30-80; 8:45 am]

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21 CFR Part 640

[Docket No. 80N-0062]

Additional Standards for Human Blood and Blood Products; Reorganization and Revision of Regulations

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the biologics regulations concerning Additional Standards for Human Blood and Blood Products by reorganizing and revising regulations on Whole Blood (Human). This action would organize these regulations into a logical sequence of manufacturing whole blood, from collection to issue, and would ensure that the criteria of safety, purity, potency, and efficacy applicable to Whole Blood (Human) are consistent with the best current judtment of the scientific community.

DATES: Comments by December 30, 1980, FDA proposes that any final regulation issued under this proposal be effective 30 days after the date of publication of the final regulation.

ADDRESS: Written comments to the Dockets Management Branch (Formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Fisher, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: Whole Blood (Human) is a biological product subject to regulations under section 351 of the Public Health Service Act (42 U.S.C. 262). It is also a drug as defined in section 201(g) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 321(g)(1)). Section 351 of the Public Health Service Act requires licensing of each manufacturer of Whole Blood (Human) before marketing the product in interstate commerce. Licenses for establishments manufacturing Whole Blood (Human) are issued only after the particular establishment has demonstrated it is capable of manufacturing Whole Blood (Human) that is safe, pure, potent, and effective. Establishment and product licensing for the production and distribution of Whole Blood (Human) is further governed by the Additional Standards for Human Blood and Blood Products under Part 640, Subpart A (21 CFR Part 640, Subpart A).

FDA has reviewed the existing regulations on Whole Blood (Human) in order to revise and update older standards of production and distribution. This review is consistent with the objectives of Executive Order 12044, "Improving Government Regulations." The agency proposes to revise and reorganize these regulations to reflect a logical sequence of manufacture, to delete outdated requirements, and to add new requirements based on recent scientific experience and developments. Because all blood establishments are required to comply with the standards of current good manufacturing practice (GMP) for blood and blood components under Part 606 (21 CFR Part 606), the requirements contained in the existing Whole Blood (Human) regulations and also prescribed in the GMP standards are deleted in the proposed standards for Whole Blood (Human). Changes in labeling requirements for Whole Blood (Human) are not being proposed at this time because the agency is proposing uniform labeling for blood and blood components in a proposal published elsewhere in this issue of the Federal Register. The current labeling requirements recodified as § 640.9a, will remain in effect pending final action on the proposal concerning uniform labeling for blood and blood components. In addition, a proposed new proper name for Whole Blood (Human), along with proposed new proper names for other biological products, is the subject of a proposal regarding changes in proper names of certain biological products published elsewhere in this issue of the Federal Register. The current proper name, Whole Blood (Human), is used throughout these proposed revisions of the Whole Blood (Human) regulations. The agency advises that new proper names that may be adopted under a final rule regarding the changes in proper names of certain biological products, will be included, as appropriate, in the final rule for revisions of the Whole Blood (Human) regulations.

Substantive changes of the existing Whole Blood (Human) regulations are as follows:

1. Proposed § 640.1 would expand the definition of Whole Blood (Human) to specify that Whole Blood (Human) is derived from a homan donor for transfusion or for use in further manufacturing.

2. Proposed § 640.2(a) would delete the term "licensed" in reference to "licensed blood establishments" because the additional standards for Whole Blood (Human) apply to both licensed and unlicended blood establishments under § 606.100.

3. Current § 640.2(b) would be deleted. The check on sterile technique is conducted to monitor the risk of environmental contamination and any subsequent growth of microorganisms during storage. However, because of technological advances and increased availability of equipment, virtually all blood banking establishments now use disposable plastic containers that do not require venting or entry, other than at the terminal end of integrally attached tubing for blood component separation. The use of disposable plastic containers eliminates the possibility of environmental contamination and the need for a continuing check on sterile technique. For these reasons and because of the requirement in proposed § 640.4(b) that all blood be collected in a closed system, FDA concludes that it is no longer necessary to require a periodic check on sterile technique on units of Whole Blood (Human). The current regulations on therapeutic bleedings are redesignated as § 640.2(b).

4. Current § 640.3(e) would be deleted. This section was promulgated before the source plasma regulation concerning the immunization of donors was published and when little was known about the possible effects that blood withdrawn from donors immunized to human blood cell antigens might have on the

recipient. In addition, this section does not take into consideration blood from immunized donors who fail to demonstrate a positive immune response to the injection of human blood cell antigens. The agency finds that this section is outdated because required laboratory tests ensure that blood withdrawn from donors immunized to human blood cell antigens will not affect the safety of transfusion.

5. Proposed § 640.3 would provide more specific guidance for determining the health of the donor to ensure continued safety during a blood donation. The agency proposes the following changes:

a. Proposed § 640.3(a) would require that a qualified licensed physician supervise the determination of donor suitability. The agency believes that the suitability of a blood donor must be determined by a physician who is licensed to practice medicine to ensure that adequate treatment is prescribed in the event of a serious donor reaction. Thus, this paragraph conforms with the Source Plasma (Human) donor suitability requirements under § 640.63(a).

b. Proposed § 640.3(b) would limit the ages of donors to 17 through 65 (up to 66th birthday). On or after the 66th birthday, a donor may be accepted only with the approval of the blood bank physician within 4 weeks before the date of donation, provided the donor has specific written consent from a licensed physician and meets all other criteria for donor acceptability. Donors who are considered minors under applicable local laws must have written consent as required by local law. The agency recognizes that the proposed age limitations are arbitrary; however, these proposed age limitations are based upon legal considerations and well-established correlations of the probability of cardiovascular disease as a function of increasing age.

c. Proposed § 640.3(c) would require that donors may not donate more than 450 milliliters ± 10 percent of Whole Blood (Human) in any 8-week period and not more often than four times per calendar year; unless, as an exception to this requirement, the donor is examined and certified in writing by a licensed physician to meet all other donor qualifications. The agency's review of published studies finds that the present limits concerning the frequency of blood donations does not protect blood donors from developing iron deficiency. These studies demonstrate that at the current permissible donation frequency, the donor's iron stores may not be replaced from the normal diet. Moreover, excluding donors on the basis of the lower limits of hemoglobin/hematocrit values for donor eligibility does not prevent donation by iron-depleted individuals because iron stores may be absent in individuals with acceptable hemoglobin/hematocrit values. The impact of a lower permissible freqency of blood donation on the nation's blood supply has been determined by a study conducted by FDA's Bureau of Biologics. Nineteen regions were surveyed, and these accounted for approximately 15 percent of the blood collected in the United States in 1976. Data from the survey demonstrate that with donations limited to four times per calendar year only 0.2 to 0.8 percent of the blood supply in these regions may be lost. Therefore, the agency concludes that limiting blood donations to 4 times per calendar year will adequately protect donors against iron depletion and will not significantly affect the blood supply needs of the nation.

d. Proposed § 640.3(d)(1) would require the use of venipuncture or fingerstick techniques to obtain blood for hemoglobin or hematocrit determination. Hemoglobin determinations must reflect venous hemoglobin values to prevent individuals with anemia or depleted iron stores from donating blood. The agency reviewed published studies concerning various sampling sites used for the source of blood for hemoglobin/hematocrit determination. These studies demonstrated that results obtained with earlobe puncture overestimate the hemoglobin/hematocrit values obtained by venipuncture or fingerstick techniques. Therefore, earlobe puncture screening may result in acceptance of a donor with anemia or depleted iron stores who would otherwise have been deferred. Furthermore, these studies demonstrate that venipuncture and fingerstick values are equivalent and more reproducible than earlobe puncture values. Based upon this evidence, the agency concludes that earlobe sampling is not suitable for hemoglobin/hematocrit determination.

The requirement for minimum hemoglobin values of not less than 12.5 grams of hemoglobin per deciliter of blood for females and 13.5 grams of hemoglobin per deciliter of blood for males is also proposed in this section. Acceptable hematocrit values, if substituted, are no less than 38 percent and 41 percent, respectively. The agency finds that the currently required minimum hemoglobin value of 12.5 grams of hemoglobin per deciliter of blood is significantly below the normal range for males. Large segments of the blood-banking community recognize this fact and commonly use a minimum hemoglobin value of 13.5 grams of hemoglobin per deciliter of blood or the equivalent hematocrit value of 41 percent for male donors. Consequently, the agency concludes that the current minimum hemoglobin/hematocrit value is below the physiologic norm for male donors.

e. Proposed § 640.3(d)(2) would provide specific criteria for blood pressure, pulse, temperature, and weight with a provision that donors outside these limits are acceptable if the donor is examined and certified in writing as acceptable by a licensed physician. The agency believes that specific criteria for donor screening are necessary to ensure continued donor health and the safety and efficacy of the blood product.

f. Proposed § 640.3(d)(3) would be revised to provide specific criteria for malaria, recent tooth extraction and other oral surgery, recent immunizations, and pregnancy. The agency believes that these criteria are necessary to adequately determine the medical history of the donor. Also, the agency is proposing two provisions, in addition to the current requirements concerning hepatitis, to further minimize the risk of transmitting hepatitis. First, a donor is premanently excluded if blood from that donor was the only unit of blood or blood component administered to a recipient who within 6 months developed posttransfusion hepatitis, and second, a donor is excluded if a tatto was received within 6 months prior to donation.

g. Proposed § 640.3(d)(4) would require the rejection of any donor suffering from symptoms of or receiving treatment for acute or chronic disease or receiving prescribed medication, with the exception of vitamins or contraceptives, unless a licensed physician approves otherwise. Also, by requiring the rejection of any donor who does not provide reliable answers to medical history questions because of the influence of drugs, alcohol, or for any other reason. The agency believes that these comprehensive requirements will further ensure an adequate determination of donor suitability.

6. Proposed § 640.4 would establish standards for blood containers and donor sets which will require that blood be collected in a closed system. For the reasons discussed in paragraph 3, above and because of the superiority of modern plastic equipment over glass containers in the collection, processing, storage, and distribution of blood, all blood-banking establishments shall be required to use approved plastic containers and donor sets exclusively.

Two additional provisions are also proposed in paragraphs (c) and (d) of this section to provide further assurance of a sterile and safe product. The first requires the collection of blood with a single venipuncture and the second requires the mixing of the blood unit by a method which results in a fully anticoagulated unit. Pilot and processing samples are also differentiated in paragraph (g) of this section to promote a clear understanding of their intended use.

7. Proposed § 640.5 would specify that laboratory tests be performed on either pilot or processing samples because both contain a representative sample of the donor's blood. Current § 640.5(a) is unchanged. The agency proposes the following changes:

a. Proposed § 640.5(b) would specify that: (1) the cell group must be determined by tests with anti-A and anti-B blood grouping serum; (2) the serum group must be determined by testing the donor's plasma or serum with known group A and group B red cells; and (3) the results of both cell and serum grouping must agree before a final label is placed on the blood container. The agency believes that a routine cell and serum test procedure will provide reliable ABO group determinations.

b. Proposed § 640.5(c) would require a test for the D varient (D^u) antigen on D negative blood to determine adequately the presence or absence of D antigen. Because the D antigen is recognized as the most immunogenic red cell antigen outside the ABO system, it is extremely important to accurately group blood donors to prevent problems in transfusion and pregnancy. To accurately determine whether a donor is a true Rh-negative individual, it is necessary to test for the D varient (D^u) antigen because donors with this phenotype are Rh-positive, and their blood to transfused to Rh-positive recipients. The agency believes that this provision will provide accurate confirmation of an Rh classification. In addition, the Wiener notations are deleted as concomitant nomenclature to the Fisher-Race notations in the Rh system. The agency believes that the Fisher-Race nomenclature is widely accepted in describing the main relationships of the Rh blood group system in simple and intelligible terms and is likely to remain indispensible to the scientific community. The Wiener nomenclature is deleted because of practical considerations and for no other reason.

c. Proposed § 640.5(d) would require a test for unexpected antibodies in previously pregnant or transfused donors. The agency believes that it is necessary to test these donors for unexpected antibodies to identify blood that may be harmful if transfused and blood that may confuse future serological evaluation. Other donors need not be tested because unexpected antibodies are rarely found in donors who have not been previously pregnant or transfused. Current § 640.5 (d) and (e) would be deleted.

8. Proposed § 640.6 would separate the storage conditions for blood into two categories, transit storage temperature and blood bank storage temperature. This section specifies that the transportation of blood from a collecting facility to a processing facility be either in a refrigerated environment capable of cooling the blood toward a temperature range of 1° to 10° C, or at a temperature range as close as possible to 20° to 24° C for a period not to exceed 4 hours. Also, for the reasons discussed in paragraph 10. below, this section further provides that blood for reissue need not be placed in temporary storage at 1° to 6° C provided the units are returned to the required refrigerated environment within 30 minutes.

9. Proposed § 640.7 would specify conditions for storage of blood used for component separation. These storage conditions reflect present practices in blood component separation. The current regulations on labeling are redesignated as § 640.9a.

10. A new § 640.8 is proposed and would specify the additional requirements concerning the issue and reissue of blood found in current §§ 640.5(e) and 640.4(i). The agency proposes the following changes:

a. Proposed § 640.8(a) would revise current § 640.5(e) and specify that blood may be issued or reissued if the container has a tamper proof seal which remains unbroken and is inspected visually prior to issue or reissue.

b. Proposed § 640.8(b) would revise current § 640.4(i) and specify that blood which has been moved from storage and exposed to room temperature for no more than 30 minutes would be permitted for reissue. Practical experience demonstrates that blood stored at 1° to 6° C and exposed to room temperature for no more than 30 minutes will not exceed 10° C. The agency would not require evidence of storage after issue because the integrity of the blood will not be compromised by this time period. The section would also extend the time period for use after a blood container has been entered from within 6 hours to within 24 hours. The agency has determined that this extended time period (24 hours) does not adversely affect the quality of Whole Blood (Human) because the significant growth of microorganisms during this short storage period at 1° to 6° C is unlikely.

11. A new § 640.9 is proposed and would incorporate exceptions to the requirements for the preparation of Whole Blood (Human) to better organize and consolidate the regulations. These exceptions concern the provisions for emergency issue, autologous infusion, pediatric use, and manufacturing use of Whole Blood (Human).

12. A new § 640.9a is proposed which is a redesignation of current § 640.7.

The agency proposes that the effective date of any final regulation issued under this proposal be 30 days after publication of the final regulation in the Federal Register.

Pertinent background data on which the agency relies in proposing these amendments are on public display in the Dockets Management Branch, Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

The agency has determined that under proposed § 25.24 (d)(10) (published on December 11, 1979 (44 FR 71742)), this proposal is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 701, 52 Stat. 1040-1042 as amended, 1050-1051 as amended, 1055-1056 as amended (21 U.S.C. 321, 352, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702, as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 640 be amended by revising Subpart A to comprise §§ 640.1-640.9a, to read as follows:

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

Subpart A—Whole Blood (Human)

Sec.
640.1 Whole Blood (Human).
640.2 General requirements.
640.3 Suitability of donor.
640.4 Collection of the blood.
640.5 Testing of the blood.
640.6 Storage of the blood.
640.7 Modification of Whole Blood (Human).
640.8 Issue and reissue of the blood.
640.9 Exceptions.
640.9a Labeling.

Subpart A—Whole Blood (Human)

§ 640.1 Whole Blood (Human).

Proper name and definition. The proper name of this product is Whole

Blood (Human). Whole Blood (Human) is defined as blood collected from a human donor for transfusion or for use in further manufacturing.

§ 640.2 General requirements.

(a) *Manufacturing responsibility.* A single establishment shall perform all manufacturing of Whole Blood (Human) including donor examination, blood collection, processing (except as provided in § 610.40(b)), storage, and issue except that the Director, Bureau of Biologics, may approve arrangements for divided manufacture between two or more licensed establishments which the Director determines are adequate to ensure compliance with the provisions of this subchapter.

(b) *Therapeutic bleedings.* Blood withdrawn to promote the health of a donor otherwise qualified under the provisions of this section, shall not be used as a source of Whole Blood (Human) unless the container label conspicuously indicate the donor's disease that necessitated withdrawal of blood.

§ 640.3 Suitability of donor.

(a) *Personnel.* The suitability of a donor as a source of Whole Blood (Human) shall be determined by a qualified licensed physician or persons under the physician's supervision and trained in determining donor suitability. Donor suitability shall be determined by medical history, limited physical examination, and hemoglobin or hematocrit evaluation on the day of and prior to the collection of blood from the donor. The establishment shall maintain on the premises a record which identifies the name and qualifications of the person immediately in charge of the employees who determines the suitability of donors when a physician is not present on the premises.

(b) *Age.* Donors shall be between the ages of 17 through 65 (up to the 66th birthday). Donors under 17 years of age are acceptable only if written consent to donate blood has been obtained in accordance with applicable local law. Donors are acceptable on or after the 66th birthday with the approval of the blood bank physician: *Provided,* That the donors have specific written consent from a licensed physician within 4 weeks before the date of donation and meet all other criteria for acceptability.

(c) *Volume and frequency of donation.* A donor shall not serve as a source of more than 450 milliliters ±10 percent of Whole Blood (Human) in an 8-week period and not more frequently than 4 times per calendar year, unless, as an exception to this requirement, the donor is examined by a licensed physician at the time of donation and certified in writing by the licensed physician to meet all other donor qualifications of this section.

(d) *Donor qualifications.* Donors shall be in good general health as determined in part by the following criteria:

(1) *Hemoglobin or hematocrit determination.* The hemoglobin shall be determined by using a sample of blood obtained by fingerstick or by venipuncture and shall be no less than 12.5 grams per deciliter of blood for females and 13.5 grams per deciliter of blood for males. Acceptable hematocrit values, if substituted, shall be no less than 38 percent and 41 percent, respectively.

(2) *Physical examination*—(i) *Blood pressure.* The systolic blood pressure shall be between 90 and 180 millimeters of mercury; the disastolic blood pressure shall be between 50 and 100 millimeters of mercury.

(ii) *Pulse.* The pulse rate shall be between 50 and 100 beats per minute and regular.

(iii) *Temperature.* The oral temperature shall not exceed 37.5° C.

(iv) *Weight.* Donors shall weigh at least 50 kilograms, except that donors weighing less may donate proportionately less in a reduced volume of anticoagulant if all other donor requirements are met.

(v) *Exceptions.* Donors with measurements outside the limits of paragraph (d)(2)(i) through (iv) of this section are acceptable if the donor is examined by a licensed physician and certified in writing by the physician to be acceptable.

(vi) *Donor skin.* The phlebotomy site shall be free of skin disease, and both arms shall be free of evidence of repeated skin punctures or scars indicative of drug addiction.

(3) *Medical history*—(i) *Viral hepatitis.* A donor shall be deferred permanently if blood from the donor was the only unit of blood or blood component administered to a patient who within 6 months developed posttransfusion hepatitis and who received no other blood fractions capable of hepatitis transmission; or if the donor is known previously to have been positive for Hepatitis B Surface Antigen (HBsAg); or if the donor has a history of viral hepatitis at any time. A donor shall be deferred if the donor has had, within 6 months prior to donation, close contact with an individual with viral hepatitis, or if the donor has been, within 6 months prior to donation, the recipient of blood products or a tattoo.

(ii) *Malaria.* A donor shall be deferred for a history of malaria exposure within 6 months following travel in an endemic area, within 3 years following residence in an endemic area, and malaria or antimalaria prophylaxis within 3 years prior to donation.

(iii) *Tooth extraction or oral surgery.* A donor shall be deferred for a history of tooth extraction or other oral surgery within 72 hours prior to donation.

(iv) *Immunization.* A donor shall be deferred until the symptons of immunization disappear, except that a symptom-free donor who has been immunized with measles (rubeola), mumps, yellow fever, oral polio vaccine, or animal serum products shall be deferred for 2 weeks after the last immunization; and with German measles (rubella), a donor shall be deferred for 1 month after the last injection.

(v) *Pregnancy.* A donor shall be deferred for known existing pregnancy and, unless a licensed physician approves otherwise, for 6 weeks postpartum.

(4) *General.* (i) A donor shall be deferred, unless a licensed physician approves otherwise, if the donor appears to be suffering from symptoms of or receiving treatment for acute or chronic disease or is receiving prescribed medication, with the exception of vitamins or contraceptives.

(ii) A donor shall be deferred if the donor appears to be under the influence of any drug or alcohol or who does not appear to be providing reliable answers to medical history questions.

§ 640.4 Collection of the blood.

(a) *Supervision.* A qualified licensed physician, or persons under the supervision of a qualified licensed physician trained in the procedure, shall draw blood from the donor. The establishment shall maintain on the premises a record that identifies the name and qualifications of the person immediately in charge of employees who collect blood when a physician is not present on the premises.

(b) *Prevention of contamination of the blood.* The skin of the donor at the site of phlebotomy shall be prepared by a method that gives assurance of a sterile container of blood. The blood shall be collected in a sterile, pyrogenfree, closed system.

(c) *Phlebotomy.* Blood shall be collected with a single venipuncture.

(d) *Mixing.* Blood shall be mixed by a method which gives a fully anticoagulated unit.

(e) *Blood containers.* Blood containers shall meet the following standards:

(1) The original blood container shall be the final container and shall not be entered for any purpose except for blood

transfusion or as specified elsewhere in this part.

(2) The blood container and anticoagulant shall meet specifications set forth in an approved new drug application filed pursuant to section 505 (a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (a) and (b)) and Part 314 of this chapter.

(f) *Donor sets.* The donor set shall be an integral component of the blood container.

(g) *Test samples.* Pilot samples shall be contained in tubing integrally attached to the final container and shall be portions of the anitcoagulated blood contained in the final container. Processing samples shall be collected at the time of donation in separate containers or in tubing integrally attached to the final container.

§ 640.5 Testing of the blood.

All laboratory tests shall be performed on a pilot or processing sample of blood, and these tests shall include the following:

(a) *Serological test for syphilis.* Whole Blood (Human) shall be negative to a serological test for syphilis.

(b) *Determination of the ABO blood group.* Whole Blood (Human) shall be classified according to ABO blood group by testing the red blood cells with licensed Anti-A and Anti-B Blood Grouping Sera and by testing the serum or plasma with known group A and B cells. The unit of Whole Blood (Human) shall not be labeled unless the results of the two tests are in agreement. The testing facility may use unlicensed blood-grouping sera prepared at such facilities, if the blood grouping sera meet the potency and specificity requirements of Part 660 of this subchapter.

(c) *Determination of the Rh group.* Whole Blood (Human) shall be classified accoridng to Rh blood group by testing the red blood cells with licensed Anti-D Blood Grouping serum. If the test using Anti-D Blood Grouping Serum is positive, no further testing is required. If the the test using Anti-D Blood Grouping Serum is negative, the results shall be confirmed by further testing for D^U antigen using the antiglobulin technique of a technique of equivalent sensitivity. The testing facility may use unlicensed Anti-D Blood Grouping Serum and unlicensed Anti-Human Globulin Serum prepared at such facility, if the blood grouping sera meet the potency and specificity requirements of Part 600 of this subchapter.

(d) *Test for unexpected antibodies.* Whole Blood (Human) from previously pregnant or transfused donors shall be tested for unexpected antibodies by a method that demonstrates significant alloantibodies.

§ 640.6 Storage of the blood.

(a) *Blood bank storage temperature.* Immediately after collection, blood shall be stored at a temperature range between 1° to 6° C, except that blood from which platelets are to be removed shall be held in storage at a temperature between 20° to 24° C for a period not to exceed 4 hours from the time of collection.

(b) *Transit storage temperatures.* Blood that is transported from the collecting facility to the processing facility shall be transported in an environment capable of continuously cooling the blood toward a temperature range of 1° to 10° C; or at a temperature as close as possible to 20° to 24° C for a period not to exceed 4 hours. Blood transported from the storage facility shall be placed in an appropriate environment to maintain a temperature range between 1° to 10° C during shipment. Blood for reissue need not be placed in temporary storage at 1° to 6° C provided the units are returned to a controlled environment within 30 minutes.

§ 640.7 Modification of whole blood (human).

The establishment may remove platelets and cryoprecipitated antihemophilic factor from Whole Blood (Human) meeting the applicable requirements of this subchapter and the following conditions:

(a) *Platelets removed.* The blood from which platelets are to be prepared shall be stored in accordance with the provisions of § 640.6(a).

(b) *Cryoprecipitated antihemophilic factor removed.* The red blood cells shall be maintained between 1° and 6° C when the plasma is being frozen for removal of cryoprecipitated antihemophilic factor.

(c) *Cryoprecipitated antihemophilic factor and platelets removed.* Paragraphs (a) and (b) of this section shall apply until both platelets and cryoprecipitated antihemophilic factor are separated from the blood.

§ 640.8 Issue and reissue of the blood.

(a) Blood may be issued or reissued if the container has a tamper proof seal that remains unbroken and the blood is inspected visually prior to issue or reissue. The blood may not be issued or reissued if the color or physical appearance is abnormal or there is any indication or suspicion of microbial contamination.

(b) Blood may be reissued if the blood was continuously maintained at 1° to 6° C except during shipment or returned to storage at 1° to 6° C within 30 minutes after issue and if a pilot sample is properly attached. Blood lacking a pilot sample may be reissued if it is accompanied by instructions for sampling and for use within 24 hours after entering the container for sampling.

§ 640.9 Exceptions.

(a) *Emergency use.* Notwithstanding the provisions of § 610.1 of this chapter, blood may be issued before results of all of the tests prescribed in § 640.5 and the test for hepatitis B surface antigen prescribed in § 610.40(a) of this chapter have been completed, where such shipment is in response to a situation that demands immediate action as determined by a responsible person and documented in writing by the shipping facility. Tests shall be completed as soon as possible, and results shall be sent to the facility receiving the emergency shipment.

(b) *Autologous infusion.* Establishments may collect blood intended for infusion into the same person from whom it was collected even if the person fails to meet one or more of the provisions of § 640.3(b): *Provided,* That (1) the collecting facility has obtained a written request, including an explanation from the donor's physician of the desirability for autologous infusion and specifying the volume and frequency of collections; (2) the donor does not have and is not being treated for bacteremia; and (3) the hemoglobin is no less than 11 grams per deciliter of blood, or the hematocrit is no less than 34 percent, unless hemoglobin or hematocrit values below these limits are approved by the blood bank physician. Blood intended for autologous infusion shall be tested as required in § 640.5 except that the requirement that blood shall be negative to a serological test for syphilis in § 640.5(a) shall not apply. The requirement that blood shall be negative for hepatitis B surface antigen in § 610.40(d) shall not apply.

(c) *Pediatric use only.* The original blood container described in § 640.4 may be entered only once to transfer a portion of the blood from the original container to an approved empty container. The blood shall be used within 24 hours after entering the original container.

(d) *Further manufacturing use.* Sections 640.2(b), 640.4(e)(1), 640.5(b), (c), and (d), 640.6, 640.8, and paragraphs (a) and (b) of this section shall not apply to Whole Blood (Human) intended for further manufacturing use. Blood intended for further manufacturing use shall not be modified as described in § 640.7

§ 640.9a Labeling.

In addition to all other applicable labeling requirements, the following, except as prescribed in paragraphs (f), (g), and (h) of this section, shall appear on the label of each container:

(a) *Donor classification.* The appropriate donor classification statement prescribed in § 606.120(b)(2) of this chapter.

(b) *Anticoagulant*—(1) *Name.* The name of the anticoagulant immediately preceding and of no less prominence than the proper name, expressed as follows:

(i) Either "ACD," or "anticoagulant citrate dextrose solution";

(ii) Either "Heparinized" or "heparin solution";

(iii) Either "CPD" or "citrate phosphate dextrose solution";

(iv) Either "CPDA-1" or "anticoagulant citrate phosphate dextrose adenine solution (CPDA-1)."

(2) *Quantity.* The quantity and kind of anticoagulant used and the volume of blood.

(c) *Serological test and test for hepatitis B surface antigen.* Indication of the method used for serological test for syphilis and the test for hepatitis B surface antigen, and the results or the statements "Nonreactive for syphilis by STS" and "Nonreactive for HBsAg by FDA required test", respectively.

(d) *Blood group and type.* Designation of blood group and Rh factor:

(1) The blood group and Rh factor shall be designated conspicuously.

(2) If a color scheme for differentiating the ABO blood groups is used, the color used to designate each blood group on the container shall be:

Blood Group A: Yellow.
Blood Group B: Pink.
Blood Group O: Blue.
Blood Group AB: White.

(e) *Additional information for labels of Group O Bloods.* Each Group O blood shall be labeled with a statement indicating whether or not isoagglutinin titers of other tests to exclude so called "dangerous" Group O bloods were performed, and indicating the classification based on such tests.

(f) *Issue prior to determination of test results.* The label on each container of blood that is issued under § 640.9(a) concerning exceptions for emergency use shall bear the following information and instructions in lieu of the information specified in paragraphs (c), (d) and (e) of this section.

Emergency Shipment for Use Only by (Name of physician, hospital or other medical facility.)

CAUTION

Before Transfusion

1. Do not use until test results received from (name of licensee).
2. Perform crossmatch.

(g) *Whole Blood (Human), Modified.* The label on each container of blood that is issued pursuant to the provisions of § 640.7 shall bear, in addition to the other applicable labeling requirements, the following:

(1) Immediately following and in no less prominence than the proper name, the word "Modified."

(2) A prominent statement indicating that antihemophilic factor has been removed by cryoprecipitation. Such statement may appear on a separate label affixed to the container.

(3) Instructions not to use the unit of blood for patients requiring antihemophilic factor.

(h) *Whole Blood (Human) for further manufacturing use.* The label on each container of blood that is issued pursuant to the provisions of § 640.9(d) shall bear, in addition to the other applicable labeling requirements, the following statement: "Caution: For Manufacturing Use Only."

Interested persons may, on or before December 30, 1980 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Dockets Management Branch docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Dated: October 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33400 Filed 10-30-80; 8:45 am]
BILLING CODE 4110-03-M

federal register

Friday
October 31, 1980

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

None

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Delaware: DE78-3080	Nov. 3, 1978.
Kentucky:	
KY80-1089	Aug. 15, 1980.
KY80-1090	Aug. 22, 1980.
KY80-1093	Aug. 22, 1980.
KY80-1094	Aug. 22, 1980.
KY80-1101	Aug. 29, 1980.
KY80-1096	Aug. 22, 1980.
KY80-1097	Aug. 22, 1980.
KY80-1095	Aug. 22, 1980.
Michigan: MI80-2065	Aug. 15, 1980.
New Hampshire:	
NH80-2056	Aug. 15, 1980.
NH80-2057	Aug. 1, 1980.
Oklahoma:	
OK80-4062	July 18, 1980.
OK80-4063	July 18, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Arkansas:	
AR79-4052 (AR80-4083)	Mar. 30, 1979.
AR79-4055 (AR80-4080)	Mar. 30, 1979.
Kentucky:	
KY79-1165 (KY80-1115)	Dec. 14, 1979.
KY79-1169 (KY80-1116)	Dec. 14, 1979.
Massachusetts: MA80-2041 (MA80-3064)	Sept. 12, 1980.
Pennsylvania: PA78-3054 (PA80-3062)	Aug. 11, 1978.
Virginia:	
VA78-3074 (VA80-3065)	Nov. 3, 1978.
VA78-3075 (VA80-3066)	Nov. 3, 1978.
VA78-3076 (VA80-3067)	Nov. 3, 1978.

Cancellation of General Wage Determination Decisions

None

Signed at Washington, D.C. this 24th day of October 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATION PAGE 1

DECISION NO. DE78-3080 - MOD. #10 (42 FR 51567 - November 3, 1978) State of Delaware	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
ASBESTOS WORKERS	$14.24	1.20	1.90		.03
BOILERMAKERS:					
New Castle Co.	15.57	1.275	1.00		.02
CARPENTERS - BUILDING & HEAVY CONSTRUCTION:					
New Castle & Kent Cos.	12.55	1.29	1.40		.03
CARPENTERS - HIGHWAY CONSTRUCTION:					
New Castle & Kent Cos.	10.95	1.29	1.40		.03
ELEVATOR CONSTRUCTORS	13.26	1.195	.95	a+b	.035
ELEVATOR HELPERS	9.28	1.195	.95	a+b	.035
ELEVATOR PROB. HELPERS	6.63	1.195	.95	a+b	.035
LINE CONSTRUCTION:					
Linemen	13.52	.60+4%	3%		3/4%
Winch truck operators	9.42	.60+4%	3%		3/4%
Truck driver	8.75	.60+4%	3%		3/4%
Groundmen	8.06	.60+4%	3%		3/4%
MILLWRIGHTS:					
New Castle & Kent Cos.	13.37	1.10	2.25		.02
PILEDRIVERMEN, WHARF & DOCK BUILDERS	11.97	2.63	1.40	c	.13
PLUMBERS & STEAMFITTERS:					
New Castle & Kent (north of the sourthern boundary of city of Dover)					
Plumbers	14.89	1.30	1.20		.10
POWER EQUIPMENT OPERATORS - BUILDING & HEAVY CONSTRUCTION:					
Group 1	13.40	7.9%	10.3%		1.8%
Group 2	13.11	7.9%	10.3%		1.8%
Group 3	12.24	7.9%	10.3%		1.8%
Group 4	11.47	7.9%	10.3%		1.8%
Group 5	11.00	7.9%	10.3%		1.8%
Group 6	10.09	7.9%	10.3%		1.8%
Group 7					
100' and over	13.65	7.9%	10.3%		1.8%
150' and over	13.90	7.9%	10.3%		1.8%
200' and over	14.14	7.9%	10.3%		1.8%

MODIFICATION PAGE 2

DECISION NO. DE78-3080 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS- HIGHWAY CONSTRUCTION:					
Group 1	13.11	7.9%	10.3%		1.8%
Group 2	12.24	7.9%	10.3%		1.8%
Group 3	11.47	7.9%	10.3%		1.8%
Group 4	10.09	7.9%	10.3%		1.8%
SHEET METAL WORKERS	13.18	1.00	1.06		.09
STONE MASONS	11.40	.95	1.10		
SOFT FLOOR LAYERS:					
New Castle & Kent Cos.	12.30	1.29	1.40		.03

MODIFICATION PAGE 3

DECISION NO.KY80-1089-
MOD. #2
(45 FR 54613- August 15, 1980)
Warren County, Ky

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Laborers:					
Group 1	8 75	40	70		
Group 2	8 90	40	70		
Group 3	9 25	40	70		
Line Construction:					
Linemen, Line Truck, Hole Digger, & Cable Splicers	11 95	55	3%		½ of 1%
Groundmen- Truck Drivers with Winch	10 18	55	3%		½ of 1%
Groundmen- Truck Drivers	9 56	55	3%		½ of 1%

MODIFICATION PAGE 4

DECISION NO.KY80-1090-
MOD. #2
(45 FR 56280-56283- August 22,1980)
Hardin, Jefferson, and Meade Counties, Ky

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Bricklayers & Stonemasons	12 34	50	40		.01
Ironworkers	12 75	1 00	2 30		06
Laborers:					
Group 1	8 95	40	70		
Group 2	9 65	40	70		
Group 3	9 85	40	70		
Group 4	10 00	40	70		
Group 5	10 15	40	70		
Group 6	10 85	40	70		
Piledrivermen	11 85	70	65		05
Pipefitters:					
Area 1- Jefferson county	15 46	85	1 59		12
Area 2- Hardin (northern portion of county up to but not including Elizabethtown) and Meade County	15 96	85	1 59		12

MODIFICATION PAGE 5

DECISION NO. KY80-1093, MOD. #1
(45 FR 56287-56290, August 22, 1980)
Boone, Campbell, Kenton, and Pendleton Cointies, Kentucky

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Bricklayers & Stonemasons	14 495	80	45		02
Electricians	15 70	70	3%+ 80		½%
Laborers:					
Boone, Campbell, & Kenton Counties					
Group A	12 35	95	90		.05
Group B	12 45	95	90		05
Group C	12 50	95	90		05
Group D	12 55	95	90		05
Group E	12 70	95	90		05
Group F	12 85	95	90		05
Group G	13 10	.95	90		05
Line Construction:					
Linemen & Machine Operators	15 70	70	3%+ 80		½%
Groundmen	11 775	70	3%+ 80		½%
Marble setters	14 385	80	45		
Marble finishers	13 35				
Terrazzo workers & Tile setters	14 335	80	45		
Terrazzo & Tile finishers	13 35				

MODIFICATION PAGE 6

DECISION NO. KY80-1094 - MOD. #2
(45 FR 46278-46280-August 22, 1980)
Henderson County, Ky

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Millwrights	13.94	70	90		
Laborers:					
Group A	9 90	85	75		09
Group B	10 10	85	.75		09
Group C	10 20	85	75		09
Group D	10 90	85	75		09
Painters:					
Brush & Roller	11 80	80	50		
Drywall Tapers, Paperhangers	12.05	80	.50		
Sandblasters, Power Tools, & Spray	12 80	80	50		

DECISION NO. KY80-1101- MOD. # 2
(45 FR 57919-57921-August 29, 1980)
McCracken County, Ky

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Carpenters	12 10	45	.25		07
Cement Masons	10 95	90	40		05
Laborers:					
Group 1	8 75	40	70		
Group 2	8 95	40	70		
Group 3	9 25	10	70		
Lathers	12 10	45	25		07
Millwrights & Piledrivermen	12 60	45	25		.07

MODIFICATION PAGE 7

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DECISION NO. KY80-1096 - MOD. #2 (45 FR 56283-56285 - August 22, 1980) Franklin County, Ky					
Change:					
Bricklayers & Stonemasons	13 00	45	50		
Ironworkers	12 75	1 00	2 30		.06
Marble, Tile & Terrazo Workers	11.85	45	50		
DECISION NO. KY80-1097- MOD. #2 (45 FR 56274-56275- August 22, 1980) Fayette County, Ky					
Change:					
Bricklayers & Stonemasons	13 00	45	50		
Ironworkers	12 75	1 00	2 30		06
Marble, Tile & Terrazo Workers	11 85	45	50		
Roofers	10.40	75			02
DECISION NO. KY80-1095 - MOD #2 (45FR 56276-56278- August 22,1980) Boyd County, Ky					
Change:					
Asbestos Workers	15.60	.60	1 10		03

MODIFICATION PAGE 8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DECISION NO. MI80-2065 MOD #1 (45FR 54623 August 15, 1980 Allegan, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, & Kalamazoo Cos Michigan					
CHANGE:					
BOILERMAKERS	$14 67	1 38	1 45	2 00	05
BRICKLAYERS & STONEMASONS:					
Allegan County (Allegan, Cheshire, Gun Plain, Martin, Otsego, Trowbridge Valley, and Watson Townships) and Kalamazoo County	12 41	1 15	70		09
Allegan County (Remainder)	12 05	75	35		04
CARPENTERS:					
Remaining Counties and the remainder of Berrien and Eaton Counties	12 44	75	90		10
CEMENT MASONS:					
Kalamazoo County; Calhoun Co.; Allegan Co (Twps of Allegan, Cheshire, Gunn Plain, Martin, Otsego, Trowbridge, Valley & Watson)	11.59	1 15	70		09
Remainder of Allegan Co	11 24	75	25		
Allegan Co (Casco, Ganges & Lee Twps) and Berrien Co	11 50	95	1 05		
ELECTRICIANS:					
Clinton and Ingham (except Onondaga, Leslie, Stockbridge and Bunker Hill Twps) Co and the remainder of Eaton Co	13 87	75	3%+1 50		5%
Jackson County	13 07	4%+1 00	3%+ 70	10%	26
Remainder of Ingham Co	13 07	4%+1 00	3%+ 70	10%	26
ELEVATOR CONSTRUCTORS					
Allegan, Kalamazoo and Calhoun Counties:					
Constructors	13 83	1 20	95	a	035
Helpers	70%JR	1 20	95	a	035

MODIFICATION PAGE 9

DECISION NO. MI80-2065
MOD #1 (Cont.)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ELEVATOR CONSTRUCTORS: (Cont)					
Eaton, Ingham & Jackson Counties:					
Constructors	$15 14	1 195	95	a	035
Helpers	70%JR	1 195	95	a	035
IRONWORKERS:					
Clinton, Ingham & Jackson Counties					
Fence Erectors	12 80	9%	17%	18%	09
MARBLE, TILE & TERRAZZO WORKERS:					
Remainder of Allegan Co	11 27	75	35		
PAINTERS:					
Calhoun County					
Brush/Roller	11 20		70		
PLUMBERS:					
Allegan County (Northern Tier Twps)	14 09	70+ 15	1 30		
Allegan County (Remainder & Kalamazoo County	14 81	70	1 50		
Berrien County (except Niles & vicinity)	14 42	1 22	90		02
Clinton & Ingham Counties and Sunfield, Roxand, Oneida, Delata and Windson Twps in Eaton Co.	14 61	1 05	1 75		02
Jackson County	14 25	1 35	1 30		02
ROOFERS:					
Jackson County					
Slate/Tile	14 88	1 20	75	1 25	10
Composition	13 57	1 20	75	1 25	10
SOFT FLOOR LAYERS:					
Clinton & Ingham Counties and the remainder of Eaton Co	11 82	75	90		01

MODIFICATION PAGE 10

DECISION NO. MI80-2065
MOD #1 (Cont.)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
LABORERS:					
Clinton, Eaton & Ingham Counties					
GROUP 1	10 35	75	50	a	04
GROUP 2	10 43	75	50	a	04
GROUP 3	10 49	75	50	a	04
GROUP 4	10 64	75	50	a	04
GROUP 5	10 59	75	50	a	04
GROUP 6	10 71	75	50	a	04
GROUP 7	10 965	75	50	a	04
Jackson County					
GROUP 1	10 33	75	50		04
GROUP 2	10 89	75	50		04
POWER EQUIPMENT OPERATORS: BUILDING & HEAVY CONSTRUCTION:					
CLASS A	14 80	1 05	*1 80		10
CLASS B	14 45	1 05	1 80		10
CLASS C	14 05	1 05	1 80		10
CLASS D	12 70	1 05	1 80		10
CLASS E	12 45	1 05	1 80		10
CLASS F	11 15	1 05	1 80		10
CLASS G	10 40	1 05	1 80		10
STEEL ERECTION:					
Clinton, Ingham, & Jackson Counties					
CLASS A	15 88	1 05	*1 80	12%	10
CLASS B	15.63	1 05	1 80	12%	10
CLASS C	14 75	1 05	1 80	12%	10
CLASS D	14 54	1 05	1 80	12%	10
CLASS E	11 98	1 05	1 80	12%	10
CLASS F	10 81	1 05	1 80	12%	10

MODIFICATION PAGE 11

DECISION NO. MI80-2065 MOD #1 (Cont.)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
POWER EQUIPMENT OPERATORS: (Cont)					
STEEL ERECTION (Cont) Remaining counties					
CLASS A	15 15	1 05	*1 80		10
CLASS B	14 90	1 05	1 80		10
CLASS C	14 40	1 05	1 80		10
CLASS D	13 05	1 05	1 80		10
CLASS E	11 75	1 05	1 80		10
CLASS F	10 50	1 05	1 80		10
UNDERGROUND CONSTRUCTION Calhoun, Clinton, Eaton, Ingham & Jackson Cos					
CLASS I	12 88	1 05	*1.80	12%	10
CLASS II	12 63	1 05	1 80	12%	10
CLASS III	11 97	1 05	1 80	12%	10
CLASS IV	11 46	1 05	1 80	12%	10
Remainder of Counties					
CLASS I	11.35	1 05	*1 80	12%	10
CLASS II	10 96	1 05	1 80	12%	10
CLASS III	10 51	1 05	1 80	12%	10
CLASS IV	10 26	1 05	1 80	12%	10

* Retiree Benefit Fund Included in Pension Fund

MODIFICATION PAGE 12

DECISION # NH80-2056 MOD.#2 (45 FR 54631 Aug 15 1980)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
HILLSBOROUGH & MERRIMACK COS., NEW HAMPSHIRE					
CHANGE: BRICKLAYERS CEMENT MASONS MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS & TILE SETTERS	10 19	1 01	89		01
DECISION #NH80-2057 MOD. #3 (45 FR 51411 Aug 1, 1980)					
ROCKINGHAM & STRAFFORD COS., NEW HAMPSHIRE					
CHANGE: BRICKLAYERS, CEMENT MASONS MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS & TILE SETTERS	10 19	1 01	89		01

MODIFICATION PAGE 13

DECISION #OK80-4062-Mod. #2
45 FR 48446-July 18, 1980
Tulsa, Creek, Craig, Ottawa, Delaware, Mayes and Rogers Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CHANGE:					
ASBESTOS WORKERS	$13 95	55	90		03
ELECTRICIANS:					
Electricians	13 25	63	3%+ 61		10
Cable splicers	13 50	63	3%+ 61		10
Lathers	11.65				01
PAINTERS (Tulsa, Creek, Rogers & Mayes Counties):					
Brush	11 75		40		10
Highwork & stage	12 15		40		.10
Spray and sandblasting	12.40		40		10
Hot or bituminous	13 05		40		10
Sheetrock handtools	11 75		.40		10
Sheetrock power tools	12.15		40		10
POWER EQUIPMENT OPERATORS:					
GROUP I	13 20	70	75		12
GROUP II	12 70	70	75		.12
GROUP III	12 20	70	75		12
GROUP IV	11 95	70	75		12
GROUP V	11 70	70	75		12
GROUP VI	11 45	.70	75		.12
GROUP VII	11 20	70	75		.12
GROUP VIII	10 20	70	75		12

MODIFICATION PAGE 14

DECISION #OK80-4063-Mod. #1
45 FR 48441-July 18, 1980
Garfield County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CHANGE:					
ASBESTOS WORKERS	$13 38	70	1 25		04
ELECTRICIANS:					
ZONE I	12 70	70	8%+ 10		1%
ZONE II	12 95	70	8%+ 10		1%
ZONE III	13 20	70	8%+ 10		1%
CABLE SPLICERS:					
ZONE I	12 95	70	8%+ 10		1%
ZONE II	13 20	70	8%+ 10		1%
ZONE III	13 45	70	8%+ 10		1%
MARBLE SETTERS	13 52		80		
PAINTERS:					
GROUP I	10 40	50	50	50	03
GROUP II	10 90	50	50	50	03
GROUP III	11 40	50	50	50	03
GROUP IV	10 90	50	50	50	.03
GROUP V	10 90	50	50	50	.03
TERRAZZO WORKERS	13 52		80		
TILE LAYERS	13 52		80		
ADD					
LATHERS	11 25	55	80		09
UNDER PAINTERS CLASSIFICATION					
DEFINITIONS					
GROUP V - Hazardous work					

SUPERSEDEAS DECISION

STATE: Arkansas COUNTY: Pulaski
DECISION NO : AR80-4083 DATE: Date of Publication
Supersedes Decision No AR79-4052 dated March 30, 1979 in 44FR19103
DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS	$12 05	55	1 00		02
BOILERMAKERS	12 00	975	1 00		03
BRICKLAYERS-STONEMASONS	10 40	70	35		04
CARPENTERS:					
Carpenters	10 35	50	50		07
Millwrights-Piledrivermen	10 85	50	50		.07
CEMENT MASONS	10 45	35			03
ELECTRICIANS:					
Electricians	12 35	55	3%+1.35		1/4%
Cable splicers	12 475	55	3%+1 35		1/4%
ELEVATOR CONSTRUCTORS:					
Journeymen	10.18	1 195	82	4%+a+b	035
Helpers	70%JR	1 195	82	4%+a+b	035
GLAZIERS	9 68				
IRONWORKERS	11 10	55	95		06
LABORERS:					
Group I	7 20	38	62		
Group II	7 45	38	.62		
Group III	7.60	38	62		
Group IV	7.70	38	.62		
Group V	7 85	38	62		
Group VI	8 10	38	62		
Group VII	8.00	38	62		

LABORERS CLASSIFICATION DEFINITIONS

GROUP I
Construction laborers, concrete labor, wrecking labor, mechanic's labor, excavating labor, plumber's labor, electricians labor, green cutter, blowpipe and concrete pump hose placer

GROUP II
Semi-skilled laborer; pipelayer, concrete, clay and mechanical tool, cement mixer, wet or dry finishers, and plasterers, mason tender, mortar mixers, asphalt rakers and shovelers, creosote wood handlers, and chuck tenders

GROUP III
Steel form setters, curb and gutters, grout and cement muckers

GROUP IV
Swinging scaffold, Barco, 90 lb pavement breaker and burners

GROUP V
Nozzleman (gunite, grout and sand blaster; concrete pump (nozzle placer)

GROUP VI
Powderman and blasters

GROUP VII
Wagon drill

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
LINE CONSTRUCTION:					
Linemen	$13 75		3%		3/8%
Cable splicers	13 875		3%		3/8%
Operator	13.75		3%		3/8%
Groundmen	65%JR		3%		3/8%
Winch equipment	73%JR		3%		3/8%
MARBLE, TILE & TERRAZZO WORKERS	9 00				
PAINTERS:					
Painters, paperhangers and steam cleaners, sheetrock finishers & wall cover hangers	9 25		50		03
Spray gun operators and sand blasterers	9 85		50		.03
All skeleton steel and all work on stages, structural steel over 30 feet high	9 50		50		03
PLASTERERS	11 00				02
PLUMBERS & PIPEFITTERS:					
Within 10 mile radius of Pulaski County Courthouse	12 75	60	75		08
Over 10 miles from Pulaski County Courthouse	13 05	60	.75		08
POWER EQUIPMENT OPERATORS:					
Group I	11 66	45	45		05
Group II	10 58	.45	45		05
Group III	10.05	45	45		05
Group IV	8 32	45	45		05

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I
Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, and mechanics

GROUP II
Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturer, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swing boom attachments, gradealls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP III
HEAVY EQUIPMENT OPERATORS - all bulldozers, front end loaders, sidebooms, skytracks, push tractors, pull scrapers, motor graders, trenching machines, regardless of size or motive power, all back fillers, central mixing plants, 10S and larger, finishing machines, boilers fireman, high or low pressure, all asphalt spreaders, hydro truck cranes multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless or size, regardless of motive power and dredge tender operator

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POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS CONT'D

GROUP IV
LIGHT EQUIPMENT OPERATORS - oiler driver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material, lad-a-vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines, light plants, pumps, all well point system, de-watering and portable pumps, space heaters, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckahand

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ROOFERS	$10 21		30		
SHEET METAL WORKERS	11 57	55	3%+.72		04
SPRINKLER FITTERS	11 69	75	1 05		08

FOOTNOTES:
a 1st 6 mos - none; 6 mos to 5 yrs - 6%; over 5 yrs -8% of ba basic hourly rate
b PAID HOLIDAYS - A through G
PAID HOLIDAYS:
A-New Years Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

WELDERS --receive rate prescribed for craft performing operation to which welding is incidental

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5 5 (a) (1) (ii)

SUPERSEDEAS DECISION

STATE: ARKANSAS COUNTY: Jefferson
DECISION No : AR80-4080 DATE: Date of Publication
SUPERSEDES DECISION No AR79-4055 dated March 30, 1979 in 44 FR 19106
DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS	$12 05	55	1 00		02
BOILERMAKERS	12 00	975	1 00		03
BRICKLAYERS - STONEMASONS	10 40	70	35		04
CARPENTERS:					
Carpenters	10 35	50	50		07
Millwrights & Piledrivermen	10 85	50	50		07
CEMENT MASONS	10 45	35			
ELECTRICIANS:					
Electricians	12 35	55	1 35		½%
Cable splicers	12 475	55	1 35		½%
ELEVATOR CONSTRUCTORS:					
Journeymen	10.18	1 195	82	4%+a+b	035
Helpers	70%JR	1 195	82	4%+a+b	035
GLAZIERS	9 68				
IRONWORKERS	11 10	55	95		06
LABORERS:					
Group I	7 20	38	62		
Group II	7 45	38	62		
Group III	7 60	38	62		
Group IV	7 70	38	62		
Group V	8.10	38	62		
Group VI	8 10	38	62		
Group VII	8 00	38	62		

LABORERS CLASSIFICATION DEFINITIONS

GROUP I _ Construction laborers, concrete labor, wrecking labor, mechanic's labor, excavating labor, plumber's labor, electricians labor, green cutter, blowpipe, and concrete pump hose placer
GROUP II _ Semi-skilled laborer; pipelayer, concrete, clay and mechanical tool, cement mixer, wet or dry finishers, and plasterers, mason tender, mortar mixers, asphalt rakers & shovelers, creosote wood handlers, chuck tenders
GROUP III _ Steel form setters, curb and gutters, grout and cement muckers
GROUP IV _ Swinging scaffold, Barco, 90 lb pavement breaker, and burners
GROUP V - Nozzleman (gunite, grout and sand blaster; concrete pump (nozzle placer)
GROUP VI _ Powderman and blasters
GROUP VII _ Wagon drill

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
LINE CONSTRUCTION:					
Linemen	$13 75		3%		3/8%
Cable splicers	13.87$		3%		3/8%
Groundmen	65%JR		3%		3/8%
Winch equipment	73%JR		3%		3/8%
MARBLE, TERRAZZO & TILE WORKERS	9 00				
PAINTERS:					
Painters, paperhangers and steam cleaners, sheet rock finishers and wall cover hangers	9 25		50		03
Spray gun operators and sand blasters	9 85		50		03
All skelton steel and all work on stages, structural steel over 30 feet high	9 50		50		03
PLASTERERS	11 00		50		03
PLUMBERS & PIPEFITTERS	12 70	90	60		10
POWER EQUIPMENT OPERATORS:					
Group I	11 66	45	45		05
Group II	10 58	.45	45		05
Group III	10 05	.45	45		05
Group IV	8 32	45	45		05

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I- Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, mechanics and/or welders

GROUP II - Hydraulic cranes cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturers, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swinging boom attachments, gradalls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP III - HEAVY EQUIPMENT OPERATORS: All bulldozers, all front end loaders, all sidebooms, skytracks, all push tractors, all pull scrapers, all motor graders, all trenching machines regardless of size or motive power, all back fillers all central mixing plants, 10S and larger, finishing machines all boiler firemen high or low pressure, all asphalt spreaders, hydro truck crane multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless of size, regardless of motive power and dredge tender operator

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP IV - LIGHT EQUIPMENT OPERATORS: Oilerdriver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material. Lad-A-Vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump Euclid, pumpcrete spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines light plants, pumps, all well point system de-watering and portable pumps, space heater, irrespective of size and motive power, equipment, greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckhand

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ROOFERS	$10 21		30		
SHEET METAL WORKERS	11 57	55	3%+ 72		.04
SPRINKLER FITTERS	11 69	75	1 05		08

FOOTNOTES:

a 7 paid holidays: A through G

b Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who had worked in business more than 5 years
Employer contributes 6% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years

PAID HOLIDAYS: FOR ELEVATOR CONSTRUCTORS ONLY
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

WELDERS -- receive rate prescribed for craft performing operation to which welding is incidental

Unlisted classifications needed for work not included within the scope of the classifictions listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5 5 (a)(1)(ii)

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: BREATHITT, FLOYD, KNOTT, LETCHER, MAGOFFIN, PERRY, & PIKE
DECISION NUMBER: KY80-1116 DATE: Date of Publication
Supersedes Decision No : KY79-1169 dated December 14, 1979 in 44 FR 72798
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - includes single family homes and apartments up to and including four stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
AIR CONDITIONING AND HEATING MECHANICS	5 25				
BRICKLAYERS	8 02				
CARPENTERS	7 18				
CEMENT MASONS	6 00				
DRYWALL HANGER	6 18				
DRYWALL FINISHER	6 75				
ELECTRICIANS	6 00				
INSULATION INSTALLERS	6 00				
LABORERS	4 66				
Laborers	4 66				
Mason Tenders	5 25				
PAINTERS	6 00				
PLUMBERS	7 23				
ROOFERS	7 23				
SHEET METAL WORKERS	6 47				
SOFT FLOOR LAYERS	6 00				
TILE SETTERS	7 83				
TRUCK DRIVERS	6 00				
P.E.O					
BULLDOZER	9 65				
FRONT END LOADER	8 48				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, (a) (1) (ii))

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: ESTILL, GARRARD, JACKSON, LEE, LINCOLN, MADISON, & OWSLEY
DECISION NUMBER: KY80-1115 DATE: Date of Publication
Supersedes Decision No : KY79-1165 dated December 14, 1979 in 44 FR 72796
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - includes single family homes and apartments up to and including four stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
AIR CONDITIONING AND HEATING MECHANICS	7 00				
BRICKLAYERS	6 21				
CARPENTERS	4 87				
CEMENT MASONS	5 69				
DRYWALL HANGERS	6 14				
DRYWALL FINISHERS	6 50				
ELECTRICIANS	5 00				
INSULATION INSTALLER	4 91				
LABORERS	4 14				
PAINTERS	5 00				
PLUMBERS	8 00				
ROOFERS	5 00				
SHEET METAL WORKERS	5 47				
SOFT FLOOR LAYERS	5 27				
TILE SETTERS	5 86				
P.E.O.					
DOZER	5 00				
FRONT END LOADER	5 83				
BACKHOE OPERATOR	6 14				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, (a) (1) (ii))

SUPERSEDEAS DECISION

STATE: Massachusetts

COUNTIES: Barnstable, Bristol, Dukes, Essex, Middlesex, Norfolk, Plymouth, Suffolk Nantucket

DECISION NUMBER: MA80-3064

DATE: Date of Publication

Supersedes Decision No MA80-2041 dated September 12, 1980, in 45 FR 60738

DESCRIPTION OF WORK: Building Projects (including Residential), Heavy and Highway Projects and Marine Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS:					
BARNSTABLE CO (Barnstable, Borne, Falmouth, Mashpee, and Sandwich); NORFOLK CO (Bellingham, Franklin, Plainville and Wrentham); PLYMOUTH CO (Lakeville, Mattapoisett, Middleboro, Rochester and Wareham); BRISTOL CO (All except Easton); Dukes; Nantucket	$12 28	1 45	1 33		
SUFFOLK, MIDDLESEX, ESSEX COUNTIES; BARNSTABLE (Remainder of County); NORFOLK (Remainder of Co): PLYMOUTH (Remainder of Co); BRISTOL (Easton)	14 31	1 40	1 15		05
BOILERMAKERS	14 63	1 275	10%		03
BRICKLAYERS: Stone Masons, Plasterers, Cement Masons (except Suffolk, Essex, Middlesex, and Brookline and Milton in Norfolk Co), Pointers, Caulkers, and Cleaners:					
SUFFOLK CO ; MIDDLESEX (Arlington, Cambridge, Everett, Malden, Melford, Melrose and Somerville); NORFOLK (Brookline and Milton except plasterers)	11 55	85	1 40		12
Residential	9 24	85	1 40		12
Veneer Plastering	9 24	84	1 40		12
NORFOLK (Avon, Holbrook, Randolph and Stoughton); PLYMOUTH (Aington, Bridgewater, Brockton, Carver, Duxbury, E Bridgewater, Halifax, Hanover, Hanson, Kingston, Marshfield, Middleboro, Pembroke, Plymouth, Norwell (except					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
BRICKLAYERS: Stone Masons, Plasterers, Cement Masons (except Sulfolk, Essex, Middlesex, and Brookline and Milton in Norfolk Co), Pointers, Caulkers, and Cleaners (Cont'd)					
plasterers) Rockland, W Bridgewater & Whitman); BRISTOL CO (Easton, N & S Easton)	11 80	85	1 15		09
Residential	9 44	85	1 15		10
Veneer Plastering	9 44	85	1 15		09
DUKES; NANTUCKET; NORFOLK (Bellingham, Canton, Dedham, Foxboro, Franklin Norfolk, Norwood, Plainville, Sharon, Walpole, Westwood and Wrentham); PLYMOUTH CO (Lakeville only); BRISTOL (Attleboro, N Attleboro, Mansfield, Raynham, Barrowsville, Taunton, Berkley, North Dighton, Rehoboth, Seehonk)	11 60	1 40	80		09
Residential	9 28	1 40	80		10
Veneer Plastering	9 28	1 40	80		09
MIDDLESEX (Reading, N Reading, Wakefield); ESSEX CO	11 85	70	1 25		09
Residential	9 48	70	1 25		10
Veneer Plastering	9 48	70	1 25		09
MIDDLESEX (Belmont, Burlington, Concord, Lexington, Lincoln, Stoneham Sudbury, Waltham, Watertown, Wayland, Weston, Winchester & Woburn	11 65	75	1 40		09
Residential	9 64	75	1 00		09
Veneer Plastering	9 64	75	1 00		09
MIDDLESEX (Acton, Ashby, Ayer, Bedford, Billerica, Boxboro, Carlisle, Chelmsford, Dracut, Dunstable, Ft Devens, Groton, Littleton, Lowell, North Acton, Pepperell, Shirley, South Acton, Tewksbury, Townsend,					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
BRICKLAYERS: Stone Masons, Plasterers, Cement Masons (except Sulfolk, Essex, Middlesex, and Brookline and Milton in Norfolk Co), Pointers, Caulkers, and cleaners (Cont'd)					
Tyngsboro, West Acton, Westford, & Wilmington	12 20	90	70		09
Residential	9 76	90	70		09
Veneer Plasterers	9 76	90	70		09
BARNSTABLE CO ; PLYMOUTH (Marion, Mattapoisett, Rochester, and Wareham); BRISTOL (Acushnet, Dartmouth, Fairhaven, Fall River, Freetown, New Bedford, N & S Dartmouth Somerset, Swansea, Westport)	11 60	1 20	1 00		09
Residential	9 28	1 20	1 00		.09
Veneer Plastering	9 28	1 20	1 00		09
MIDDLESEX (Ashland, Farmington, Holliston, Hopkington, Hudson, Sherborn, Stow) NORFOLK (Medfield, Medway, Millis)	11 60	1 20	1 00		09
Residential	9 28	1 20	1 00		.09
Veneer Plastering	9 28	1 20	1 00		09
MIDDLESEX (Newton only); NORFOLK (Dover, Needham, Wellesley)	11 75	65	1 40		12
NORFOLK (Braintree, Cohasset, N Weymouth, Quincy, S. Weymouth, Weymouth); PLYMOUTH (Hingham, Hull, Scituate, and the Islands of Quincy)	11 70	1 10	1 00		09
Residential	9 36	1.10	1 00		.09
Veneer Plastering	9 36	1 10	1 00		09

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CARPENTERS: Soft Floor Layers					
MIDDLESEX (Ashby, Ayer, Lunenburg, Shirley, Lancaster, Harvard, Groton, Pepperell, Townsend, W Groton, and W Townsend)	12 20	75	1 00		07
ESSEX (Methuen, Lawrence, Andover, N. Andover)	11 95	1 00	1 00		05
ESSEX (Ipswich, Essex, Gloucester, Rockport, Topsfield, Hamilton, Wenham, Middleton, Danvers, Beverly, Manchester, Peabody, Salem, Marblehead)	11 15	1 00	1 00		03
SUFFOLK, MIDDLESEX (Remainder of County); Norfolk (all except Avon, Holbrook, Randolph and Stoughton); ESSEX (Remainder of County); PLYMOUTH (Duxbury, Hanover, Hingham, Hull, Marshfield, Norwell, Pembroke, Rockland and Scituate); Bristol (Attleboro, N Attleboro, & Seekonk)	11 95	1 00	1 00		07
BARNSTABLE; NORFOLK (Avon, Holbrook, Randolph and Stoughton); PLYMOUTH (Remainder of Co); BRISTOL (Remainder of County); DUKES; NANTUCKET	12 05	70	1 00		.04
CEMENT MASONS:					
SUFFOLK: MIDDLESEX (Arlington, Cambridge, Everett, Malden, Medford, Melrose, Somerville, Stoneham, Wakefield, Winchester and Woburn); NORFOLK (Brookline and Milton)	12 15	1 15	60		20

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CEMENT MASONS (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
MIDDLESEX (Bedford, Burlington, Lowell, Billerica, Tyngsboro, Westford, Tewksbury, Acton, Littleton, Dracut, Wilmington, Dunstable, Chelmsford, Carlisle)	10 40	90	70		02
MIDDLESEX (Ashby, Ayer, Boxboro, Groton, N Acton, Pepperell, Shirley, S. Acton, Townsend)	12 20	90	70		10
MIDDLESEX (Ashland, Farmingham, Holliston, Hopkinton, Hudson, Marlboro, Maynard, Natick, Sherborne, and Stow	11 60	1 20	1 00		09
MIDDLESEX (Newton only)	11 75	65	1 40		12
MIDDLESEX (Belmont, Concord, Lexington, Sudbury, Waltham, Watertown, Wayland, Weston)	11 65	75	1 40		09
MIDDLESEX (Reading, N Reading); ESSEX (Andover, Amesbury, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, N Andover, Salisbury)	11 69	70	75		
ESSEX (Remainder of County)	11 85	70	1 25		09
ELECTRICIANS:					
MIDDLESEX (Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, Wilmington)	12 10	1 15	1 10+3%		02
MIDDLESEX (Ashby, Ayer, Ft Devens, Groton, Pepperell, Shirley, Townsend)	12.90	75	70+3%		02
MIDDLESEX (Ashland, Hopkinton, Hudson, Marlboro and Stow)	12 78	1 02	94+3%		01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
SUFFOLK CO ; MIDDLESEX (Remainder of County): NORFOLK (all except Avon, Holbrook, Randolph, Stoughton and Plainville); ESSEX (Lynn, Lynnfield, Nahant, Saugus, Swampscott) PLYMOUTH (Hingham, Hull)	14 18	1 05	1 80+3%		.10
BARNSTABLE CO ; PLYMOUTH (Mattapoisett, Rochester, Wareham); BRISTOL COUNTY (Acusnet, Dartmouth, Fairhaven, New Bedford, N & S Dartmouth); DUKES; NANTUCKET	11 25	1 30	1 20+3%		£
BRISTOL (Fall River, Freetown, Seekonk, Somerset, Swansea, Westport	11 30	7%	1 00+3%	6%	½%
BRISTOL (Attleboro, N Attleboro); NORFOLK (Plainville)	12 35	73	2 05+3%		02
BRISTOL (Mansfield, Norton, Taunton, Raynham, Rehoboth, Dighton, Berkley) PLYMOUTH (Lakeville, Middleboro)	12 50	75	1 00+3%		1/10of1%
Residential	9 25	75	1 00+3%		1/10of1%
NORFOLK (Avon, Holbrook, Randolph, Stoughton); PLYMOUTH (Remainder of County); BRISTOL (Easton) Electricial Contracts over $50,000	12 78	77	51+3%	1 00	1%
Electrical Contracts under $50,000	9 51	57	38+3%	1 00	1%
ESSEX (Andover, Lawrence, Methuen, N Andover, Salisbury, W Newbury, Amesbury, Boxford, Georgetown, Groveland, Haverhill, Merrimac, Newbury, Newburyport, Rowley	12 37	1 00	75+3%		02
ESSEX (Remainder of County) Contracts over $30,000	12 25	92	31+3%		02
Contracts $30,000 or less	11.40	92	31+3%		02

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
ELEVATOR CONSTRUCTORS	13 88	1 195	95	a+b	035
ELEVATOR CONSTRUCTORS' HELPERS	9 72	1 195	95	a+b	035
GLAZIERS:					
SUFFOLK; MIDDLESEX; NORFOLK; ESSEX; PLYMOUTH (all except Carver, Lakeville, Middleboro, Marion, Mattapoisett, Rochester, Wareham); DUKES; NANTUCKET	11 85	77	1 19		03
BARNSTABLE; PLYMOUTH (Carver, Lakeville, Middleboro, Marion, Mattapoisett, Rochester, Wareham); BRISTOL CO	10 25	62	1.38		01
IRONWORKERS:					
BRISTOL (except Easton); BARSTABLE: PLYMOUTH (Lakeville, Middleboro, Rochester, Wareham, Marion, Mattapoisett); NORFOLK (Plainville); DUKES NANTUCKET	12 33	1 15	2 35		05
SUFFOLK; NORFOLK (Remainder of Co.); ESSEX (Manchester Beverly, Peabody, Salem, Lynn, Lynnfield, Saugus, Swampscott, Marblehead, Nahant); PLYMOUTH (Remainder of County); BRISTOL (Easton, N Easton); MIDDLESEX (Sherborn, Natick, Framingham, Weston, Newton, Arlington, Belmont, Cambridge, Somerville, Waltham, Medford, Malden, Stoneham, Woburn, Winchester, Burlington, Bedford, Lincoln, Lexington, Sudbury, Maynard, Concord, Everett	12.85	1.15	2 05		10

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IRONWORKERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
MIDDLESEX (Ashby, Shirley, Ayer, Boxboro, Stow, Hudson, Marlboro, Ashland, Hopkinton, Holliston)	12 85	1 15	2 05		10
ESSEX (Remainder of County); MIDDLESEX (Remainder of County)	12 39	1 15	2 55		06
LATHERS	11 90	1 00	55		03
LINE CONSTRUCTION:					
Lineman	13 50	70	50+3%	d	3/8of1%
Driver Groundman	9 64	70	50+3%	d	3/8of1%
Groundman	8 82	70	50+3%	d	3/8of1%
Equipment Operators	12 06	70	50+3%	d	3/8of1%
MARBLE, TILE & TERRAZZO WORKERS	10 90	85	1 50		
MILLWRIGHTS	12 90	1 00	1 00		10
PAINTERS:					
BARNSTABLE, PLYMOUTH (Marion, Mattapoisett, Rochester, Wareham); BRISTOL (Acushnet, Dartmouth, Fairhaven, New Bedford, N & S Dartmouth); DUKES; NANTUCKET					
Brush/Roller	10 96	90	85		
Raping	11 06	90	85		
Spray	12 31	90	85		
Sandblast, Chipping Hammer, Power Brush	12 46	90	85		
Paperhangers, Vinyl Installer	11 46	90	85		
Steel	14 21	90	85		
Steel Spray	15 56	90	85		
Sandblast, Chipping Hammers, Power Tools (Steel)	15.71	90	85		

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PAINTERS (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
MIDDLESEX (Bedford, Billerica, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford and Wilmington)					
Brush/Taper/Paper-Hanging	11 81	1 18	1 00		04
Spray/Steel/Sandblast	13 31	1 18	1 00		04
Repaint	10 04	1 18	1 00		04
Residential	10 04	1 18	1 00		04
MIDDLESEX (Ashby, Townsend, Pepperell, Groton, Shirley, and Ayer)					
Brush	12 38	90	1 65		04
Spray/Sandblast	13 38	90	1 65		04
Steel	14 50	90	1 65		04
Repaint	10 52	90	1 65		.04
Residential	9 29	90	1 65		04
MIDDLESEX (Boxbord, Action, Concord, Stow, Maynard, Lincoln, Lexington, Hudson, Sudbury, Wayland, Weston, Waltham, Watertown, Newton, Marlboro, Framingham, Natick, Ashland, Sherborn, Hopkinton, Holliston); NORFOLK (Dover, Medfield, Medway, Millis, Needham, Wellesley)					
New Construction:					
Brush	9 00	85	70		06
Steel	9 25	85	70		06
Spray	9 95	85	70		06
Repaint:					
Brush	8 45	85	70		06
Steel	8 70	85	70		06
Spray	9 40	85	70		06
SUFFOLK, ESSEX, PLYMOUTH (Remainder of County); BRISTOL (Remainder of Co.); MIDDLESEX (Remainder of County); NORFOLK (Remainder of County)					
New Construction:					
Brush/Taper	12 61	.82	1 40		04
Spray/Sandblast	13 61	82	1 40		04
Steel	14 88	82	1 40		04

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
PAINTERS (CONT'D)					
Repaint:					
Brush/Taper	10 96	82	1 40		04
Spray/Sandblast	11 96	82	1 40		04
Steel	14 88	82	1 40		04
SIGN PAINTERS	10 25	84	50	82	04
PILEDRIVERMEN	12 80	1 00	1 00		
PLASTERERS:					
SUFFOLK, MIDDLESEX (Arlington, Cambridge, Everett, Malden, Melford, Melrose, Somerville); NORFOLK (Brookline, Milton); PLYMOUTH (Norwell only)	11 53	85	1 68		02
PLASTERERS TENDERS	9 80	75	1 10		10
PLUMBERS AND STEAMFITTERS:					
BARNSTABLE; BRISTOL (Acushnet, Dartmouth, Fairhaven, Fall River, Freetown, New Bedford, N & S Dartmouth, Somerset, Swandea, Westport, and Seekonk) PLYMOUTH (Marion, Mattapoisett Rochester, and Wareham); DUKES, NANTUCKET	12 14	1 05	1.63		.20
Residnetial	10 93	1 05	1 63		20
MIDDLESEX (Ashby, Townsend, Groton, Shirley, Ft. Devens, Ayer-West of Greenville Branch of The Boston and Maine RR)	11 71	80	.65	47	05
PLUMBERS AND PIPEFITTERS: MIDDLESEX (Acton, Ayer - except West of Greenville Branch of the Boston and Maine RR, Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Pepperell Tewksbury, Tyngsboro, Westford and Wilmington)	13 22	1 10	1 10		.02

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
PLUMBERS AND PIPEFITTERS (CONT'D)					
MIDDLESEX (Ashland, Belmont, Concord, Framington, Holliston, Hopkington, Lexington, Lincoln, Marlboro, Maynard, Natick, Sherborn, Sudbury, Stow, Waltham, Wayland, Weston, Hudson); NORFOLK (Medway, Medfield, Dover, Wellsley)	14 32	1 30	1 08		05
SUFFOLK, MIDDLESEX (Remainder of Co); NORFOLK (except Avon, Holbrook, Randolph, Stoughton, Dover, Medfield, Medway, Wellesley); ESSEX (Lynn, Lynnfield, Nahant, Saugus, Swampscott); PLYMOUTH (Hingham, Hull, Scituate,					
PLUMBERS	14 50	1 02	1 48		08
PIPEFITTERS	13 36	94	1 45		07
PLYMOUTH (Remainder of Co); BRISTOL (Remainder of County); NORFOLK (Avon, Holbrook, Randolph, Stoughton)	12 85	95	80		05
PLUMBERS, PIPEFITTERS AND STEAMFITTERS:					
ESSEX (Methuen, Lawrence, Groveland, Georgetown, Andover, North Andover)	11 15	87	1.00		05
Residential	8 92	87	1 00		05
ESSEX (Remainder of Co)	11 80	1 65	87		05
ROOFERS:					
BARNSTABLE CO , PLYMOUTH (Carver, Lakeville, Marion, Mattapoisett, Middleboro, Rochester, Wareham and Hingham); BRISTOL (Seekonk, Rehoboth, Dighton, Berkley, Swansea, Somerset, Fall River, Freetown, Westport, Dartmouth, New Bedford, Achushnet, Fairham); DUKES; NANTUCKET	9 95	75	.30		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ROOFERS (CONT'D)					
PLYMOUTH (Brockton)	8 50				
ESSEX (Haver Hill)	7 65				
SUFFOLK, MIDDLESEX, NORFOLK, ESSEX (Remainder of Co); BRISTOL (Remainder of co)					
Journeyman	12 05	70	1 85		17
Pitch Work	13 05	70	1 85		17
SHEET METAL WORKERS:					
BARNSTABLE, PLYMOUTH (Marion, Mattapoisett, Rochester, Wareham); BRISTOL (Acushnet, Dartmouth, Dighton, Fairhaven, Fall River, Freetown, Rehoboth, Seekonk, Somerset, Swansea, Westport, & New Bedford); DUKES; NANTUCKET	11 24	1 05	1 34		04
SUFFOLK, MIDDLESEX, NORFOLK, ESSEX, PLYMOUTH (Remainder of County); BRISTOL (Remainder of County)	12 58	1 16	1 55		10
SPRINKLER FITTERS	14 28	85	1 20		.08
TILE AND MARBLE FINISHERS	9 90	.90	75		
TERRAZZO FINISHERS	10 60		1 10		

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PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit

b Holidays: A through F and the day after Thanksgiving Day

c Holidays: A through F, Washington's Birthday, Good Friday & Christmas Eve provided employee has worked at least 45 full days during the 120 calendar days immediately prior to the holiday and the regular scheduled work days immediately preceding and following the holiday

d Holidays: A through F, Bunker Hill Day, provided the employee has been employed 5 working days prior to any one of the listed holidays

e Holidays: A through F, Patriots' Day, Washington's Birthday, Columbus Day, Veteran's Day, 1 week of vacation after 1 year's employment

f Apprentice Training: $1 00 per week per journeyman

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LABORERS (BUILDING):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS I:					
Laborers, Carpenter Tenders, Wrecking Laborers	9 55	75	1 10		10
CLASS II:					
Jackhammer Op , Pavement Breakers, Asphalt Rakers, Carbide Core Drilling Machine, Chain Saw Op , Pipelayer, Barco Type Jumping Tampers; Laser Beam, Concrete Pump, Mason Tenders, Motorized Mixers, Ride-on Motorized Buggy, Fence and Beam Rail Erectors	9 80	75	1 10		10
CLASS III:					
Air Track, Block Pavers, Rammers Curb Setter	10.30	75	1.10		10
CLASS IV:					
Blasterers, Powdermen	10.55	.75	1.10		10
CLASS V:					
Pre Cast Floor and Roof Plank Erectors	10 05	75	1 10		10

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HEAVY AND HIGHWAY LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS I	9 55	75	1 10		10
CLASS II	9 80	75	1 10		10
CLASS III	10 30	75	1 10		10
CLASS IV	10 55	75	1 10		10

CLASS I - Carpenter Tenders, Cement Finisher Tenders, Laborers, Wrecking Laborers

CLASS II - Asphalt Rakers, Fence and Guard Rail Erector, Laser Beam Op., Mason Tender, Pipelayer, Pneumatic Drill Op , Pneumatic Tool Op , Wagon Drill Op

CLASS III - Air Track Op , Block Pavers, Rammer, Curb Setters

CLASS IV - Blasters, Powdermen

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BUILDING CONSRUCTION: POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS I	13 76	1 18	1 15	a	03
CLASS II	13 64	1 18	1 15	a	03
CLASS III	11 52	1 18	1 15	a	03
CLASS IV	12 55	1 18	1 15	a	03
CLASS V	10 21	1 18	1 15	a	03
CLASS VI	10 83	1 18	1 15	a	03

CLASS I - Cranes, Shovels, Truck Cranes, Cherry Pickers, Draglines, Trench Hoes, Backhoes, Three Drum Machines, Derricks, Pile Drivers, Elevator Towers, Hoists, Gradalls, Shovel Dozers, Front end Loaders, Fork Lifts, Augers, Boring Machines, Rotary Drills, Post Hole Hammers, Post Hole Diggers, Pumpcrete Machines, Asphalt Plant (on Site), Concrete Batching and/or Mixing Plant (on Site), Crusher Plant (on Site), Paving Concrete Mixers, Timber Jacks, Boom over 150' Including Jib additional $ 50 per hour; Boom over 185' including Jib - additional $ 90 per hour; Boom over 210' Including Jib - additional $1 25 per hour Boom over 250' including Jib - additional $1 90 per hour; Boom over 295' including Jib- additional $2 65 per hour

CLASS II - Sonic or Vibratory Hammer, Graders, Tandem Scrapers, Concrete Pumps, Bulldozers, Tractors, York Rakers, Mulching Machines, Portable Steam Boiler, Portable Steam Generators, Rollers, Spreaders, Tampers (Self Propelled or Tractor Drawn), Asphalt Pavers, Mechanic Maintenance, Paving Screed Machines, Stationary Steam Boilers, Paving Concrete Finishing Machines, Cal Trucks, Ballast Regulators, Switch Tampers, Rail Anchor Machinery, Tire Trucks (when operated by the Employer on the job site)

CLASS III - Pumps (1-3 Grouped), Compressors, Welding Machines (1-3 Grouped), Generators, Concrete Vibrator, Lighting Plants, Heaters (Power Driven 1-5), Well-Point System (Operating and Installing), Syphones-Pulsometers, Concrete Mixers, Values Controlling Permanent Plant Air to Steam, Conveyors, Jackson Type Tampers, Single Diapragn Pump, Lighting Plants

CLASS IV - Assistant Engineers (Firemen)

CLASS V - Oilers (other than truck cranes and gradalls)

CLASS VI - Oilers on Truck cranes and Gradalls

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day
E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a HOLIDAY: A through F, Washington's Birthday, Columbus Day, Veterans Day and Patriots Day

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HEAVY & HIGHWAY CONSTRUCTION

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
GROUP 1	13 76	1 18	1 15	a	03
Hourly premium for boom lenghts including jib					
over 150 feet + $ 50					
Over 185 feet + $ 90					
Over 210 feet + 1 25					
Over 250 feet + 1.90					
Over 295 feet + 2 65					
GROUP 2	13 64	1 18	1 15	a	03
GROUP 3	11 52	1 18	1 15	a	03
GROUP 4	12 55	1 18	1 15	a	03
GROUP 5	10 21	1 18	1 15	a	03
GROUP 6	10 83	1 18	1 15	a	03

GROUP 1 - Power Shovels, Cranes, Truck Cranes, Derricks, Pile Driver, Trenching Machines, Mechanical Hoists Pavement Breakers, Cement Concrete Pavers, Draglines, Hoisting Engines, Three Drum Machines, Pumpcrete Machines, Uke Loaders, Shovel Dozer, Front End Loaders, Mucking Machines, Shaft Hoists, Steam Engines, Backhoe, Gradalls, Cable ways, Fork Lifts, Cherry Pickers, Boring Machines, Rotary Drills, Post Hole Hammers, Port Holes Diggers, Asphalt Plant on Job Site, Concrete Batching and/or Mixing Plant on Job Site, Crusher Plant on Job Site, Paving Concrete Mixers, Timber Jacks.

GROUP 2 - Sonic or Vibratory Hammers, Graders, Scrapers, Tandem Scrapers, Bulldozer, Tractors, Mechanic Maintenance, York Rakes, Mulching Machines Paving Screed Machines, Stationary Steam Boilers, Paving Concrete Finishing Machines, Grout Pumps, Portable Steam Boilers, Portable Steam Generators, Rollers, Spreaders, Asphalt Pavers, Locomotives or Machines used in Place thereof, Tampers, Self Propelled or Tractor Drawn, Cal Track, Ballast Regulators, Rail Anchor Machines, Switch Tampers

GROUP 3 - Pump (1-3 Grouped), Compressors, Welding Machine (1-3 Grouped), Generators, Lighting Plants, Heaters (Power Driven) (-5), Syphons-Pulsometers, Concrete Mixers, Valves Controlling Permanent Plant Air Steam, Conveyors, Wellpoint System (Operating and Installing)

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POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 4 - Assistant Engineers (Fireman)

GROUP 5 - Oilers (Other than Truck Cranes & Gradalls)

GROUP 6 - Oilers (on Truck Cranes & Gradalls)

FOOTNOTES:

a. Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Columbus Day, Veterans Day and Patriots Day

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MARINE CONSTRUCTION

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
GROUP I	13 76	1 18	1 15	a	03
GROUP II	15 02	1 18	1 15	a	03
GROUP III	13 71	1 18	1 15	a'	03
GROUP IV	13 64	1 18	1 15	a	03
GROUP V	11 52	1 18	1 15	a	03
GROUP VI	12 55	1 18	1 15	a	03
GROUP VII	10 21	1 18	1 15	a	03
GROUP VIII	10 83	1 18	1 15	a	03

GROUP I - Shovels, Cranes, Truck Cranes, Cherry Pickers, Derricks, Pile Drivers two or more Drum Machines, Ligjterns, Derrick Boats, Trenching, Mechanic Hoists Pavement Breakers, Cement Concrete Pavers, Draglines, Hoisting Engines, Pumpcrete Machines, Elevating Graders, Shovels Dozers, Front End Loaders, Backhoe, Gradalls, Cable Way, Boring Machines, Rotary Drills, Post Hole Hammer, Post Hole Diggers, Fork Lifts, Timber Jacks, Asphalt Plant (on site), Concrete Batching &/or Mixing Plant (on site), Crusher Plant, (on site), Paving Concrete Mixers; Boom over 150' including Jib- additional $ 5) per hour, Booms over 185' including Jib - additional $ 90 per hour; Booms over 210' including Jib - additional $1 25 per hour; Booms over 250' including Jib - additional $1 90 per hour; Booms over 295' including Jib - Additional $2 65 per hour

GROUP II - Master Mechanic

GROUP III - Swinger Engines

GROUP IV - Portable Steam Boilers, Portable Steam Generators, Sonic or Vibratory Hammer, Graders, Scrapers, Tandem Scrapers, Concrete Pumps, Bulldozers, Tractors, York Rakes, Mulching Machines, Rollers, Spreader, Tamper self-propelled or Tractor Drawn, Asphalt Pavers, Concrete Mixers with side Loaders, Mechanics - Maintenance, Cal Trucks, Ballast, Regulator, Switch Tampers, Rail Anchor Machines, Tire Trucks

GROUP V - Pumps, Compressors, Welding Machines, Heaters (Power Driven), Valves controlling Permanent Plan Air or Steam, Well Point Systems, Augers - Powered by Independent Engines & Attached to Pile Drivers, Hydraulic Saws, Generators, Lighting Plants, Syphons-Pulsometers, Concrete Mixers, Conveyors

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POWER EQUIPMENT OPERATORS (CONT'D)

GROUP VI - Assistant Engineers (Fireman)

GROUP VII - Oiler (other than Truck Cranes and Gradalls)

GROUP VIII - Oilers on Truck Cranes and Gradalls

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; E-Thanksgiging Day; F-Christmas Day

FOOTNOTE:

A Holidays: A through F; Washington's Birthday; Patriots' Day; Columbus & Veterans' Day

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BUILDING, HEAVY & HIGHWAY CONSTRUCTION TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS I	9 565	1 00	1 10	a+b	
CLASS II	9.735	1 00	1 10	a+b	
CLASS III	9 805	1 00	1 10	a+b	
CLASS IV	9 925	1 00	1 10	a+b	
CLASS V	10 025	1 00	1 10	a+b	
CLASS VI	10 315	1 00	1 10	a+b	
CLASS VII	10 605	1 00	1 10	a+b	

CLASS I - Station Wagons, Panel Trucks and Pickup Trucks

CLASS II - Two axle Equipment; Helpers on Low Bed When Assigned at the Discretion of the Employer, Warehousemen, Forklift Operators

CLASS III - Three Axle Equipment and Tiremen

CLASS IV - Four and Five Axle Equipment

CLASS V - Specialized Earth Moving Equipment under 35 tons other than Convential type trucks, Low Bed, Vachual, Mechanics, Paving Restoration Equipment, Mechanics

CLASS VI - Specialized Earth Moving Equipment over 35 Tons

CLASS VII - Trailers for Earth Moving Equipment (Double Hookup)

PAID HOLIDAYS:

A New Year's Day; B-Memorial Day; C-Independence Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. One half day's pay each month in which an employee has worked 15 days provided he has been employed for 4 months

b. Holidays: A through F, Washington's Birthday, Columbus Day, Veteran's Day and Patriots' Day provided an employee works two days of the calendar week in which the holiday falls

SUPERSEDEAS DECISION

STATE: Pennsylvania COUNTIES: Bucks, Chester, Delaware, Montgomery and Philadelphia

DECISION NO : PA80-3062 DATE: Date of Publication

Supersedes Decision No PA78-3054 dated August 11, 1978, in 43 FR 35868

DESCRIPTION OF WORK: Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CARPENTERS	11 72	2 63	1 40	a	13
CEMENT MASONS	10 59	2 09	2 36		
ELECTRICIANS:					
Philadelphia (only)	13 88	83	3%+ 83		1 3/4%
IRONWORKERS:					
Structural & ornamental Philadelphia (only)	13 77	1 34	1 36		04
IRONWORKERS:					
Rigger, machinery mover Philadelphia (only)	13 20	1 34	1 36		
LABORERS:					
Group 1	10 05	95	85		
Group 2	9 85	95	85		
Group 3	9 75	95	85		
Group 4	9 90	95	85		
Group 5	9 65	95	85		
Group 6	10 30	95	85		
Group 7	10 15	95	85		
Group 8	10 00	95	85		

LABORERS CLASSIFICATIONS

Group 1 - Powderman, multiple wagon drill op under pinning excavation, bottom men

Group 2 - Finished surface asphalt rakers ops , pipelayers, caulkers conduit and duct layers

Group 3 - Other pneumatic tools ops , Laborers stripping concrete forms, carrying or handling lumber, steel & steel mesh and other concrete materials, form pinners, tool room men, Mortar mixers, concrete pitman & spaders, grademen, asphalt shovelers, men working in shoring, men working in lagging, Laborers assistaing in the setting of cut stone, granite or artifical stone, hod carriers, Scaffold builders, all other laborers on construction work, with the exception of workers in compressed air

Group 4 - Wagon drill operators

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LABORERS CLASSIFICATIONS CONT'D

Group 5 - Yard workers: Laborers, scale mixermen, burnermen dustmen, Feeder

Group 6 - Free Air Tunnel: Miner miners bore driver, blasters, drillers, pneumatic shield ops , welders & burners

Group 7 - Miners' helpers, form setters, circular caisson excavation bottom men underpinning excavation bottom men

Group 8 - Trackmen, brakemen, groutmen, bottom shaft men, all others in free air tunnels

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr Tr
LANDSCAPING:					
Landscape Laborers	8 30	95	85	b	
Farm Tractor Driver	8 80	95	.85	b	
Hydroseeder Nozzlemen	8 80	95	85	b	
Mulcher Nozzlemen	8 80	95	85	b	
LINE CONSTRUCTION					
Journeyman Lineman	14 38	60	3%		1%
Winch truck operator	10 03	60	3%		1%
Groundman	8 57	60	3%		1%
LINE CONSTRUCTION (RAILROAD ONLY)					
Linemen	10 94	.45	3%	c	75%
"A" equipment operator	10 94	45	3%	c	75%
"B" equipment operator	9 57	45	3%	c	75%
MILLWRIGHTS:					
Philadelphia (only)	11 77	2 63	1 40		.13
POWER EQUIPMENT:					
HEAVY CONSTRUCTION					
Wage Group 1	13 71	7 9%	10 3%	d	1 8%
Wage Group 2	13 45	7 9%	10 3%	d	1 8%
Wage Group 3	12 58	7 9%	10 3%	d	1 8%
Wage Group 4	12 37	7 9%	10 3%	d	1 8%
Wage Group 5	12 06	7 9%	10 3%	d	1 8%
Wage Group 6	11 89	7 9%	10 3%	d	1 8%
Wage Group 7	11 38	7 9%	10 3%	d	1 8%
Wage Group 8	10 64	7 9%	10 3%	d	1 8%

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HEAVY CONSTRUCTION CLASSIFICATION DEFINITIONS CONT'D

Group 1 - Handling steel and stone in connection with erection, crane, doing hook work, any machines handling machinery, cable spinning machine, helicopters, machines similar to above

Group 2 - All types of cranes, all types of backhoes, cableways, draglines, keystones all types of shovels derricks, trench shovels, trenching machines, pippin type backhoes, hoist with two towers, pavers 21E and over, all types overhead cranes, building hoists - double drum (unless used as single drum), mucking machines in tunnel, gradalls, front-end loaders 3½ cu yds & over, Boat Captain, tandem scrapers, tower type crane operation, erecting, dismantling, jumping or jacking, drills self-contained (drill-master type), fork lift (20 ft and over), motor patrols (fine grade) batch plant with mixer, machines similar to the above

Group 3 - Conveys (except building conveyors), building hoist (single drum), scrapers and tournapulls, asphalt engineer, roller (high grade finishing) front end loaders under 3½ cu yds , mechanic-welder, spreaders high or low pressure boilers,concrete pumps, well drillers, fork lift trucks of all types, bulldozers and tractors, ditch winch type trencher, motor patrol, machines similar to the above

Group 4 - Concrete breaking machines rollers machines similar to the above

Group 5 - Seaman pulverizing mixer tireman on power equipment maintenance engineer (power boat) machines similar to the above

Group 6 - Conveyors (building) welding machines, heaters, wellpoints, compressors, farm tractors, fine grade machines, form line graders, road finishing machines, form line graders, road finishing machines, pumps, power broom (self-contained), seed spreader, machines similar to the above

Group 7 - Fireman, grease truck

Group 8 - Oilers and deck hands (personnel boats), grease truck helper

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
POWER EQUIPMENT OPERATORS HIGHWAY CONSTRUCTION:					
Wage Group 1	13 46	7 9%	10 3%	d	1 8%
Wage Group 2	13 23	7 9%	10 3%	d	1 8%
Wage Group 3	12 63	7 9%	10 3%	d	1 8%
Wage Group 4	12 10	7.9%	10 3%	d	1 8%
Wage Group 5	11 73	7.9%	10 3%	d	1 8%
Wage Group 6	11.38	7 9%	10 3%	d	1 8%
Wage Group 7	10 64	7 9%	10 3%	d	1 8%

HIGHWAY CONSTRUCTION CLASSIFICATIONS

Wage Group 1 - Handling steel and stone in connection with erection, cranes doing hook work, and machine handing machinery, helicopters, machines similar to the above

Wage Group 2 - All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, pavers 21E and over, trenching machines, gradalls, front-end loaders 3½ c y and over, boat captain, pippin type backhoes, tandem scrapers, tower type crane operation erecting, dismantling, jumping or jacking, drills self-contained, (drillmaster type), forklift (20 ft and over), motor patrols (fine grade), batch plant with mixer, machines similar to the above

Wage Group 3 - Carryalls, scrapers, tournapulls, asphalt plant engineers, roller (high grade finishing) front-end loaders under 3½ c y , spreaders (asphalt), concrete pumps, well drillers, bulldozers and tractors, ditch witch (small trencher), motor patrols, mechanic welder, machines similar to the above

Wage Group 4 - Conveyor loader, seaman pulverizer, ten-ton roller (grader fill stone base) concrete breaking machines, machines similar to the above

Wage Group 5 - Form line grader, fine grade machines, farm tractors, road finishing, concrete spreaders, compressors, power broom self contained, seed spreader, pumps, welding machines, tireman, power equipment, maintenance engineers (power boats), machines similar to the above

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HIGHWAY CONSTRUCTION CLASSIFICATIONS CONT'D

Wage Group 6 - Fireman, grease truck

Wage Group 7 - Oilers and deckhands (Personnel Boats), grease truck helper

FOOTNOTES:

a Paid Holiday: Labor Day
b Paid Holidays: July 4th, Labor Day, and Thanksgiving Day
c Paid Holidays: New Year's Day; Decoration Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day and Good Friday
d Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day, providing the employee works the day before and after the holiday

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5 5 (a)(1)(ii) "

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
HEAVY & HIGHWAY TRUCK DRIVERS:					
Including Building Site Preparation					
Class 1	9.35	9175	975	a+b	
Class 2	9 45	9175	975	a+b	
Class 3	9 65	9175	975	a+b	

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HEAVY & HIGHWAY TRUCK DRIVERS CLASSIFICATIONS

Class 1 - Helpers, stake body truck (single axle, dumpster)

Class 2 - Dump trucks, tandem & batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

Class 3 - Euclid type, off-highway equipment or belly dump trucks and double hitched equipment, staddle (ross) carrier, low-bed trailers

FOOTNOTES:

a Employee will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days per calendar year During each two (2) consecutive months period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitle to all days of vacation

b Paid Holidays: Memorial Day; Independence Day; Labor Day and Veterans Day and five (5) personal holidays provided such employee work the schedule work days before and after said holiday; and employee gives employer one (1) week's notice requesting a personal holiday The eligibility for personal holidays will be as follows: Employee will earn one (1) personal holiday every two (2) months up to a maximum of five (5) personal holidays per calendar year During each two (2) consecutive month period, employee must have worked twenty-six (26) days in that two month period After 130 workdays the employee will be entitled to all person holidays

SUPERSEDEAS DECISION

STATE: Virginia COUNTIES: Henrico and the Independent City of Richmond

DECISION NO : VA80-3065 DATE: Date of Publication

Supersedes Decision No VA78-3074 dated November 3, 1978 in 43 FR 51588

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
ASBESTOS WORKERS	10 88	80	95		01
BOILERMAKERS	12 70	1 175	1 30		04
BRICKLAYERS AND STONEMASONS	12 00	80	35		02
CARPENTERS AND SOFT FLOOR LAYERS	10 55	55	55		06
CEMENT MASONS	9 00				
CEMENT MASONS MACHINE MAN	9 10				
ELECTRICIANS:					
ZONE I-within a 12 air mile radius of Staples Mills Road and Broad Street in the City of Richmond	12 35	6½%	3%		½%
ZONE II-remainder of city of Richmond and Henrico County	13 10	6½%	3%		½%
ELEVATOR CONSTRUCTORS	9 66	745	56	a+b	025
ELEVATOR CONSTRUCTORS HELPERS	6 76	745	56	a+b	025
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	4 83				
GLAZIERS	5 95	30	10		01
IRONWORKERS-STRUCTURAL, REINFORCING AND ORNAMENTAL:					
ZONE I-up to 10 miles from Capital Square	10 75	55	75		05
ZONE II-from 10 miles to 30 miles radius	11 125	55	75		05
ZONE III-from 30 miles and beyond	11 375	55	75		05
LABORERS:					
Unskilled	6 70	25	35		06
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete Saw Operators, Air Tool and Vibrator Operators Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble and Tile and Terrazzo Workers Helpers	6 80	25	35		06
Burners (wrecking)	6 95	25	35		06
	7 05	25	35		06

DECISION NO VA80-3065

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
LABORERS (CONT'D)					
Floor, Base and Terrazzo Grinders	7 10	25	35		06
Wagon Drill, Air Trac and Similar Drills	7 20	25	35		06
Powdermen	7 45	25	35		06
LATHERS:					
Plasterer and Drywall Finish	10 49	55	20		01
Sheet Rock Applicator	8 79	55	20		01
LEADBURNERS	10 75	40	25	c	01
LINEMEN AND CABLE SPLICERS:					
ZONE I-within a 12 mile air radius of Staples Mill Road and Broad Street in the City of Richmond	12 35	6½%	3%		½%
ZONE II-remainder of City of Richmond and Henrico County	13 10	6½%	3%		½%
MARBLE, TILE AND TERRAZZO WORKERS	9 50				
MILLWRIGHTS	11.95	.55	55		01
PAINTERS:					
Brush, Paperhangers, Tapers and Finishers	9 60				
Structural Steel, Swing Stage and Bosun Chair	9 85				
Scaffold or Other Hazard Work Over 50 Feet	9 85				
Spray	10 10				
Sandblasting, Elevated Tanks, Smoke Stacks and all Towers	10 25				
PILEDRIVERMEN AND DOCK-BUILDERS	10 05	55	55		
PLASTERERS	11 25				
PLUMBERS AND STEAMFITTERS	11 30	60	70		05
ROOFERS COMPOSITION	7 10				
ROOFERS HELPERS (TEARING OFF OLD ROOFING, CARRYING MATERIALS & CLEAN-UP)	5 20				

DECISION NO VA80-3065

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
SHEET METAL WORKERS:					
City of Richmond	11 32	45	35		01
Remainder of County	11 57	45	35		01
SPRINKLER FITTERS	11 79	85	1 20		08

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; F-Christmas Day

FOOTNOTES:

a Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit

b Paid Holidays: A through F, Day after Thanksgiving

c Paid Holidays: A through F; Washington's Birthday; Good Friday and Christmas Eve, provided 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

DECISION NO VA80-3065

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION:					
GROUP 1	10 20	575	50		08
GROUP 2	8 10	575	50		08
GROUP 3	6 55	575	50		08
GROUP 4	6 35	575	50		08
GROUP 5	6 16	575	50		08

CLASSIFICATIONS

GROUP 1 - Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad

GROUP 2 - Cableways, tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16 S, fork lift

GROUP 3 - Compressor over 125 cu ft , bottom and end dumps, tractor without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including wellpoints), A-frame trucks, mechanic's helper

GROUP 4 - Firemen

GROUP 5 - Oilers

SUPERSEDEAS DECISION

STATE: Virginia

COUNTIES: York County, The Cities of Hampton and Newport News (including Langley AFB, Fort Eustis and Fort Monroe)

DECISION NO : VA80-3066

DATE: Date Of Publication

Supersedes Decision No VA78-3075 dated November 3, 1978 in 43 FR 51590

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up and including 4 stories), Sewer and Water Line Construction

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS	10.75	70	70		
BOILERMAKERS	12 70	1 175	1 30		04
BRICKLAYERS AND STONE MASONS	11 00				
CARPENTERS AND SOFT FLOOR LAYERS	10 55	55	55		.06
CEMENT MASONS:					
Cement Masons	9 50	40			
Machine and Scaffold Men	9 60	40			
ELECTRICIANS:					
Zone I-within a 16 air mile radius of 7812 Warwick Bldv , Newport News:					
Wiremen	11 05	60	8%		1%
Cable Splicers	11 30	60	8%		1%
Zone II-beyond a 16 air mile radius of 7812 Warwick Bldv , Newport News:					
Wiremen	12 05	60	8%		1%
Cable Splicers	12 30	60	8%		1%
ELEVATOR CONSTRUCTORS	8 80	745	56	a+b	025
ELEVATOR CONSTRUCTORS HELPERS	6 16	745	56	a+b	025
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	4 40				
GLAZIERS	5 95	30	10		01
IRONWORKERS:					
Structural, ornamental, riggers, reinforcing, fence erectors, and machinery movers	11 30	75	1 25		08
LABORERS:					
Unskilled	6 70	.25	35		06
Tenders, motorized Georgia buggy operators, nozzlemen (gunite or sandblasting), concrete saw operators, air tool and vibrator operators	6 80	25	35		06

DECISION NO VA80-3066

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
LABORERS CONT'D:					
Mortar mixers, hod carriers, pipelayers, caulkers, marble, tile and terrazzo worker helpers	6 95	25	35		06
Burners (wrecking)	7 05	25	35		06
Floor, base, and terrazzo grinder	7 10	25	35		06
Wagon drill and air trac	7 20	25	35		06
Powdermen	7 45	25	35		06
LATHERS	10 75		25		
LINE CONSTRUCTION:					
Zone 1-within a 16 air mile radius of 7812 Warwick Blvd , Newport News:					
Linemen	11 05	60	8%		1%
Cable Splicer	11 30	60	8%		1%
Zone II-beyond a 16 air mile radius of 7812 Warwick Bldv , Newport News:					
Linemen	12 05	.60	8%		1%
Cable Splicer	12 30	60	8%		1%
MARBLE SETTERS	10 05				
MILLWRIGHTS	11 95	55	55		01
PAINTERS:					
(York County from a point on the north shore of Queens Creek at the intersection of York River due west to a point on the eastern shore of James River including all cities therein the cities of Hampton and Newport News:)					
Brush and roller	8 80	35	45		
Paperhanger, taper, spray, roller with a 6' handle or over, structural steel to 74' from the ground up, swing stage, under 40', sandblasting	9 15	35	45		

DECISION NO VA80-3066

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
PAINTERS CONT'D:					
Swing stage over 40', spray epoxy	9 40	35	45		
Epoxy brushed or rolled	9 05	35	45		
All work over 74' from the ground	9 30	35	45		
Bituminous coatings, hot creosite	10 20	35	45		
PAINTERS: REMAINDER OF COUNTY OF YORK					
Brush and roller	9 40	35	45		
Paperhanging, taper, spray, roller with a handle 6' or over, structural steel 74' from the ground up, swing stage under 40', sandblasting	9 75	35	45		
Swing stage over 40', epoxy sprayed	10 00	35	45		
Epoxy brushed or rolled	9 65	35	45		
All work over 74' from the ground	9 90	35	45		
Bituminous coatings, hot creosite	10 80	35	45		
Piledrivermen and dock-builders	10 05	55	55		
Plasterers	11 66	40			
Plumbers and Steamfitters	11 85	75	55		02
Roofers composition	7 10				
Roofers helpers (tearing off old roofing, carrying materials & clear-up)	5 20				
Sheet metal workers:					
Newport News and Hampton	10 30	45	55		005
York County	10 55	45	55		005
Sprinkler fitters	11 79	85	1 20		08
Terrazzo workers and tile setters	10 05				
WELDERS-receive rate prescribed for craft performing operation to which welding is incidental					

DECISION NO VA80-3066

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a Holidays: A through F, Day after Thanksgiving
b Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION:					
Group 1	10 20	575	50		06
Group 2	8 10	575	50		08
Group 3	6 55	575	50		08
Group 4	6 35	575	50		08
Group 5	6 16	575	50		08

CLASSIFICATIONS:

Group 1 - Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad

Group 2 - Cableways, tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16S, fork lift

Group 3 - Compressor over 125 cu ft , bottom and end dumps, tractors without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including wellpoints), A-frame trucks, mechanic's helper

Group 4 - Firemen

Group 5 - Oilers

DECISION NO VA80-3066

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
SEWER AND WATER CONSTRUCTION					
LABORERS	3 38				
PIPELAYERS	4 59				
TRUCK DRIVERS	3 50				
LOADERS	4 69				
BACKHOE	6 50				
CRANES	7 90				

SUPERSEDEAS DECISION

STATE: Virginia

LOCATION: The Cities of Chesapeake, Portsmouth and Virginia Beach

DECISION NO : VA80-3067

DATE: Date of Publication

Supersedes Decision No VA78-3076 dated November 3, 1978 in 43 FR 51592

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr.
ASBESTOS WORKERS	10 75	70	70		
BOILERMAKERS	12 70	1 175	1 30		04
BRICKLAYERS AND STONE MASONS	11 38	70	20		03
CARPENTERS AND SOFT FLOOR LAYERS	10 55	55	55		06
CEMENT MASONS:					
Cement Masons	9 85				
Machine and Scaffold Men	9 95				
ELECTRICIANS AND CABLE SPLICERS	11 05	60	8%	a	1%
ELEVATOR CONSTRUCTORS	8 80	745	56	a+b	025
ELEVATOR CONSTRUCTORS HELPERS	6 16	745	56	a+b	025
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	4 40				
GLAZIERS	5 95	30	10		01
IRONWORKERS:					
Reinforcing, Ornamental, Structural, Riggers, Fence Erectors, Machinery Movers	11 30	75	1 25		08
LABORERS:					
Unskilled	6 70	25	35		06
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete Saw Operators, Air Tool and Vibrator Operators	6 80	25	35		06
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble, Tile and Terrazzo Workers Helpers	6 95	25	35		06
Burners (wrecking)	7 05	25	35		06
Floor, Base and Terrazzo Grinders	7 10	25	35		06
Wagon Drill and Air Trac	7 20	25	35		06
Powdermen	7 45	25	35		06
LATHERS	10 75		25		
LEAD BURNERS	10 75	40	25	d	.01
LINE CONSTRUCTION:					
Linemen and Cable Splicers	11 05	60	8%		1%

DECISION NO VA80-3067

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
MARBLE SETTERS	9 50	60	20		
MILLWRIGHTS	11 95	55	55		01
PAINTERS:					
Brush and Roller	9 65		50		
Structural Steel from Ground to 74 feet	10 15		50		
Spray, Paperhangers and Tapers	10 00		50		
Any Work Over 74 feet from the Ground	10 95		50		
Bituminous Coating and Hot Creosite	11 30		50		
Swing Stage Under 40 Feet, Rollers With 6 Feet Handles and Over, Epoxy Brushed or Rolled	9 90		50		
Swing Stage Over 40 Feet	10 15		50		
Epoxy, Sprayed	10 25		50		
Sandblasting	10 40		50		
PILEDRIVERMEN AND DOCK-BUILDERS	10 05	.55	55		
PLASTERERS	11 66	40			
PLUMBERS AND STEAMFITTERS	11 30	80	75		12
ROOFERS COMPOSITION	7 10				
ROOFERS HELPERS (Tearing off old roofing, carrying materials & clean-up)	5 20				
SHEET METAL WORKERS	10 05	45	55		.005
SPRINKLER FITTERS	11 79	85	1 20		08
TERRAZZO AND TILE WORKERS	8 20	60	20		

DECISION NO. VA80-3067

WELDERS-receive rate prescribed for craft performing operation for 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. Workmen shall be allowed 2 hours with pay at the start or at the end of the work day on State and National Election days; Tuesday following the first Monday in November, provided they are qualified to and Vote.

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 service as vacation pay credit.

c. Holidays: A through F, Day after Thanksgiving.

d. Holidays: A through F; Washington's Birthday, Good Friday and Christmas Eve provided 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.

[FR Doc. 80-33700 Filed 10-30-80; 8:45 am]
BILLING CODE 4510-27-C

DECISION NO. VA80-3067

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS - BUILDING CONSTRSUCTION:					
GROUP 1	10.20	.575	.50		.08
GROUP 2	8.10	.575	.50		.08
GROUP 3	6.55	.575	.50		.08
GROUP 4	6.35	.575	.50		.08
GROUP 5	6.16	.575	.50		.08

CLASSIFICATIONS

GROUP 1 - Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad

GROUP 2 - Cableways, tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16S, fork lift

GROUP 3 - Compressor over 125 cu. ft., bottom and end dumps, tractors without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including wellpoints), A-frame trucks, mechanic's helper

GROUP 4 - Firemen

GROUP 5 - Oilers

federal register

Friday
October 31, 1980

Part IV

Office of the Federal Register

Incorporation by Reference: Approvals, Extensions, and Corrections

OFFICE OF THE FEDERAL REGISTER

1 CFR Part 51

Incorporation by Reference

AGENCY: Office of the Federal Register.

ACTION: Approvals, extensions, and corrections of incorporations by reference.

SUMMARY: This document announces final approvals, further extensions, and corrections to a document published on September 30, 1980 at 45 FR 64816. The September 30, 1980 document listed materials approved by the Director of the Federal Register for incorporation by reference into Titles 42–50 of the *Code of Federal Regulations*. Material that is approved for incorporation by reference has the same legal status as if it were published in full in the Federal Register.

EFFECTIVE DATE: The Director approves the following incorporations by reference as noted.

FOR FURTHER INFORMATION CONTACT: Rose Anne Lawson at (202) 523–4534.

SUPPLEMENTARY INFORMATION: For more information on incorporation by reference see the document published on September 30, 1980 at 45 FR 64816.

Martha Girard,

Acting Director, Office of the Federal Register.

October 28, 1980.

In FR Doc. 80–29660 at 45 FR 64816, September 30, 1980 make the following changes: On page 64817 under American Society of Heating, Refrigerating and Air Conditioning Engineers, Handbook of Fundamentals, 1977: Extension granted to Dec. 1, 1980.

On page 64817 under Emergency Department Nurses' Association, "P.O. Box 1566, East Lansing, Mich. 48823" is corrected to read: "666 N. Lake Shore Dr., Chicago, Ill. 60611.

On page 64817 under American Nurses Association, "242 Pershing Road" is corrected to read: "2420 Pershing Road."

On page 64817 under American Nurses Association, "ANA Publication Code MS–S" is corrected to read: "ANA Publication Code MS–5 10M 9/75."

On page 64817 under Department of Health and Human Services, approval is given for one year effective October 1, 1980 for: Part 2.1 (except section 5.4, 8.8, 11.2, 11.3, 11.4; Chapter 12, sections 13.2, 13.3, and exhibits 9 and 10) of DHHS Technical Handbook for Facilities Engineering and Construction Manual, Federally Assisted Construction, entitled "2.1 Information for Project Applicants and State Agencies on Design and Construction Related Activities":

On page 64817 under Department of Health and Human Services, "Chapter 14 of DHHS Publication No. (MRA) 79–14500" is corrected to read: "Chapter 14 of DHHS Publication No. (HRA) 79–14500."

On page 64817 under International Conference of Building Officials, Uniform Building Code, 1979 edition: Extension granted to Dec. 1, 1980.

On page 64818 the following corrections, approvals and extensions are made:

Under National Association of Plumbing-Heating-Cooling Contractors, National Standard Plumbing Code: Approved for one year effective October 1, 1980.

Under National Conference of States on Building Codes and Standards, National Building Code: Extension granted to December 1, 1980.

Under United States Public Health Service, "Manual of Tests for Syphilis, 1969" USPHS Publication, add the following: "No. 411, January, 1969."

Under Department of Transportation, National Highway Traffic Safety Administration, Basic Training Course/Emergency Medical Technician (2nd Edition) Course Guide 1977 (DOT Pub. No. HS 802534 through 536): Approved for one year effective October 1, 1980.

Course Guide, National Training Course, Emergency Medical Technician—Paramedic 1977: Extension granted to December 1, 1980.

Appendix A, "National Training Course Guide for Emergency Medical Technicians—Paramedic.": Extension granted to December 1, 1980.

On page 64819 the following corrections, approvals and extensions are made:

Chart of Accounts for Hospitals, 1973 edition: Extension granted to December 1, 1980.

Under American Society for Testing and Materials D–93, Test for Flash Point by Pennsky-Martens Closed Tester, 1979, "1979" is removed and replaced by "1977" and approval is granted for one year effective October 1, 1980.

On page 64820 the following corrections, approvals and extensions are made: Under Inter-Governmental Maritime Consultative Organization, A.264 (VIII), Bulk Grain Cargoes, 1966: Extension granted to December 1, 1980.

Under Naval Publications and Forms Center, Federal Specification ZZ–H–451, Hose, Fire, Woven-Jacketed Rubber or Cambric-Lined, With Couplings, E is approved for one year effective October 1, 1980.

Under American Boat and Yacht Council, P–1, Recommended Practice and Standards Covering Safe Installation of Exhaust Systems for Propulsion and Auxiliary Machinery, 1971: Extension granted to December 1, 1980.

On page 64820 under 46 CFR Subchapter F—U.S. Coast Guard, Department of Transportation, the Director approves the following materials for one year effective October 1, 1980. The following list also contains corrections.

American National Standards Institute (ANSI), 1430 Broadway, New York, N.Y. 10018.

ANSI B1.1 Unified Inch Screw Threads, 1974—56.60–1.

ANSI B1.20.3 Dryseal Pipe Threads (Inch) 1976 (formerly ANSI B2.2–1968)—56.60–1.

ANSI B16.1 Cast Iron Pipe Flanges and Flanged Fittings, 1975—56.60–1, 56.60–10, 56.60–15.

ANSI B16.3 Malleable Iron Threaded Fittings, 150 and 300 lb., 1977—56.60–1.

ANSI B16.4 Cast Iron Threaded Fittings, 125 and 250 lb., 1977—56.60–1.

ANSI B16.5 Steel Pipe Flanges and Flanged Fittings, 1977—56.20–1, 56.30–10, 56.60–1, 56.60–15.

ANSI B16.9 Factory-made Wrought Steel Buttwelding Fittings, 1978—56.60–1.

ANSI B16.10 Face-to-Face and End-to-End Dimensions of Ferrous Valves, 1973—56.60–1.

ANSI B16.11 Forged Steel Fittings, Socket-Welding and Threaded, 1973—56.30–5, 56.60–1.

ANSI B16.14 Ferrous Pipe Plugs, Bushings and Locknuts with Pipe Threads, 1977—56.60–1.

ANSI B16.15 Cast Bronze Threaded Fittings, 1978—56.60–1.

ANSI B16.18 Cast Copper Alloy Solder-Joint Pressure Fittings, 1978—56.60–1.

ANSI B16.20 Ring Joint Gaskets and Grooves for Steel Flanges, 1973—56.60–1.

ANSI B16.21 Non-metallic Flat Gaskets for Pipe Flanges, 1978—56.60–1.

ANSI B16.22 Wrought Copper and Copper Alloy Solder Joint Pressure Fittings, 1980—56.60–1.

ANSI B16.23 Cast Copper Alloy Solder Joint Drainage Fittings—DWV, 1979—56.60–1.

ANSI B16.24 Bronze Pipe Flanges and Flanged Fittings, 1979—56.60–1.

ANSI B16.25 Buttwelding Ends, 1979—56.60–1.

ANSI B16.28 Wrought Steel Buttwelding Short-radius Elbows and Returns, 1978—56.60–1.

ANSI B16.29 Wrought Copper and Wrought Copper Alloy Solder Joint Drainage Fittings—DWV, 1980—56.60–1.

ANSI B18.2.1 Square and Hex Bolts and Screws, 1972—56.60-1.
ANSI B31.1 Power Piping, 1977 with addenda a-1977, b-1978, c-1978, d-1979, e-1979, f-1980— Part 56.
ANSI B31.5 Refrigeration Piping, 1974—58.20-5, 58.20-20.
ANSI B36.10 Welded and Seamless Wrought Steel Pipe, 1979—56.07-5, 56.30-20, 56.60-1.
ANSI B36.19 Stainless Steel Pipe, 1976—56.07-5.
ANSI B93.5 Practice for the Use of Fire Resistant Fluids in Industrial Hydraulic Fluid Power Systems, 1979—58.30-1.
ANSI Z21.22 Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems, 1979—63.10-30.

On page 64821 under AMERICAN SOCIETY OF MECHANICAL ENGINEERS, the four extensions granted to November 1, 1980 are changed to December 1, 1980.

On page 64822 "A307, Carbon Steel Externally Internally Standard Fasteners, 1978" is corrected to read: "A307, Carbon Steel Externally and Internally Threaded Standard Fasteners, 1978."

On page 64823 under COMPRESSED GAS ASSOCIATION, the two extensions granted to November 1, 1980 are changed to December 1, 1980.

On page 64823 under FLUID CONTROLS INSTITUTE, INC., 69-1-77 Pressure Rating Standard for Steam Traps: Approval granted for one year effective October 1, 1980.

On page 64823 under MANUFACTURERS STANDARDIZATION SOCIETY the address is corrected to read: 5203 Leesburg Pike, suite 520, Falls Church, Va. 22041, (703) 998-7996, and the extensions granted to Nov. 1, 1980 for all the following MSS standards is changed to Dec. 1, 1980.

On page 64824 under MIL-S-901, Shock Tests, HI, (High Impact); Shipboard Machinery Equipment and Systems, Requirements for: Extension granted to Dec. 1, 1980.

On page 64824 under NATIONAL FIRE PROTECTION ASSOCIATION, "To, National Electrical Code, 1980" is corrected to read: "70, National Electrical Code, 1980."

On page 64824 under SOCIETY OF AUTOMOTIVE ENGINEERS, J429, Mechanical and Quality Requirements for Externally Threaded Fasteners, 1977: Approved for one year effective Oct. 1, 1980.

On page 64824 under TUBULAR EXCHANGER MANUFACTURERS ASSOCIATION, Heat Exchangers, Class "B," "C," or "R," 1968 Rev. 1970: Extension granted to Dec. 1, 1980.

On page 64824 under UNDERWRITERS LABORATORIES, UL296, Standard for Oil Burners, 1975: Extension granted to Dec. 1, 1980; and UL814, Standard for Gas Tube Sign and Ignition Cable, 1978: Extension granted to Dec. 1, 1980.

On page 64824 under AMERICAN SOCIETY FOR TESTING AND MATERIALS "093, Test for Flash Point by Pennsky-Martens Closed Tester, 1973" is corrected to read: "D93, Test for Flash Point by Pennsky-Martens Closed Tester, 1977," and approved for one year effective Oct. 1, 1980.

On page 64824 under FEDERAL SPECIFICATION, ZZ-H-451, Hose, Fire, Woven-Jacketed Rubber or Cambric-Lined, with Couplings, E: Approved for one year effective Oct. 1, 1980.

On page 64825 under AMERICAN SOCIETY FOR TESTING AND MATERIALS, "D93, Test for Flash Point by Pennsky-Martens Closed Tester, 1973" is corrected to read: "D93, Test for Flash Point by Pennsky-Martens Closed Tester, 1977," and approved for one year effective Oct. 1, 1980.

On page 64825 under FEDERAL SPECIFICATION, ZZ-H-451, Fire, Woven-Jacketed, Rubber or Cambric Lined, with Couplings, E: Approved for one year effective Oct. 1, 1980.

On page 64825 under INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION, A.264 (VIII), Bulk Grain Cargoes, 1966: Extension granted to Dec. 1, 1980.

On page 64825 under UNDERWRITERS LABORATORIES, UL-19, Woven-Jacketed, Rubber lined Fire Hose, 1978 at 46 CFR 76.10-10 and 95.10-10: Extensions granted to Dec. 1, 1980.

On page 64826 under UNDERWRITERS LABORATORIES, "UL20, Snap Switches, 1974 with revs. thru 1976. . . . .110.10-1; 1211.55-5" is corrected to read: "110.10-1; 111.55-5."

On page 64826 under AMERICAN BUREAU OF SHIPPING, Rules for Building and Classing Steel Barges for Offshore Service, 1973: Extension granted to Dec. 1, 1980.

On page 64827 under AMERICAN NATIONAL STANDARDS INSTITUTE, all standards are approved for one year effective Oct. 1, 1980.

On page 64827 under UNDERWRITERS LABORATORIES, 783, Flashlights and Lanterns, Electric, for Use in Hazardous Locations: Extension granted to Dec. 1, 1980.

On page 64827 under AMERICAN SOCIETY OF MECHANICAL ENGINEERS, Boiler and Pressure Vessel Code. Section VIII Pressure Vessels, 1979 with addenda through Summer 1980: Extension granted to Dec. 1, 1980.

On page 64828 under COAST GUARD, DWG No. 160.005-1, Life Preserver, Fibrous Glass Adult and Child (Jacket Type): Approval granted for one year effective Oct. 1, 1980.

On pages 64828 and 64829 under FEDERAL SPECIFICATIONS, extensions are granted to Dec. 1, 1980 for all standards.

On page 64829 "T-R-505, Rope, Manila and Sisal, B, amd.3" is corrected to read: "T-R-605", and "WW-C-621, Couplings; Hose, Cotton (Rubber-lined) and lined (unlined) E, amd.1" is corrected to read: "WW-C-621, Couplings; Hose, Cotton (Rubber-lined) and Linen (unlined)."

On page 64829 under FEDERAL STANDARDS AND TEST METHOD STANDARDS, extensions are granted to Dec. 1, 1980 for all Federal Standards and Test Method Standards.

On page 64829 under MILITARY SPECIFICATIONS, extensions are granted to Dec. 1, 1980 for all the Military Specifications.

On page 64830 under NAVY DEPARTMENT PLANS extensions are granted to Dec. 1, 1980 for all Navy Department Plans.

On page 64830 under UNDERWRITERS LABORATORIES "UL1988 Fuses (Class H Fuses), 1975" is corrected to read: "UL198B".

On page 64830 under INSTITUTE OF ELECTRICAL AND ELECTRONIC ENGINEERS, 45, Recommended Practice for Electrical Installations on Shipboard, 1977: Extension granted to Dec. 1, 1980.

On page 64831 under FEDERAL SPECIFICATION, ZZ-H-451, Hose, Fire, Woven-Jacketed Rubber or Cambric-Lined, with Couplings, E: Approved for one year effective Oct. 1, 1980.

On page 64831 under UNDERWRITERS LABORATORIES, UL-19 Woven-Jacketed, Rubber lined Fire Hose, 1978: Extension granted to Dec. 1, 1980.

On page 64831 under AMERICAN SOCIETY FOR TESTING AND MATERIALS, D93, Test for Flash Point by Pennsky-Martens Closed Tester: Approved for one year effective Oct. 1, 1980.

On page 64831 under FEDERAL SPECIFICATION, "ZZ-H-45, Hose, Fire, Woven Jacketed Rubber or Cambric-lined, with Couplings, E," is corrected to read: "ZZ-H-451" and approved for one year effective Oct. 1, 1980.

On page 64831 under NAVSHIPS 250, Cable Comparison Guide, 1975: Extension granted to Dec. 1, 1980.

On page 64831 under UNDERWRITERS LABORATORIES, UL-595, Marine Type Electric Lighting

Fixtures, 1974, all revisions through 1977: Extension granted to Dec. 1, 1980.

On page 64832 under FEDERAL SPECIFICATIONS, ZZ-H-451, Hose, Fire, Woven-Jacketed, Rubber or Cambric-Lined, with Couplings, E: Approved for one year effective Oct. 1, 1980.

On page 64832 under MILITARY SPECIFICATIONS, MIL-V-17501, (Valve, Control, Automatic Sprinkler System): Extension granted to Dec. 1, 1980.

On page 64832 under UNDERWRITERS LABORATORIES, UL-19, Woven Jacketed, Rubber Lined Fire Hose, 1978: Extension granted to Dec. 1, 1980.

On page 64836 the following entry is added and approved for one year effective Oct. 1, 1980.

49 CFR Part 399—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

U.S. Dept. of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161.

Public Health Service Publication No. 1000, Series 11, No. 8, "Weight, Height, and Selected Body Dimensions of Adults, United States 1960-62—399.205.

[FR Doc. 80-33961 Filed 10-30-80; 8:45 am]

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federal register

Friday
October 31, 1980

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Partial Approval/Disapproval of the Permanent Program Submission From the State of Illinois Under the Surface Mining Control and Reclamation Act of 1977

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Partial Approval/Disapproval of the Permanent Program Submission From the State of Illinois Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule: partial approval and disapproval of the Illinois program.

SUMMARY: On March 3, 1980, the State of Illinois submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and thorough review of the program submission, the Secretary of the Interior has determined that the Illinois program only partially meets the minimum requirements of SMCRA and the Federal Permanent program regulations. Accordingly, the Secretary of the Interior has approved in part and disapproved in part the Illinois program. The purpose of this document is to acknowledge the partial approval and disapproval of the program and therefore establish the beginning of the 60 day period in which Illinois has to submit revisions to those portions of the program that have been disapproved by the Secretary. Illinois will not assume primary jurisdiction for implementing SMCRA until its program receives complete approval.

DATE: Illinois has until December 30, 1980 to submit revisions of the disapproved portions of the program for the Secretary's consideration.

ADDRESSES: Copies of the Illinois program submission and the administrative record on the Illinois program are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Bldg., 1951 Constitution Ave., Washington, D.C. 20240.

Office of Surface Mining Reclamation and Enforcement, Region III, Fifth Floor, Room 510, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204.

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

Department of Mines and Minerals, Division of Land Reclamation, Southern District Field Office, Route 6, Box 140A, Marion, Illinois 62959.

FOR FURTHER INFORMATION CONTACT: Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone (202) 343-4225.

SUPPLEMENTARY INFORMATION: This notice is arranged as set forth in the following table:

I General Background on Permanent Program
II General Background on State Program Approval Process
III Background on the Illinois Program Submission
IV Secretary's findings under Section 503 of SMCRA
1. Statute (General)
2. Sanctions for Violations
3. Administrative/Technical Personnel and Funds
4. Permit System
5. Areas Unsuitable for Mining
6. Coordinating Permit Review/Issuance
7. Regulations (General)
8. Solicited/Disclosed Views of the Environmental Protection Agency (EPA), and other Federal Agencies.
9. Concurrence of EPA
10. Held Public Meeting and Hearings
11. Legal Authority/Qualified Personnel
V Secretary's findings Under 30 CFR 732.15
12. Program Provisions for Carrying out SMCRA/30 CFR Chapter VII (General)
13. Alternate Approaches ("State Window")
14. Performance Standards—(Subchapter K)
15. Permits—(Subchapter G)
16. Coal Exploration—(30 CFR 776, 815)
17. Coal Extraction—(Incidental)—(30 CFR 707)
18. Enter, Inspect, Monitor—(30 CFR 840)
19. Performance Bonds—(Subchapter J)
20. Civil and Criminal Sanctions—(30 CFR 845)
21. Notices and Violations/Cessation Orders (30 CFR 842, 843)
22. Lands Unsuitable—(Subchapter F)
23. Public Participation
24. Conflict of Interest—(30 CFR 705)
25. Blasting—(Section 719 of SMCRA)
26. Small Operator Assistance Program—(30 CFR 795)
27. Protection of Employees—(30 CFR 865)
28. Adminstrative and Judicial Review (Subchapter L)
29. Provisions of Documents/Information to OSM
30. Laws
31. Personnel and Funds
VI Disposition of Comments
VII Approval in Part/Disapproval in Part
VIII Effect of This Action
IX Additional Findings

I. General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501-503 of SMCRA, 30 U.S.C. 1251-1253. The initial program, which became effective on February 3, 1978, for new coal mining operations on non-Federal and non-Indian lands that received state permits on or after that date, and on May 3, 1978, for all coal mines existing on February 3, 1978, is administered and enforced by the Federal Government. The initial program rules were promulgated by the Secretary on December 13, 1977, under 30 CFR Parts 710-725 (42 FR 62639).

The permanent program will become effective in each state upon either the approval of a state program by the Secretary of the Interior or implementation of a Federal program within the state. To be approved, a state program must demonstrate that the state is capable of carrying out the provisions of SMCRA in regulating surface coal mining within the state. If a state program is approved, the state, rather than the Federal government, will be the primary regulator of activities subject to SMCRA. The Federal regulations for the permanent program, including procedures for states to follow in submitting state programs and minimum standards and procedures the State programs must include to be eligible for approval, are found in 30 CFR Parts 700-707 and 730-865. Part 705 was published October 20, 1977 (42 FR 56064), and Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312-15463). Errata notices were published March 14, 1979 (44 FR 15485), August 24, 1979 (44 FR 49673-49687), September 14, 1979 (44 FR 53507-53509), November 19, 1979 (44 FR 66195), April 16, 1980 (45 FR 26001), June 5, 1980 (45 FR 37818) and July 15, 1980 (45 FR 47424). Amendments to the regulations were published October 22, 1979 (44 FR 60969), as corrected December 19, 1979 (44 FR 75303), December 19, 1979 (44 FR 75302-75303), December 31, 1979 (44 FR 77440-77447), January 11, 1980 (45 FR 2626-2629), April 16, 1980 (45 FR 25998-26001), May 20, 1980 (45 FR 33926-33927), June 10, 1980 (45 FR 39446-39447) and August 6, 1980 (45 FR 52306-52324).

Portions of these regulations that have been suspended, pending further rulemaking, were published on November 27, 1979 (44 FR 67942), December 31, 1979 (44 FR 77447–77454), January 30, 1980 (45 FR 6913) and August 4, 1980 (45 FR 51547–51549).

II. General Background on the State Program Approval Process

The Federal regulations governing state program submissions are found at 30 CFR Parts 730–732. Any state wishing to assume primary jurisdiction under SMCRA for the regulation of surface coal mining within the state may submit a state program for the Secretary's consideration. The Secretary of the Interior has the responsibility to approve or disapprove the program, and must approve or disapprove each specific part of the program. After review of the submission by OSM and other agencies, and opportunity for the state to make additions or modifications to the program and an opportunity for public comment, the Secretary may approve the program unconditionally, approve it conditioned upon minor deficiencies being corrected in accordance with a specified timetable, disapprove the program, or approve it in part and disapprove it in part. If a program or a part thereof is disapproved, the state may submit a revised program that is corrected to meet the requirements of SMCRA and the applicable Federal regulations. If the revised program or a part thereof is also disapproved, SMCRA requires the Secretary of the Interior to establish a Federal program in that state. The state may submit a further proposed state program for the Secretary's consideration after the Federal program has been implemented.

The 104 Day Rule

As originally promulgated, 30 CFR 732.11(d) required that State make any modifications and additions to state program submissions by November 15, 1979. That section stated:

> Program submissions that do not contain all required and fully enacted laws and regulations by November 15, 1979, will be disapproved pursuant to the procedures for the Secretary's initial decision in § 732.13.

As a result of litigation in the U.S. District Court for the District of Columbia, the deadline for states to submit proposed programs was extended from August 3, 1979, to March 3, 1980 and the November 15, 1979, date in 30 CFR 732.11(d) and 732.12(b)(2) became obsolete. Therefore, on May 20, 1980, (45 FR 33927) 30 CFR 732.11(d) and 732.12(b)(2) were amended to change the November 15, 1979, date to the 104th day after program submission. Other minor adjustments were made to the timetables for comments and hearings.

The Secretary's rules for the review of State programs implement his policy that industry, the public, and other agencies of government should have an opportunity to participate effectively in his decisions. The Secretary also has a policy that a State should be afforded the maximum opportunity possible to change its program, when necessary, to cure any deficiencies in it.

To accomplish both of these policy objectives, the Secretary determined that the laws and rules upon which he bases his decision on a state program must be finalized prior to the beginning of the public comment period on the program. By identifying the laws and rules in effect on the 104th day as the basis of his program approval decision, the Secretary assists commenters by informing them of program elements that should be reviewed. Meaningful public comment would be undermined if the program elements were constantly changing until the day before the Secretary's decision.

The 104 day rule affords the State 3½ months following submission within which to modify its laws and rules. In addition, after the Secretary's initial program decision, the State has additional opportunities to revise its laws and regulations.

All program elements other than laws and rules, including Attorney General's opinions, program narratives, descriptions and other information, may be revised by the state at any time prior to program approval. The Secretary will provide opportunity for public comment on those changes, as appropriate.

Effect of Litigation of the Federal Permanent Regulatory Program

The Secretary, in reviewing state programs, is applying the provisions of Section 503 of SMCRA, 30 U.S.C. 1253, and 30 CFR 732.15. In reviewing the Illinois program, the Secretary has followed the Federal regulatory criteria cited above as affected by decisions of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation.* That litigation is a consolidation of several lawsuits challenging the Secretary's permanent regulatory program.

Because of the complexity of that litigation, the court issued its decision in two "rounds." The "Round I" opinion, issued February 26, 1980, denied several generic challenges to the permanent program regulations, but remanded all or parts of twenty-two specific regulations. The "Round II" opinion, issued May 16, 1980, denied additional generic challenges to the regulations, but remanded some 40 additional parts, sections or subsections of the regulations. The court also ordered the Secretary to "affirmatively disapprove, under Section 503 [of SMCRA], those segments of a state program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its opinion. The effect of this stay is to allow the Secretary to approve state program provisions in the three circumstances described in paragraph 1 below. Therefore, the Secretary is applying the following standards to the review of state program submissions:

1. The Secretary need not affirmatively disapprove state provisions similar to those Federal regulations that have been suspended or remanded by the District Court where the state has adopted such provisions in a rulemaking or legislative proceeding that occurred either: (1) before the enactment of SMCRA, or (2) after the date of the Round II District Court decision, since such state regulations clearly are not based solely upon the suspended or remanded Federal regulations. (3) In addition, the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal rules if a responsible state official has requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove all provisions of a state program that incorporate suspended or remanded Federal rules and do not fall into one of the three categories in paragraph 1, above. The Secretary believes that the effect of his "affirmative disapproval" of such a section in a state's regulations is that the requirements of that section are not enforceable in the permanent program at the Federal level to the extent they have been disapproved. That is, to the extent a provision is disapproved, no cause of action for its enforcement exists in a Federal court, and Federal inspections will not result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under State law and in State courts. Accordingly, these provisions are not being superseded as a matter of Federal law.

3. A state program need not contain provisions to implement a suspended regulation and no state program will be

disapproved for failure to contain a counterpart to a suspended regulation.

4. A state must have authority to implement all permanent program provisions of SMCRA, including those provisions of SMCRA upon which the suspended regulations were based.

5. A state program may not contain any provision that is inconsistent with a provision of SMCRA.

6. Only those provisions that need not be disapproved because of the District Court's order will be evaluated. These provisions will be unconditionally approved, conditionally approved, or disapproved, in whole or in part, in accordance with 30 CFR 732.13.

7. Upon promulgation of new regulations to replace those that have been suspended or remanded, the Secretary will afford states that have approved or conditionally approved programs a reasonable opportunity to amend their programs, as appropriate. In general, the Secretary expects that the provisions of 30 CFR 732.17 will govern this process.

A list of the regulations suspended or remanded as a result of the Round I and Round II decisions was published in the Federal Register on July 7, 1980 (45 FR 45604). Notice of availability of a tentative listing of proposed Illinois regulations that incorporate suspended or remanded Federal Regulations was published at 45 FR 46820–46826, July 11, 1980.

III. Background on the Illinois Program Submission

The Illinois surface mining legislation was enacted September 22, 1979. The Illinois permanent program submission was received by the OSM, Region III, office on March 3, 1980. The submission included regulations that were proposed, but not fully promulgated. Appropriate distribution was made within OSM and to other governmental agencies. Announcement of receipt of the submission was made in newspapers of general circulation in the state of Illinois and published in the Federal Register on March 11, 1980 (44 FR 15583–15584).

An appropriately announced public review meeting regarding completeness of the submission was held in Springfield, Illinois on April 10, 1980.

Comments from reviewers regarding the content of the Illinois program were received by the Region III office, and a list of deficiencies and suggestions for corrections was forwarded to the Illinois Department of Mines and Minerals (IDMM, the agency that is to be the regulatory authority under the Illinois program) on May 1, 1980 (Administrative Record Number (ARN): Ill–0063). The determination that the state program was incomplete was published in the Federal Register (45 FR 29310–29311) on May 2, 1980. The Federal Register notice, published in accordance with Section 732.11(c) of the permanent regulatory program regulations, noted that the following required elements were missing from the proposed Illinois permanent regulatory program:

1. A legal opinion from the Attorney General as required by 30 CFR 731.14(c).

2. Narratives or descriptions of the existing and/or proposed organization of the Illinois regulatory authority as required by 30 CFR 731.14(e).

3. Statistical information describing coal exploration operations or a statement that no such information is available as required by 30 CFR 731.14(h).

4. Brief descriptions of other programs that may be administered by the regulatory authority as required by 30 CFR 731.14(o).

5. A copy of regulations that were in the process of promulgation as required by 30 CFR 731.14(a).

On May 22, 1980, substantive comments regarding the Illinois submission were forwarded to IDMM by OSM, Region III (ARM Ill–0076).

On June 6, 9 and 22, 1980, public meetings were held between Region III–OSM and IDMM to discuss the comments in the May 22, 1980, letter. The results of these meetings are documented in the Administrative Record (ARN Ill–0096, 0111, 0113).

On June 16, 1980, the 104th day after submission of the program, IDMM submitted to OSM revisions and additions to the Illinois permanent program submission. The additions and revisions submitted by Illinois on June 16, 1980, are listed below:

Volume 6—Supplemental Information:

Tab A—Narrative and Descriptions of Existing and proposed organization of the Agency—with Functional Organization Charts (Supplement to Tab E., Volume 1).

Tab B—statement and Data Concerning Coal Exploration Operations.

Tab C—Brief Description of Other Programs Administered by the Regulatory Authority (omitted from Tab N., Volume 1).

Tab D—A statement Regarding Public Participation (refer to Tab N., Volume 2).

Tab E–J—Other Applicable state Laws and Regulations.

Volume 7—A legal Opinion of the Attorney General and a section-by-section comparison of the Act and regulations.

Volume 8—Civil Administrative Code.

Volume 9—A copy of the June 13, 1980, Illinois Register, which includes the proposed state program regulations at pages 1–135.

The revised proposed regulations submitted by Illinois on June 16, 1980, were not fully promulgated. As described above in the discussion of the 104 Day Rule under *General Background on the State Programs Approval Process*, proposed regulations may not form the basis for approval of a state program. Therefore, this notice does not contain findings on the proposed Illinois regulations.

On June 26, 1980, the Regional Director published in the Federal Register (45 FR 43221–43223) and in newspapers of general circulation within the state of Illinois a notice that the amended Illinois submission was complete. The notice set forth a summary of the amended state program, the times and locations for public review of the program, and procedures for the public hearings on the substance of the Illinois program. The notice stated that the public comment period on the program would extend until 4:30 p.m., July 30, 1980.

In accordance with the June 26, 1980, notice, public hearings regarding the Illinois permanent program submission were held in Springfield, Illinois, on July 24, 1980, and in Marion, Illinois, on July 25, 1980.

On July 30, 1980, the last day of the public comment period on the Illinois program submission, Illinois submitted substantial additional information, including revised proposed regulations to OSM. The information submitted on July 30, 1980, by Illinois includes:

1. Letter of Transmittal from IDMM to Edgar A. Imhoff dated July 29, 1980.

2. Letter of Alternatives (10 issues) from IDMM to Edgar A. Imhoff dated July 29, 1980.

3. Letter in regard to Permit Completeness from Harvey Sheldon to Edgar A. Imhoff dated July 30, 1980.

4. *Volume 10*—Response to Attachments A and C of OSM III—May 22, 1980, letter.

5. *Volume 11*—Proposed Final Regulations.

6. *Volume 12*—Written and Public Hearing Comments Received during rulemaking with Department Action rule 1700–1815.

7. *Volume 13*—Written and Public Hearing Comments received during rulemaking with Department Action 1816–1845.

As stated previously, revised proposed regulations may not form the basis for approval of a state program and this notice will not discuss proposed regulations. However, as provided in the

June 26, 1980, notice of public comment period and public hearings on the Illinois program submission (*see* 45 FR 43222, col. 2), OSM will review the proposed regulations and provide comments on their adequacy to the state of Illinois separately from this notice. These separate comments will be available to the public at the places listed above under "Addresses."

The Regional Director completed his program review on August 12, 1980, and forwarded the public hearing transcript, written presentations, exhibits and copies of all comments to the Director together with a recommendation that the program be approved in part and disapproved in part.

On August 20, 1980, 45 FR 55478, the Secretary publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies.

On August 22, 1980, ARN: ILL-0190, the Director communicated to Illinois the August 15, 1980, opinion of the U.S. District court for the District of Columbia staying its order to "affirmatively disapprove" segments of a state program incorporating suspended or remanded Federal regulations. The state was asked to inform OSM if there were any such provisions in its program that Illinois wished the Secretary *not* to disapprove affirmatively. No reply has been received from Illinois.

On September 23, 1980, the Administrator of the Environmental Protection Agency transmitted his written concurrence on the portions of the Illinois program that the Secretary is approving at this time.

On September 25, 1980, the Director recommended to the Secretary that the program be approved in part and disapproved in part.

Secretary's Findings

In reaching his decision to approve in part and disapprove in part the Illinois program submission, the Secretary makes the following findings pursuant to Section 503 of SMCRA and 30 CFR 732.15. Where appropriate these findings offer corrective action that may be utilized by Illinois in revising disapproved parts of the program for resubmission. However, the resubmitted portions of the program will be subject to review and comment by the public prior to a final decision by the Secretary.

Findings made under Section 503(a)(1) through (7) and (b)(1) through (4) are numbered (1) through (11). Findings made under 30 CFR 732.15(a), (b)(1) through (16), (c) and (d) are numbered (12) through (31).

IV. Findings Under Section 503 of SMCRA

(1) The Secretary finds that the state of Illinois has in part a state law that fully provides for regulation of surface coal mining and reclamation operations in accordance with the requirements of SMCRA for the reasons relating to statutory provisions submitted with the program that are discussed specifically under Findings 12 through 31 below.

(2) The Secretary finds that Illinois has in part a state law that fully provides sanctions for violations of state laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of SMCRA including criminal sanctions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the state regulatory authority or its inspectors for the reasons specifically set forth under Findings 14, 15, 16, 17, 18, 19, 20 and 21 below.

(3) The Secretary finds that Illinois does not have a state regulatory authority with sufficient administrative and technical personnel and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA for the reasons set forth below under Finding 31.

(4) The Secretary finds that Illinois has in part a state law that fully provides for the effective implementation, maintenance, and enforcement of a permit system meeting the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within the State for the reasons set forth under Finding 15 below.

(5) The Secretary finds that the state program in part provides for establishment of a process for designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA for the reasons set forth below under Finding 22.

(6) The Secretary finds that the state program establishes in part a process to avoid duplication by coordinating the review and issuance of permits for surface coal mining and reclamation operations with other Federal or state permit processes applicable to the proposed operations for the reasons set forth below under Finding 27.

(7) The Secretary finds that the State of Illinois does not have rules and regulations fully consistent with the regulations issued by the Secretary pursuant to SMCRA because the State did not have fully promulgated regulations on June 16, 1980, the 104th day after program submission, as required by 30 CFR 732.11(d).

(8) The Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Illinois program.

(9) The Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Illinois program that are being approved at this time and which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, 33 U.S.C. 1151–1175, and the Clean Air Act, 42 U.S.C. 7401 *et seq.*

(10) The Secretary, through OSM, held a public review meeting in Springfield, Illinois, on April 10, 1980, to discuss the Illinois program submission and its completeness and held public hearings in Springfield, Illinois, on July 24, 1980, and in Marion, Illinois, on July 25, 1980, on the substance of the Illinois program submission.

(11) The Secretary finds that the State of Illinois has in part the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII, for the reasons set forth below under Findings 12–31.

V. Findings Under 30 CFR 732.15

For each of the specific following findings, the Federal statute citation is given first, followed by the corresponding Illinois statute citation. In accordance with 30 CFR 732.15, the Secretary finds the following on the basis of information in the Illinois program submission, public comments, testimony and written presentations at the public hearings, and other relevant information.

Finding 12

The Secretary finds that the Illinois program submission does not provide in full for Illinois to carry out the provisions and meet the purposes of SMCRA and the Secretary's implementing regulations in 30 CFR Chapter VII. This finding is made under 30 CFR 732.15(a). Detailed discussion of the basis of this finding is found in the discussions following Findings 13–31.

Finding 13

The Illinois permanent program submission did not contain any proposed "state window" items submitted pursuant to 30 CFR 731.13. As a result of public meetings held on June 6 and 9, 1980, the Illinois Department of Mines and Minerals agreed to consider submitting the following sections of the Illinois proposed regulations as state windows: 1816.49(c), 1816.83, 1816.85(c)(3), 1816.89(b), 1816.103(a), 1817.49(c), 1817.89(b). No such state window provisions have been submitted. This finding is made under 30 CFR 732.15(a).

Finding 14

The Secretary finds that the Illinois Department of Mines and Minerals does not have full authority under Illinois laws and regulations to regulate coal exploration and surface coal mining and reclamation operations and that the Illinois program submission does not include the provisions necessary to implement, administer, and enforce all applicable requirements consistent with Subchapter K of 30 CFR Chapter VII. This finding is made under 30 CFR 732.15(b)(1) and is based upon the lack of promulgated regulations and on the findings listed below.

14.1 *Section 515(a)—Sections 3.01 and 4.01.* SMCRA Section 515(a) requires any permit issued for "surface coal mining operations" to require those operations to meet all applicable performance standards in SMCRA. Illinois Section 3.01 requires "surface mining operations" to comply at a minimum with the performance standards of Article III of the Illinois statute and Section 4.01 requires "underground mining operations" to comply at a minimum with the performance standards of Article IV of the Illinois statute.

The Illinois definition of "underground mining operations" in Section 1.03(a)(26) excludes surface impacts incident to underground mining operations. The SMCRA definition of "surface coal mining operations" explicitly includes such impacts. However, Section 4.11 of the Illinois statute requires surface impacts incident to an underground operation to comply with the performance standards of Article III of the Illinois statute.

Illinois, in its July 30, 1980, submission, explains that Sections 8.06 (b) and (c), which require enforcement actions to be taken against violations "of any requirement" of the Illinois statute, require mining operations to comply with all performance standards in the Illinois statute. This does not conflict with the language of Sections 3.01 and 4.01, which refer to compliance with the performance standards as minimal requirements. Therefore, Sections 3.01 and 4.01 are consistent with SMCRA.

14.2 *Section 515(b)(3)—Section 3.04(a).* The Illinois term "affected land" is substituted for the Federal term "surface coal mining operations" in regulating what lands must be backfilled and graded. As Illinois points out in its July 30, 1980, submission, the intent of Section 515(b)(3) is to require backfilling and grading of lands where mining operations occur or disturb the natural land surface. As defined by Section 1.03(a)(1) of the Illinois statute, "affected land" includes areas where surface or underground mining operations occur or disturb the natural land surface. However, the Illinois definition of underground mining operations excludes some surface impacts incident to an underground operation. Thus, the Illinois statute would not require backfilling and grading of subsidence depressions, and other surface impacts of underground operations, which is inconsistent with SMCRA.

14.3 *Section 515(b)(3)—Section 3.04(b).* SMCRA requires that, in order to obtain the thin overburden exemption from the approximate original contour requirement, mining must have been carried out at the same location "over a substantial period of time." Illinois substitutes the phrase "over a period greater that one year." The Secretary finds this language is consistent with SMCRA and 30 CFR 816.104.

14.4 *Section 515(b)(3)—Section 3.04(c).* The Illinois statute would allow variances from the requirement to return to the approximate original contour wherever there is excess overburden. Section 515(b)(3) of SMCRA requires that this variance be granted only "where the volume of overburden is large relative to the thickness of the coal deposit." The Illinois provision would impermissibly broaden the approximate original contour provisions SMCRA and is, therefore, less stringent.

14.5 *No corresponding Federal provision—3.07(b), (d) and (f).* The Illinois statute contains performance standards for high capability lands, which are defined in Section 3.07(d) as land that is non-prime farm land but capable of row crop use. SMCRA has no such provision. Section 3.07(f) indicates that the high capability land performance standards in Section 3.07(b) are in addition to the other requirements of the Illinois statute. However, Section 3.07(b) would allow removal and replacement of only part of the topsoil, which would be inconsistent with SMCRA Section 515(b)(5). In addition, it would allow the topsoil to be replaced with other available material that is suitable for revegetation. SMCRA Section 515(b)(5) allows such substitution only where the topsoil is of poor quality for where the substituted material is *more* suitable than the topsoil for revegetation. The Illinois provision is inconsistent with SMCRA.

14.6 *Section 515(b)(8)—Section 3.08(b).* SMCRA Section 515(b)(8) allows permanent impoundments only "if authorized in the approved mining and reclamation plan and permit." Illinois Section 3.08(b) does not contain this language, but it does require state approval of permanent impoundments of water, and thus appears to be consistent with SMCRA. The Illinois rules should clarify that permanent impoundments will not be allowed except as authorized by the mining and reclamation plan.

14.7 *Section 515(b)(10)(B)—Section 3.08(a).* The Illinois provision concerning runoff water contains standards that are not found in SMCRA. The Illinois statutory side-by-side submitted by Illinois in accordance with 30 CFR 731.14(a) indicates that Section 3.08(a) is intended to be consistent with SMCRA Section 515(b)(10)(B) *(See* Vol. 4, p. 36 of Illinois submission). However, the reference to draining runoff water from affected areas is unclear. In addition, the Illinois provision would allow construction of temporary impoundments "in accordance with sound engineering practices and standards adopted by the Department by rule." This would be acceptable only if the Illinois regulations are consistent with the requirement in Section 515(b)(10)(B) that siltation structures be constructed as designed and approved in the reclamation plan using the best technology currently available. A conclusion on this section is not possible at present.

14.8 *Section 515(b)(10)(B)(ii)—Section 3.10(d).* Section 515(b)(10)(B)(ii) requires that siltation structures shall be constructed prior to commencement of operation. Illinois Section 3.10(d) is less stringent that SMCRA because it provides that such structures "may" rather than "shall" be constructed prior to commencement of operations. Furthermore, SMCRA requires that an engineer certify that the structure is constructed as designed, whereas the Illinois provision does not clearly require that the construction of siltation structures be certified by a qualified registered engineer.

14.9 *Section 515(b)(10)(C)—Section 3.10(e).* Illinois Section 3.10(e) requires that siltation structures be cleaned out and removed after revegetation unless

"consistent with the reclamation plan." Illinois, in its July 30, 1980, submission, states that this language is intended to exempt only permanent impoundments approved in accordance with Illinois Section 3.08(b) (the Illinois counterpart to SMCRA Section 515(b)(8)) and not to modify the SMCRA requirement that temporary impoundments be cleaned out and removed after revegetation. Based upon this assurance, the Secretary finds the Illinois provision to be acceptable.

14.10 *Section 515(b)(14)—Section 3.11(c).* SMCRA Section 515(b)(14) is a performance standard for disposal of materials constituting a fire hazard. The Illinois statute law contains additional language that lists minimum disposal standards. Certain of these standards are inconsistent with SMCRA, since they would allow covering of toxic materials with water, may allow variances from the approximate original contour provisions of SMCRA and may allow revegetation not meeting the SMCRA standards.

14.11 *Section 515(b)(16)—Section 3.25(b).* The Illinois provision requires extensions of the reclamation period under the following situations: "Acts of God, strikes, inability to receive ordered equipment or extended periods of unreasonable and unexpected weather have made completion within these time limits impossible." This authority is consistent with the SMCRA requirement that reclamation be as contemporaneous as practicable.

14.12 *No corresponding Federal provision—Section 3.14(c).* The Illinois provision requires removal and grading of abandoned roads and mine drainage ditches except where the State determines that retention of a road or ditch is "consistent with and necessary to the reclamation plan." Section 3.14(c) does not clearly require, as does SMCRA, that this determination of consistency with the reclamation plan be made in the context of the permitting process. However, Illinois, in its July 30, 1980, submission, asserts that such a determination must be made as part of a permitting decision. Based upon this assertion, this Illinois provision is consistent with SMCRA.

14.13 *Section 515(b)(20)—Section 3.15(b).* The Illinois provision for responsibility for successful revegetation states that it "does not preclude responsible land management practices" on the land being revegetated. In its July 30, 1980, submission, Illinois indicates that this is intended to prevent normal land management practices from being considered augmentation that could cause the five year period for measuring success to start over again. The preamble to 30 CFR 816.116(b)(1) makes clear that an "accepted local agricultural practice that can be expected to continue as a postmining practice" shall not be considered augmentation. 44 FR 15237, Col. 1, March 13, 1979. The Illinois provision is inconsistent with SMCRA because "responsible land management practices" are not practices that can be expected to continue during the post mining period.

14.14 *Section 515(b)(20)—Section 3.15(c).* Illinois allows the 5-year period of responsibility for revegetation of high capability lands to commence at the date of initial planting rather than after the first full year of augmented seeding, fertilizing and other revegetation work. The first proviso of Section 515(b)(20), however, allows the period of responsibility to commence with initial planting only where long-term intensive agricultural postmining land use has been approved regardless of what type of land is involved. Illinois asserts in its July 30, 1980, submission that its provision is more stringent than SMCRA. However, the purpose of the first proviso in Section 515(b)(20) is to prevent the period of responsibility from recommencing each growing season when new crops are planted and fertilized. If this standard were applied to non-farmed lands, the operator would be able to conduct augmented seeding, fertilizing and other revegetation work throughout the period of responsibility up until the last two years of the period, the time for determining success of revegetation (*See* 30 CFR 816.116(b)(1)(i)). The effects of such recent augmented revegetation practices would prevent a true determination of whether a permanent and self-sustaining vegetative cover has been established. Therefore, the Illinois provision is less stringent than SMCRA.

14.15 *Section 515(b)(20)—Section 3.15(c).* Illinois allows exceptions to the requirement in Section 3.15(c) that the period of responsibility for revegetation commence with the initial planting. This provision would be acceptable if interpreted to allow the period of responsibility to commence at a date later, but not earlier, than the date of initial planting. The scope of the Illinois exception is unclear. No conclusion on the consistency of the Illinois provision with SMCRA is possible at this time.

14.16 *Section 515(e)—Section 3.23(e).* The Illinois provision does not restrict the postmining land uses for which variances from the steep-slope performance standards may be granted. SMCRA Section 515(e)(2) allows the granting of variances only so as to render the land suitable for industrial commercial, residential or public postmining land uses. The Illinois July 30, 1980, submission indicates that variances would also be granted in Illinois for agricultural purposes. However, the intent of SMCRA to prohibit steep-slope variances for agricultural postmining land uses is made clear by Section 515(c)(3), which explicitly allows such variances from the mountaintop removal performance standards. The Illinois provision is inconsistent with Section 515(e)(2) and cannot be accepted.

Finding 15

The Secretary finds that Illinois does not have full authority under State laws, regulations or provisions in the State program to implement, administer and enforce a permit system consistent with the regulations of Subchapter G of 30 CFR Chapter VII and prohibit surface coal mining and reclamation operations wihout a permit issued by the regulatory authority. This finding is made under 30 CFR 732.15(b) and is based upon the lack of promulgated regulations and the findings listed below.

15.1 *Section 506(b)—Section 2.06(b).* SMCRA provides that a successor in interest to a permittee, after meeting certain criteria, may continue surface mining and reclamation operations until the successor's application for a new permit is granted or denied. The Illinois provision is consistent with SMCRA, since successors in interest in Illinois would have to apply for new permits prior to commencing operations.

15.2 *Section 510(a)–Section 2.11.* SMCRA requires the regulatory authority to notify local governmental officials within 10 days of granting a permit. Illinois' provision requires prompt notification of such officials. The Illinois July 30, 1980, submission states that the promulgated regulations will require notice within 10 days of permit approval. This would be acceptable.

15.3 *Section 510(a)–Section 2.08(a).* SMCRA provides granting or denial of permit applications on the basis of a complete mining application and reclamation plan or a revision or renewal thereof. Illinois' deletion of "renewal" appears to limit the applicability of this section. However, Illinois Section 2.07 prescribes requirements for renewal applications that are consistent with SMCRA.

15.4 *Section 510(d)(1)–Section 2.08(b).* SMCRA requires consultation with the Secretary of Agriculture prior to approving a permit application that involves prime farmland. Illinois has omitted this required consultation, which could render its statute

inconsistent with SMCRA. Illinois states in its July 30, 1980, submission that its promulgated rules will require consultation with the Secretary of Agriculture prior to permit approval. This would be acceptable.

15.5 *Sections 510 and 511–Section 2.08(c).* Illinois adds language to its statute that provides review of permits and revised permits for its interagency committee and county board review. This language is acceptable provided the involvement of the interagency committee and county board complies with Sections 510(a), 511(a) and 513 of SMCRA.

15.6 *Section 511(a)(1)–Section 2.03(b).* SMCRA requires that a revised reclamation plan be submitted with an application for revision of a permit. The Illinois provision would allow as an alternative "a statement with supporting evidence that the proposed revision does not require a revision of the reclamation plan". This is consistent with the intent of SMCRA that decisions on permit revision approval be based upon either a revised reclamation plan or the original reclamation plan where that plan covers the revised operation.

15.7 *Section 511(a)(2)–Section 2.09(a).* The Illinois provision does not require that the regulatory authority establish a time period for approval or disapproval of revisions. However, Illinois Section 2.11 requires decisions on applications within designated times and Illinois defines "application" so as to include permit revision applications. Therefore, the Illinois provision is consistent with SMCRA.

15.8 *30 CFR 731.14(g)(1) (Permit Process Review)–Volume 2, Tab A, I, J.* The regulatory authority is responsible for providing special information to the applicant; e.g., fish, wildlife, lands unsuitable, hydrology, geology, climatological. However, the method by which this information would be dispensed has not been explained in sufficient detail to enable the Secretary to find the State's provisions on this point to be adequate.

15.9 *30 CFR 731.14(g)(10) (Consulting with State and Federal Agencies on Historic, Cultural and Archaeological Procedure)–Volume 2, Tab J and Volume 10, Tab L.*

The submitted material is not adequate because:

A. All consultation is indirect and initiated by agencies without program responsibility rather than directly by the regulatory authority.

B. It states that there are "continuing dialogue[s]" between the Illinois Departments of Conservation and Transportation on the one hand and the Fish and Wildlife Service and Corps of Engineers on the other. This does not constitute a sufficient description of systems for consulting on particular decisions that affect the interests of the Fish and Wildlife Service and Corps of Engineers.

Finding 16

The Secretary finds that Illinois does not have the full authority under current Illinois laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations, and the provisions in the Illinois program submission do not provide for the regulation of coal exploration consistent with 30 CFR Parts 776 and 815. This finding is made under 30 CFR 732.15(b)(3) and is based upon the lack of promulgated regulations.

Finding 17

The Secretary finds that Illinois does not have the full authority under current Illinois laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations, and that the Illinois program submission does not include the necessary provisions to require that persons extracting coal incidental to government financed construction maintain information on site consistent with 30 CFR 707. This finding is made under 30 CFR 732.15(b)(4) and is based on the lack of promulgated regulations.

Finding 18

The Secretary finds that Illinois lacks the full authority under State laws and regulations and provisions in the State program to enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within the State consistent with the requirements of Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII. This finding is made under 30 CFR 732.15(b)(5) and is based on the lack of promulgated regulations and the findings listed below.

18.1 *Section 517(a) and (b)(3)—Section 8.01 and 8.02* The Illinois statute substitutes "may enter" for "shall have a right of entry" found in SMCRA. Based and conditioned upon the Illinois Attorney General's assurance (Volume 7, page 16) that this substitution has no legal significance because the Illinois language gives Illinois the legal authority to enter in that "may" is not used permissively, the Illinois language is consistent with SMCRA.

18.2 *Section 517(d)—Section 3.21* The Illinois statute uses the term "surface mining and reclamation operation" in the requirement that signs be posted. This term is undefined in the Illinois statute, although the term "mining and reclamation operations" is defined in the Illinois statute (Section 1.03(a)). Based on the Secretary's interpretation that "surface mining and reclamation operation" is covered by the definition of "mining and reclamation operations," this provision is consistent with SMCRA.

18.3 *30 CFR 731.14(g)(4)—Volume 2, Tab D* Illinois Section 8.01(b) requires that inspections "shall occur without prior notice." However, the narrative states that inspections "may" occur without prior notice. This inconsistency should be resolved, in favor of the statutory language, before the Secretary can unconditionally approve the program.

18.4 *30 CFR 731.14(g)(4)—Volume 2, Tab G* The program submittal is inconsistent with SMCRA because in the injunctive relief portion, the State asserts, perhaps inadvertently, that OSM, rather than Illinois, may institute civil action for refusal to allow an inspection of monitoring equipment. Illinois, not OSM, must be prepared to take such actions.

18.5 *30 CFR 731.14(g)(4)—Volume 2, Tab D* The summary information furnished by activity, reference, and requirement is not sufficient to enable the Secretary fully to evaluate the program's inspection provisions. It does not adequately discuss:

(1) A means to receive and process written and oral reports of possible violations or of imminent danger violations;

(2) A specification of how citizens will be informed of their right to accompany inspectors;

(3) The means for receipt and processing of written reports of an alleged failure to make adequate, complete, or periodic inspections;

(4) A menas to conduct a review of the inspector's decision not to inspect or not to take an enforcement action with respect to a violation alleged by a citizen;

(5) A means to give the public advance notice of formal and informal hearings concerning enforcement actions and penalties.

18.6 *30 CFR 731.14(g)(4)—Volume 2, Tab D* The Illinois submittal is inconsistent with the Federal rules because inspectors do not have the independent authority to take enforcement action immediately upon the detection of a violation, as required by 30 CFR Part 840. Illinois appears to provide for enforcement after filing of an inspection report with a permit coordinator, which is inconsistent with the Federal rule.

Finding 19

The Secretary finds that Illinois does not have full authority under current Illinois laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations, and that the Illinois program submission does not include the provisions necessary to implement, administer and enforce a system of performance bonds and liability insurance or other equivalent guarantees, consistent with the requirements of Subchapter J of 30 CFR Chapter VII. This finding is made pursuant to 30 CFR 732.15(b)(6) and is based on the lack of promulgated regulations and the findings listed below.

Portions of the following Federal bonding regulations were proposed for amendment on January 24, 1980 (45 FR 6028–6042): 30 CFR 800.5, 800.11(b)(1), 800.13, Part 801, 805.13, 805.14, 806.11, 806.12, 806.13, 806.14, 806.17, 807.12, 808.11, 808.12, and 808.13(a). Final Federal regulations on the above referenced bonding sections were published on August 6, 1980 (45 FR 52306–52324). Because of the public comment received by the Secretary during the promulgation process, many changes were made to the proposed rules.

The Secretary is taking the position that a state program's bonding provisions may be approved if they are consistent with either the Federal rules as they existed when the Illinois program was submitted on March 3, 1980, or the rules as amended August 6, 1980. Therefore, if the promulgated regulations included in the Illinois resubmission contain bonding provisions that are consistent with either the Federal rules as promulgated on March 13, 1979, or with the August 6, 1980, amendments, its bonding regulations may be approved. At the time of the final Secretarial decision on the Illinois program, the State will be advised of any further changes that may be required and will be allowed sufficient time to accomplish the changes.

19.1 *No corresponding Federal provision—Section 6.07(a)* Illinois Section 6.07(a) requires that, prior to institution of bond forfeiture proceedings by the Illinois Attorney General, the operator shall have the right to a hearing on the violation upon which the forfeiture would be based. The Secretary finds that the Illinois provision provides for the regulation of mining operations for which no provision is contained in SMCRA and that, pursuant to SMCRA Section 505(b), it is consistent with SMCRA.

19.2 *Section 509—Section 6.07(d)* Section 509 of SMCRA requires that performance bonds be "conditional upon faithful performance of all the requirements of this Act and the permit." Section 701(17) defines "permit area" to include that area of land "covered by the operator's bond as required by Section 509 of this Act." The Secretary has determined that the regulatory authority may forfeit any or all bonds deposited for an entire permit area regardless of the area in which the violation occurred. (30 CFR 808.12(c)). Therefore, Illinois section 6.07(d), by limiting the amount of the bond to be forfeited to "the amount of the bond or deposit for the area in which the violation occurred," is inconsistent with Federal requirements.

19.3 *Section 519(c)(2)–Section 6.08(d)(2)* The Federal provision requires that, prior to bond release, soil productivity for prime farmland be determined to be equivalent to that of simialr non-mined prime farmland through reference to the soil survey contained in the permit application pursuant to SMCRA Section 507(b)(16). The Illinois provision omits the required reference to the soil survey, and is inconsistent with SMCRA unless it is interpreted by regulation or otherwise to require reference to a soil survey contained in the permit application.

19.4 *30 CFR 731.14(g)(3)–Volume 2, Tab C.* The Illinois program element concerning bonding does not contain sufficient information to enable the Secretary to fully evaluate Illinois bonding provisions. It would be improved by submittal of material such as (1) a description of when and how actions against sureties will be taken; (2) a system providing for adequate bond at all times; (3) a system providing for bonds to be updated to cover changes as mining progresses; (4) a system assuring that the latest field conditions are reflected through bond adjustment in coordination with the inspection force; (5) a system allowing for forfeiture of a bond; (6) a description of the factors that will be considered in the establishment of a bond and/or release of all or a portion of the bond.

Finding 20

The Secretary finds that Illinois lacks the full authority or provisions to provide for civil and criminal sanctions for violations of the State law, regulations, and conditions of permits and exploration approvals, including civil and criminal penalties, in accordance with Section 518 of SMCRA and 30 CFR 845. This finding is made under 30 CFR 732.15(b)(7) and is based on the lack of promulgated regulations and the findings listed below.

20.1 *Section 518(a)–Section 8.04(a)* The Illinois statute adds the language "for the purpose of aiding in the administration of this Act." The Illinois Attorney General (Volume 2, page 17) indicates that Illinois Supreme Court decisions require that all penalties be imposed for this purpose to be valid. This provision is not on its face less stringent than SMCRA Section 518, but the Secretary must have before him the State's regulations or a narrative description dealing with its intended application before he can find the provision, as implemented, will be consistent with SMCRA.

20.2 *Section 518(b)—Section 8.04(b).* The Illinois statute omits the requirement that a penalty be assessed without a hearing "[w]here the person charged with such a violation fails to avail himself of the opportunity for a public hearing" as is required by SMCRA. Consequently, it is not clear what circumstances other than the waiver could lead to the assessment of a penalty without a hearing. The Illinois Attorney General (Volume 7, page 17) concludes in his opinion that the provision of an opportunity for a hearing implies that the only time that a hearing would not be held is when the required opportunity is not seized by the operator. Based on this assurance, the Secretary finds the Illinois provision to be acceptable.

20.3 *Section 518(d)—Section 8.04(d).* The Illinois statute provides for collection of a civil penalty, but does not specify, as does SMCRA, who has the authority to institute such actions or in which court the action will be brought. The Illinois Attorney General (Volume 7, page 17) states that the Illinois Constitution and Illinois case law make it clear that such actions are initiated in the Circuit Court and are brought by the Attorney General. Based upon this assurance, the Illinois provision is acceptable.

20.4 *Section 518(e)—Section 8.04(e).* The Illinois statute is on its face consistent with SMCRA, but is rendered inconsistent because of its reference to Illinois Section 8.06. Section 8.06 is the Illinois equivalent of SMCRA Section 521, but is inconsistent with SMCRA because it does not contain all the requirements of SMCRA Section 521. (see Findings 21.1–21.5).

20.5 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal indicates that no assessment is made in those instances in which a violation is corrected within a specified abatement period. This is inconsistent with the penalty criteria established in SMCRA

Section 518(a), because it does not require that each violation be assessed solely upon the established abatement factors.

20.6 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal indicates that either a penalty or a cessation order would be issued if the operator fails to abate a violation, whereas SMCRA Section 521(a)(3) and 518(h) require that a cessation order be issued where the operator fails to abate and that a penalty be assessed for each cessation order. The Illinois submittal is inconsistent with SMCRA.

20.7 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* There is an apparent inconsistency in that the Illinois narrative indicates that the operator may submit information within fifteen days, whereas the flow chart in Tab E shows twenty days and proposed Illinois rule 1845.17(a) identifies 20 days.

20.8 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal allows a penalty to be calculated on such criteria as the daily cost of abatement and the cost of mitigating any environmental damage, whereas SMCRA Section 518(a) clearly establishes the factors which the amount of the panelty is to reflect. Under the Illinois plan these required factors would be considered by the regulatory authority only as options and then only as adjustments of a penalty rather than an establishing the penalty itself. This is inconsistent with SMCRA.

20.9 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal contains insufficient information by which to determine whether the Illinois proposal meets the time periods required by SMCRA (Section 521(a), 30 CFR Part 845) in the payment of penalties and thus is inadequate. The submittal implies that at some point the proposed assessment will be reassessed but is insufficient in that it does not explain by whom and under what circumstances a proposed assessment would be reassessed prior to being sent to the operator.

20.10 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal suggests that: (1) judicial review is available to contest the amount of the penalty instead of the administrative review provided by SMCRA; and (2) that any judicial review of a penalty is a *de novo* review. This is inconsistent with SMCRA Section 518(b).

20.11 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal does not provide information concerning how the Illinois EPA and other agencies that appear to have some inspection responsibilities will schedule and perform inspections in a manner consistent with SMCRA. Further, they do not appear to have enforcement powers along with inspection powers, which is required by SMCRA.

20.12 *30 CFR 731.14(g)(5)—Volume 2, Tab E.* The flow chart in the Illinois submittal does not make it clear that the inspector is the person responsible for issuing notices of violation and cessation orders while in the field as required by 30 CFR Part 840.

20.13 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal suggests an impermissible standard to determine when a notice of violation may be issued. As specified in 30 CFR Part 843, a notice of violation must be issued in each instance in which a violation has occurred without regard to whether or not corrective action can be taken within an abatement period and without regard to whether or not irreversible environmental damage has occurred.

20.14 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submission suggests an impermissible standard for penalty determinations. It is not permissible to have a penalty determined based upon the submission of the case to the Attorney General's Office for litigation. SMCRA Section 518 and Illinois Section 8.04 require that each enforcement action be subject to an assessment process, which is contradicted in this part of the submission.

20.15 *30 CFR 731.14(g)(7)—Volume 1, Tab F; Volume 2, Tab G.* The Illinois submission appears to exclude violations of water and air pollution from assessment and collection under the Illinois surface mining statute which is inconsistent with SMCRA. If the Illinois EPA is to have sole responsibility for air and water, as implied, Illinois must submit processes and procedures which show that the IEPA will inspect, enforce, assess and collect civil penalties in a manner that is consistent with SMCRA.

20.16 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* There is no indication as to what process will be used to include the required assessment factors for each violation. The submittal indicates that fines would be based on factors not allowed to be considered under SMCRA (Section 518). It appears that the only guideline for assessment is the maximum of $5,000 per day. The assessor appears to have the authority to determine whether there is to be an assessment, although no guidelines for these decisions are indicated. Adequate procedures must be identified for determining whether a fine is to be assessed and how the amount of the assessment will be established.

20.17 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal indicates that a proposed assessment will be given to the operator as a result of the hearing process before the Illinois Pollution Control Board. The submittal indicates that the Board may determine assessments based on the cost of abatement and the ability to pay, standards which are inconsistent with SMCRA Section 518(a). Generally, this portion of the narrative fails to describe how the new Illinois Pollution Control Board will inspect, enforce, assess and collect penalties consistent with SMCRA.

Finding 21

The Secretary finds that Illinois does not have the full authority under State laws or regulations or provisions to provide for the issuance, modification, termination, and enforcement of notices of violation, cessation orders, and show cause orders in accordance with Section 521 of SMCRA and 30 CFR Parts 840–845. This finding is made under 30 CFR 732.15(b)(8) and is based on the lack of promulgated regulations and the findings listed below.

21.1 *Section 521—Section 8.06.* The Illinois statute omits references to the "authorized representative," which is inconsistent with SMCRA. The Illinois Attorney General (Volume 7, page 19) states that the term "Department" necessarily includes anyone authorized by the Department. The use of "authorized representative" in SMCRA Section 521 emphasizes the independent authority that must be placed in enforcement personnel. The Illinois statute does not clearly give independent authority to enforcement personnel. The Illinois program must provide that field inspectors have the authority to take all enforcement actions.

21.2 *Section 521(a)(2)—Section 8.06(b).* The Illinois statute provides that an operator may seek immediate injunctive relief from an issued order without exhausting administrative remedies and therefore is inconsistent with SMCRA.

21.3 *Section 521(a)(2)—Section 8.06(b).* The Illinois statute does not limit judicial review to that review provided by SMCRA (*See* Finding 28.1), and thus is inconsistent with SMCRA, because Illinois courts would be authorized to second-guess enforcement decisions, including notices and orders issued by the regulatory authority to protect the environment and public health and safety, in circumstances not authorized by SMCRA.

21.4 *Section 521(a)(3)—Section 8.06(c).* The Illinois statute provides that an operator may seek immediate injunctive relief from any order issued under the section without exhausting

administrative remedies as required by SMCRA, and thus is inconsistent with SMCRA.

21.5 *Section 521(a)(3)—Section 8.06(c).* The Illinois statute allows for an extension of the time to abate beyond 90 days (see Attorney General's opinion, (Volume 7, page 19), which is less stringent than SMCRA, which absolutely prohibits such an extension.

Finding 22

The Secretary finds that Illinois lacks the full authority under State laws and regulations or State program provisions to designate areas as unsuitable for surface coal mining consistent with SMCRA Section 522 and 30 CFR Parts 760–769. This finding is made under 30 CFR 732.15(b)(9) and is based on the lack of promulgated regulations and the findings listed below.

22.1 *Section 522—Section 3.16(b).* Illinois adds language that allows, under certain circumstances, mining excavations that remove and do not replace lateral support to be within 10 feet plus one and one-half times the depth of the excavation of established right-of-way lines of any public roads, streets or highways. This provision could conflict with the general prohibition of mining within 100 feet of the outside right-of-way line of any public road found in Section 522(e) (4) and (5) of SMCRA. However, Illinois, in its July 30, 1980, submission, states that this provision does not supersede the provisions of Section 522. Based upon this assurance, the Secretary finds Section 3.16(b) to be consistent with SMCRA.

22.2 *Section 522(a)(3)(A)—Section 7.02(b)(1).* SMCRA Section 522(a)(3)(A) provides that surface areas may be designated unsuitable for mining if mining would be incompatible with existing State or local land use plans or programs while the Illinois provisions refers only to plans. However, Illinois, in its July 30, 1980, submission, states that its promulgated regulations will refer to both plans and programs. If so, the Secretary will be able to approve Section 702(b)(1) on resubmission.

22.3 *Section 522(e) (1) and (2)—No corresponding Illinois section.* The Illinois statute fails to address surface coal mining activities on lands that are protected against mining by SMCRA Section 522(e) (1) and (2). Since some of these areas could contain non-Federal land underlain by coal, this omission could be inconsistent with SMCRA. Illinois, in its July 30, 1980, submission, indicates its intent to promulgate regulations consistent with Sections 522(e) (1) and (2). This would be acceptable, if the Attorney General's opinion indicates that such rules would be authorized.

22.4 *Section 522(e)—Section 7.01(e).* The Illinois provision excepts from its prohibitions operations that existed on August 3, 1977, whereas SMCRA Section 522(e) excepts operations with "valid existing rights." The Illinois provision is acceptable because operations with "valid existing rights" include all operations in existence on August 3, 1977, as well as other operations that did not exist as of that date.

22.5 *30 CFR 731.14(g)(11)—Volume 2, Tab K.* The Illinois submission discussion of staffing requirements and methodology contains insufficient information to enable the Secretary to find there will be adequate staffing to implement this system.

Finding 23

The Secretary finds that Illinois has in part the full authority over State laws or regulations or the provisions in the state program for public participation in the revision and enforcement of State regulations and the State program, consistent with the public participation requirements of the Act and the regulations. This finding is made under 30 CFR 732.15(b)(10) and is based on the lack of promulgated regulations and on the findings listed below.

23.1 *Section 513(a)—Section 2.04(a).* Section 513(a) requires an applicant to advertise in local newspapers the ownership, location and boundaries to be affected by the proposed operation and to submit a copy of the advertisement along with the permit application. Illinois Section 204(a) does not specify the contents of such advertisements nor does it require submittal of a copy of the advertisement along with the permit application. The Federal requirement ensures public notice of a proposed operation. While this deficiency might be remedied by regulation, the Secretary is unable at this time to find that the Illinois program will specify the contents of such advertisements and require submittal of a copy along with the permit application.

23.2 *Section 513(b)—Section 2.04(d).* Section 513(b) provides that, among others, the heads or officers of local governmental agencies shall have the right to file written objections to a permit application and request an informal conference. Illinois Section 204(d) limits local government involvement to the county board of counties to be affected by the proposed operations. This would limit the right of city and town governments and local planning and other agencies to object to an application, which renders the Illinois provision inconsistent with SMCRA.

23.3 *Section 513(b)—Section 2.04(d).* The Illinois statute does not provide that objections to applications shall be immediately transmitted to the applicant and made available to the public as is required by SMCRA Section 513(b). This makes the Illinois provision inconsistent with SMCRA, since it reduces public access to information that would assist public participation in permit decisions.

23.4 *Section 513(b)—Section 2.04(d).* SMCRA Section 513(b) requires that informal conferences on permit applications be advertised in a newspaper at least two weeks prior to the conference date. The Illinois provision contains no such requirement and is, therefore, inconsistent with SMCRA.

23.5 *Section 513(b)—Section 2.04(d).* The Illinois statute does not require that informal conferences be held in the locality of the proposed mining, as is required by SMCRA Section 513(b), and thus is inconsistent with SMCRA.

23.6 *Section 513(b)—Section 2.04(d).* The Illinois statute does not provide that a party to the informal conference on a permit applicatin may have access to the proposed mining area for the purpose of gathering information relevant to the proceeding, as is required by SMCRA. Thus, the Illinois provision is inconsistent with SMCRA.

23.7 *Section 514(e)—Section 2.11(g).* SMCRA Section 514(e) requires that a verbatim record of each public hearing required by the Act be prepared and made available. Illinois Section 211(g) appears to limit this requirement to hearings on permit approvals or disapprovals. However, Illinois Section 8.09 requires transcripts to be made available for other hearings and Illinois, in its July 30, 1980, submission, states that its promulgated regulations will require recording of all hearings. The Secretary finds that this would satisfy minimum Federal requirements for verbatim records.

23.8 *Section 515(b)(15)(A)—Section 3.13(a)(1).* The Illinois provision requires that daily notice of blasting be given residents living within one-half mile of blasting sites whereas SMCRA Section 515(b)(15) requires such notice to be given to all "resident/occupiers." The Illinois provision is consistent with SMCRA if it is interpreted to mean that daily notice shall be provided all resident/occupiers within one-half mile of proposed blasting sites.

23.9 Section 517(f)—Section 8.01(c). Illinois Section 8.01(c) requires public availability of information obtained by the regulatory authority under this "Section," while the Federal provision

would require availability of information obtained under "this title," referring to the Illinois counterparts to SMCRA Sections 501–529. The Illinois Attorney General (Volume 7, page 16) notes that Illinois is authorized to copy any records under the Illinois statute or permits. This, however, does not ensure public availability of the information as required by SMCRA Section 517(f). The Illinois July 30, 1980, submission, states that the promulgated Illinois regulations will require public availability of all records, reports, inspection materials or information obtained by the regulatory authority under the Illinois counterparts to SMCRA Sections 501–529. The Secretary would be able to approve Section 8.01(c) upon submission of such promulgated regulations, but may not do so at this time.

23.10 *Section 517(f)—Section 8.01(c).* The Illinois statute omits the requirement that records and other information be available to the public at locations in the "county, multicounty, and State" area as required by SMCRA. The Illinois Attorney General (Volume 7, page 17) asserts that such availability at "central and sufficient locations," as required by Illinois Section 8.01(c), complies with SMCRA Section 517(f). The Illinois provision requires that chosen locations be convenient, central and sufficient. This is consistent with the intent of SMCRA.

23.11 *Section 517(h)—Section 8.06(a).* There appear to be no Illinois provisions comparable to SMCRA Section 517(h), which provides for informal review of state inspection and enforcement decisions. Section 8.06(a), listed in the Illinois side-by-side (Vol. 4, p. 61) as comparable to SMCRA Section 517(h), does not provide for review of the refusal of the authorized representative to issue a citation, nor does it require the regulatory autority to give written reasons for the final disposition of the case. Further, the section fails to require the regulatory authority to determine whether or not adequate and complete inspections have been made and furnish a written statement of the reasons for its determination that adequate and complete inspections have or have not been conducted as is required by SMCRA Section 517(h). However, Illinois, in its July 30, 1980, submission, indicates that its promulgated regulations will cover all these points consistently with SMCRA. This would cover the deficiency.

23.12 *Section 519(h)—Section 8.08(c) and 8.09.* Section 519(h) of SMCRA empowers the regulatory authority to administer oaths, subpoena witnesses, or written or printed materials, among other things, for the purpose of a hearing on an appeal of the regulatory authority's decision for bond release. As Illinois notes in its side-by-side comparison (Vol. 4, p. 68), that Illinois Section 6.08(c) "does not give the regulatory authority the powers granted in Subsection 519(h) of the Federal Act." Illinois Section 8.09, which requires adjudicatory hearing procedures, does not apply to Section 8.08. Accordingly, the Illinois statute is inconsistent with SMCRA unless Illinois, by regulation or otherwise, provides the regulatory authority with the powers specified in Section 519(h) of SMCRA for the purpose of a hearing on bond release.

23.13 *Section 520(c)(2)—Section 8.05.* Illinois Section 8.05 does not contain a provision that would allow the Secretary to intervene in a citizen's suit to compel compliance with the Illinois statute. Thus, the Illinois provision is inconsistent with SMCRA Section 520(c)(2).

23.14 *Section 520(d) and 525(e)—Section 8.05(c) and 807(f).* The Illinois statute allows the awarding of litigation costs to any party:

> * * * on the basis of the importance of the proceeding and the participation of the parties to the efficient and effective enforcement of the Act.

SMCRA Section 520(d) allows such awards where deemed appropriate by the court and Section 525(e) allows awards of reasonable litigation costs in administrative proceedings. Regulations promulgated under Section 525(e) provide that a person may receive an award if "the person made a substantial contribution to a full and fair determination of the issues." 43 CFR 4.1294. The Attorney General of Illinois (Volume 7, page 19) states that there is no legally significant difference between SMCRA and the Illinois statute on this issue, while the Illinois July 30, 1980, submission, states that the Illinois provision would not "necessarily" limit judicial discretion in awarding litigation costs.

However, the intent of Section 520(d) is to allow judicial discretion in determining whether to award litigation costs. The Illinois provision clearly would interfere with this discretion by limiting the factors a court could consider in its determination. With respect to administrative proceedings, SMCRA intends, as expressed at 43 CFR 4.1294, that awards will be based on the effectiveness of a party's contribution to a resolution of the issues involved, not on the "importance of the proceeding" or other such factors.

Since the Illinois standard would lead to denials of awards in situations in which Congress intended they would be awarded, the Illinois provision is inconsistent with SMCRA.

23.15 *SMCRA Section 520(f)—Section 8.05(d).* The Illinois statute (SCMCRA Section 8.05(d)) does not specify the venue of suits brought under its provisions. The Secretary finds, pursuant to the assurance of the Illinois Attorney General (Volume 7, page 19) that the omission has the legal effect of giving the injured person a choice of venue, that the provision would allow suits in the judicial district where the affected mining operation is located. This is consistent with SMCRA Section 520(f).

23.16 *No Corresponding SMCRA Section—Section 7.03(f).* The Illinois provision requires the Illinois Department of Mines and Minerals to adopt rules to prevent the filing of repetitive or frivolous "unsuitability" petitions. Section 7.03(f) cannot be approved as consistent with SMCRA until the Secretary has reviewed the rules to determine that Illinois interprets Section 703(f) as not allowing rules that inhibit the right of a person "having an interest which is or may be adversely affected" to file an unsuitability petition.

23.17 *Section 525(a)(1)—Section 8.07(a).* The Illinois provision allows only the person who requests review of an enforcement order or notice may request a hearing on the enforcement action. SMCRA extends this right also to "any person having an interest which is or may be adversely affected" by the enforcement action. The Illinois statutory side-by-side (Volume 4, page 82) states that exclusion of the latter category of persons is intentional. The Illinois provision is inconsistent with SMCRA, because it narrows the class of persons who may request a hearing.

23.18 *No corresponding Federal provision—Section 8.09.* Section 8.09 requires that hearings held under certain sections of the Illinois statute shall have the characteristics of formal, adjudicatory hearings. The reference to Section 7.03(c) is inconsistent with SMCRA since that section refers to hearings on petitions to designate lands unsuitable for surface coal mining, which SMCRA requires to be less formal legislative hearings. *In Re: Permanent Surface Mining Regulation Litigation,* No. 79–1144, slip up at 24–25 (D.D.C. Feb. 26,1980.) Also inconsistent with SMCRA is the reference to Section 8.06, since hearings under SMCRA Section 521(a)(5), the counterpart to Illinois Section 8.06(e), are to be informal. *See also* 30 CFR 843.15.

23.19 *30 CFR 731.14(g)(8)—Volume 2, Tab H.* The Illinois submission does not provide a sufficient basis for the Secretary to find that the Illinois program adequately describes: (1) where the public can inspect records; and (2) the identification of agency records that will be needed to document public notice.

23.20 *30 CFR 731.14(g)(8)—Volume 2, Tab H.* The Illinois submission does not provide a sufficient basis for the Secretary to find that the Illinois program adequately describes: (1) the provisions that have been made to accomodate all those who wish to be heard, (2) the procedures for assuring that comments will be considered by decisionmakers, and (3) the persons or entities responsible for notifying the public.

23.21 *30 CFR 731.14(g)(14)—Volume 2, Tab H.* The Illinois submission does not provided a sufficient basis for the Secretary to find that the Illinois program adequately describes: (1) a standard mechanism for consideration of public views so as to affect decisionmaking, and (2) a means of documenting the listed views, how they were reviewed, and the reasons for the disposition of comments.

23.22 *30 CFR 731.14(g)(14)—Volume 2, Tab H.* The Illinois submission does not provide a sufficient basis for the Secretary to find that the Illinois program adequately describes public inspection of records, informal conferences, the manner in which publication for public notice is assured, and public hearings requirements.

23.23 *30 CFR 732.15(b)(10)—Volume 1, Tab A and D, and Volume 2, Tab N.* The Surface Mining Advisory Council, consisting of 10 members representing conservation, agriculture, surface coal mining industry, local government, environmental protection, the colleges and universities, underground coal mining industry, labor, and the general public, and who were appointed by the Governor for a term of three years, developed draft legislation. The Illinois General Assembly passed HB 2548 and it was signed into law on September 22, 1979. The Advisory Council held numerous meetings that were open to the public. To aid in drafting the Illinois rules, the Illinois Department of Mines and Minerals held public meetings (workshop sessions) on September 21, November 11, 13, 21 and December 3, 5, 6, 12, 13, 14, 19 and 23, 1979. All comments received were presented to the Surface Mining Advisory Council, which met on January 10, 11, 17 and 18, 1980, to review the regulations and all comments thereto. In addition, public hearings were held on July 14, 1980, at Carbondale, Illinois, and on July 15, 1980 at Springfield, Illinois, to review the Illinois state program. The State program (Volume 9) includes revised draft regulations that were published in the Illinois Register on June 13, 1980, and thus were in the official rulemaking process. A public comment period followed the public hearings to allow interested persons to review the program and/or comment. The Illinois rules are in the promulgation process. This meets the requirements for public participation in development of state programs under SMCRA and the Federal rules.

Finding 24

The Secretary finds that Illinois does not have the full authority under State laws or regulations or provisions in the State program to monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations of the State by employees of the State consistent with 30 CFR Part 705. This finding is made under 30 CFR 732.15(b)(11) and is based on the lack of promulgated regulations and on the finding listed below.

24.1 *Section 517(g)–Section 9.06.* The Illinois statute limits the financial interest requirements to persons employed by the Department of Mines and Minerals. While the Illinois Attorney General (Volume 7, page 17) states that the financial interest requirements apply to employees of the State regulatory authority, the Illinois program clearly indicates that employees of State agencies other than the Department will have functions or duties in the implementation of the Illinois program. Since these employees are not clearly considered to be employees of the state regulatory authority for conflict of interest purposes, as required by SMCRA, Illinois Section 9.06 is inconsistent with SMCRA.

Finding 25

The Secretary finds that Illinois has authority under State laws to require training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA. This finding is made under 30 CFR 732.15(b)(12). Because the Secretary has no final regulations for this matter, Illinois is not required to enact regulations on this subject until six months after the Secretary issues his final regulations for training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives.

Finding 26

The Secretary finds that Illinois does not have the full authority under current Illinois laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations and that the State program submission does not include the necessary provisions to provide for small operator assistance consistent with 30 CFR 795. This finding is made under 30 CFR 732.15(b)(13) and is based on the lack of promulgated regulations and on the findings listed below.

26.1 *Section 507(c)–2.02(b).* SMCRA requires the regulatory authority to assume the cost of determining the probable hydrologic consequences of an operator's mining operations if the annual production will not exceed 100,000 tons. The Illinois provision instead applies to the annual production of a single operation. Since an operator may have more than one operation, the Illinois provision would require the regulatory authority to assume the costs of more determinations than would the SMCRA provision. While the Illinois provision is consistent with SMCRA, Federal administration and enforcement and small operator assistance program (SOAP) grants may not be used to cover costs that result from the more liberal Illinois provision. Small operator's assistance will only be provided in accordance with Section 507(c) of SMCRA.

26.2 *30 CFR 731.14(g)(16)–Volume 2, Tab P.* The State submittal is inadequate to enable the Secretary to find that Illinois' SOAP will be consistent with the Federal requirements, because it provides no information regarding the procedure for determining the eligibility of small operators for assistance, the procedure for qualifying laboratories according to work to be done, and the number of contracts expected to be let. Further, the submittal indicates that the regulatory authority has an agreement with Southern Illinois University (SIU) but does not provide a copy of that agreement. Also, the State provides no description of operator eligibility and laboratory qualifications. Further, no information is provided on the process to assure small operator assistance program quality control and laboratory quality assurance.

Finding 27

The Secretary finds that Illinois does not have the full authority under State laws and regulations to provide for the protection of State employees in accordance with the protection afforded Federal employees under Section 704 of SMCRA. This finding is made under 30

CFR 732.15(b)(14) and is based on the lack of promulgated regulations and the finding listed below.

27.1 *Section 704—No corresponding Illinois provision.* The Illinois statute has no counterpart to SMCRA Section 704, which provides for criminal sanctions against persons who resist, prevent, impede or interfere with persons performing duties under the Act. This is less stringent than SMCRA.

Finding 28

The Secretary finds that Illinois does not have the full authority under State laws or regulations or program provisions to provide for administrative and judicial review of State program actions, in accordance with Sections 525 and 526 of SMCRA and Subchapter L of 30 CFR Chapter VII. This finding is made under 30 CFR 732.15(b)(15) and is based on the lack of promulgated regulations and on the findings listed below.

28.1 *Section 526—Section 8.10.* The Illinois statute does not expressly limit the granting of temporary relief in review proceedings according to those standards set forth in Section 526(c) of SMCRA. The Illinois Attorney General's opinion (Volume 7, page 22) states that similar standards are found in Illinois case law. In addition, the Illinois July 30, 1980, submission includes a copy of the Illinois Administrative Review Act, which does contain appropriate provisions for temporary relief in review proceedings that are consistent with SMCRA. Thus, the Illinois section is acceptable.

28.2 *Section 526—No corresponding Illinois provision.* The Illinois statute does not contain the authority, required by SMCRA 526(e), that actions of the regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction. However, the July 30, 1980, submission, include a copy of the Illinois Administrative Review Act which contains appropriate judicial review provisions that are applicable to the SMCRA. This is consistent with SMCRA.

28.3 *30 CFR 731.14(f)(15) Volume 2, Tab 0.* The Illinois system is unclear as to whether a *de novo* review of administrative decisions is provided. This must be clarified and must be in accord with Section 526 of SMCRA.

28.4 *Section 526.* The Illinois statute does not contain any provisions comparable to the judicial review provisions contained in Section 526 (a), (b) and (d) and therefore does not appear to contain the same or similar procedural requirements of SMCRA.

Finding 29

The Secretary finds that Illinois does not have the full authority under the Illinois law and regulations to cooperate and coordinate with, and provide documents and other information to, the Office of Surface Mining. This finding is made under 30 CFR 732.15(b)(16). The Illinois program (Volume 2, Tab I and Tab J) contains provisions to cooperate and coordinate with Federal agencies, but it does not specifically allow for the providing of documents and other information to the Office of Surface Mining as required under the provisions of 30 CFR Chapter VII.

Finding 30

The Secretary finds that the Illinois laws and regulations and the State program do contain provisions that would interfere with or preclude implementation of those in SMCRA and 30 CFR Chapter VII. This Finding is made under 30 CFR 732.15(c) and is based on the findings listed below and on Findings 12–29.

30.1 *30 CFR 701.5—Section 1.03(a)(1).* The Illinois definition of "affected land" does not include water in which surface or underground mining activities occur and does not include land or water located above underground mine workings. To this extent, the Illinois definition is inconsistent with the definition of "affected area" found in the Federal rule.

30.2 *30 CFR 701.5—Section 1.03(a)(18).* The Illinois definition of "permit term" is limited to the period of permitted mining operations, while the term of a permit under SMCRA would include reclamation activities as well. This is less stringent than SMCRA.

30.3 *30 CFR 701.5—Section 1.03(a)(25).* Illinois defines "toxic conditions" and "toxic materials" as conditions and materials that will not support higher forms of plant or animal life. The Federal phrase "toxic forming materials" is defined in terms of being detrimental to biota or uses of water. The Illinois definition is inconsistent with the Federal definition because biota includes are lesser forms of life than are protected by the Illinois definition and the Illinois definition would not necessarily lead to protection of all uses of water.

30.4 *Section 701(28)—Section 1.03(a)(24).* The definitions of "surface mining operations" and "underground operations" in the Illinois statute do not, taken together, include the surface impacts of underground coal mining as does the definition of "surface coal mining operations in SMCRA". This is inconsistent with SMCRA.

30.5 *Section 701(28)—1.03(a)(26).* The definition of "underground mining operations" in the Illinois Statute does not include all activities and areas included in the definition of "surface coal mining operations" in SMCRA. The Illinois definition deletes the activities of cleaning, concentrating, or other processing or preparation loading of coal for interstate commerce at or near the mine site; deletes areas upon which such activities occur or where such activities disturb the natural land surface; deletes adjacent lands which are incidental to any such activities; and fails to include areas such as impoundments, dams, entryways, refuse banks, dumps, stockpiles, overburden piles, culm banks, tailing, holes or depressions, and other areas upon which are sited structures, facilities or other property on the surface, resulting from or incident to such activities. This is less stringent than SMCRA.

30.6 *No corresponding SMCRA section—Section 3.11(d).* The Illinois provision specifies mininum performance standards for disposal of gob and slurry. This provision is not inconsistent with SMCRA, since it specifically states that it does not supersedes any other requirements of the Illinois statute. Thus, all other performance standards will apply to disposal of gob and slurry in addition to those in Section 3.11(d).

30.7 *Section 707—No corresponding Illinois provision.* The Illinois statute contains no counterpart to SMCRA, Section 707, which is a severability clause that, if any part of SMCRA is held invalid, preserves the remainder. Illinois Section 1.04(f), cited by Illinois as being the equivalent of Section 707 (Volume 4, page 94), deals only with revision of the Illinois program when SMCRA or the Federal regulations are changed or held invalid. However, there is no indication in the administrative record that the lack of a severability clause in the statute will be interpreted as rendering the entire statute invalid should one part be declared invalid. Pending clarification of this issue during the resubmission period, the Secretary is unable to determine whether the Illinois statute is consistent with SMCRA in this regard.

Finding 31

The Secretary finds that, with respect to staff, funding and logistics, the Illinois submission does not adequately demonstrate that the Department of Mines and Minerals and other state agencies having a role in the Illinois program have sufficient legal, technical

and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the program. 30 CFR 732.15(b), and other applicable State and Federal laws. This finding is made under 30 CFR 732.15(d) and is based on the findings listed below.

31.1 *30 CFR 731.14(e)—Volume 1, Tab E.* The Illinois program description, including appropriate charts, of the existing and proposed structural organization of the regulatory authority and other agencies that will have duties in the state program, including a description of the coordination system among these agencies and the lines of authority and staffing functions within each agency and among agencies, is unclear in that:

A. Coordination mechanisms to insure that interagency actions will be sufficient or timely are not adequately described. Illinois has not submitted any flow charts, systems analyses, standard operating procedures or other documentation to demonstrate the capability of the interagency scheme to function. There is no specification of the decision authority in event of conflicts between agencies;

B. Illinois has divided so many of its functions and powers that it appears that the Department of Mines and Minerals cannot conduct full inspections as required. The inspection powers are divided among the Departments of Mines and Minerals, Agriculture, and Conservation and the Illinois Environmental Protection Agency (IEPA). No provision is made for coordinating the efforts of the three of more inspectors required to perform a complete review of all activities at a mine, and agencies other than the Department of Mines and Minerals apparently have insufficient power to fulfill responsibilities; and

C. No organizational charts have been submitted that depict the Institute of Natural Resources or its component organizations.

31.2 *30 CFR 731.14(f)—Volume 1, Tab F.* The Illinois submission of supporting agreements between agencies that will have duties under the state program is unclear in that:

A. No agreement is submitted to document the working relationship with the Institute of Natural Resources;

B. The agreement with IEPA does not provide for turnabout times to ensure timely processing of permits or specify the nature of laboratory tests or specifications to be used for product reports and reviews.

31.3 *30 CFR 731.14(g)(2)—Volume 2, Tab B.* The narrative descriptions, flow charts and other documents of the Illinois system for assessing permit fees appear to be adequate. SMCRA Section 507(a) requires the fee revenues to be equal to or less than the actual or anticipated cost of review, administration and enforcement. The information provided by Illinois depicts a system that appears to be feasible. It should be noted, however, that the submission states that 20,000 acres are mined annually and that fees are $125 per hundred acres, which will generate revenues of $500,000 annually. This appears to be a mathematical error since a fee at that rate for 20,000 acres would only equal $25,000 per year. This discrepancy should be clarified.

31.4 *30 CFR 731.14(i)—Volume 1, Tab I.* The summary table of the existing and proposed state program staff, showing job functions, titles and required job experience and training is insufficient to enable the Secretary to evaluate the adequacy of staffing in that:

A. The Illinois submittal indicates that the majority of land reclamation specialists will be in Class I. The job descriptions indicate that Class II, but not Class I, specialists will have authority to issue notices of violations and cessation orders to operators violating the Illinois statute or regulations. However, the number of Class II specialists is not adequate to issue notices and orders;

B. No position, statement of function or other documentation is provided for the proposed positions in the Institute of Natural Resources.

31.5 *30 CFR 731.14(j)—Volume 1, Tab J.* The Illinois program description of how the staffing proposed will be adequate to carry out the functions, including permitting, inspection and legal actions, for the projected workload to ensure that coal exploration and surface coal mining and reclamation operations will be regulated in accordance with the requirements of SMCRA and 30 CFR Chapter VII, is insufficient to enable the Secretary to find that staffing is adequate, because:

A. Based on Illinois' information on frequency of inspections (Volume 2, Tab D), the State would appear not to be able to carry out adequate inspections at mines and other inspectable units. The Illinois proposal is based upon the concept of inspecting mines, while SMCRA and 30 CFR Chapter VII clearly define tipples, preparation plants, carbon recovery operations and other similar structures and projects as "inspectable units";

B. The proposed staffing for the administration of the bonding program at State headquarters level is 5 percent of the duties of the land reclamation supervisor and 10 percent of the duties of the clerk IV, which appears to be inadequate for dealing with this sensitive element of the program;

C. One attorney is proposed to handle legal matters for the Department of Mines and Minerals. Due to the highly legalistic work inherent to a regulatory agency, one attorney alone cannot perform all necessary work, including giving advice, providing legal opinions, participating in negotiations, and conducting litigation. Illinois proposes to use the services of a contract attorney, but it has not identified the numbers of hours or services provided through this arrangement;

31.6 *30 CFR 731.14(l)—Volume 1, Tab L.* The Illinois submission of the actual capital and operating budget and sources of funds for the past year, current year, and future two years is insufficient to enable the Secretary to evaluate the adequacy of Illinois' finding. By providing a statement of facts or assumptions used in the development of this information, Illinois would assist the Secretary to make a determination of the adequacy of the projections.

Section VI.—Disposition of Comments

The comments received on the Illinois program during the public comment periods described previously under "Background on Illinois' Program Submission" raised numerous issues. The Secretary considered these comments carefully in evaluating Illinois' program, as indicated below. In many instances, where comments relate to Illinois' proposed rules, further relevant information can be found in the letter from the Director of OSM to Illinois officials referred to above under "Background on the Illinois Program Submission." Copies of this letter are available at the locations listed above under "Addresses."

Department of the Interior

1. The Bureau of Mines (BOM) (ARN: ILL-0081) commented that Illinois statute Section 2.08(b)(4), which provides that a permit application shall not be approved if the area proposed to be mined is the subject of a designation proceeding, is more stringent than its SMCRA counterpart Section 510(b)(4) in that it does not provide an exception where the operator has made "substantial, legal, and financial commitments in relation to the [proposed] operation" prior to January 4, 1977. The secretary agrees and finds the Illinois provision to be acceptable.

2. BOM (ARN: ILL-0081) commented that the Illinois statutory performance standard (Section 3.07) for high

capability lands is more stringent than the SMCRA requirements for these lands, because this provision will provide better reclamation than the Federal Act for land that does not meet the definition of prime farmland, but which is capable of row-crop use. However, as detailed in Finding 14.5, the Secretary finds the Illinois provision inconsistent with SMCRA.

3. The Heritage Conservation and Recreation Service (HCRS) (ARN: ILL-0095) commented that the Interagency Agreement with the Illinois Deparment of Conservation would be strengthened by specifically including under the general provisions, compliance with 36 CFR 800—Protection of Historic and Cultural Properties. Illinois proposed regulation 1761.12(e), if promulgated, would require joint approval by all affected agencies of surface mining operations that may adversely affect any publicly owned place on the National Register of Historic Places. This would be consistent with the Federal regulations. HCRS also suggested that the agreement should include recreational and heritage resources as part of the Department of Conservation evaluation responsibilities. The Federal regulations do not contain this requirement and the State cannot be required to do more than the Federal rules require.

4. The Geological Survey (GS) (ARN: ILL-0072) recommended that the State be informed about the exisitng Bureau of Land Management/GS/OSM Memorandum of Understanding on the management of Federal coal. A reference to the MOU in the State program was suggested by GS as being needed to inform the general public and the State regulatory authority. A copy of the MOU has been sent to the State and may be referenced in its program, if the State so desired.

5. GS (ARN: ILL-0072) commented that the State should briefly address State procedures for processing exploration, mining plans, or permits that include Federal lands. Jurisdiction for processing exploration and/or mining permits on Federal land lies solely with the Secretary, though a State may enter into a cooperative agreement with the Secretary pursuant to SMCRA Section 523(c) that would allow the State to assume partial responsibility for Federal lands in the State. Illinois chose not to enter into such an agreement at this time and therefore is not required to discuss Federal land impacts in its program.

6. The Fish and Wildlife Service (FWS) (ARN: ILL-0082) pointed out that the proposed Illinois rule 1701.5 definition of "Best Technology Currently Available" is significantly different from the Federal definition, since it requires consideration of economic and energy requirements, and economically viable alternatives. However, the revised proposed rule 1701.5 submitted July 30, 1980, would be acceptable if promulgated since it does not contain the inconsistent references to economic and energy considerations.

7. The FWS (ARN: ILL-0082) noted that proposed Illinois regulation 1762.12(b) would have provided that additional unsuitability for mining criteria could be consistent with the Act, if they provided "for protection" of the public health, safety and welfare. Section 762.12(b) of the Federal regulations provides that such additional criteria are consistent only if they provide "for greater protection." However, the revised Illinois regulations submitted June 16, 1980, contain the word "greater."

8. The FWS (ARN: ILL-0082 and ILL-0176) commented that the Illinois state program does not comply with 30 CFR 731.14(g)(10), which requires a narrative description of the Illinois system for consulting with State and Federal agencies having responsibility for fish and wildlife, historic, cultural and archeological resources, since the Illinois narrative requires consultation only with State agencies. The FWS also commented this would nullify proposed Illinois regulations 1776.12(b)(2), 1780.16, 1784.21, 1786.13(a), and 1786.14(a). Illinois should address in the resubmission its system for consultation with pertinent Federal agencies. *See* Finding 15.9.

9. The FWS (ARN: ILL-0082) pointed out that the inclusion of the words "but in accordance with Subsection 522(a)(1)" in the Illinois regulation 1762.14, which concerns exploration operations on lands designated unsuitable, is misleading. The Secretary agrees with this comment. However, this language was deleted from the proposed Illinois regulations submitted June 16, 1980.

10. The FWS (ARN: ILL-0082) commented that proposed Illinois regulation 1770.12, which addresses coordination of review and issuance of permits with other Federal and State permitting processes applicable to surface coal mining, is inconsistent with the corresponding Federal regulation. The Secretary agrees that the proposed regulation could be changed to insure more direct coordination with the Federal agencies concerned. However, the proposed Illinois regulation does provide for coordination of review and issuance of permits including the applicable requirements of other laws and could, therefore, be consistent with the Federal rule.

11. The FWS (ARN: ILL-0082) suggested rewording Illinois regulations 1779.20, 1783.20 and 1786.17(a)(2). 30 CFR 779.20 and 783.20, which required permit applicants to submit fish and wildlife resources information, have been remanded by the U.S. District Court for the District of Columbia (*In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, February 26, 1980). Illinois revised regulations resubmitted on June 16, 1980, omitted these sections. The Secretary cannot require these rules at this time (*See General Background on the State Program Approval Process*, above). Similarly, 30 CFR 780.18 and 784.21, which required permit applications to contain fish and wildlife reclamation plans, have been suspended. Therefore, Illinois' omission of a counterpart to 30 CFR 786.17(a)(2), which requires review of such plans, is not presently significant.

12. The FWS (ARN: ILL-0082) commented that proposed Illinois regulation 1786.11(c) is inconsistent with the corresponding Federal rule, because it does not require that Federal agencies with jurisdiction over or interest in the area of a proposed operation be notified on the filing of a permit application. The Secretary agrees that this proposed regulation is inconsistent with the Federal rule. However, proposed Illinois rule 1786.11(c), submitted July 30, 1980, would, if promulgated, be consistent.

13. The FWS (ARN: ILL-0082) contends that proposed Illinois regulation 1786.19(o) usurps the authority and responsibility of the FWS regarding the Endangered Species Act. The Illinois regulation 1786.19(o) is consistent with the corresponding Federal rule, 30 CFR 786.19(o), and does not usurp the authority of FWS.

14. The FWS (ARN: ILL-0082) contends that proposed Illinois regulation 1786.29(a) concerning conditions of permits should contain a process for consultation with the FWS to maintain the integrity of this provision. The Secretary's regulations, however, have no such requirement and the State cannot be required to do more than the Federal regulations require.

15. The FWS (ARN: ILL-0082) commented that proposed Illinois regulation 1788.12(b)(2) and 1788.12(f) concerning permit revision do not provide for written notification to State and Federal fish and wildlife agencies so that significant deviation from fish and wildlife permit requirements can be identified. These Illinois provisions are consistent with the Federal rules in

regard to written notification requirements.

16. The FWS (ARN: ILL-0082) commented that the regulatory authority should contact the FWS in conjunction with Illinois regulations 1816.44(a)(3) and 1817.44(a)(3) concerning the hydrologic balance of stream channel diversions. The Illinois regulation is consistent with the corresponding Federal regulation and the Secretary cannot require the State to do more than the Federal regulations require.

17. The FWS (ARN: ILL-0082) commented that proposed Illinois regulations 1816.97(d) and 1817.97(d) concerning protection of fish, wildlife and related environmental values are inconsistent with the corresponding Federal rules for not requiring protection "to the extent possible using the best technology current available." The Secretary agrees with this comment.

18. The FWS (ARN: ILL-0082) commented that proposed Illinois regulations omit the requirement of the corresponding Federal regulations, 30 CFR 815.133(c) and 817.133(c), that alternative land use may be approved only "after consultation with the landowner or the land management agency having jurisdiction over the land." The Secretary agrees this is inconsistent with the Federal rules.

19. The FWS (ARN: ILL-0082) objected to inclusion of proposed Illinois regulation 1825, concerning high capability lands, without clarification that the Illinois rule would not lead to significant losses of important fish and wildlife areas, especially wetlands. The Secretary agrees that the intent of this rule is unclear. However, it does require that all other requirements of the regulations, including fish and wildlife regulations, be met.

20. The FWS (ARN: ILL-0176) considers the Illinos program to be inadequate and opposes acceptance of it by the Secretary. The Secretary is initially disapproving the program in part.

21. The National Park Service (NPS) (ARN: ILL-0094) commented that it should be allowed to participate in permitting decisions in cases where NPS units may be affected. Illinois proposed regulation 1761.12(e)(2) would require joint approval by the Illinois Department of Mines and Minerals and the NPS of permits for operations that may adversely affect a National Park.

22. The NPS (ARN: ILL-0094) stated that it should be involved in setting bond amounts for surface mining and reclamation activities that may impact NPS units. NPS would be involved in bonding through the permitting process.

23. The NPS (ARN: ILL-0094) commented that it should be allowed to participate in inspections where a NPS unit may be affected, especially inspections undertaken in response to a petition or notification of violation or prior to bond release. Illinois statute Section 8.06(a) provides that if an inspection results from information provided by any person, that person may accompany the inspector on the inspection. The NPS could avail itself of this opportunity. Neither SMCRA Section 519(b) nor Illinois statute Section 6.06(b) requires the regulatory authority to allow outside parties to participate in evaluation inspections conducted prior to bond release. However, 30 CFR 807.11(e), which concerns informal conferences on bond release, has been remanded by the U.S. District Court for the District of Columbia with instructions to include a provision for citizen access to the mine site prior to bond release (*In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, February 26, 1980). When the revision to 30 CFR 807.11(e) is promulgated, Illinois will have a reasonable time to amend its program appropriately. *See Effect of Litigation on the Federal Permanent Regulatory Program, supra.*

24. The NPS (ARN: ILL-0094) requested the opportunity to participate in developing criteria for designating lands unsuitable for surface coal mining near NPS units and to be allowed to participate in protecting all resources on lands under its jurisdiction from mining in adjacent areas. Illinois' proposed regulation Section 1762.11, identifying the criteria for designating lands as unsuitable, is consistent with 30 CFR 762.11 and the Secretary cannot require the State to adopt additional criteria. The petition process included in Illinois' proposed regulation 1764.13 provides the opportunity for any person having an interest that is or may be adversely affected to petition to have an area designated as unsuitable for mining. This approach appears to provide the NPS with the opportunity it seeks to protect lands in the National Park System. The Secretary has instructed the Park Service not to seek criteria in State programs that would establish unsuitable for coal mining "buffer zones" adjacent to National Parks, unless these lands meet one or more of the other specific criteria for designation. On June 4, 1979, the Secretary made final decisions on the Federal Coal Management Program. Included in those decisions were numerous changes in the proposed unsuitability criteria for Federal lands. The Secretary chose to delete the automatic "buffer zone" language for national parks and certain other Federal lands for the first criterion (43 CFR 3461.1(a)). Instead, he stated lands adjacent to a national park should be found unsuitable only if they are covered by one of the other specific criteria (43 CFR 3461.1(b)-(t)). This instruction to the National Park Service assures that that agency's approach to State unsuitability criteria will be compatible with the Secretary's policy on Federal unsuitability criteria.

25. The NPS (ARN: ILL-0094) stated that permit applications for coal mining regarding air quality should be referred to its Air Quality Office. SMCRA provides that it will not supersede existing Federal law and existing air quality laws do not require NPS review. However, NPS will be notified of permit applications under its proposed rule 1786.11 of July 30, 1980.

Department of Agriculture

26. The U.S. Forest Service (USFS) (ARN: ILL-0071) suggested that a copy of the Land Report be sent to the surface owner(s) and other person(s) known to the regulatory authority to have an interest in the property. 30 CFR 764.15 doe snot contain such a requirement and a State cannot be required to do more than the Federal rules require.

27. The USFS (ARN: ILL-0071) suggested that the surface owner(s) be notified of intent to perform coal exploration activities. Part 776 of the Secretary's regulations do not require that the surface owner(s) be notified and a State cannot be required to do more than the Federal rules require.

28. The USFS (ARN: ILL-0071) suggested that, where commercial forest is the proposed postmining land use, the State require a detailed management plan that reflects commercial forest management standards. This requirement is found in proposed Illinois regulation 1780.23(a)(5).

29. The USFS (ARN: ILL-0071) suggested that an MOU be established between the State and the USFS to coordinate the regulation of mining on National Forest lands. The Secretary of the Interior has been given the responsibility by SMCRA to receive and approve or disapprove mining plans, and inspect and enforce regulations covering all coal exploration and surface coal mining operations on Federal lands, including National Forest lands. An MOU is being developed by OSM and the USFS to coordinate these activities on National Forest lands.

30. The USFS (ARN: ILL-0071) commented that early release of performance bonds for research areas

would encourage reclamation research. This comment is currently being considered together with the USDA-RECLAM petition for an amendment to 30 CFR Part 780 to allow the use of alternative reclamation practices for research or demonstration purposes. (45 FR 41166-41169, June 18, 1980). This petition has been granted in part and rulemaking has been initiated to consider appropriate amendments to OSM's regulations. The Secretary will require State programs to be consistent with any amendments that are adopted.

31. The USFS (ARN: ILL-0071) noted that the Illinois program submittal did not contain a section discussing the State's Abandoned Mined Land Program. State reclamation plans for abandoned mined lands are separate documents and are not considered part of the regulatory program submittal. Illinois submitted a State program for abandoned mine lands reclamation on July 22, 1980.

32. The USFS (ARN: ILL-0151) stated that the Illinois program submittal does not require Federal agencies to be responsible for bonding requirements on areas where Federal reclamation research is being performed. The comment is currently being considered together with the USDA-RECLAM petition for an amendment to 30 CFR Part 780 (45 FR 41166-41169, June 18, 1980). See comment 30.

33. The USFS (ARN: ILL-0151) suggested that the language "woody materials may be chipped and distributed over the surface as mulch" be added to Sections 1816.114 and 1817.114 of the proposed Illinois rules. The Secretary's regulations do not contain such language and the State is not required to do more than the Federal rules require.

34. The Soil Conservation Service (SCS) (ARN: ILL-0084) questioned the intermittent stream definition found in proposed State regulation 1701.5. The definition used by Illinois, with one exception, is identical to the one in 30 CFR 701.5. Illinois has omitted the conjunction "and" between parts (a) and (b) of the definition, thus indicating fewer streams than under the Federal provision. When this omission is corrected, the definition will be consistent with the Federal rules.

35. The SCS (ARN: ILL-0084) questioned why the definition of agricultural use in proposed Illinois rule 1701.5 included cropping, cultivation and harvesting of plants, but not of trees. The Illinois definition of agricultural use is the same as the definition in the Secretary's rules. The Secretary lacks the authority to require Illinois to include more in its definition than is found in the Federal rules.

36. The SCS (ARN: ILL-0084) recommended either that prime timberland and prime grazing land be excluded from the definition of High Capability Land in proposed Illinois Rule 1701.5 or that they be recognized as suitable postmining land uses for High Capability Lands. The Secretary disagrees that the definition should exclude prime timberland and grazing land. Proposed Illinois rule 1825.11(d) would provide that all other requirements of the regulations, including the postmining land use requirements, be applicable to High Capability Lands. Therefore, timberland and grazing land would be suitable for postmining uses of High Capability Lands.

37. The SCS (ARN: ILL-0084) commented that proposed Illinois regulation 1762.11(b)(3), which would allow renewable resource lands to be designated as unsuitable for all or certain types of surface coal mining operations, should be expanded to include consideration of prime farmland as well as wildlife land, wetlands, etc. "Renewable resource lands" are defined in proposed Illinois Rule 1701.5 to include "areas for agricultural . . . production of food," which would include prime farmland.

38. The SCS (ARN: ILL-0084) commented that a hypothetical case should be developed for interpreting the phrase "reasonable and farmable unit," as it is used in Section 1779.27(b)(5) of the proposed Illinois rules. This subsection specifies that smaller units of land shall not be considered prime farmland. The Illinois provision is inconsistent with 30 CFR 779.27(b)(5), since the latter provision excepts lands from prime farmland treatment only if there are no soil map units that have been designated prime farmland by SCS.

39. The SCS (ARN: ILL-0084) noted that proposed Illinois rule 1780.23(a)(2) does not include "rangeland" as a classification of Illinois lands, but that proposed Illinois rule 1816.115 refers to "range" as a land use. The Secretary's rule 701.5 does not include "rangeland" as a land use category, but rangeland is defined in that rule differently from "grazingland." Illinois' intent, evident in its submission (Volume 5, Tab 13, page 9), is to delete rangeland as a land classification in Illinois, probably because no such lands exist in Illinois. The reference to "range" in proposed Illinois rule 1816.115 is probably inadvertent.

40. The SCS (ARN: ILL-0084) commented that proposed Illinois rules 1785.17 (b)(7) and (b)(8) are inconsistent, because Part (b)(7) speaks to high levels of management, while Part (b)(8) addresses equivalent yields with equivalent management practices on non-mined land of the same soil type. SCS points out the need for a definition of high level management and also recommends using the Illinois Department of Agricultural "Weighted County Average Yield Formula" for determining the postmining productivity. Section 785.17(b)(8) of the Federal rules [corresponding to 1785.17(b)(7)] has been remanded by the U.S. District Court for the District of Columbia, which found that SMCRA requires only that revegetation meet the equivalent levels for surrounding non-mined lands [*In Re: Permanent Surface Mining Regulations Litigation*, No. 78-1144, May 16, 1980]. The Secretary may not require an Illinois counterpart to the remanded provision.

41. The SCS (ARN: ILL-0089) commented that proposed Illinois rule 1785.17(c), which indicates that SCS is expected to determine within 30 days whether an applicant's soil reconstruction proposal is adequate, may not allow SCS sufficient time. This time limit is not found in 30 CFR 785.17(c). However, proposed Illinois rule 1786, unlike 30 CFR Part 786, sets specific time limits within which decisions on permit applications must be made. Setting a time limit on SCS review of soil reconstruction proposals is reasonable, therefore, so long as the proposed Illinois rule is not interpreted as allowing permit decisions without the required consultation with SCS.

42. The SCS (ARN: ILL-0084) commented that, if proposed Illinois rule 1805 provided for early release of performance bonds to allow research to be conducted on reclaimed areas, reclamation research would be encouraged. This comment is currently being considered together with the USDA-RECLAM petition (45 FR 41166-41169, June 18, 1980) for an amendment to 30 CFR Part 780 relating to research and demonstration of reclamation technology. [See Comment 30]

43. The SCS (ARN: ILL-0084) suggested that proposed Illinois rule 1815.15(f)(1) is too restrictive and would preclude the use of species not indigenous to the disturbed area. It recommended that qualifying language such as "unless otherwise approved by the regulatory authority" be added to the first sentence in this section. The suggested revision is less stringent than Federal rule 815.15(f)(1) and cannot be approved by the Secretary.

44. The SCS (ARN: ILL-0084) commented that the lower limit for pH (6.0) is not met by streams at some times

and recommended that the maximum/minimum values for pH be expressed as "average" or "mean" or some similar term in Section 1816.42(a)(7) of the proposed Illinois rules. As was amplified in the preamble to the OSM regulations (44 FR 15153), OSM must have regulations no less stringent than those adopted by the EPA. The EPA has specified the range in pH that streams must meet. Therefore, this suggestion cannot be approved by the Secretary. However, 30 CFR 816.42(a)(7) has been remanded as a result of the court opinion of May 16, 1980 (*In RE: Permanent Surface Mining Regulation Litigation, No. 79-1144*), and Illinois has removed this provision from its July 30, 1980, proposed regulations.

45. The SCS commented that it presumed "that provisions of 1816.42(a)(2) of the proposed Illinois rules override the minimum standards given in Part 1816.42(a)(7)." In proposed regulations submitted June 16, 1980, Illinois revised Section 1816.42(a)(2) to be consistent with 30 CFR 816.42(a)(2).

46. The SCS (ARN: ILL-0084) commented that in proposed Illinois rule 1816.102(b), Table 1 water storage-outlet capacity the first two lines are valid but figures in lines 3, 4, and 5 are not adequate and would result in system failure. The Illinois proposed rule of July 30, 1980, has been changed to conform to the Federal rule.

47. The SCS (ARN: ILL-0084) recommends use of the Universal Soil Loss Equation to measure soil loss from sheet and rill erosion and maintenance of the soil loss tolerance (T) value on all mined land in Section 1816.106 of the proposed Illinois rule instead of using the 9-inch rule as a criteria before requiring control. The Universal Soil Loss Equation is a technically accepted method of determining soil loss and is to be modified to reflect conditions typical of surface mining operations. However, the State language is identical to the Federal and the State is not required to do more than the Federal rules require.

48. The SCS (ARN: ILL-0084) argued that proposed Illinois rule 1816.111(a) should require a vegetative cover for areas where the postmining land use is industrial and residential. The Secretary agrees that the Illinois rule should, when promulgated, require establishment of diverse, effective and permanent vegetative cover on lands being reclaimed.

49. The SCS (ARN: ILL-0084) pointed out that Section 1816.111(b)(2) of the proposed Illinois rules was less stringent than the corresponding Federal regulation. This was called to the attention of the State in an OSM letter dated May 22, 1980, and has been corrected in later submittals of the State program.

50. The SCS (ARN: ILL-0084) recommended that the Chief of the Division of Forestry in the Illinois Department of Conservation be consulted and his recommendations on the use of introduced species be considered by the State regulatory authority in Section 1816.112 of the proposed Illinois rules. This is not required by the Federal regulations. The State, however, is permitted to establish such an arrangement by means of a cooperative agreement between the Department of Mines and Minerals and the Department of Conservation.

51. The SCS (ARN: ILL-0084) suggested that, for the purpose of determining the success of revegetation, the State should define ground cover in Section 1816.116 of the proposed Illinois rules as litter and the aerial parts of plants less than 0.5 meters from the soil surface. This definition is more restrictive than the definition of ground cover found in 30 CFR 816.116(d)(3) and may be incorporated into the State's regulations if the State so desires.

52. The SCS (ARN: ILL-0084) suggested the use of an alternative herbaceous sampling technique that might be easier to use and more accurate than the method proposed by the State in Section 1816.116(d) of the proposed State rules. Section 816.116(a) of the Federal rules requires that the success of revegetation shall be measureed by techniques approved by the regulatory authority after consultation with appropriate State and Federal agencies. The possibility of adopting the proposed ground cover sampling technique has been called to the State's attention.

53. The SCS (ARN: ILL-0084) commented that Section 1816.117 of the proposed Illinois rules does not require adequate erosion control prior to and during tree establishment. This section of the State's regulations is similar to the Federal rules, which require the establishment of herbaceous ground cover that is at least 70 percent of the ground cover of reference areas with 90 percent statistical confidence or a level of ground cover that is adequate to control erosion as determined by the State regulatory authority. The Secretary believes these provisions are adequate and the State is not required to do more than the Federal rules require.

54. The SCS (ARN: ILL-0084) noted that Section 1816.133(c)(5) of the proposed Illinois rules invalidly implies that all registered professional engineers have the expertise necessary for preparation of postmining land use plans and recommended that use of only qualified engineers be allowed. However, the State language is identical to that of the Federal rule and the State is not required to do more than the Federal rules require.

55. The SCS (ARN: ILL-0084) commented on the provision for dust control in Section 1816.155(b) of the proposed Illinois rules for Class 1 road maintenance in light of research being conducted on alternate dust control methods by the Forest Service and others. Its recommendation is to allow, in addition to watering, other dust control methods approved by the regulatory authority. This is a valid recommendation since dust control measures other than water are presently available. However, 30 CFR 816.155(b) has been remanded in *In Re: Permanent Surfact Mining Regulations Litigation*, No. 79-1144, May 16, 1980. The provision cannot be required at this time.

56. The SCS (ARN: ILL-0084) commented that Section 1825 of the proposed Illinois regulations, which contains performance standards for High Capability Lands encourages changes of land use from prime timberland and prime grazing lands, as well as prime farmlands. The SCS recommends that lands identified as prime timber or grazing land be retained as such in postmining land use plans. Part 1825 is unparalleled in the Federal rules. However, proposed rule 1825.11(d) clearly states that all other requirements of the Illinois regulations will apply to High Capability Land. This would include postmining land use requirements.

57. The SCS (ARN: ILL-0084) questioned whether National Forest lands were exempt from the Illinois statute and future implementing regulations. The Secretary of the Interior is responsible for regulating mining on National Forests and all other Federal lands. Mining companies are required to satisfy Federal requirements. Illinois may assume responsibility for regulating surface coal mining and reclamation operations on Federal lands in Illinois by entering into a cooperative agreement with the Secretary under Section 523(c) of SMCRA. Illinois has not requested to enter into such an agreement.

58. The SCS (ARN: ILL-0084) questioned whether the State would accept petitions to designate National Forest lands unsuitable for coal mining. It also recommended that the USFS be given an opportunity to participate in the designation process. The Secretary, acting through the director of OSM, is responsible for designating areas of Federal lands unsuitable for all or certain types of surface coal mining

operations in accordance with the requirements of 30 CFR Part 769. The USFS, as the surface managing agency for National Forests, will be provided the opportunity to make recommendations on approval or disapproval of unsuitability designation petitions on National Forest lands.

59. The SCS (ARN: ILL-0084) recommended that the Chief of the Division of Forestry, Department of Conservation, be a member of the Illinois Surface Mining Advisory Committee. This recommendation has been forwarded to the State for its consideration.

60. The SCS (ARN: ILL-0084) recommended that the Chief of the Division of Forestry, Department of Conservation, review permit applications where forest management is the pre and post mining land use. SMCRA does not require such review. However, Illinois statute Section 2.04(d) does provide officers of government agencies the opportunity to file written objections with respect to a permit application. In addition, the Illinois Department of Mines and Minerals can arrange for permit review by the Division of Forestry in its supporting agreement with the Department of Conservation.

61. The SCS (ARN: ILL-0084) recommended that the Chief of the Division of Forestry, Department of Conservation, review reclamation performance when reforestation is included in the reclamation plan. Neither SMCRA Section 519 nor the Federal regulations requires such reviews, though Illinois statute Section 6.08(c) allows heads of State agencies to comment on reclamation performance in bond release proceedings. In addition, the Illinois Department of Mines and Minerals can arrange for reviews by the Division of Forestry in its supporting agreement with the Department of Conservation.

62. The SCS (ARN: ILL-0084) recommended the establishment of provisions for less laterials handling and compaction and more flexibility in slope requirements when forestry is the approved postmining land use. The Secretary recognizes that soil compaction is detrimental to the survival and the growth of trees; however, SMCRA does not make special provisions for soil handling and grading when forestry is the approved postmining land use. Illinois may wish to establish such provisions as an alternative according to the procedures described in 30 CFR 731.13.

63. The SCS (ARN: ILL-0084) recommended that the Illinois regulations provide for reclamation research on mined lands while retaining performance bond requirements. This comment is currently being considered together with the USDA-RECLAM petition for amendment to 30 CFR Part 780 to allow the use of alternative reclamation practices for research or demonstration purposes (45 FR 41166-41169, June 18, 1980). [See Comment 30]

Department of Energy

64. The Department of Energy (DOE) (ARN: Ill-0100) commented that, as required by 30 CFR 731.14(e), the Illinois submission should contain a description of the structural organization of the regulatory authority, including appropriate charts. As presented, the submission lacks the description required by this section of the Federal regulations. The submission should be revised to incorporate a written explanation of the regulatory authority organization, together with appropriate charts. The comment has merit and is addressed in Finding 31.1.

65. The DOE (ARN: ILL-0100) commented that the narrative description of the Illinois system for restricting direct and indirect conflicts of financial interests, required by 30 CFR 731.14(g)(12), should describe the specific civil and criminal remedial actions that will be implemented in order to enforce these restrictions. While this information would be useful, the Secretary will not require it.

66. The DOE (ARN: ILL-0100) commented that the statistical information on coal exploration, mining and reclamation operations in Illinois, submitted pursuant to 30 CFR 731.14(h), is not adequately explained. Illinois submitted additional information on July 30, 1980 (Volume 10, Tab S) which is adequate.

67. The DOE (ARN: ILL-0100) commented that, according to the description of the existing and proposed State program staff, required by 30 CFR 731.14(i), the State regulatory authority will not employ wildlife management professionals, agronomists, geologists or ecologists. The Secretary agrees that the specific expertise provided by these specialists should be available to the Department of Mines and Minerals and that Illinois must demonstrate the availability of personnel to make decisions on permit applications (See Finding 31).

68. The DOE (ARN: ILL-0100) commented that, while Section 1816.131(b) of the proposed Illinois rules allows operations to cease for 30 days before the regulatory authority must be notified Volume 5, Tab 30, page 79 of the Illinois submission indicated without adequate explanation that the time period would be changed to 90 days. However, the proposed rules of July 30, 1980, retain the 30-day provision, which is consistent with the Federal rules.

69. The DOE (ARN: ILL-0100) commented that the applicable water quality standards should be reincorporated into Section 1817.46(a) of the proposed Illinois rules. The proposed revised regulations submitted by Illinois on June 16, 1980, have reinstated the water quality requirement into this section.

70. The DOE (ARN: ILL-0100) suggests that Illinois should explain further why Section 1845.14 of the proposed Illinois rules is better than the Federal rule, which provides for penalties up to $5,000 as opposed to the Illinois $750. It appears that DOE has misunderstood Illinois' submission. Illinois provides for a penalty of $5,000 per violation which may be assessed per day, and in addition, provides for a $750 per day assessment for non-abatement Cessation Orders.

Department of Labor

71. The Mine Safety and Health Administration (MSHA) (ARN: ILL-0075) commented that its guidelines recommended that a 100-year 6-hour frequency storm be used to design drainage diversions for coal processing waste embankments instead of the 100-year, 24-hour storm prescribed in the Illinois regulation. Federal rules 816.92(b) and 817.92(b) also prescribe the 100-year 24-hour precipitation event, and the Illinois rules may not be less stringent.

72. The MSHA (ARN: ILL-0075) has indicated that counterparts to 30 CFR 816.86 and 30 CFR 817.86 are missing from the proposed Illinois regulations and that MSHA must approve plans for extinguishing coal processing waste fires. The Illinois proposed rules of July 30, 1980, contain acceptable counterparts to 30 CFR 816.86 and 817.86.

Environmental Protection Agency

73. The Environmental Protection Agency (EPA) (ARN: ILL-0099) noted that the Illinois State Program did not, as required by 30 CFR 731.14(c), contain the Illinois Attorney General's opinion stating that Illinois has the legal authority to implement, administer and enforce its program. However, on June 16, 1980, Illinois submitted the required Attorney General's opinion.

74. EPA (ARN: ILL-0099) commented that the Illinois program submittal (Vol. I, Tab E) does not contain sufficient narrative for the public to understand the coordination system between agencies, as required by 30 CFR

731.14(e). The Secretary agrees that the narrative must be clarified. (See Finding 31.1)

75. EPA (ARN: ILL-0099) argued that the State has not clearly demonstrated that it has personnel qualified to review reported levels of toxic materials and other pollutants, and to determine appropriate permit limits under the Clean Water Act as required under 30 CFR 816.42(a)(7) and 30 CFR 780.18(b)(9). Findings 31.1 through 31.6 point out deficiencies in staffing and funding.

76. EPA (ARN: ILL-0099) commented that Volume II, Tab I, submitted in response to 30 CFR 731.14(g)(9), which requires coordination of permit issuance with other State, Federal and local agencies, should specifically mention coordinating the issuance of permits with the Illinois Environmental Protection Agency (IEPA). The Illinois submittal of July 30, 1980 (Volume 10, Tab K) includes reference to IEPA but clarification is still needed. *See* Finding 31.

77. EPA (ARN: ILL-0099) commented that proposed Illinois rule 1784.14(b)(2), which requires reclamation plans to include water treatment plans and which refers to Parts 1810-1828 of the Illinois regulations, should be accompanied by the exact wording of those provisions to aid reviewers. The Secretary believes that it is sufficient for the State to incorporate Parts 1810-1828 by reference, especially since these parts are included in the same volume.

78. EPA (ARN: ILL-0099) commented that proposed Illinois regulation 1816.41(c) which contains general requirements for preserving the hydrologic balance, differed from the corresponding Federal rule and needed additional explanation. Proposed regulation 1816.41(c) submitted July 30, 1980, is consistent with the Federal rule.

79. EPA (ARN: ILL-0099) noted that the Illinois program provided no requirement for detention time for sedimentation ponds. The requirement for a 24-hour detention time for sedimentation ponds, 30 CFR 816.46(c) and 817.46(c), has been suspended and cannot be required at this point. OSM will reconsider and repropose new requirements (44 FR 77453) (1979).

80. EPA (ARN: ILL-0099) commented that the Control Measures listed in Section 1817.95(b) of the State regulations, which references 30 CFR 817.95(b), is less stringent because it uses the language "may include" in place of "shall include." Also, the Illinois language allows the owner/operator the option of deciding for himself whether an activity should not be controlled, especially where two or more techniques of control are needed. This section has been remanded and cannot be required at this time. OSM will reconsider and repropose new requirements (45 FR 51547 (1980)).

81. EPA (ARN: ILL-0099) noted that section 1816.81(b) was inconsistent with 30 CFR 816.81(b). The State's original submittal omitted important conditions that had to be met before the regulatory authority could approve the disposal of coal processing waste from outside the permit area in the permit area. The Secretary believes this omission has been corrected in the July 30, 1980, resubmittal and that further changes are not needed.

82. EPA (ARN: ILL-0099) commented that Illinois proposed regulation 1817.12(a) does not require the regulatory authority to approve underground mining beneath or adjacent to streams or impoundments and to determine that subsidence will not cause material damage to water bodies or streams. Also, it does not require the applicant to correct damage or prevent additional subsidence. The EPA citation of the Illinois regulation appears to be in error. Section 1817.126(a) seems to be more applicable to the comment. The State appears to have corrected this problem in its July 30, 1980, resubmittal.

Public Comments

The following acronyms were used to identify commenters: Illinois South Project (ISP); Village of Catlin, Illinois (VCI); Citizens for the Preservation of Knox County (CPKC).

83. *Section 1.02* A commenter (ARN: ILL-073) is concerned that Section 1.02 provides that Illinois will establish requirements that are no more stringent than SMCRA. The commenter suggested that the provision be revised to provide that Illinois law can be more stringent than SMCRA. SMCRA Section 505(b) allows, but does not require, State laws to be more stringent than counterpart SMCRA provisions. Therefore, Illinois Section 1.02 is consistent with SMCRA.

84. *Section 1.03(a)(25)* Illinois South Project (ISP) (ARN: ILL-0179, ILL-0170 and ILL-0148) commented that the definition of "toxic conditions and toxic materials" found in Section 1.03(a)(25) of the Illinois statue does not conform with the definition of "toxic forming materials" found in 30 CFR 701.5. The Secretary agrees with this comment. *See* Finding 30.3.

85. Section 6.07(b) ISP (ARN: ILL-0170, ILL-0179 and ILL-0182) commented that Section 6.07(b) is inconsistent with 30 CFR 808.11(a), because the regulatory authority has discretion in requesting the Attorney General to institute bond forfeiture proceedings. The Secretary disagrees. Section 6.07(b) authorizes the promulgation of rules which are no less stringent than the Federal regulations in describing the events and conditions upon which the Attorney General may be requested to institute bond forfeiture proceedings. Section 6.07(b) would allow Illinois to specify circumstances in which a bond would be forfeited that are more stringent than those required by the Federal regulations.

86. *Section 9.01(h)* ISP (ARN: ILL-0170, ILL-0148, ILL-0179 and ILL-0182) is concerned about whether the requirements of the state program can be made applicable to operations commenced prior to approval of the state program because Section 9.01(h) of the Illinois statute states that rules "shall not be made applicable to any operations prior to the effective date thereof." The Secretary disagrees with this comment because rules cannot apply to operations until such rules are effective. When they become effective, the rules will apply to all operations.

87. *Section 9.01* ISP (ARN: ILL-0148, ILL-0170 and ILL-0179) is concerned that Section 9.01 does not conform with 30 CFR 732.17 because an approval of the proposed regulation by the Director of OSM must be obtained as an amendment to the State program. The Secretary does not agree. 30 CFR 732.17 does not prevent the adoption of a regulation without OSM approval; instead it provides that the regulation shall not take effect for purposes of a state program until approved by OSM as a program amendment.

88. *Section 9.01* The Village of Catlin, Ill. (VCI) (ARN: ILL-0169E) commented that Section 9.01 does not appear to require the State to hold hearings on rulemaking. While the Secretary would not object to a provision requiring a hearing on each rulemaking procedure, Section 9.01(d) does appear to provide for public comment on any rulemaking process and, therefore, appears to be consistent with SMCRA.

89. *Section 506(a)—Section 2.01* ISP (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182) suggests that Section 2.01 is not sufficient to meet the requirements of Section 506(a) of SMCRA. SMCRA Section 506(a) specifies that no person may conduct surface mining operations unless the person has obtained a permit pursuant to an approved State program or pursuant to a Federal program within the time limits set forth. Illinois Section 2.01 is consistent with SMCRA in that it prohibits persons from engaging in mining operations without a permit.

90. *Section 507(e)—Section 2.04(a)* VCI (ARN: ILL-0169E) is concerned that Section 2.04 does not specify where in the county that a permit application will be available for inspection. However,

Illinois Section 2.04(a) provides that permit applications be available for public inspection at the county seat of each county containing land to be affected under the permit.

91. *Section 6.07(d)* Several commenters (ARN: ILL-0182B and ILL-0171) suggest that Section 6.07(d) limits the liability for bond forfeiture in a manner that is inconsistent with SMCRA and the Federal regulations. The Secretary agrees. See Finding 19.2.

92. *Section 510(b)—Section 2.08* VCI (ARN: ILL-0169E) commented that whereas SMCRA Section 510(b) requires written findings in support of permit decisions, Section 2.08 does not require Illinois to make written findings of fact with respect to comments supplied by the Interagency Committee and the county boards on permit applications. The Secretary disagrees. It appears that Section 2.08(c) does require that Illinois respond in writing to comments made by the Interagency Committee and the county boards before a permit may be issued. In addition, Section 2.08(b) requires written findings in support of permit decisions.

93. *Section 2.04(d)* VCI (ARN: ILL-0169E) is concened that Section 2.04(d) of the Illinois statute fails to require, as does SMCRA Section 513(b), that a newspaper advertisement of an informal conference be placed two weeks before the conference and that such informal conferences be held in the locality of the proposed mining. The Secretary agrees, but Illinois may by regulation cure this deficiency. See Findings 23.4 and 23.5.

94. *Section 513(b)—Section 2.04(d)* VCI (ARN: ILL-0169E) is concerned that Section 2.04(d) of the Illinois statute limits the rights of local government agencies to object to a permit application as required by SMCRA Section 513(b). The commenter is particularly concerned that it is unclear that a village or township would have the right to file written objections. The Secretary agrees. See Finding 23.2.

95. *Section 513(b)—Section 2.04* ISP (ARN: ILL-0148, ILL-0170 and ILL-0179) notes that the Illinois statute, unlike SMCRA Section 513(b), does not allow parties to an informal conference on a permit application access to the proposed application prior to the conference. The commenter questions whether such a defect may be remedied by the promulgation of Section 1786.14(b)(3) of the proposed Illinois rules. The Secretary agrees that the statutory section alone is inconsistent with SMCRA, but believes that an appropriate regulation would make it consistent. See Finding 23.6.

96. *Section 514(e), 519(h) and 525(a)(2)* ISP (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182) commented that although Section 8.09 authorizes the regulatory authority to issue subpoena as the section does not require the enforcement of a subponeas is required by SMCRA Sections 514(e), 519(h), and 525(a)(2). However, Sections 2.11(g) and 8.07(b) are consistent with their SMCRA counterparts, Sections 514(e) and 525(a)(2), in providing for issuance of subpoenas. Illinois Section 6.08(c), though, is inconsistent with SMCRA Section 519(h) in this regard. *See* Finding 23.12. Yet SMCRA nowhere provides for *enforcement* of subpoenas, a power usually not vested in administrative law judges. Therefore, the Illinois statute is not inconsistent with SMCRA in failing to provide for enforcement of subpoenas.

97. *Section 514(e)—Section 2.11(g)* VCI (ARN: ILL-0169E) commented that Section 2.11(g) of the Illinois statute does not require a verbatim record of all public hearings held as is required by SMCRA Section 514(e). As a result, the commenter asserts that hearings to designate land as unsuitable for mining, hearings to remove such designations, hearings on the revision of a mining permit, hearings in the revocation of a permit, and hearings on the release of a bond may not be covered under Section 2.11(g) of the Illinois statute. However, Illinois Section 8.09 requires a verbatim record to be prepared for most hearings held under the Illinois statute and Illinois, in its July 30, 1980, submission, states that its promulgated regulations will require transcripts of all hearings. The Secretary has found this to be acceptable. *See* Finding 23.7.

98. *Section 515(b)(3)* A commenter (ARN: ILL-0179) suggested that high walls should be allowed to remain since they do not contribute to erosion. The Secretary disagrees, because Section 515(b)(3) of SMCRA requires, with respect to surface coal mining operations, the elimination of all highwalls.

99. *Section 3.25(b)* ISP (ARN: ILL-0170, ILL-0179 and ILL-0182) suggests that Section 3.25(b) impermissibly provides an exception to the requirements for contemporaneous backfilling and precludes public participation a decision to allow such an exception by not requiring the decision to be made in the context of a permit approval or permit revision as is required by SMCRA. The Secretary has found that the Illinois provision, which allows extensions of the reclamation period where conditions have made timely reclamation "impossible," is consistent with the SMCRA requirement that reclamation be as contemporaneous as practicable. *See* Finding 14.11. In addition, 30 CFR 816.101 does not require that additional time for rough backfilling and grading be granted only as part of a permit or permit revision approval decision.

100. *Section 517(b)-Section 8.02* ISP (ARN: ILL-0170, ILL-0179 and ILL-0182) suggested that, since the regulatory authority may only impose monitoring requirements by adopting rules pursuant to Section 8.02, the regulatory authority may not impose the case-by-case monitoring requirements provided for in Section 517(b) of SMCRA. The Secretary believes that Section 8.02 provides the authority for the regulatory authority to adopt rules that would allow monitoring requirements to be instituted on a case-by-case basis.

101. *Section 517(b)(3), 704, and 521(c)* ISP (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182) is concerned that Sections 8.01(a) and 8.08 do not provide the same right of entry and sanctions against both an operator and a private landowner for refusal to allow entry as are found in SMCRA Sections 517(b)(3), 704, and 521(c). The Secretary has found Illinois Section 8.01(a) to be consistent with SMCRA (*See* Finding 18.1), and Section 8.08 is consistent with SMCRA Section 521(c). However, Illinois has not enacted a counterpart to SMCRA Section 704 and therefore does not provide for sanctions against operators or landowner for refusal to allow entry that is consistent with SMCRA. *See* Finding 27.1.

102. *Section 517(f)* ISP (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182) is concerned that the Section 8.01 limits the availability of documents to the public more than required by SMCRA Section 517(f). The Secretary has found that Illinois Section 8.01(c) does not provide for public availability of documents that is consistent with SMCRA Section 517(f); however, the proposed regulations would rectify this problem. *See* Finding 23.9.

103. *Section 517(g)-Section 9.06* ISP (ARN: ILL-0170, ILL-0179 and ILL-0181) is concerned that the conflict of interest provision found in Section 9.06 of the Illinois statute is limited in its application to employees of the Department of Mines and Minerals rather than including employees from other state agencies who may perform a function or duty in the program. The Secretary agrees that Section 9.06 is inconsistent with SMCRA Section 517(g) since it does not clearly apply to all employees of the state performing functions or duties under the Illinois Act. *See* Finding 24.

104. *Section 517(g)-Section 9.06* ISP (ARN: ILL-0179) suggests that all state employees performing direct or indirect

functions or duties under the Illinois act would be subject to the Section 9.06 of the Illinois statute, instead of merely the Directors of the Interagency Committee as is proposed in Tab L of the Illinois narrative. However, the narrative does not limit the applicability of the conflict of interest provisions to the Directors of the Interagency Committee; it only subjects them to the requirements imposed on other employees. The Secretary, though, is initially disapproving Illinois Section 9.06 because it applies only to employees of the Illinois Department of Mines and Minerals. *See* Finding 24.

105. *Section 517(h)* ISP (ARN: ILL-0179) is concerned that no Illinois statutory provision is comparable to SMCRA Section 517(h), which allows a person to notify the Secretary when that person believes that a violation exists at a mining site or that inspections are not adequate and complete. The Secretary agrees. *See* Finding 23.11.

106. *Section 519(d)(f)(h)* The commenters (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182) are concerned that basic elements of an adjudicatory hearing are not provided in Section 6.08. The Secretary agrees. *See* Finding 23.12.

107. *Section 520(b)(1)(B)-Section 805* ISP (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182) commented that Section 8.05 of the Illinois Act fails to allow any person to intervene as a matter of right in a suit by the State to require compliance with the statute as specified in Section 520(b)(1)(B) of SMCRA. However, Section 529(1)(B) provides for intervention as a matter of right only in suits in Federal courts. Illinois is not required to provide for such intervention in state courts as well.

108. *Section 520(c)-Section 8.05.* ISP (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182) suggests that Section 8.05 is deficient because it fails to provide for the intervention of the Secretary in a citizen's suit as is provided in Section 520(c)(2) of SMCRA. The Secretary agrees. *See* Finding 23.13.

109. *Section 520(d) and 525(e).* ISP (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182) suggests that the Sections 8.05(c) and 8.07(f) limit the award of attorney's fees and other costs and expenditures inconsistently with SMCRA Sections 520(d) and 525(e). The Secretary agrees. *See* Finding 23.14.

110. *Section 521.* ISP (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182) is concerned that an operator or permittee may seek immediate injunctive relief from a court based upon Section 8.06, instead of exhausting administrative remedies for review as is required by SMCRA Section 526(c). The Secretary agrees. *See* Findings 21.2 and 21.4.

111. *Section 522(e)(1)-Section 7.01.* ISP (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182) is concerned that Section 7.01 does not prohibit mining within those areas designated under SMCRA 522(e)(1). The Secretary agrees with this concern, but *see* Finding 22.3.

112. *Section 3.16(b).* ISP (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182) is concerned that it be made clear that Section 3.16(b) does not supersede the requirements of SMCRA Section 522(e)(4). The Secretary agrees. *See* Finding 22.1.

113. *Section 7.03.* ISP (ARN: ILL-0170) is concerned that the hearing on a petition to designate lands unsuitable for mining under Section 7.03 would be adjudicatory pursuant to Section 8.09 of the Illinois statute. The Secretary has found this provision inconsistent with the SMCRA requirement that such a hearing be a relatively informal legislative hearing. *See* Finding 23.19.

114. *Section 703.* ISP (ARN: ILL-0171) is concerned that no Illinois provision is the equivalent of Section 703 of SMCRA which concerns employee protection. The Secretary believes that SMCRA Section 703 provides sufficient protection of employees participating in the administration or enforcement of SMCRA and will not require state programs to contain comparable provisions.

115. *Section 707.* ISP (ARN: ILL-0179), and VCI (ARN: ILL-0169E) are concerned that the Illinois statute contains no severability clause that would preserve the remaining portions of the statute if any part of the statute is declared invalid. There is no indication in the Illinois submission that the entire Illinois statute will be rendered invalid if a single part is declared invalid. However, no conclusion as to the effect of the omission of a severability clause in the Illinois statute is possible at this time. *See* Finding 30.7.

The following comments [nos. 116 through 381] concern the proposed Illinois rules. A detailed discussion of the Illinois proposed rules will be sent in a letter to the State regulatory authority from the Director, OSM, and will be available in the administrative record at the locations specified under "Addressess" above.

116. *Rule 1701.5.* ISP (ARN: ILL-0170) and (CPKC) (ARN: ILL-0169B) are concerned that definitions of "essential hydrologic functions" and "Regional Director" are omitted from the Illinois proposed regulations. SMCRA, though, seeks to preserve the essential hydrologic functions of alluvial valley floors in arid or semiarid regions. No such reasons exist in Illinois and Illinois need not, therefore, define essential hydrologic functions. Illinois is not required to define Regional Director since Regional Directors are Federal officials defined in the Federal regulations.

117. *Rule 1701.5.* The commenter, (ARN: ILL-0169A) suggests the addition of a definition of the term "final decision" in Illinois proposed regulation 1701.5. The Secretary would not object to such a definition as long as it is not inconsistent with SMCRA.

118. *Rule 1701.5.* The commenter (ARN: ILL-0169) suggests the addition of the phrase "or is benefited by" to the definition of "person having an interest * * *" in Section 1701.5 of the proposed Illinois regulations. The Illinois regulation appears to be consistent with the definition of that term in 30 CFR 700.5, and the Secretary believes that definition appears to include the concept with which the commenter is concerned.

119. *Rule 1701.5.* CPKC (ARN: ILL-0169B) is concerned that the definition of "high capability lands" should be rewritten more objectively and should conform with the definition of "high capability lands" used by either the USDA or SCS. The term "high capability land" is not used in SMCRA or the Federal rules. Illinois may define and use the term in any manner it believes appropriate so long as its use does not cause the State's statute and regulations to be inconsistent with SMCRA and the Federal rules.

120. *Rule 1701.5* CPKC (ARN: ILL-0169A) believes that the definition of "valid existing rights" found in Section 1701.5 of the Illinois regulations should be amended to delete the phrase "coal is both needed" in subsection (a)(2)(ii). That portion of the definition is consistent with definition of "valid existing rights" found in 30 CFR 761.5.

121. *Rule 1701.5* ISP (ARN: ILL-0182) and CPKC (ILL-0169A) believe that subsection (c) the definition of "valid existing rights" found in Section 1701.5 of the Illinois regulations should be amended to delete the phrase "If an applicant claims valid existing rights." The Secretary agrees that subsection (c) of the proposed Illinois definition of valid existing rights would be inconsistent with the Federal regulations since it could allow a finding of valid existing rights even if the person had made no attempt, as of August 3, 1977, to obtain permits to mine.

122. *Rule 1701* ISP (ARN: ILL-0170) is concerned that the Illinois regulation do not contain the term "materially damage the quantity and quality of water". This term is defined by 30 CFR 701.5 with respect to alluvial valley floors. Since the alluvial valley floor provisions of

SMCRA apply only in arid and semiarid regions, none of which are in Illinois, a definition of this term is not required in Illinois.

123. *Rule 1701.5* ISP (ARN: ILL-0170) is concerned because the definition of the term "Director" in Illinois rule 1701.5 does not distinguish between the Director of the state agency and the Director of the Office of Surface Mining. The Secretary agrees that this distinction should be made.

124. *Rule 1701.5* CPKC (ARN: ILL-0169B) is concerned that the following terms defined in Illinois Rule 1701.5 need further clarification and more concise definition.

a. "Surface mining activities"

b. "Surface mining operations"

c. "Surface mining and reclamation operations" (the commenter is assumed to be referring to the term "surface coal mining and reclamation operations").

Illinois does not define "surface mining activities," but the Illinois definition of "surface mining operations," a term not found in the Federal regulations, is consistent with the Federal definition of "surface mining activities." The Illinois definition of "surface coal mining and reclamation operations" is consistent with the definition of the term in 30 CFR 700.5.

125. *Rule 1701.5* CPKC (ARN: ILL-0169B) is concerned that "agricultural activities" and "agricultural use" have varied meanings and Section 1701.5 of the Illinois regulations is unclear as to their meaning. The Illinois definition of "agricultural use" is consistent with the Federal definition. Illinois need not define "agricultural activities," since that term is used in the Federal regulations only with respect to alluvial valley floors. *See* comment 122.

126. *Rule 1701.5* CPKC (ARN: ILL-0169B) and VCI (ARN: ILL-0169E) are concered that Illinois Rule 1701.5 does not contain adequate definitions of the following terms. The Secretary's responses are as follows:

a. "Acid drainage"—the proposed Illinois rule of July 30, 1980, contains the same definition as the Federal rules.

b. "Affected area"—the definition in the proposed Illinois rule does not include the land or water located above underground mine workings as required by the Federal rule.

c. "Best technology currently available"—the definition in the proposed Illinois rule of July 30, 1980 is consistent with the Federal rule.

d. "Coal exploration"—the definition in the proposed Illinois rule of July 30, 1980 is consistent with the Federal rule.

e. "Director"—see comment 123.

f. "Intermittent stream"—the definition in the proposed Illinois rule contains the conjunctive "and" rather than the alternative "or", so that it appears less stringent than the Federal rule. See comment 24.

g. "Toxicforming materials"—the proposed Illinois rule submitted July 30, 1980 is consistent with the Federal rule.

h. "Valid existing rights"—the proposed Illinois definition of valid existing rights provides that such rights "are not limited to" the circumstances found in the Federal rule and the Illinois definition adds a subsection (c), not found in the Federal definition, that would allow a finding of valid existing rights where no attempt had been made to obtain permits to mine prior to August 3, 1977. This is inconsistent with the Federal rule.

i. "Permit term"—the Illinois definition in the proposed rules of July 30, 1980 is consistent with SMCRA.

127. *Rule 1701.5* CPKC (ARN: ILL-0169A) suggests that the definition of "public roads," found in Section 1701.5 of the proposed Illinois regulations, should include the right-of-way so that it would be consistent with the description of public road as it is used in the regulations. The Secretary believes this change is unnecessary since Illinois statute Section 7.01(b) prohibits mining within 100 feet of the outside right-of-way line of any public road.

128. *Rule 705.18(c)—Section 1705.18(c)* CPKC (ARN: ILL-0169B) suggests that Illinois Rule 1705.18(c) be amended to include the phrase "including dismissal" in the remedies for violation of the conflict of interest provision. The Secretary finds that, while the suggested language would clarify the available remedies, the Illinois language appears to be consistent with 30 CFR 705.18(c). The existing language would allow the regulatory authority to take the administrative action suggested by the commenter.

129. *Rule 732.15(b)(10)* ISP (ARN: ILL-0053 and ILL-0179) expressed concern that Illinois did not allow for public comment before submitting its program to the Secretary. The Secretary disagrees. *See* Finding 23.23.

130. *Rule 731.14(j)* ISP (ARN: ILL-0170 and ILL-0179) expressed concern that the Illinois program submitted in response to 30 CFR 731.14(j) reflects inadequate staffing. The Secretary agrees. *See* Finding 31.5.

131. ISP (ARN: ILL-0179) asked whether emergency rules adopted by Illinois as part of its program would meet the requirements for program approval, since the time limitations on emergency rules would inhibit public participation. The Commenter also asked whether Illinois must make the changes suggested in the Secretary's Findings. Federal Rule 732.15(b)(10) requires public participation in the adoption of a state program. Section 5.02 of the Illinois Administrative Procedure Act, which allows emergency rules only to deal with threats to the public interest, safety and welfare, and which allows these rules to remain effective only 150 days, is consistent with the provisions of 43 CFR Part 14, which governs OSM rulemaking. Thus, emergency rules may form the basis for program approval.

The Secretary identifies in this notice concerns in the proposed program submission that the State must address in its resubmission. Before the State program can be finally approved, the State must assure the Secretary that the identified concerns will not prevent the State from conducting a State program in accordance with the requirements of SMCRA.

132. ISP (ARN: ILL-0170) suggested that the Illinois Environmental Protection Agency be given inspection and enforcement responsibilities and capabilities in the area of explosives use. The Secretary would not object to the Illinois Department of Mines and Minerals delegating certain functions to another state agency as long as the agency can conduct that portion of the program in accordance with SMCRA.

133. A commenter (ARN: ILL-0169) pointed out that Illinois did not organize its law consistently with the scope, objectives, authority, responsibilities and definitions of the Federal regulations. While 30 CFR 732.15(b) requires the State to have laws to implement, administer and enforce the Federal provisions, a State need not organize its rules in the same manner as the Federal regulations as long as the substantive provisions are included in the State rules. Deficiencies that have been identified in the proposed Illinois rules are discussed in a letter to the regulatory authority from the Director, OSM.

134. *Rule 1760.4* CPKC (ARN: ILL-0169A) suggests that a date be set by which Illinois must have established a process, including a data base, for making decisions on designating lands unsuitable for surface mining. A date is set, in effect, by SMCRA Section 522(a), which requires that a planning process for decisions on designation of lands unsuitable for surface mining, including a data base, be instituted prior to the approval of a State program.

135. *Rule 1761.11(c)* ISP (ARN: ILL-0148) and the Illinois Archeological Survey (ARN: ILL-0179) have questioned the extent of the prohibitions in the proposed Illinois regulations on mining

near parks and historic places. Federal regulation 761.11(c) has been suspended as it applies to places eligible for listing on the National Register of Historic Places (44 FR 67942, November 27, 1979). The Illinois proposed rule of July 30, 1980, is consistent with the Federal rule.

136. *Rule 1761.11* Illinois Archeological Survey (ARN: ILL-0179) expressed concern about interpretation of designating areas unsuitable for surface coal mining in questioning whether sites must be already on the National Register of Historic Sites to be designated unsuitable for surface coal mining. This is consistent with the Federal rules in that 30 CFR 761.11(c) and .12(f)(1) has been suspended by the Secretary insofar as these provisions affect places "eligible for listing on" the National Register of Historic Places [44 FR 67942 [1979]].

137. *Rule 1761.11(e)* ISP (ARN: ILL-0148 and ILL-0179) expressed concern that Illinois' rule, which prohibits mining within 300 feet of occupied dwellings and also dwellings under construction or contracted for at the time of public notice, would provide an exemption to the requirement of a 300 foot buffer zone around occupied dwellings. The Secretary disagrees, since the proposed Illinois rule protects not only occupied dwellings, but also dwellings under construction or contracted for.

138. *Rule 1761.11(h)* Several commenters (ARN: ILL-0148, ILL-0169A and ILL-0182), objected to the proposed Illinois rule, which allows reclamation operations to take place within areas designated unsuitable, because they felt it allowed a loophole for related operation impacts which are considered to be in the reclamation phase. The Secretary has interpreted SMCRA Section 522 as allowing exploration operations on lands designated unsuitable. 30 CFR 762.14. Reclamation of such operations is consistent with the intent of SMCRA and the Federal rules.

139. *Rule 1761.12(f)(1)* ISP (ARN: ILL-0148 and ILL-0170) a commenter objected to the proposed Illinois rule which would protect only "publicly owned" places included on the National Register of Historic places. *See* Comment 135.

140. *Rule 1762.11(b)(1)* (The commenter appears to have incorrectly cited Section 1762.11(a)(1)) CPKC (ARN: ILL-0169B) suggested that additional language and correction be made to proposed Illinois Rule 1762.11(b)(1) by changing "incompatible" to "compatible" and adding the phrase "existing at the time the petition is filed" regarding land use plans and programs. The Secretary disagrees. The proposed Illinois rule is consistent with 30 CFR 762.11(b)(1).

141. *Rule 1762.11(b)(1)* CPKC (ARN: ILL-0169A) suggested the term "existing" be deleted from Illinois Rule 1762.11(b)(1) which sets forth criteria for designating lands as unsuitable for surface coal mining. The Secretary disagrees. The Illinois rule appears to be consistent with 30 CFR 761.11(b)(1).

142. *Rule 1764.13(b)* ISP (ARN: ILL-0148 and ILL-0170) and CPKC (ARN: ILL-0169B) commented that Illinois Rule 1764.13(b) omits the words "only" and "need" from the requirements of information required in a petition to designate an area unsuitable for surface coal mining operations, thereby resulting in the possibility of placing additional burdens on a petitioner not provided in the Federal rule. The Secretary believes that Illinois has corrected this provision in its July 30, 1980, proposed rules.

143. *Rule 1764.13(b)(4)* ISP (ARN: ILL-0148) is concerned that while the Federal rule requires the petitioner's name, address, and telephone number, Illinois has added "the name or names of other persons represented by the petition." The Secretary believes that the proposed Illinois rule is consistent with the Fedeal rule.

144. *Rule 1764.15(a)(5)* CPKC (ARN: ILL-0169A) objected to Illinois' use of the term "baseless" in determining that a petition to have an area designated as unsuitable for surface coal mining operations is incomplete or frivolous. Illinois deleted this term in its proposed rules submitted on June 16, 1980.

145. *Rule 1764.(b)(1)* ISP (ARN: ILL-0148 and ILL-0170) and CPKC (ARN: ILL-0169) suggested that the Illinois Institute of Natural Resources should be allowed to approve contract work, if needed. The Secretary declines to suggest how internal relationships between the Institute and the Department of Mines and Minerals should be conducted.

146. *Rule 1764.15(b)(1)* Several commenters (ARN: ILL-0169 and 0170) are concerned that while 30 CFR 764.15(b)(1) provides for the circulation of copies of the completed petition to different entities, Illinois limits referral of the complete petition to its Institute of Natural Resources. The Secretary disagrees in that Illinois Rule 1764.15(b)(3) appears to contain provisions comparable to 30 CFR 764.15(b)(1).

147. *Rule 1764.(b)(1)* The commenter (ARN: ILL-169A) suggested a deletion of language which states that the Land Report submitted by the Illinois Institute of Natural Resources on a petition to designate lands unsuitable for mining shall not contain a recommendation as to whether the petition should be granted or denied. While the Secretary would not object to the adoption of the commenter's suggestion, the suggestion is not required for the Illinois provision to be consistent with 30 CFR 764.15(b)(1).

148. *Rule 1764.15(b)(3)* CPKC (ARN: ILL-0169A) suggests that the term "interest," as used in proposed Illinois Rule 1764.15(b)(3) should be defined. The rule in question refers to the circulation of copies of the petition to have an area designated as unsuitable for surface coal mining operations to, and the requests for submissions of relevant information from, interested agencies and persons. Such a definition is not required by the Federal rules.

149. *Rule 1764.17(e)* ISP (ARN: ILL-0148 and ILL-0170) the commenter disagreed with the phrase "prepare a detailed statement" and suggested instead "authorize the preparation of a Land Report." The use of phrase "prepare a detailed statement" by Illinois is consistent with 30 CFR 764.17.

150. *Rule 1764.19(a)(3)* ISP (ARN: ILL-0148) the commenter expressed concern for use of the phrase "detailed statement" in proposed Illinois Rule 1764.19(a)(3), because it would be possible for Illinois to prepare its own report separate from the Institute of Natural Resources and base its decision on its report without considering the Land Report. While it is true that the Illinois provisions may allow the preparation of two reports, Illinois would be required to consider all information relating to the designation petition in arriving at a decision. The Land Report would be considered under proposed Rule 1764.19(a)(2).

151. *Rule 1764.19(c)* CPKC (ARN: ILL-0169B) noted Illinois Rule 1764.19(c) cites the Federal rather than State statute and rules. The proposed rule of July 30, 1980 has been corrected.

152. *Rule 1764.23(a)* ISP (ARN: Ill-0148 and ILL-0170) suggested that this section be amended to make the entire information and data base system available to the public at two central locations. The Illinois rule is consistent with 30 CFR 764.23(a). The Secretary cannot require the State to do more than the Federal rules require.

153. *Rule 1764.23* ISP (ARN: ILL-0148 and ILL-0170) suggested that language be added to the Illinois rule that would require publishing of an information booklet concerning procedures for designating lands unsuitable. This requirement is not necessary for compliance with the Federal regulations.

154. *Rule 1764.23(c)* ISP (ARN: ILL-0170) suggested modification of proposed Illinois Rule 1764.23(c) to read

(modifiers underscored) "make the *entire* information and data base system developed under Section 1764.21 available to the public at *2 central locations* for inspection free of charge and for copying at reasonable cost." This is not required for compliance with the Federal rules.

155. *Rule 1770.12* ISP (ARN: ILL-0148 and ILL-0170) requests that language be added to Illinois Rule 1770.12 that would incorporate Sections 1776.11(e), Part 1785 and Part 1786 to insure that exploration permits would be also included in the required review of the Illinois Committee on Surface Mining Control and Reclamation. While the Secretary would not object to the review, this change is not required for compliance with the Federal rules.

156. *Rule 1771.11(a)* ISP (ARN: ILL-0148 and ILL-0170) notes that the Illinois reference to Rule 1771.13(b) is not valid in Illinois Rule 1771.11(a), since Illinois does not have a Rule 1771.13(b). The cite is not necessary, but the provision does not appear to be inconsistent with the Federal rules since the substantive provisions of 30 CFR 771.13(b) appear in Illinois Rule 1771.11(a). The cite the Rule 1771.13(b) is not contained in the July 30, 1980, version of Rule 1771.11(a).

157. *Rule 1771.21(b)* ISP (ARN: ILL-0148) expressed concern that Illinois has not allowed enough time in its review process of permit applications to allow required public participation and response. Illinois has the discretion to establish deadlines for filing permit applications and revisions, and the Secretary believes that sufficient time has been provided for public participation.

158. *Rule 1771.21(b)(3)* Several commenters (ARN: ILL-0148, ILL-0169A and ILL-0169B) suggest deletion of language in the phrases (suggested deletion underscored): "*significant* revisions must be submitted 180 days before" and *"Insignificant revisions may be approved after review by the regulatory authority."* Further, the commenter pointed out that the term "insignificant revision" is not used in the Federal or State Act. The language of the Illinois rules is consistent with SMCRA Section 511(a)(2), which implies that insignificant revisions need not be subject to notice and hearing requirements.

159. *Rule 1771.25(b)(4)* CPKC (ARN: ILL-0169B) suggested clarification of the term "lands not affected" used in Illinois Rule 1771.25(b)(4) by adding the phrase "totally undisturbed by any facet of mining." The Rule provides permit fee credits for fees already paid for permits issued under the SMCRA Section 502 interim program. This change was believed to be needed because the definition of "affected lands" in Part 1701 is vague. Illinois Rule 1771.25(b)(4) is not inconsistent with SMCRA Section 507(a), which sets only an upper limit on permit fees.

160. *Rule 1776.2* CPKC (ARN: ILL-0169B) noted that Illinois does not reference the Federal Act and regulations in this section. The State has correctly referenced its own act and rules and is not required to refer to the Federal Act or regulations.

161. *Rule 1776.11(b)* Several commenters (ARN: ILL-0148, ILL-0170 and ILL-0169B) pointed out that Illinois does not require that a notice of intent to explore and remove less than 250 tons of coal shall include a map of the exploration areas. The Secretary agrees that this omission makes the Illinois proposed rule inconsistent with the Federal rule.

162. *Rule 1776.12(a)(5)* ISP (ARN: ILL-0148 and ILL-0170) and CPKC [ARN: ILL-0169B] pointed out that Illinois Rule 1776.12(a)(5) does not require applications for coal exploration to include a coal exploration map with the detail called for in 30 CFR 776.12(a)(5). In proposed rules submitted July 30, 1980, Illinois included a map requirement consistent with the Federal rule.

163. *Rule 1776.13(a)* ISP (ARN: ILL-0148 and ILL-0170) was concerned as to when the 10 day period for approval of a permit would commerce. Proposed Illinois Rule 1776.13(a) submitted July 30, 1980, states that approval shall occur within 10 days of the close of the public comment period. This is consistent with 30 CFR 776.13(a), which requires such decisions within a reasonable time.

164. *Rule 1776.12(b)(1)* CPKC (ARN: ILL-0169B) suggested that public notice of coal exploration permits should be given as required by proposed Illinois Rule 1786.11. Proposed Illinois Rule 1776.12(b)(1) is consistent in this regard with 30 CFR 776.12(b)(1).

165. A commenter (ARN: ILL-0169) expressed concern that local people will not be aware of mining permits. In proposed Rule 1786.11, Illinois provides for public notice of permit applications, including advertisements in local newspaper that is consistent with 30 CFR 786.11.

166. *Rule 1778.14(d)* ISP (ARN: ILL-0148 and ILL-0170) and CPKC (ARN: ILL-0169B) stated that proposed Illinois Rule 1778.14(d), which requires information about the applicant's financial condition to provide assurance that no further forfeiture would occur, is not relative to nor needed as compliance information. This language is consistent with the Federal regulations.

167. *Rule 1778.15(a)* Several commenters (ARN: ILL-0148 and ILL-0169) suggested that language added in Illinois Rule 1778.15(a) in which the Illinois Department of Mines and Minerals disclaimed liability for adjudicated right-of-entry problems not be accepted since this situation is adequately handled elsewhere in the State's Act and rules. The added language does not conflict with Federal requirements.

168. *Rule 1778.19(e)* ISP (ARN: ILL-0148) suggests adding language to Rule 1778.19(1c) to require that if grandfathering of prime farmland has been granted, then the applicant should include a map showing exempted acres and a copy of the opinion and order issued by the regulatory authority. While the Secretary would not object to the requirement, the provision is not required by SMCRA or the Federal rules.

169. *Rule 1779.6* Commenter (ARN: ILL-0172) expressed concern that Illinois Rule 1779.6 is a "loophole" because it allows for "predictive information" based upon "expert opinion extrapolation" from known data about "similar areas." The Secretary agrees that the Illinois provision is inconsistent with the Federal regulations to the extent it would allow permit applicants to substitute extrapolations from information about "similar" areas without any testing of the actual area to be mined.

170. *Rule 1779.15(a)* A commenter (ARN: ILL-0172) noted that this section adds the term "when applicable" to the Federal requirement for a description of groundwater hydrology. The commenter contends that this makes the Illinois rule less stringent than the Federal rule. The Secretary believes that this deficiency has been corrected in the State's July 30, 1980 proposed rules.

171. *Rule 1779.15(c)* ISP (ARN: ILL-0148 and ILL-0170) and another commenter, (ARN: ILL-0172), were concerned that the Illinois Rule 1779.15(c), which appears to establish an exemption where a "significant aquifer" does not occur, is less stringent than 30 CFR 779.15. The Secretary believes Illinois Rule 1779.15(c) has been acceptably modified in the State's July 30, 1980 proposed rules.

172. *Rule 1779.16(b)(2)(v)* ISP (ARN: ILL-0148 and ILL-0170) objected to the omission of "dissolved iron" from the water quality data specified in rule 1779.16(b)(2)(v). The Secretary believes this rule has been modified to be consistent with 30 CFR 779.16(b)(2)(v) in the State's July 30, 1980 proposed rules.

173. *Rule 1779.20* Several commenters (ARN: ILL-0148, Ill-0170 and ILL-0172)

suggested adding new language regarding fish and wildlife resource information. Because 30 CFR 779.20, which pertained to fish and wildlife resource information, has been suspended, the Secretary cannot require any specific standard at present. [*In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, February 26, 1980.]

174. *Rule 1779.21(a)* A commenter (ARN: ILL-0172) suggested that this section was inconsistent with 30 CFR 779.21(a). The Illinois rule on soil survey information tracks the Federal rule and therefore is consistent with it.

175. *Rule 1779.22(a)(1), 1778.22(a)(1), 1816.133(b)(2), and 1817.133(b)(2)* CPKC (ARN: ILL-0169B) proposed changing "the anticipated date of beginning the proposed operation" and "the beginning of mining" to "the date of acquisition" for the above sections in order to make the provisions consistent and provide a definition of historical use of land. This change is not required for compliance with the Federal rules.

176. *Rule 1779.24(i)* ISP (ARN: ILL-0170) Stated that "or eligible for which listing" should be added to Illinois Rule 1779.24(i) concerning boundaries to be shown on permit application maps. The added language is not required for compliance with the Federal rules.

177. *Rule 1779.25(k)(4)* ISP (ARN: ILL-0148 and ILL-0170) commented that the additional language in Illinois rule 1779.25(k)(4) with regard to slope measurement techniques is inadequate. The Secretary agrees that, since Illinois allows medium intensity soil maps or contoured aerial photos in lieu of specific slope measurements, the Illinois proposed rule is inconsistent with the Federal provision.

178. *Rule 1779.27(b)(1) and 1783.27(b)(1)* CPKC (ARN: ILL-0169B) objected that Illinois Rules 1779.27(b)(1) and 1783.27(b)(1) would negate prime farmland criteria for mining reclamation if the land had not been historically used for cropland. The Secretary believes that the Illinois provisions appear consistent with the Federal regulations.

179. *Rule 1779.27(b)(5)* Two commenters (ARN: ILL-0148, ILL-0170 and ILL-0172) objected to the language in Illinois Rule 1779.27(b)(5) which would provide an exemption to prime farmland restoration requirements. The Secretary believes that Illinois has corrected this deficiency in its July 30, 1980, proposed rules.

180. *Rule 1780.6* Commenter (ARN: ILL-0172) expressed concern that Illinois Rule 1780.6 provides a "loophole" in that the proposed rule allows for "predictive information" based upon "expert opinion extrapolation" from known data about "similar areas." The Secretary agrees that the Illinois provision is inconsistent with the Federal regulations to the extent it would allow permit applicants to substitute extrapolations from information about "similar" areas without any testing of the actual area to be mined.

181. *Rule 1784.14(a)(3)* ISP (ARN: ILL-0171) commented that Illinois cites its rule 1817.54. The proposed Illinois rules do not contain a Section 1817.54. However, 30 CFR 817.54 has been remanded. [*In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144; May 16, 1980]. Therefore, the Secretary cannot require the Illinois rules to contain a corresponding provision and the reference to Section 1817.54 is in error.

182. *Rule 1784.14(b)(2)* A commenter (ARN: ILL-0172) suggests that the "and" after the second comma should be changed to "of" in Section 1784.14(b)(2), which concerns a treatment plan to protect the hydrologic balance. The proposed Illinois regulation appears to be consistent with 30 CFR 784.14(b)(2).

183. *Rule 1784.20(c)(4)* ISP (ARN: ILL-0148 and ILL-0170) expressed concern with the reference to Section 1817.124 in Illinois Rule 1784.20(c)(4), which concerns non-cancellable insurance. The Secretary believes that Illinois has corrected this deficiency in its July 30, 1980, proposed rules.

184. *30 CFR 785 and 823* Several commenters (ARN: ILL-0170 and 0269D) provided suggestions on the re-adoption of regulations that have been suspended. [*In Re: Permanent Surface Mining Regulation Litigation* No. 79-114, February 26, 1980 and No. 79-1144, May 16, 1980]. These suspended provisions will not be required for program approval at this time. Therefore, they do not provide a basis for the Secretary's findings at present.

185. *Rule 1785.13* CPKC (ARN: ILL-0169A) appears to express a concern that an entire county or township acreage cound be included in experimental practice. Illinois Rule 1785.13(e)(3), 30 CFR 785.13(e)(3) and SMCRA Section 711(ii) specify that the experimental practice may be no larger than is necessary to conduct the experiment.

186. *Rule 1785.13(e)(5)(i)* CPKC (ARN: ILL-0169A) suggested additional language that would allow public participation in the review process in the middle of the permit term. While the Secretary would not object to this provision, the provision is not required.

187. *Rule 1785.17(a)* A commenter (ARN: ILL-0169A and ARN: ILL-170) noted that Illinois added language "on which drilling for blasting, blasting, and overburden removal to the coal seam to be mined occurs," concerning the scope of the prime farmlands provisons. The Secretary believes that Illinois has corrected this deficiency in its July 30, 1980, proposed rules.

188. *Rule 1785.17(a)* ISP (ARN: ILL-0170) suggests that Illinois Rule 1785.17(a) be amended to limit revisions and renewals to areas already under permits issued prior to August 3, 1977, and then not include additional land. The "revision and renewal" language in Illinois Rule 1785.17(a) appears to be consistent with SMCRA Section 510(d)(2).

189. *Rule 1785.17(a)* Several commenters (ARN: ILL-0148, ILL-0169, ILL-0179 and ILL-0182) were concerned about the implications of Illinois' use of the term "mining" in the prime farmlands permit application section. Proposed Illinois Rule 1785.17(a) submitted July 30, 1980, refers to "surface coal mining and reclamation operations" instead of "mining." However, while the wording of the proposed Illinois rule is consistent with 30 CFR 785.17(a), Illinois excludes surface impacts of underground mining from its definition of "surface coal mining and reclamation operations," rendering Rule 1785.17(a) inconsistent with the Federal rule.

190. *Rule 1785.17(b) and 1823.14(c)* VCI (ARN: ILL-0169E) pointed out that proposed Illinois Rules 1785.17(b) and 1823.14(c) do not require measuring of the moist bulk density of each major soil horizon of prime farmland soils as do the Federal rules. This specific requirement has ben remanded and the Secretary cannot require such provisions at present. 44 FR 77455, December 31, 1979.

191. *Rule 1785.17(b)(1)* CPKC (ARN: ILL-0169B) suggested that a requirement for bulk density data be added to the permit application requirements for prime farmlands. The Illinois rule tracks the corresponding Federal rule and, therefore, the Secretary cannot require that the State add the suggested requirement. *See also* comment 190.

192. *Rule 1785.17(b)(3)* Commenters (ARN: ILL-0148 and ILL-0169) expressed concern with the meaning of proposed Illinois Rule 1785.17(b)(3), which requires separate stockpiling of topsoil "from the spoil" on prime farmland. The language used in this rule is unclear; however, the Secretary believes that Illinois has corrected this deficiency in its July 30, 1980, proposed rules.

193. *Rule 1785.17(b)(6).* CPKC (ARN: ILL-0169B) requested that the term "reasonable time" in proposed Illinois Rule 1785.17(b)(6) be defined or that

guidelines be provided. This rule requires permit applications for prime farmlands to demonstrate that higher or equivalent crop yields will be achieved "within a reasonable time." Illinois' rule is consistent with the Federal rule, but appears to be inconsistent with Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. Chap. 127, Part 1001), because it fails to include the standards by which the agency will determine what is a reasonable time.

194. *Rule 1785.17(b)(7)* CPKC (ARN: ILL-0169A) suggested adding the phrase "an unmined soil" in determining current estimated yields for prime farmlands in proposed Illinois Rule 1785.17(b)(7). This additional language is not required in order for the Illinois rule to be consistent with the Federal regulations.

195. *Rule 1785.17(b)(7)* Commenters (ARN: ILL-0148 and ILL-0169) suggested that the Illinois language regarding the determination of estimated yields for prime farmland is a "state window" item. The Illinois rule is consistent with the Federal provisions.

196. *Rule 1785.17(b)(8)* Several commenters (ARN: ILL-0169B and ILL-0169D) are concerned with the deletion of target yields as a standard for revegetation success in proposed Illinois Rule 1785.17(b)(7). The Secretary cannot require that current estimated yields under a high level of management be used as the "target" yield for determining success of revegetation. *In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, May 16, 1980. Therefore, the proposed Illinois rule is consistent with Federal requirements.

197. *Rule 1785.17(c)* ISP (ARN: ILL-0148 and ILL-0171) stated that language in the proposed Illinois rule that places deadlines on the U.S.D.A for commenting on prime farmland permit applications should not be allowed. The Federal rule requires consultation with the Secretary of Agriculture prior to issuance of permits for areas including prime farmlands. To the extent that the deadline for U.S.D.A comments would allow the State to make approvals without the required consultation, the Illinois rule is inconsistent with SMCRA and the Federal rules.

198. *Rule 1785.17(d)(1)* Several commenters (ARN: ILL-0148, ILL-0182A, ILL-0169 and ILL-0169E) objected to the phrase "higher and better use" as an alternative to cropland as the postmining and use for prime farmland in proposed Illinois Rule 1785.17(d)(1). The Secretary believes that Illinois has corrected this provision in its July 30, 1980, proposed rules.

199. *Rule 1785.17(e)(1)(i)* ISP (ARN: ILL-0182A, ILL-0148 and ILL-0150) and CPKC (ILL-0169B) requested that the exemption from the prime farmland standards for surface facilities and/or waste piles be stricken from the Illinois rule. One commenter supported this exemption. The Secretary believes this exemption is inconsistent with the Federal rules, because the Illinois rule would not clearly allow exemptions only for surface facilities that are actively used over extended periods and affect a minimal amount of land.

200. *Rule 1785.17(e)(1)(iv)* CPKC (ARN: ILL-0169B) suggested that a substitution of the term "intends" in Illinois Rule 1785.17(e)(1)(iv) for the term "demonstrate" in 30 CFR 785.17 with regard to best technology available should not be allowed. Rule 1785.17(e) concerns exemptions from prime farmland requirements. It has no counterpart in the Federal rules, and is not acceptable. *See* Comment 199.

201. *Rule 1785.17(e)(2)* ISP (ARN: ILL-0182A and ILL-0148) objects to the exemption from the prime farmland requirements of small irregular farm units in Illinois Rule 1785.17(e)(2). Illinois has not included this exemption in its July 30, 1980, proposed rules.

202. *Rule 1786.11(a)* ISP (ARN: ILL-0171) suggests that the newspaper advertisement of the filing of an application be made after the regulatory authority determines that the application is complete. As the commenter notes, Rule 1786.11(a) of the proposed Illinois regulations is consistent with 30 CFR 786.11(a), so that the State is not required to make the suggested revision. The present Illinois proposed regulation would allow the public to have input in the regulatory authority's determination on whether the application was complete.

203. *Rule 1786.11(b)(4)* ISP (ARN: ILL-0171) suggests that the notice required to be sent to governmental and other entities under proposed Illinois Rule 1786.11(c) would not have to indicate where comments can be submitted, as do 30 CFR 786.11(b)(4) and 786.11(c). Proposed Illinois Rule 1786.11(c), submitted by Illinois on June 16, 1980, includes provisions comparable to those of 30 CFR 786.11(b) and which the Secretary believes will ensure that the entities covered by Rule 1786.11(c) will know where to submit comments.

204. *Rule 786.11(c)—Rule 1786.11(c)* ISP (ARN: ILL-0171) noted that Illinois Rule 1786.11(c) fails to require that notice of the filing of a permit application be sent to all the entities specified in 30 CFR 786.11(c). As the Illinois Attorney General (Vol. 7, p. 49) notes, the proposed Illinois rule does specify some specific State agencies that are to receive notice. However, it does not ensure that all the entities specified in 30 CFR 786.11(c) will receive the proper notice. The Secretary believes that Illinois has corrected this deficiency in its July 30, 1980, proposed rules.

205. *Rule 1786.11(c)* ISP (ARN: ILL-0148 and 166.0170) suggests that notice of request for an alternative postmining land use be included in the notice of the filing of a permit application set forth in proposed Illinois Rule 1786.11(c). While this amendment would not be required for the rule to comply with 30 CFR 786.11(c), the Secretary agrees that the change would be beneficial in combining the notices required by 30 CFR 816.133(c) and 30 CFR 786.11(c).

206. *Rule 1786.11(e)(1)* ISP (ARN: ILL-0171) suggests additional language to proposed Illinois Rule 1786.11, that would require a revised application to be treated as if it were a new application if the revised application is submitted after the notice and filing required for a new application but prior to the regulatory authority's decision. Although such a change would be beneficial in ensuring public participation in the permitting process, the change is not necessary to comply with 30 CFR 786.11.

207. *Rule 1786.11(e)(1)* ISP (ARN: ILL-0170) suggested additional language that would address public review of changes made in a permit application after the steps in proposed Illinois Rule 1786.11 have been taken. The proposed Illinois rule appears to be consistent with Federal requirements.

208. *Rule 1786.12(a)* ISP (ARN: ILL-0148) suggests proposed Illinois Rule 1786.12(a) include reference to 1786.11(d) which requires a copy of the complete application be made available for public inspection. The Illinois reference appears to be consistent with the Federal requirement.

209. *Rule 1786.12(a)* ISP (ARN: ILL-0170) suggests that proposed Illinois Rule 1786.12(a) be amended to include a subparagraph (d) to specify who may make public comments on a permit application. The commenter is particularly concerned that comments may be made by the County Board or Commission. The Secretary believes that proposed Illinois Rule 1786.11(c) would include the County Board or Commission under the language "local governmental bodies" or "such other agencies as may have an interest."

210. *Rule 1786.12(b)* ISP (ARN: ILL-0170) suggests that proposed Illinois Rule 1786.12(b) be changed to allow the Interagency Committee 45 days from the last publication of the newspaper notice to comment on permit applications,

instead of 45 days from the first publication as the rule currently states. The proposed Illinois rule allows a reasonable time within which comments shall be submitted, which is consistent with 30 CFR 786.12(b).

211. *Rules 1786.12(b) and 1786.13(a)* ISP (ARN: ILL-0170) suggests that the combined effect of proposed Rules 1786.12(b) and 1786.13(a) is to require members of the Interagency Committee to file objections to a permit application within 30 days while allowing the members of the Interagency Committee 45 days to submit comments on the permit application. The Secretary cannot agree since the Interagency Committee's comments are due within 45 days of the first publication of the newspaper notice and the other governmental agencies' comments and objections are due within 30 days of the last newspaper advertisement. Section 1786.11(a) requires the notice of the application to be advertised once a week for four consecutive weeks. Consequently, it appears that under the Illinois system, the Interagency Committee's comments are due several days before the deadline for filing an objection to the application.

212. *Rule 1786.12(c)* ISP (ARN: ILL-0148) suggests that Illinois Rule 1786.12(c) be amended to include the Interagency Committee as an entity that would receive a copy of comments so that the Interagency Committee, in the commenter's view, could serve more effectively as a resource for the regulatory authority. While this change is not mandated by 30 CFR 786.12(c), the Secretary would not object to the revision.

213. *Rule 786.13—Section 1786.13* CPKC (ARN: ILL-0619B) suggests amending proposed Illinois Rule 1786.13(a) to allow "a person with a valid legal interest" as well as a "person having an interest which is or may be adversely affected" to file objections to a permit application. Proposed Illinois Rule 1786.13(a) is consistent with the language of 30 CFR 786.13(a) and the Secretary cannot require the suggested additional language. However, the existing language appears to encompass the persons with whom the commenter is concerned.

214. *Rule 1786.13(a)* ISP (ARN: ILL-0171) suggests amending proposed Illinois Rule 1786.13(a) to require either that a revised application may not be accepted after publication of the last newspaper notice or that the filing of a revised application would cause the notice and comment periods to commence. The Illinois provision is consistent with the Federal regulation and the Secretary may not require the suggested amendment.

215. *Rule 1786.13(b)(1)* ISP (ARN: ILL-0148) suggests that Illinois proposed Rule 1786.13(b)(1) be amended to include the Interagency Committee as an entity that would receive any objections to an application. This would enable the Interagency Committee, in the commenter's view, to serve more effectively as a resource for the regulatory authority. While this change is not mandated by 30 CFR 786.13(b)(1), the Secretary would not object to the addition.

216. *Rule 1786.14(a)(3)* ISP (ARN: ILL-0148) suggests that the informal conference filing deadline be changed in Illinois proposed Rule 1786.14(a)(3) from 30 days to 60 days after the last publication of the newspaper advertisement. The Illinois provision is consistent with the Federal rule and the Secretary may not require the change.

217. *Rule 1786.14(b)* ISP (ARN: ILL-0148) suggests that Illinois proposed Rule 1786.14(b) be amended to change the time for holding an informal conference from within 75 days of the first date of the newspaper notice to within 90 days of the last date of the newspaper notice. As the commenter points out, the present rule may force the regulatory authority to give two weeks notice of the hearing and hold the hearing within 15 days. The regulatory authority is required, in accordance with 30 CFR 786.14(b), to hold the informal conference within a reasonable time following the receipt of the request. The time set by Illinois is reasonable and the Secretary cannot mandate the precise time limit suggested by the commenter.

218. *Rule 1786.14(b)(2)* ISP (ARN: ILL-0148) suggests that Illinois proposed Rule Section 1786.14(b)(2) be amended to require notice of an informal conference two weeks prior to the informal conference. The Secretary believes that Illinois has corrected this provision in its July 30, 1980, proposed rules.

219. *Rule 1786.14(c)* ISP (ARN: ILL-0171) suggests that proposed Illinois Rule 1786.14(c) is inconsistent with the Federal regulation because it allows a person who has not requested an informal conference to force the cancellation of an informal conference requested by another person. The Secretary agrees that the proposed Illinois rule is inconsistent with SMCRA Section 513(b), which requires that an informal conference shall be held on a permit application upon request and may be cancelled only if all parties to the informal conference agree.

220. *Rule 1786.15* ISP (ARN: ILL-0171) noted that the proposed Illinois rule does not contain a provision for procedures to maintain confidential information in the permit application, as required by 30 CFR 786.15(b). The Secretary agrees that the proposed Illinois rule should be revised to clarify that such information may be kept confidential.

221. *Rule 1786.16.* CPKC (ARN: ILL-0169A) suggests that Illinois amend proposed Illinois Rule 1786.16 to prohibit the State from considering new material unless parties are allowed 28 days to review and comment on the new material. While the Secretary would not object to this provision, the change would not be mandated.

222. *Rule 1786.16.* CPKC (ARN: ILL-0169A) suggests a change in the designation of "(4)" to "(g)" on page 147 in proposed Illinois Rule 1786.16 concerning opportunity for public hearing. The Section appears to be correctly numbered.

223. *Rule 1786.16(a).* ISP (ARN: ILL-0148) suggests that proposed Illinois Rule Section 1786.16(a) be amended to require that a public hearing be requested within 95 days after the last newspaper notice rather than 80 days after the first newspaper notice. This suggestion would be beneficial in allowing the public time to consider whether a hearing may be necessary and the regulatory authority time to schedule the hearing. However, the change is not required by SMCRA.

224. *Rule 1786.16(a).* CPKC (ARN: ILL-0169B) suggests that proposed Illinois Rule 1786.16(a) be amended to allow a "person having an interest which is or may be adversely affected" (defined in proposed Rule 1701.5) instead of an "interested person" (undefined) request a public hearing. The amendment might clarify the intent of the Illinois provision but will not be required.

225. *Rule 1786.16(c).* CPKC (ARN: ILL-0169 A and B) suggests an amendment that would prohibit a state employee, a person who has been employed by the State for more than five years, or a person employed by or representing a coal company for more than five years from being the hearing officer at a public hearing on a permit application. Further, the amendment would require the hearing officer to be an attorney. SMCRA contains no provisions for public hearings on permit applications and no provisions similar to those suggested limiting the persons who may preside at public hearings. Therefore the suggested amendments may not be required.

226. *Rule 1786.16(c).* CPKC (ARN: ILL-0169B) suggests amending Illinois Rule 1786.16(c) to give the hearing officer the power to subpoena witnesses. SMCRA

does not provide for public hearings on permit applications, so the Secretary may not prescribe the powers of hearing officers presiding at such hearings.

227. *Rule 1786.16(f).* ISP (ARN: ILL-0170) suggests amending this section to require the permit applicant to respond to questions on information in the application or on the proposed operation and to require the regulatory authority to exclude the information from consideration if the applicant fails to respond. Such an amendment is not required by SMCRA.

228. *Rule 1786.16(f)(2).* CPKC (ARN: ILL-0169 A and B) suggests the addition of language to proposed Illinois Rule 1786.16(f)(2) that would include the right to call and cross-examine witnesses in the same manner allowed by Section 60 of the Illinois Civil Practice Act. Such an amendment is not required by SMCRA.

229. *Rule 1786.16(f)(5).* CPKC (ARN: ILL-0169B) suggests the amendment of Illinois Rule 1786.16(f)(5), concerning objections to rulings, to change the phrase "interested person" to the phrase "person having an interest * * *," which is defined in proposed Illinois regulation 1701.5. The suggested change would be consistent with Illinois definitions; however, it will not be required.

230. *Rule 1786.16(f)(5).* CPKC (ARN: ILL-0169 A and B) suggests the amendment of proposed Illinois Rule 1786.16(f)(5) to delete the prohibition of an interlocutory appeal from a hearing officer's ruling. The suggested change is a matter to be determined pursuant to the Illinois Administrative Procedure Act, and thus would not be mandated.

231. *Rule 1786.16(g)(4).* CPKC (ARN: ILL-0169 A and B) suggests the deletion of the phrase "nor submitted to the regulatory authority pursuant to the State Act and these regulations in a situation where no hearing is held" and the addition of language that would allow a 28 day comment period. Since SMCRA contains no provisions for public hearings on permit applications, these changes will not be mandated.

232. *Rule 1786.17.* ISP (ARN: ILL-0171) notes that the Illinois regulation fails to implement 30 CFR 786.17(a)(2). Although this section was not specifically remanded, the section requires the regulatory authority to determine the adequacy of fish and wildlife plans. Regulations requiring the permit application to contain these plans have been remanded. *In Re: Permanent Surface Mining Regulation Litigation* No. 79-1144, February 26, 1980. Consequently, Illinois need not incorporate this provision at this time.

233. *Rule 1786.17(a).* ISP (ARN: ILL-0170) suggests additional language to prohibit the regulatory authority from considering in its review of a permit application information that is not included in a hearing record, unless the information is an internal staff review. Although this addition would be consistent with the public participation intent of SMCRA, proposed Illinois Rule 1786.19 would require the regulatory authority to document in its decision on permit approval information otherwise available that is not included in the application but which forms a basis for the decision. If the information is not supportive of the decision, then a person with an interest which is or may be adversely affected may request a hearing pursuant to proposed Illinois Rule 1787.

234. *Rule 1786.19.* CPKC (ARN: ILL-0169A and B) and (ILL-0171) suggests amending proposed Illinois Rule 1786.19 to require that documents or information on which a permit decision is based be in the record before the Department with "regard to the specific application." The Secretary finds that the Illinois language appears to be consistent with 30 CFR 786.19. The documentation of a permit decision is required to be part of the record and is, except for those items that are treated as confidential under SMCRA and the regulations, available to the public. 30 CFR 786.19 merely requires that the regulatory authority identify with some specificity the documentation of the permit decision that is not a part of the permit application itself.

235. *Rule 1786.19(e).* ISP (ARN: ILL-0148 and ILL-0170) suggests amending proposed Illinois Rule 1786.19(e) to make the section cover both privately-owned places and places eligible for listing in the National Register of Historic Places. The Secretary agrees that proposed Rule 1786.19(e) is inconsistent with 30 CFR 786.19(e) to the extent it does not cover privately-owned places included in the National Register of Historic Places. However, the Secretary may not require the rule to cover places eligible for listing on the Register. *See* Comment 135.

236. *Rule 1786.19(p).* ISP (ARN: ILL-0148 and Ill-0170) suggests several changes to proposed Illinois Rule 1786.19(p) for clarity. This provision concerns criteria for permit approval or denial. While the Secretary believes that the changes would clarify the intent of the section, the changes would not be required, since the Illinois provision concerns review by the Interagency Committee and is not inconsistent with the Federal rules.

237. *Rule 1786.23(b)(1).* ISP (ARN: ILL-0148) suggests that the reference to Section 1771.13 be amended to 1771.11, because there is no Section 1771.13 in the Illinois Rule. The Secretary agrees with this suggestion.

238. *Rule 1786.23(b)(2)(iii).* ISP (ARN: ILL-0148—Ill-0170) suggests amending proposed Illinois Rule 1786.23(b)(2)(iii) so that the time within which a decision must be made is the same whether or not an informal conference has been held. The Illinois provision sets up reasonable time limits which are consistent with 30 CFR 786.23(b)(2)(ii).

239. *Rule 1786.23(c).* ISP (ARN: ILL-0171) points out that if an interested party requests a public hearing pursuant to Section 1786.16 of the proposed Illinois regulations, the person would not receive notice of the permit decision under proposed Illinois Rule 1786.23(c). However, parties to the public hearing on the application would be notified of the permit decision as persons who filed written objections or comments under proposed Rule 1786.23(e), which is consistent with 30 CFR 786.23(e).

240. *Rule 1786.23(d).* ISP (ARN: ILL-0171) suggests that proposed Illinois Rule 786.23(d) be changed to clarify that the applicant must modify the permit rather than the regulatory authority. The Illinois provision is consistent with 30 CFR 786.23(d).

241. *Rule 1786.25(d).* ISP (ARN: ILL-0170) suggests that an additional section be added to prohibit the commencement of the operation prior to the running of the time to appeal the regulatory authority's permit decision. SMCRA Section 514(d) requires that granting of stays of permit decisions is discretionary. Proposed Illinois Rule 1787.11(2) is consistent with 30 CFR 787.11(b)(2) in implementing SMCRA Section 514(d).

242. *Rule 1786.27.* CPKC (ARN: ILL-0169A) suggests the addition of Section (d) to this sub-part which addresses the 30 day administrative review record. The Secretary does not have the authority to require such language since it does not appear in the Federal rules.

243. *Rule 1786.27.* The commenter (ARN: ILL-0169A) suggests that no operation should commence until the time for appeal has run. *See* Comment 241.

244. *Rule 1786.27(b)(2)* ISP (ARN: ILL-0170) notes correctly that Section 1786.27(b)(2) of the proposed Illinois rules concerning right of entry refers to Part 1842, which is not in the state regulations. The reference should be deleted.

245. *Rule 1786.29* CPKC (ARN: 0169B and ILL-1069A) suggested "an appeal" be added to this section heading, "Conditions of permits: Environment, public health, and safety." While the Secretary would not object to this

change, the change will not be mandated, since the suggested language does not appear in the Federal rules.

246. *Rule 786.29—Rule 1786.29* CPKC (ARN: ILL-0169B) suggests addition of a paragraph to proposed Illinois Rule 1786.29 to prohibit the commencement of an operation until the expiration of the time to appeal the decision. *See* Comment 241.

247. *Rule 1787* ISP (ARN: ILL-0171) notes that Part 1787 of the Illinois regulations concerning administrative and judicial review of permit decisions does not contain procedures substantively similar to those contained in 43 CFR Part 4, which provide for public participation in the enforcement of the state program. The Secretary agrees that the Illinois submission does not contain provisions for public participation in the enforcement of the state program comparable to those in 43 CFR Part 4.

248. *Rule 1787.11(2)* A commenter suggests the deletion of the provisions for temporary relief on decisions of and failures to act by the regulatory authority. The Illinois provision is consistent with 30 CFR 787.11(b)(2) and need not be changed.

249. *Rule 1787.11* CPKC (ARN: ILL-0169A) suggests new language that would postpone the date on which mining may commence where public comment is involved and also suggests reordering this section. This new language cannot be required since these requirements are not found in the Federal rules.

250. *Rule 787.11(b)(2)(i-iv)—Section 1787.11(2)(i-iv)* CPKC (ARN: ILL-0169B) suggests that proposed Illinois regulation 1787.11(2)(i-iv) be amended by striking the paragraph and adding language that would prohibit the commencement of the operation until after the decision on the appeal has been reached. Section 1787.11(2)(i-iv) of the Illinois regulations is consistent with 30 CFR 787.11 and need not be changed. *See* Comment 241.

251. *Rule 787.12—Section 1787.12* The commenters (ARN: ILL-0169A and ILL-0182) believe that the judicial review provisions in proposed Illinois Rule 1787.12 require clarification. The Illinois regulation is consistent with 30 CFR 787.12 and need not be changed.

252. *Rule 1788.12* ISP (ARN: ILL-0170) suggested that Illinois should add the requirement that a change in a monitoring plan approved under a permit should require a permit revision to insure public participation. Since this requirement is not contained in 30 CFR 788.12, it cannot be mandated.

253. *Rule 1788.12(a)(1)* ISP (ARN: ILL-0171) objected to proposed Illinois Rule 1788.12(a)(1) regarding "significant departure" for which a permit revision would be required. The Secretary believes that the July 30, 1980 proposed Illinois rules are consistent with the Federal rules in this respect.

254. *Rule 1788.12(b)* ISP (ARN: ILL-0182A) suggested that "application for permit revision" be changed to "applications" in order to insure clarity. The Secretary would not object to the change, but will not mandate it since it is not required by the Federal rule.

255. *Rule 1788.12(c)* ISP (ARN: ILL-0170) commented that an application for revision of a permit should not be approved unless the regulatory authority finds that reclamation required by the State Act can be accomplished under the revised plan. The Illinois rule is consistent with 30 CFR 788.12(c) and need not be changed.

256. *Rule 1788.12(d)* (ARN: ILL-0182A) A commenter suggested changing the term incidental boundary "changes" to "revisions" in keeping with the Federal rule. The language substitution by Illinois does not render the provision inconsistent with 30 CFR 788.12(d).

257. *Rule 1788.12(d)* ISP (ARN: ILL-0182A) suggests an alternative to the proportional acreage criterian that are used to describe incidental boundary changes in proposed Illinois Rule 1788.12(d) concerning permit revisions. The Secretary believes the criteria used by the State are acceptable.

258. *Rule 1788.12(e)* ISP (ARN: ILL-0170) commented that proposed Illinois Rule 1788.12(e) has been misplaced and should be included as part of Rule 1788.17, which covers the general requirements for the transfer, assignment, or sale of permit rights. The Secretary believes that the arrangement of the State's rules is acceptable.

259. *Rule 1788.12(f)* ISP (ARN: ILL-0179 and ILL-0182A) objected that the proposed Illinois rule, which provides that determinations of what constitutes a "significant departure" requiring a permit revision shall be made by the regulatory authority in consultation with the permittee, allows decisions "behind closed doors." However, SMCRA Section 511(a)(2) does not require public participation in non-significant revisions in a mining operation.

260. *Rule 1788.13* CPKC (ARN: ILL-0169A) suggests that additional language that would require the submission of permit revision applications 180 days prior to expected commencement of the revised operations in order to allow for public hearings. The Illinois language is consistent with 30 CFR 788.13 and need not be altered.

261. *Rule 1800.5* CPKC (ARN: ILL-0169B) stated that the requirement that a self-bond" be executed by the permittee has been deleted from the definition of "self-bond" in proposed Illinois Rule 1800.5. Illinois used the definition of self-bond in proposed amendments to the Federal bonding regulations published January 24, 1980. This language was changed in final amended Federal bonding regulations published August 6, 1980 (45 FR 52306-52324). Illinois has been advised that its proposed rules should be modified in accordance with the new Federal rule. *See* Finding 19.

262. *Rule 1800.11(b)(ii) and (iii)* CPKC (ARN: ILL-0169B) noted that proposed Illinois Rules 1800.11(b)(1)(ii) and (iii) provide too many possibilities concerning the requirement to file a bond. The provisions appear to be consistent with 30 CFR 800.11(b)(ii) and (iii).

263. *Rule 1800.11(b)(2)* CPKC (ARN: ILL-0169B) noted that Illinois added language at Section 1800.11(b)(2) providing that the regulatory authority shall determine the bond amount in accordance with Parts 1805 and 1806. The commenter suggested that the regulatory authority should "approve" but not "determine" the bond amount and that 1805 and 1806 are poorly stated and do not match the Federal Regulations. Parts 805 and 806 were amended in final Federal regulations published August 6, 1980. The regulatory authority shall determine (not approve) the bond amount under 30 CFR 805.11. Illinois has been advised that modification of the proposed Illinois regulations should be made so provisions are consistent with the amended Federal provisions. *See* Finding 19.

264. *Rule 1805.13(b)(1)* CPKC (ARN: ILL-0169B) suggested that the reference to Section 1816.116 and 1817.116 in Section 1805.13(b)(1) of the June 16, 1980 proposed Illinois regulations should be changed to add the term "revised" Sections 1816.116 and 1817.116. In final Federal regulations published on August 6, 1980, concerning the period of liability under 30 CFR 805.13(b)(1), all references to 30 CFR 816.116 and 817.116 have been deleted. *See* Finding 19.

265. *Rule 1805.13(b)(3)* CPKC (ARN: ILL-0169B) suggested that Section 1805.13(b)(3) of the proposed Illinois regulations of June 16, 1980, concerning approved selected husbandry practices, be omitted. This provision tracks the Federal regulation proposed for amendment January 24, 1980. However, after public comment, changes were made to the proposed rule. The final rule, 30 CFR 805.13(b)(3), was published reflecting these changes on August 6, 1980. *See* Finding 19.

266. *Rule 1805.13(c), (c)(1) and (c)(2)* CPKC (ARN: ILL-0169B) suggested that proposed Illinois Rules 1805.13(c)(1) and (2) concerning period of bond liability should be deleted from the June 16, 1980, proposed Illinois regulations. This language tracks the proposed amendments to Federal regulations published on January 24, 1980. However, because of public comment, changes were made to these proposed Federal regulations. These changes are reflected in the final Federal regulations published August 6, 1980. *See* Finding 19.

267. *Rule 1805.13(d)* CPKC (ARN: ILL-0169B) stated that Section 1805.13(d) of the June 16, 1980, proposed Illinois regulations concerning the period of bond liability, should refer to "revised" Section 1816.133 rather than Section 1816.133, Illinois is being advised that Section 1816.133 concerning post mining land use is inconsistent with 30 CFR 1816.133.

268. *Rule 1806.12(d)* CPKC (ARN: ILL-0169B) suggested that Section 1806.12(d) of the June 16, 1980, proposed Illinois regulations concerning terms and conditions of bonds should refer to "revised" Section 1805.13 rather than section 1805.13 because the referenced section is a poor regulation. The Federal counterpart, 30 CFR 805.13, has been revised. *See* Finding 19.

269. *Rule 1806.12(e)(1)* CPKC (ARN: ILL-0169B) noted that, whereas 30 CFR 806.12(e)(1) requires the surety to give at least a sixty day notice to the permittee and the regulatory authority of the intent to cancel, Section 1806.12(e)(1) (June 16, 1980 proposed regulations) requires 90 days notice.

Since the provision concerns effective bond cancellation on lands not disturbed, the additional 30 days does not make the Illinois provision inconsistent with the Federal rule. The required minimum notice time of 60 days stated in the Federal rule is satisfied by the changed 90 day requirement of the Illinois rule.

270. *Rule 1806.12(e)(1)* CPKC (ARN: ILL-0169B) suggested that the language "may allow continuation of mining operations on land for which bond is cancelled" be omitted from Section 1806.12(e)(1) of the June 16, 1980, Illinois proposed regulations. This provision concerns allowing operations to continue where the bond has been cancelled, but a replacement bond has been filed. The comparable language in the Federal provision at 30 CFR 806.12(e)(1) is: the regulatory authority "may approve such cancellation". Thus, the Illinois language is consistent with the Federal provision.

271. *Rule 1806.12(e)(1)* CPKC (ARN: ILL-0169B) noted that Section 806.12(e)(1) of the June 16, 1980, proposed Illinois regulations concerning terms and conditions of bonds should refer to "revised" Part 1805 rather than Part 1805 because this Part does not track the Federal regulations. The Federal counterpart (30 CFR 805) has been revised. *See* Finding 19.

272. *Rule 1806.12(e)(6)(iii)* CPKC (ARN: ILL-0169) suggested that 1806.12(e)(6)(iii) of the June 16, 1980, proposed Illinois regulations be revised to provide for immediate cessation of operations upon insolvency of the surety so that Illinois will not allow mining to continue while bonds are in violation. Illinois has drafted the proposed regulation in accordance with 30 CFR 806.12(e)(6)(iii) published on August 6, 1980. The Illinois provision is consistent with the Federal regulation.

273. *Rule 1806.12(f)(1)* CPKC (ARN: ILL-0169B) pointed out that in 1806.12(f)(1) of the June 16, 1980, Illinois proposed regulations, the regulatory authority must obtain possession of certificates of deposit deposited by the applicant whereas 30 CFR 806.12(f)(1) does not require this possession. The additional requirement of the Illinois provision is not inconsistent with the Federal requirements, and is thus satisfactory.

274. *Rule 1806.12(f)(6)* CPKC (ARN: ILL-0169B) pointed out that at 1806.12(f)(6) of the June 16, 1980, Illinois proposed regulations, Illinois added a provision not found in 30 CFR 806.12(f). Illinois provides that any assignment or pledge of collateral supporting a collateral bond will be void and will provide grounds for immediate forfeiture of the repledged collateral. This added language provides additional protection to the regulatory authority. The Illinois proposed rule is not inconsistent with the Federal rule and is thus acceptable.

275. *Rule 1806.12(g)(7)(iii)* CPKC (ARN: ILL-0169B) noted that 1806.12(g)(7)(iii) of the June 16, 1980, proposed Illinois regulations should be revised to provide for immediate cessation of operations upon the insolvency of a surety bank so that Illinois will not allow mining to continue is spite of violations. In 30 CFR 805.12(g)(7)(iii) of final Federal regulations published August 6, 1980, a reasonable period is allowed to replace bond coverage, not to exceed 90 days. Since Illinois allows 30 days, the state provision is consistent with the Federal provision.

276. *Rule 1806.12(h)* CPKC (ARN: ILL-0169B) suggested that since 1806.12(h) of the proposed Illinois regulations of June 16, 1980, has no counterpart in the Federal regulations, this subsection should be omitted. The counterpart to this provision concerning property posted as collateral is contained in new Federal regulations published August 6, 1980, at 30 CFR 806.12(h).

278. *Rule 1806.13* CPKC (ARN: ILL-0169B) pointed out that Section 1806.13 of the proposed June 16, 1980, Illinois regulations should be omitted because it has no counterpart in the Federal rule. The counterpart to this provision concerning escrow bonding is found in new Federal regulations published August 6, 1980 at 30 CFR 806.13.

279. *Rule 1806.14* CPKC (ARN: ILL-0169B) suggested that the Illinois provision concerning self-bonding contained in Section 1806.14 of the June 16, 1980, proposed regulations be omitted because it has no counterpart in the Federal rule. The Federal provision on self-bonding, 30 CFR 806.14, was published August 6, 1980.

280. *Rule 1807.12(a)* CPKC (ARN: ILL-0169B) pointed out that in the Illinois provision concerning the criteria and schedule for bond release, 1807.12(a) of the proposed June 16, 1980, regulations, the word "may" is used instead of "shall" concerning release by the regulatory authority of a portion of bond liability. The language used by Illinois is the same as used in 30 CFR 807.12(a) published August 6, 1980.

281. *Rule 1807.12(b)* CPKC (ARN: ILL-0169B) noted that the Illinois provision concerning the criteria and schedule for release of performance bond, 1807.12(b) of the June 16, 1980, proposed regulations, omits the formula for calculating bond release. Although this formula was contained in the Federal regulation of March 13, 1979, it is omitted in the final regulations published August 6, 1980, 30 CFR 807.12(b). Therefore, the Illinois rule is acceptable. *See* Finding 19.

282. *Rule 1807.12(c)* CPKC (ARN: ILL-0169B) noted that the Illinois provision concerning criteria and schedule for bond release at Section 1807.12(c) of the June 16, 1980 proposed regulations should be changed to correspond to the Federal provision. 30 CFR 807.12(c) has been modified in final regulations published August 6, 1980. *See* Finding 19.

283. *Rule 1807.12(d)* CPKC (ARN: ILL-0169B) stated that the Illinois rule on criteria and schedule for bond release at Section 1807.12(d)(3) of the June 16, 1980, proposed regulations, should add the word "revised" before Sections 1816.116, 1816.133, 1817.116, 1817.133, 1816.166(b)(3)(iii) and 1817.116(b)(3)(ii). Illinois is being advised that proposed Sections 1816.116 and 1817.116 concerning revegetation performance standards and 1816.133 and 1817.133 concerning postmining land use are

inconsistent with the Federal regulations.

284. *Rule 1808.11(d)* CPKC (ARN: ILL-0169B) asserts that the Illinois provision concerning bond forfeiture criteria and procedures, Section 1808.11(d) of the June 16, 1980, proposed regulations, should be modified.

The language "any operator against whom forfeiture proceedings have been required shall not be issued a permit for further mining in Illinois *unless he provides additional assurances satisfactory to the Department that such procedure will not again become necessary*" should be changed to delete the underlined portion. Although this language is not contained in the Federal rule, it provides additional protection for the regulatory authority and is thus acceptable.

285. *Rule 1808.12(c)* CPKC (ARN: ILL-0169B) pointed out that the Illinois provision concerning bond forfeiture procedure at Section 1808.12(c) of the June 16, 1980, proposed regulations omits the phrase "with respect to protection of the hydrologic balance." This omission is consistent with 30 CFR 808.12(c) of the Federal regulations published August 6, 1980.

286. *Rule 1808.13(a)(3)* CPKC (ARN: ILL-0169B) suggested that the Illinois bond forfeiture criteria be revised to delete the language allowing the operator to prevent forfeiture when his bond is revoked so long as reclamation work is diligently and satisfactorily being performed. The Illinois language is the same as Federal language in 30 CFR 808.13(a)(3) published August 6, 1980, and is, therefore, acceptable.

287. *Rule 1808.14* CPKC (ARN: ILL-0169B) pointed out that the Illinois provision on determination of bond forfeiture amount, Section 1808.14 of the June 16, 1980, proposed regulations, provides for the bond funds remaining after completion of reclamation to be returned to the operator who submitted the bond. The Secretary finds that this language is in accordance with the Court opinion [*In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, February 26, 1980] in which 30 CFR 808.14(b) was remanded because it allowed the regulatory authority to retain forfeited bond money unnecessary for costs and administrative expenses associated with reclamation.

288. *Rule 1816.22(a)* ISP (ARN: ILL-0148 and Ill-01170) objected to the proposed Illinois rule, which exempted "small disturbances" from the topsoil removal requirements. Illinois has deleted this exemption in its July 30, 1980, proposed rules.

289. *Rule 1816.22(c)* ISP (ARN: ILL-0148 and Ill-0170) objected to the Illinois exemption from the topsoiling requirements of previously mined land and land disturbed by other activities. The Secretary believes that Illinois has corrected this deficiency in its July 30, 1980 proposed rules.

290. *Rule 1816.24(c) and 1817.24(c)* Several commenters (ARN: ILL-0148, ILL-0169A and Ill-0170) objected to Illinois' exemption from the topsoil redistribution requirements where inconsistent with the approved past mining use or where it would create unsafe conditions. The Secretary believes that the proposed Illinois rules submitted July 30, 1980, have corrected this problem.

291. *Rule 1816.48(c)* CPKC (ARN: ILL-0169B) pointed out that, through a typographical error the sentence "Temporary storage of the spoil may be approved by the regulatory authority" has been repeated unnecessarily. The Secretary agrees. Illinois has corrected this in its July 30, 1980, proposed regulations.

292. A commenter (ARN: ILL-0179) expressed concern that strip mining cuts have served as water supplies and these impoundments should not be destroyed. Sections 1816.49 and 1817.49 of the proposed Illinois rules allow permanent impoundments to be authorized by the regulatory authority in limited circumstances if properly designed, constructed and maintained.

293. *Rule 1816.49.* CPKC (ARN: ILL-0169B) requested clarification as to whether 30 CFR 816.49(c) requires that perimeter slopes of impoundments shall not be steeper than 1v:2h or 2v:1h. The Federal rule has been misprinted and should read 1v:2h.)

294. *Rule 1816.49(c).* CPKC (ARN: ILL-0169B) objected that the Illinois rule concerning perimeter slopes of impoundments is inconsistent with the Federal rule. The Federal rule requires that perimeter slopes of excavations that will impound water during or after mining shall not exceed 1v:2h. The proposed Illinois rule would require that these slopes not exceed the angle of repose and would not require topsoil replacement on these slopes. The proposed Illinois standard is not consistent with the Federal rules.

295. *Rule 1816.62.* ISP (ARN: ILL-0170) expressed a need for procedures for determining what constitutes an acceptable pre-blast survey. Proposed Rule 1816.62 concerning pre-blast surveys provides acceptable guidelines as to content and purpose of these surveys.

296. *Rule 1816.62(a).* ISP (ARN: ILL-0170) objected to the language that would require a person who makes a request for a pre-blasting survey to the regulatory authority to also make the request to the person conducting the surface mining activities. The Secretary believes such a requirement is consistent with Section 515(b)(15)(E).

297. *Rule 1816.62(b)(1).* ISP (ARN: ILL-0148) expressed concern about the addition of "one time" regarding the conducting of a requested pre-blasting condition survey in the Illinois rule. The Federal rule does not address this specific requirement but the singular "survey" is used therein. Therefore, the "one time" limitation found in the Illinois language is consistent with the Federal rule.

298. *Rule 1816.62(b)(2)(i).* ISP (ARN: ILL-0148) objected to the proposed Illinois rule because it would allow blasting to commence prior to completion of the pre-blasting survey under certain conditions. The proposed Illinois rule would allow this to occur only where 60 days' notice of intent to conduct blasting has been given the public and the request for the survey is made less than 30 days prior to the scheduled commencement of blasting. The rule also would require the notice of intent to include instructions on how to request a survey and state that blasting may commence prior to completion of the survey unless the request is made at least 30 days prior to the scheduled commencement of blasting. The proposed Illinois rule is a reasonable accommodation of the SMCRA requirement that pre-blasting surveys should be made upon request and the need to avoid delays caused by requests for pre-blasting surveys made soon before the scheduled commencement of blasting.

299. *Rule 1816.62(b)(2)(iii).* ISP (ARN: ILL-0148) suggests rewriting of Section 1816.62(b)(2)(iii) of the Illinois rules to clarify the instruction on how to request a pre-blasting survey. This provision is not required by or inconsistent with the Federal rule. The commenter may wish to suggest to the State how such information is to be presented. *See.* Comment 298.

300. *Rule 1816.62(d).* Two commenters (ARN: ILL-0148 and ILL-0179) suggested additional language concerning requestor's objections to findings of the pre-blasting survey. While this language may be helpful, the Federal rule does not require this and a State is not required to provide standards beyond those in the Federal rules.

301. *Rule 1816.64(a)(1).* ISP (ARN: ILL-0148) suggested additional language what would specify the graphic requirements of a published blasting

schedule. This information goes beyond the Federal rule requirement and will not be required of the State.

302. *Rule 1816.64(a)(2).* ISP (ARN: ILL-0148) suggests clarification of additional language in the Illinois rule regarding who is eligible for a pre-blasting survey. The language at issue is not found in the Federal rule and is consistent with the Federal requirements.

303. *Rule 1816.64(a)(3).* ISP (ARN: ILL-0148) objected to the variance which would permit the firing of small confined charges in coal seams at times other than those scheduled. The Secretary believes this variance is inconsistent with 30 CFR 816.64(a)(1) to the extent it would allow a variance for blasts that use more than five pounds of explosives or blasting agent.

304 *Rule 1816.64(a)(3)* ISP (ARN: ILL-0170) has offered additional language to modify the coal seam blasting provisions. The Secretary cannot require a State to adopt provisions more stringent than the Federal rules.

305 *Rule 1816.65(e)(4) and Section 1816.67(c)* IPS (ARN: ILL-0148 and ILL-0170) suggested additional language that introduces a process for making discretionary determinations of air blast measurements. Such a process would go beyond the Secretary's requirements.

306 *Rule 816.65(f)* One commenter (ARN: ILL-0179) expressed concern that homes should be protected from blasting effects no matter how far away they are from the blasting operation. 30 CFR 816.65(f) has been remanded, *In Re: Permanent Surface Mining Regulation Litigation,* No. 79-1144, May 16, 1980, insofar as it restricts blasting at distances greater than 300 feet.

307. *Rule 1816.65(h)—Section 816.65(i) in Federal rule* ISP (ARN: ILL-0148 and ILL-0170) offered additional language to this section that would require timely and discretionary determination to reduce peak particle volocity standards allowable. This determination is not required in the Federal rule and the Secretary cannot require this of a State.

308. *Rule 1816.65(i)(3)* ISP (ARN: ILL-0148) stated that additional language in the Illinois rule regarding structures leased by the person conducting the mining operation porvided a variance to the Federal rule of 30 CFR 816.65(j) because the maximum peak particle volocity standards will not apply. The Secretary finds this language acceptable as long as a written waiver by the owner and occupant is obtained.

309. *Rule 1816.65(l)* ISP (ARN: ILL-0148) proposed additional language, taken from the interim program, which prohibits blasting within 1000 feet and 500 feet of structures and utility facilities. 30 CFR 816.65(f) has been remanded, *In Re: Permanent surface Mining Regulation Litigation,* No. 79-1144 May 16, 1980, insofar as it restricts blasting at distances greater than 300 feet. The Federal rule cannot be required at this time.

310. *Rule 1816.67(b)* ISP (ARN: ILL-0148) has suggested adding language to the Illinois rule that would require termination of the use of a modified equation for peak particle volocity if one inch per second is exceeded. The language is not contained in the Federal rule and cannot be required.

311. *Rule 1816.67(b)* The commenter (ARN: ILL-0179) has suggested changes to the Illinois rule that is now consistent with the Federal rule concerning seismographic measurements. The State is not required to adopt rules different from the requirements of the Federal rules.

312. *Rule 1816.71(g)(2), (a)(3)* ISP (ARN: ILL-0148) and CPKC (ARN: ILL-0169B) suggested both subsections dealing with box-cut spoils and direct cast spoil be deleted. The Secretary agrees. These Illinois provisions provide a variance inconsistent with the Federal rule.

313 *Rule 1816.83* CPKC (ARN: ILL-0169B) commented that the Illinois provision concerning coal processing waste banks is inconsistent with the Federal rule. The Secretary agrees that the proposed Illinois rule is less stringent than the Federal rule. In particular, the Illinois rule does not create a presumption that an underdrain will be built.

314. *Rule 1816.85(c)(2)* CPKC (ARN: ILL-0169B) objected to the Illinois variance regarding compacting coal waste banks "to the extent necessary." the language was deleted from proposed rules submitted July 30, 1980.

315. *Rule 1816.86* CPKC (ARN: ILL-0169B) pointed out that Illinois omits this section which provides for burning of processing waste. The section was added to the Illinois proposed regulations submitted on July 30, 1980.

316. A commenter (ARN: ILL-0179) expressed concern as to whether there is any way to enforce dust control on haulage roads. Federal rule 816.95, which contained standards for controlling fugitive dust emissions from haul roads, has been remanded [*In Re: Permanent Surface Mining Regulation Litigation* No. 79-1144, May 16, 1980.] the Court ruled tha SMCRA contains no authority for requiring regulation of air pollution except as air pollution is generated by erosion. Thus the provision cannot be required at this time.

317. *Rule 1816.101(a)(3)* ISP (ARN: ILL-0170) noted that the proposed Illinois rule contains additional language not found in 30 CFR 816.101 that would allow "additional spoil ridges" as well as additional time as a variance to the requirement of contemporaneous backfilling and grading. The proposed regulations submitted July 30, 1980, acceptably modified this provision.

318. *Rule 1816.102(a)(2)* ISP (ARN: ILL-0170) commented concerning the need for clarification of the proposed Illinois provisions for backfilling and grading requirements of impoundments. The Secretary has expressed concern that the Illinois provision is unclear, but appears to provide a less stringent standard than required by the Federal rule.

319. *Rule 1816.102(a)(2)* CPKC (ARN: ILL-0169B) objected to language added by Illinois to this section on backfilling and grading. *See* Comment 318.

320. *Rule 1816.103(a)(1)* CPKC (ARN: ILL-0169B) objected to the additional language provided by Illinois in this section dealing with covering of coal and toxic forming materials. This modification is acceptable since the Federal provision has been suspended pending the outcome of rulemaking.

321. *Rule 1816.104(b)(3)* CPKC (ARN: ILL-0169B) suggested completing the section concerning backfilling and grading which appears to be editorially incomplete in the Illinois submittal. Illinois completed this section in proposed rules submitted July 30, 1980.

322. *Rule 1816.104(b)(7)* CPKC (ARN: ILL-0169B) objected to the language in subparagraph (7), which allows final cut impoundments and suggested it be omitted since the Federal rule does not allow for such impoundments. Final cut "permanent" impoundments are allowable under the Federal rule.

323. *Rule 1816.111(a)* ISP (ARN: ILL-0148) and CPKC (ARN: ILL-0169B) expressed concern that the additional language in the Illinois rule "except where permanent vegetative cover is not consistent with the approved land use" provides a blanket exemption for some areas for revegetation. In proposed regulations submitted July 30, 1980 Illinois deleted the additional language.

324. *Rule 1816.111(b)(1) and Rule 1817.111(b)(1)* ISP (ARN: ILL-0170) expressed concern about the broad exemptions from revegetation provided by the Illinois proposed rule. Illinois deleted the exemption from proposed rules submitted July 30, 1980.

325. *Rule 1816.112(a) and 1817.112(a)* ISP (ARN: ILL-0170) and CPKC (ARN: ILL-0169B) objected to the proposed Illinois rule concerning the use of introduced species. The rule would allow "appropriate past research" as an alternative for field trials. Illinois

acceptably clarified this rule in proposed regulations submitted July 30, 1980.

326. *Rule 1816.114(a)* CPKC (ARN: ILL-0169B) and Illinois South (ARN: ILL-0148) objected to additional Illinois language that provides for mulching "when consistent with the post mining land use." The proposed Illinois rule submitted July 30, 1980 was acceptably modified.

327. *Rule 1816.116(a) and 1817.116(a)* ISP (ARN: ILL-0148 and ILL-0170) and CPKC (ARN: ILL-0169B) expressed concern that the proposed Illinois rule provides for the use of "other technical procedures approved by the regulatory authority" regarding techniques to be used to measure success of revegetation. The proposed Illinois rules of July 30, 1980 have been modified acceptably.

328. *Rule 1816.116(b)(2)(ii)* ISP (ARN: ILL-0148) and CPKC (ARN: ILL-0169B) suggest that the ten year responsibility period for revegetation success be reinserted into the Illinois rule. The ten year criteria is not applicable to Illinois since average annual rainfall exceeds the 26.0 inches average annual precipitation criteria. 30 U.S.C. 515(b)(20).

329. *Rule 1816.116(b)(1)* A commenter (ARN: ILL-0169B) and ISP (ILL-0148 and ILL-0170) suggested a change in language for this section of Illinois' rule. This section has been remanded [*In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, February 26, 1980]. Illinois modified this provision concerning the period of liability for revegetation success in accordance with the Court's opinion.

330. *Rule 1816.131(b)* CPKC (ARN: ILL-0169B) objected to the proposed Illinois rule concerning temporary cessation of operations because a statement identifying the number of acres to be affected is not required. This Illinois rule is consistent with the Federal rule in proposed regulations submitted July 30, 1980.

331. *Rule 1816.133(b) and 1817.133* CPKC (ARN: ILL-0169B) and ISP (ARN: ILL-0148 and ILL-0170) objected to the Illinois additional language that provides identification on the basis of acreage summaries for each land use type as required by proposed Rule 1701.5. The Secretary does not agree with this objection, because proposed Rules 1779.22 and 1779.24 require a map in the application that will graphically show premining land use locations and provide the ability to verify total acreage of each land use type.

332. *Rule 1816.133(b)(1)* CPKC (ARN: ILL-0169B) expressed concern that this provision concerning postmining land use be reinstated. Since the corresponding Federal rule has been remanded [*In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, May 16, 1980], it cannot be required at this time.

333. *Rule 1816.133(b)(2)* ISP (ARN: ILL-0148 and ILL-0170) and CPKC (ARN: ILL-0169B) objected to added Illinois language that provides one set of criteria for determining postmining land use for lands that have been improperly managed under the ownership of mine operators. The Secretary agrees that the Illinois rules are inconsistent with the Federal rules because the Illinois provisions would not ensure that post mining land use will be based on the use the land would have supported if not previously mined and if properly managed.

334. *Rule 1816.133(c)* ISP (ARN: ILL-0148 and ILL-0170) and CPKC (ARN: ILL-0169B) objected to Illinois use of the term "condition" rather than the Federal term "uses" concerning alternate land uses. This proposed Illinois rule of July 30, 1980, has been acceptably modified.

335. *Rule 1816.133(c)(1)* ISP (ARN: ILL-0148 and ILL-0170) and (ARN: ILL-0169B) objected to Illinois' deleting the Federal requirements dealing with consulation with the land owner or land management agency regarding alternative land use. This proposed Illinois rule of July 30, 1980, has been acceptably modified.

336. *Rule 1816.133(c)(2)* ISP (ARN: ILL-0148 and ILL-0170) and CPKC (ARN: ILL-0169B) desire additional language that would require a demonstration that a water impoundment proposed to be left on high capability land improves the value of the agriculatural unit. Such information is required in proposed Illinois Rule 1816.133(c)(1) in order to prove compatability.

337. *Rule 1816.150 through Rule 1816.176* CPKC (ARN: ILL-0169B) suggested sections concerning roads be reinstated in Illinois' rule. Since the Federal rules are suspended, the State may omit them at this time. [*In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, May 16, 1980]

338. *Rule 1817.52(a)(2)* The commenter (ARN: ILL-0172) suggests that the clause beginning after the first comma should read: "ground water levels . . ." in Rule 1817.52(a)(2) of the proposed Illinois regulations. The Illinois rule is consistent with 30 CFR 817.52(a)(2) concerning ground water monitoring. While the change is not necessary, Illinois could make it for clarity.

339. *Rule 1817.52(a)(3)* The commenter correctly suggests that the first "shall" in the third line of the text be deleted. This appears to be a misprint in the proposed rule concerning surface and ground water monitoring. This has been corrected in the State's July 30, 1980, submission.

340. *Rule 1817.121(a) ISP* (ARN: ILL-0170) objected to Illinois additional language that allowed an exception to the requirement that subsidence be prevented where the mining technology used requires planned, predictable and controlled subsidence. This is consistent with 30 CFR 817.121(a), which allows planned and controlled subsidence.

341. *Rule 1817.124(c) ISP* (ARN: ILL-0170) objected to additional Illinois language that would limit the period needed for subsidence insurance from that required in the Federal rule. This proposed Illinois rule of July 30, 1980 has been acceptably modified.

342. *Rule 1817.126(c) ISP* (ARN: ILL-0148) suggested that language be added to this section to require that subsurface information leading to a subsidence exemption be included with the permit application. This specific language is not required by the Federal rule, but such evidence would have to be included in the subsidence control plan submitted with the application in order for the application to be complete.

343. *Rule 1823.1* Several commenters (ARN: ILL-0169A, ILL-0148, ILL-0150 and ILL-0169E) objected to the Illinois language that would allow exemptions from the prime farmland requirement for underground mines and areas where drilling, blasting and overburden removal exists. The Secretary agrees that the proposed Illinois rule is inconsistent with the Federal rule to the extent the exemption is not limited to surface facilities of underground mines that are used over extended periods and that affect minimal amounts of land.

344. *Rule 1823.11(a)* CPKC (ARN: ILL-0169B) suggested the Federal rule in 30 CFR 823.11(c) be reinstated in the comparable Illinois section. Since the Federal rule is suspended, the State may omit it at this time. [*In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, May 16, 1980]

345. *Rule 1823.11(b)* CPKC (ARN: ILL-0169A) suggested additional language which would prohibit mixing or contaminating prime farmland soils "with any other material." The proposed Illinois rule is consistent with the Federal rule.

346. *Rule 1823.11(c) and 823.15(c)* A commenter (ARN: ILL-0169 and ILL-0169D) expressed concern that the proposed Illinois rule does not contain the target yield provision for determining success of revegetation on prime farmlands that is found in the Federal rule. Since this provision has been remanded, it cannot be required at

this time. *[In Re: Permanent Surface Mining Regulation Litigation,* No. 79-1144, February 26, 1980]

347. *Rule 1823.12(a)(2) and (3)* (ARN: ILL-1069E) a commenter objected that the proposed Illinois rule would allow "placement" instead of "separate removal" of soil horizons in prime farmlands. This is acceptable because combined removal of the B and C soil horizons, which may be approved, would not require separate removal techniques.

348. A commenter (ARN: ILL-0179) suggested that where Illinois provisions concerning soil handling on prime farmland refer to "soil scientist," "soil and plant scientists" should be used. This is not required by the Federal rule.

349. *Rule 1823.14(c)* ISP (ARN: ILL-0148 and ILL-0170) and CPKC (ARN: ILL-0169) suggested that the moist bulk density section be left blank so that the Illinois Department of Mines and Minerals can insert Federal re-promulgated rules. Illinois can adopt this suggestion if it desires.

350. *Rule 1823.14(e)* VCI (ARN: ILL-0169E) expressed concern that the proposed state rule regarding soil removal on prime farmland requires soil stabilization only when seasonably practical. This language was deleted from Illinois' proposed rules submitted July 30, 1980.

360. *Rule 1823.15* ISP (ARN: ILL-0170) and (ARN: ILL-0148) and the Director of Belleville (ARN: ILL-0179) pointed out two subsections (b) and (c) of the proposed Illinois rule are missing from the Illinois submittal and that the State should submit a "state window" on productivity on prime farmland. Since these provisions have been remanded, the State is not required to implement them at this time. *[In Re: Permanent Surface Mining Regulation Litigation,* No. 79-1144, February 26, 1980]

361. *Rule 1823.15* CPKC (ARN: ILL-0169A & B) suggests this entire section be deleted since the Illinois permanent program has deleted the success standards of productivity on prime farmland. Since this provision has been remanded, the State is not required to implement it at this point. *See* Comment 360.

362. *Rule 1823.15(a)* ISP (ARN: ILL-0148) and CPKC (ARN: ILL-0169) objected that the proposed Illinois prime farmland revegetation standard allows a variance where compliance would be "inconsistent with post mining land use." The proposed Illinois rule of July 30, 1980, has been acceptably modified.

363. *Rule 1825.11(c)* ISP (ARN: ILL-0148) and another commenter (ARN: ILL-0179) stated that the proposed Illinois rule, which provides that revegetation success on high capability lands shall be measured in accordance with the standards in Rule 1816.116, does not provide an adequate basis for determining revegetation success on high capability lands. Since prime farmlands are excluded from the Illinois definition of high capability lands, applying the normal standards for determining success of revegetation to high capability lands is consistent with SMCRA and the Federal rules.

364. *Rule 1825.12(a)(2)(ii)—1825.13—1825.14(g)—1825.15—1825.14(g)* Several commenters (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182A) suggest that language be added to all the above stated sections. Part 1825 of the Illinois proposed regulations, which contains special requirements for high capability lands, has no parallel in the Federal rules. Since proposed Rule 1825.11(d) explicitly provides that all other requirements apply to these lands as well, the high capability standards are generally consistent with the Federal rules. The Secretary will require changes in the high capability requirements only where they conflict with other requirements.

365. *Rule 1825.13* ISP (ARN: ILL-0148 and ILL-0170) was concerned that the proposed Illinois rule does not clearly indicate that segregated materials shall be stockpiled separately. The Secretary agrees that it is unclear whether separate stockpiling, which is required by the Federal rules, is required by this added section. *See* Comment 364.

366. *Rule 1825.14(g)* ISP (ARN: ILL-0148 and ILL-0170) suggested that language be added to this section that would require that all postmining alternative land uses and approximate original contour requirements be met. The Secretary agrees that it is unclear whether the proposed Illinois rule is intended to provide a variance from these and the impoundment requirements of the Federal rules. *See* Comment 364.

367. *Rule 1825.15* ISP (ARN: ILL-0148 and ILL-0170) suggested additional language that would clarify the potential of the high capability lands requirement for providing an exemption from the prime farmland criteria. The Secretary agrees that the high capability lands requirements may not provide an exemption from the prime farmland criteria. *See* Comment 364.

368. *Rule 1827.12(d)* CPKC (ARN: ILL-0169A) suggests that the limitation "If required by the regulatory authority" be deleted from the provision for sediment control structures for coal processing plants. The Illinois language is consistent with the Federal rules.

369. *Rule 1840.17(a)* The commenter (ARN: ILL-0172) correctly suggests that the reference to 30 CFR 842.12, found in Rule 1840.17(a) of the proposed Illinois rule, should be changed to Rule 1840.15. Illinois has corrected this reference in its proposed regulations of July 30, 1980.

370. *Rule 1843.12(a)(2)* The commenter (ARN: ILL-0172) suggests that this provision concerning notices of violation must be deleted because in a state program the state has direct enforcement responsibilities, not oversight responsibilities as suggested by the Illinois language. The Secretary finds the proposed Illinois rule inconsistent with SMCRA because it appears to have the effect of providing for inspections by persons who do not have enforcement authority.

371. *Section 843.14(b)—Rule 1843.14(b)* CPKC (ARN: ILL-0169B) suggests the addition of "(2)" to the language of Illinois regulation 1843.14(b). The language of the Illinois regulation appears to be consistent with 30 CFR 843.13(b) concerning service of a show cause order.

372. A commenter (ARN: ILL-0169) suggested that blasting penalties fines should be set aside for homeowners who have damage. The disposition of funds accumulated from penalties is a matter for State discretion.

373. *Section 845.1—Rule 1845.1* CPKC (ARN: Ill-0169B) suggests additional language that would include notice of violations in the penalty provisions. The proposed Illinois rule does not specifically mention notices of violation as mentioned in 30 CFR 845.1, which requires penalty consideration of all notices of violation and cessation orders. However, proposed Illinois Rule 1845.11 does provide for consideration of notices and would, therefore, appear to be consistent.

374. *Section 845.2—Rule 1845.2* CPKC (ARN: ILL-0169B) is concerned that proposed Illinois Rule 1845.2 requires assessment of penalties to aid "in the administration of the State Act," whereas 30 CFR 845.2 requires assessment "to deter violations and to insure maximum compliance with the terms and purposes of the Act on the part of the coal mining industry." The Illinois provision is not on its face less stringent than SMCRA, but it must be clarified. *See* Finding 20.1.

375. *Rule 1845.13(a)* CPKC (ARN: ILL-0169B) suggests the adoption of the Federal point system or an alternative in Illinois Rule 1845.13(a). While the Secretary agrees that some system to identify how penalties will be assessed would be desirable in the administration of the program, such a point system cannot be mandated at this time since

the Federal provision has been remanded. [*In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, May 16, 1980]

376. *Section 845.13(b)(3)(ii)(B)—Rule 1845.13(b)(3)* CPKC (ARN: ILL-0169B) suggests that Illinois Rule 1845.13(b)(3), concerning factors to be considered in assessing civil penalties should be amended to specify that negligence can be an act or omission. The Secretary agrees that the Illinois rule should specify, by rule or policy statement, that it defines "negligence" in a mannor consistent with 30 CFR 845.13(b)(3)(ii)(B).

377. *Rule 1845.14* CPKC (ARN: ILL-0169B) suggests the addition of a point system to Illinois Rule 1845.14 comparable to the point system in the Federal system. While the Secretary agrees that some system to identify how penalties will be assessed would be desirable in the administration of the program, such a point system cannot be mandated. *See* Comment 375.

378. *Rule 1845.15(a)* CPKC (ARN: ILL-0169B) suggests that proposed Illinois Rule 1845.15(a) be revised to require assessment of a penalty for a minimum of two separate days under certain circumstances including assignment of a certain number of points to the violation. The Secretary cannot require the use of a point system to assess penalties as the commenter's suggestion would require at this time. See Comment 375.

379. *Rule 1845.15(b)(2)* The cite given by CPKC (ARN: ILL-0169B) is somewhat confusing, but it would appear that the commenter was referring to Illinois proposed Rule 1845.15(b)(2) which is consistent with 30 CFR 845.15(b)(2).

380. *Section 845.17—845.20—Rule 1845.17—1845.20* CPKC (ARN: ILL-0169B) is concerned by the differences between proposed Illinois Rule 1845.17—Rule 1845.20 and 30 CFR 845.17—845.20 with respect to assessment and payment of penalties. The Secretary believes that the proposed Illinois rules of July 30, 1980, adequately require: 1) a permittee providing information pertaining to the assessment of a violation to the regulatory authority; 2) assuring the service of the proposed assessment is accomplished; and 3) providing for review or reassessment of a penalty. This would be acceptable.

381. *Section 845.17(a)—Rule 1845.17(a)* CPKC (ARN: ILL-0169B) suggests that the provision in proposed Illinois regulation 1845.17(a) allowing persons or operators who have received notices or orders within 20 days to submit to the regulatory authority information on the violation be changed to allow only 15 days, as does 30 CFR 845.17(a). Proposed Illinois Rule 1845.17(a) submitted July 30, 1980, allows only 15 days.

382. A commenter (ARN: ILL-0179) requested that the Secretary review the Illinois law, particularly the public participation provisions, to insure that time schedules outlined in the Illinois regulations will be adequate. The Secretary has reviewed the public participation provisions of the Illinois law. See Finding 23 and the detailed discussion of the Illinois rules sent to Illinois by the Director, OSM.

383. CPKC (ARN: ILL-0169B) expressed concern that the number of personnel who have authority to issue violations and cessation orders should be increased. The Secretary agrees. See Findings 31.4 and 31.5.

384. CPKC (ARN: ILL-0169) commented that inspectors should be given the power to issue violations and cessation orders. The Secretary agrees. See Finding 21.1.

385. CPKC (ARN: ILL-1069) commented that the timetable submitted by Illinois for designation of lands unsuitable is not consistent with the proposed Illinois regulations. The Illinois flow chart submitted July 30, 1980, appears to be adequate. Another problem identified is that the number of personnel handling petitions is inadequate. The Illinois narrative on this issue is discussed in Finding 22.5.

386. ISP (ARN: ILL-1070) expressed concern that the number of inspectors authorized to take enforcement action is inadequate. The Secretary agrees. See Finding 31.4 and 31.5. It further suggested that inspection authority be given to other state agencies that make up the Interagency Committee to avoid duplication of expertise. The Secretary would not object to the Illinois Department of Mines and Minerals delegating functions to another state agency as long as the agency can conduct that portion of the program in accordance with SMCRA.

387. ISP (ARN: ILL-0170) expressed concern about the Illinois systems and procedures on revegetation (Vol. 2—Tab F). One concern was how the public and the Interagency Review Committee will be involved in development of technical guidelines. This was clarified in Volume 10, Tab H, submitted July 30, 1980. A second concern was what procedures would be employed to determine 90% ground cover. This also was clarified in Volume 10, Tab H, of the July 30, 1980, submittal. A third concern was for the interaction between the regulatory authority, the Interagency Committee and the general public concerning the determination of whether bond may be released. Deficiencies in the Illinois statute and system element concerning bonding are identified in Finding 19.

388. ISP (ARN: ILL-0170) expressed concern that the Illinois system provides no procedure for determining lands historically used for cropland as prime farmland (Vol 2, Tab F). However, the Illinois narrative requires operators "to delineate areas which by their soil type and *land use*" (emphasis added) are prime farmlands. In addition, Illinois' definition of "historically used for cropland" is the same as the Federal definition.

A second point was that the public should be made aware that the regulatory authority is considering other factors under Rule 1783.27(b)(3) in determining the number of prime farmland acres in the permit application. The Secretary's concerns regarding public participation are outlined in Finding 23.

A third concern was the lack of a system for assessing whether data submitted under 1785.17(b)(7) is adequate to demonstrate that the proposed method of reclamation will achieve equivalent yields. While this system may be helpful, it is not specifically required by the Federal rules.

A fourth concern was that there is no process for determining whether productivity has been met on restored land (Section 1823.15(b) and (c)). The description of this process is not specifically mandated by the Federal rules.

389. ISP (ARN: ILL-0170) commented on the system element concerning use of explosives (Vol 2, Tab F). It suggested that an application be used in making the discretionary decision in Rule 1816.65(h) regarding a reduction in the maximum peak particle velocity allowed. While such an application would be helpful, it is not required by the Federal rules. A further concern was that procedures be included for making discretionary decisions on the use of explosives. Delineation of such procedures is not specifically mandated by the Federal rules.

390. ISP (ARN: ILL-0170) is concerned that the system and procedures submitted by Illinois concerning post-mining land use in Volume 2, Tab F: (1) do not discuss how the regulatory authority will weigh and employ comments on post-mining land use, and (2) do not provide procedures for evaluating data needed to justify alternative post-mining land use under Rule 1816.133(c). The Federal rules do not specifically require Illinois to delineate these procedures.

391. ISP (ARN: ILL-0170) believes that the systems and procedures concerning backfilling and grading in Volume 2, Tab F: (1) should reference Section 1816.100. (2) should explicitly describe the regulatory authority's responsibilities for ensuring contemporaneous reclamation, and (3) should not provide for mandatory extensions of time for completion of backfilling and grading. Illinois submitted additional information on July 30, 1980, in Volume 10, Tab H. The Secretary's concerns about Illinois backfilling and grading requirements are expressed in Finding 14 of this notice and Finding 14 of the deficiency letter being sent to Illinois by the Director of OSM.

392. ISP (ARN: ILL-0170) suggested that at least one of the staff positions at the Division of Land Reclamation should contain specific responsibilities for evaluation of subsidence control plans. The Secretary has expressed specific concerns regarding staffing in Finding 31.

393. ISP (ARN: ILL-0170) expressed the following concerns about the systems and procedures on permanent and temporary impoundments in Volume 2, Tab F: (1) 1816.133 should be referenced, (2) clear language that all permanent impoundments will meet 1816.133 should be included, (3) a clear directive should be included that impoundment approval will be in accord with existing land uses and recommendations of county and other local officials, (4) guidelines on what constitutes acceptable justification for an impoundment as a post-mining land use should be included, and (5) guidelines should be provided to coal operators on general design criteria for categories of impoundments. While these suggestions are useful, they are not mandated by the Federal rules.

394. ISP (ARN: ILL-0170 and 0169) had several comments regarding the systems and procedures submitted in Volume 2, Tab K concerning designating lands unsuitable for mining. The first comment is that the comment period should be reopened following the July 30, 1980 submittal by Illinois of additional narrative information. Illinois South will have the opportunity to comment on this material prior to the final decision by the Secretary on the Illinois program. The second problem is that the narrative should be expanded to include a determination of the priority of petitions. Further, the staffing is insufficient, and the narrative contains serious timing problems. The Secretary disagrees that timing problems are evident in the Illinois narrative, but agrees that staffing is inadequately described. *See* Finding 22.5. Further, ISP suggests that the regulatory authority provide a document to inform citizens of their rights under Section 522. While this document would be helpful, it is not mandated by the Federal rules. Another point is that the data base should be available to the public. Proposed Illinois Rule 1764.23 provides for public access to the data base system and information.

A third concern is that the timetable in the narrative is not synchronized with the regulations. The Secretary has expressed concern regarding the flowcharts and Illinois adequately revised them in Volume 10, Tab N, on July 30, 1980.

A fourth point is that the regulatory authority does not have criteria by which it will determine a petition "frivolous." While this would be useful, it is not specifically required in the narrative under the Federal rules.

A fifth concern is that there is no information on the type of data base the regulatory authority will develop for designating lands unsuitable nor how the data base will coordinate with the permitting process. The Federal rules do not require this specific information on the data base, in the narrative.

A sixth point was that there is no indication that a data base system will be operable and open to public use by January 3, 1981, and further that the system does not indicate what information will be put in the system. The Federal rules do not require these specific items in the Illinois narrative.

A seventh concern was that no process was identified by which citizens can have access to the system. A description of this process is not specifically required in the narrative by the Federal rules.

An eighth point was that no procedure was described for determining automatic designation as unsuitable. While such a procedure would be useful, its description is not mandated by the Federal rules.

A ninth problem was the lack of a process by which state agencies can designate lands unsuitable and also lack of a priority system for state versus public petitions. A description of this process is not required by the Federal rules.

395. ISP (ARN: ILL-0170) commented concerning the systems and procedures submitted by Illinois regarding conflict of interest (Vol. 2, Tab L). The following concerns were expressed: (1) The state submittal is unclear as to which employees come under the conflict of interest provisions. The Secretary believes that the narrative is adequate; however, see Finding 24. (2) The Illinois submittal contains no description of how annual reporting to the Secretary will be carried out. This description is not required by the Federal rules.

396. *30 CFR 731.14(g)(1)* ISP (ARN: ILL-0170) expressed concern that there is no institutionalized mechanism for consideration of public views presented in the State program at Volume 2, Tab A concerning the timeline for the permit process. A second concern is that the timeline presented by Illinois leaves no room for the Interagency Committee to receive public comment. The Secretary believes that the narrative on the permit review process as supplemented by the July 30, 1980 submittal (Volume 10), is adequate.

A third concern expressed is that the proposed regulations and narrative do not state how public comments will be received. This deficiency is discussed in Finding 23.19–23.23.

A fourth point expressed is that Tab H of Volume 2 contains no procedure for permit revisions. What constitutes significant departures and incidental boundary revision was also questioned. The Secretary believes that the Illinois narrative as supplemented by the July 30, 1980, submittal (Volume 10), is adequate in this regard.

A final point made is that the opportunity for public participation in the development of the Illinois State program is inadequate and that in Volume 2, Tab N, comment 1.h., the State claims the primary beneficiaries of public participation in the pre-submittal period were the coal operators and the Department staff. The Secretary disagrees. See Finding 23.23.

Approval in Part/Disapproval in Part

Pursuant to Section 503 of SMCRA and 30 CFR 732, the Secretary initially approves in part and disapproves in part the Illinois program because the State does not have laws that fully comply with SMCRA, does not have appropriate promulgated regulations, and has systems that are both incomplete and inadequately described. Illinois is not now eligible to assume primary jurisdiction to implement the permanent program. If the State wishes to assume primacy, it must revise its program by resolving the statutory problems, promulgating appropriate regulations, and revising the program narrative. The revised program must be submitted within 60 days of the effective date of this decision. The resubmission will then be reviewed and approved or disapproved under the procedures in 20 CFR 732.

As previously mentioned, the regulations are being disapproved in their entirety since they were not fully promulgated by the 104th day after

program submission. The following sections of the Illinois statute are disapproved for the reasons and to the extent set forth in the paragraphs identified following each provision's section number:

Statute section	Finding No.
1.03(a)(1)	30.1
1.03(a)(18)	30.2
1.03(a)(24)	30.4
1.03(a)(25)	30.3
1.03(a)(26)	30.5
2.04(a)	23.1
2.04(d)	23.2
	23.3
	23.4
	23.5
	23.6
3.04(a)	14.2
304(c)	14.4
3.07(b)	14.5
3 08(a)	14.7
3.10(d)	14.8
3.11(c)	14.10
3.13(a)(1)	23.8
3.15(b)	14.13
3.15(c)	14.14
	14.15
3.23(e)	14.16
6.07(d)	19.2
6.08(c)	23.12
6.08(d)(2)	19.3
7.02(b)(1)	22.2
7.03(c)	23.19
7.03(f)	23.16
8.01(c)	23.9
8.04(a)	20.1
8.04(e)	20.4
8.05	23.13
8.05(c)	23.14
8.06	21.1
8.06(a)	23.11
8.06(b)	21.2
	21.3
8.06(c)	21.4
	21.5
8.06(e)	23.19
8.07(a)	23.17
8.07(f)	23.14
8.09	23.18
9.06	24.1

Effect of This Action

For the present, Illinois is not eligible to assume primary jurisdiction to implement the permanent program. Illinois may submit additions or revisions to its proposed program within 60 days from the date of decision.

If no revised submission is made within 60 days, the Secretary will take the appropriate steps to promulgate and implement a Federal program for the State of Illinois. If the disapproved portions of the State regulatory program are revised and resubmitted within the 60 day time limit, the Secretary will have an additional 60 days to review the revised program, solicit comments from the public, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other Federal agencies, and approve, conditionally approve or disapprove the final Illinois program submission.

This disapproval relates only to the permanent regulatory program under Title V of SMCRA. It does not constitute approval or disapproval of any provisions related to implementation of Title IV of SMCRA, the abandoned mine lands (AML) reclamation program. In accordance with 30 CFR Part 884 (State Reclamation Plans), Illinois may submit a State AML reclamation plan at any time. Final approval of an AML plan, however, cannot be given by the Director of OSM until the State has an approved permanent regulatory program.

Prior to any approval of the Illinois program, the initial Federal lands program regulations in 30 CFR Part 211 will apply to operations on Federal lands in Illinois. After any approval of the Illinois program, the permanent Federal lands program regulations in 30 CFR Part 740 will apply.

The Secretary does not intend to promulgate rules in 30 CFR Part 924 until the Illinois program has been finally approved or disapproved following opportunity for resubmission.

Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of Public Law 95-87, 30 USC 1292(d), no Environmental Impact Statement will be prepared on this approval in part/disapproval in part.

Note.—The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory anlysis is being prepared on this approval in part/disapproval in part.

Dated: October 27, 1980.

Joan M. Davenport,

Assistant Secretary of the Interior.

[FR Doc. 80-33931 Filed 10-30-80; 8:45 am]

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federal register

Friday,
October 31, 1980

Part VI

Department of the Interior

Heritage Conservation and Recreation Service

1981 Action Program—Identification of Nationwide Recreation Issues

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

1981 Action Program-Identification of Nationwide Recreation Issues

AGENCY: Heritage Conservation and Recreation Service, Interior.

ACTION: Notice

SUMMARY: This notice announces that the Heritage Conservation and Recreation Service is now seeking public comment on possible recreation problems and concerns for the 1981 Action Program. The Action Program is the annual implementation phase of the five-year Nationwide Outdoor Recreation Plan. The comments received will enable HCRS to formulate a list of national priority recreation issues for consideration by the Secretary of the Interior. The final 1981 Action Program document on selected issues will be transmitted by the President to the Congress and may propose legislation, policy changes or a combination of recommended actions to remedy national recreation problems.

SUPPLEMENTARY INFORMATION: In accord with the provisions of the Federal Outdoor Recreation Coordination Act of 1963, Pub. L. 88-29, the Secretary of the Interior is responsible for the coordination of the governmental and private sector actions required to assure adequate outdoor recreation resources for present and future generations of Americans. In carrying out this responsibility the Secretary is authorized to formulate and maintain a comprehensive nationwide outdoor recreation plan, taking into consideration the plans of the various Federal agencies, States and their political subdivisions. The plan shall set forth the needs and demands of the public for outdoor recreation and the current and foreseeable availability of adequate recreation resources to meet those needs in the future. The plan shall identify critical outdoor recreation resource problems, recommend solutions, and recommend desirable actions to be taken at each level of government and by the private sector.

In an effort to more effectively discharge its outdoor recreation planning responsibility the Heritage Conservation and Recreation Service has adopted a continual nationwide recreation planning process designed to assess the scope and adequacy of Federal, State and local public agency and private sector recreation resources, programs and activities; identify and provide for the resolution of critical recreation issues and problems; and provide for the effective coordination of Federal and State comprehensive recreation plans. The HCRS Division of Nationwide Recreation Planning has undertaken an analysis of the most recent Statewide Comprehensive Outdoor Recreation Plans (SCORPs) to begin evaluating recreation problems and concerns in recreation for the 1981 Action Program. As Public Law 88-29 requires consideration of State plans in the formulation of the Nationwide Outdoor Recreation Plan, the annual Action Program coordinated by HCRS will increasingly look to the State Action programs for issue data and recommendations for action on identified national issues.

The HCRS nationwide recreation planning process is a continuing policy and program development process consisting of two major elements:

Five Year Assessments of national recreation resources, needs, impacts, benefits, and public outdoor recreation participation trends will be produced for transmittal to the Congress by the President every five years.

Annual Action Programs which identify national priority recreation issues and set forth policy action recommendations required to resolve these issues as determined by the affected Federal agencies and approved by the Secretary of the Interior. This document will be produced annually for transmittal to the Congress by the President.

1981 Action Program Development Process

The 1981 Action Program development process involves the identification of outdoor recreation concerns and problems; the selection of problems of critical importance; the study and correlation of selected problems to form issues; and the development and recommendation of the actions required to resolve priority recreation issues.

The Action Program process annually selects national recreation issues identified through a broad-based review by Federal agencies, States, and the private sector. Issues may range from those that can be resolved in a short timeframe with few resources to those requiring several years of coordinated effort with budgetary needs or legislative changes. The identification and selection of key recreation issues and development of recommendations for action punctuates the five-year Nationwide Plan with yearly implementation phases. Through this process, Federal attention will be director to resolve major issues while responding to changing socio-economic conditions, recreation trends, and other important national policies.

Previous Year Action Programs

The *1979 Nationwide Outdoor Recreation Action Program* focused on nine major public policy issues which affect recreation, including Federal Land acquisition; wild and scenic rivers; national trails; water resources; energy conservation; environmental education; handicapped access; private sector involvement; and recreation research.

The *1980 Nationwide Outdoor Recreation Action Program* consists of six issues: implementation of the Federal land acquisition decisionmaking process adopted in the *1979 Action Program*; alternative sources of funding for the Land and Water Conservation Fund; improved participation by Indian tribes in the Land and Water Conservation Fund; recreation needs of rural areas and small communities; health promotion strategies in urban parks; and documentation of sites important to the history of recreation and parks. The 1980 Action Program reports on the progress and status of actions recommended by the 1979 Action Program for the nine major recreation issues.

Suggested Issue Format

Suggested Issued Format. It is anticipated that issues which are most suitable for inclusion in the 1981 Action Program will be those involving other agencies and multiple policies. Issues should be submitted in written form by December 1, 1980 to HCRS, Division of Nationwide Recreation Planning. To the extent practicable, please use the following format:

A. Concise statement identifying the specific problem or issue to be resolved.

B. Brief narrative statement described the background and circumstances associated with the issue.

C. Brief narrative statement describing the relevant actions taken and or in progress to resolve the issue.

D. Citation of Federal, State, or local actions required to resolve the issue identified.

E. Potential Federal, State, or local actions required to resolve the issue identified.

F. Sources of information relevant to the issue.

G. Name and telephone number of any key contacts who are familiar or active in this issue and could supply more information.

Proposed 1981 Issues

You may wish to make further suggestions or comments on issues which have already been submitted to

HCRS for consideration in the 1981 Action Program. After public comment these issues will be correlated to form core issues. Many are still in the problem statement stage at this time. Some of the issues may continue through more than one Annual Action Program, with different aspects addressed in succeeding years. They are as follows:

1. *Strengthen employment-recreation linkages.* This issue deals with the response of park and recreation systems to longterm social problems like unemployment. How can training and placement opportunities be made available to disadvantaged workers in maintenance, rehabilitation and development projects for part and recreation facilities? What are possible linkages with youth, minority, refugee, delinquency, and other social concerns?

2. *Improve small community recreation program delivery.* How can we build onto existing institutional stuctures to increase small community capacities to use funds effectively for recreation?

3. *Develop effective health promotion strategies.* How can mutually cooperative strategies be developed to include health and physical fitness programs in park and recreation settings? How can activities for employees be encouraged during leisure time at the workplace and related to beneftis such as productivity and health?

4. *Elderly population recreation.* Demographics show that the retirement and elderly population is increasing. In what ways will this expanding recreation need be met?

5. *Safety in parks and recreation.* How can safety problems be corrected by recreation facility design and programming? Also, what policies should be developed to aid in determining the responsibilities of park and recreation managers in risk environments and activities?

6. *Issue-oriented research for decisionmakers.* How can research and information assist decisionmakers better? How can data bases (such as visitor use statistics) be made comparable to ensure maximum use and sharing of information? Timely research needs include: vacation patterns and leisure trends, budget cut impacts on park and recreation programs, recreation facility design and planning for energy development.

7. *Inadequate recreation funding.* Growing recreation demand is often not reflected in these budget areas: operation and maintenance, construction and development, and land acquisition. How can these funds be kept from being diminished at disproportionate rates compared to other budget items? What are ways that parks can fill the gap in funding for operation and maintenance? What are the impacts of regressive user fees?

8. *Water resources and recreation.* Has public access been adequately addressed in urban waterfront revitalization and improved water quality areas? Is lake, river and stream protection receiving priority consideration by all levels of government and the private sector?

9. *Handicapped access.* In what areas should accessible recreation for disabled persons receive further emphasis?

10. *Increase the amount of available recreation land where it is most needed.* What methods are available or should be developed to increase or ensure adequate recreation resources? How can Federal goals for open space and recreation be clarified to provide direction in land acquisition and guidelines for state planning? Several concerns are tied to the need for available and accessible land for recreation: closure of private lands to recreationists, and the need for preservation of open space around urban areas to provide close-to-home recreation.

11. *Maintain the quality of recreation lands.* How can the natural characteristics be kept intact on currently owned land resources? This is a large issue area which covers: Intensive use of wilderness and decline of the resource; pollution such as acid rain which can affect an entire biological community; protection of areas to perpetuate natural diversity; and land adjacency issues which are characterized by a lack of intergovernmental planning and coordination.

12. *Emphasize the public transportation role in meeting recreation demand in an energy-efficient manner.* What are the possibilities of the following concepts: Recreational transit service funding in certain Federal grants; development of incentive packages for transit services to recreation areas; and regional information/travel centers with intermodal transportation focal points?

DATE: Comments must be received by December 1, 1980.

ADDRESS: Send written comments to Shirley D. Patterson, Division Chief, Nationwide Recreation Planning, Heritage Conservation and Recreation Service, 440 G Street, N.W., Washington, D.C. 20243.

FOR FURTHER INFORMATION CONTACT: Marcia Keener, Outdoor Recreation Planner, Division of Nationwide Recreation Planning, Department of the Interior, Heritage Conservation and Recreation Service, Washington, D.C. 20243 (202) 343-4317.

Dated: October 28, 1980.

Meg Maguire,

Acting Director, Heritage Conservation and Recreation Service.

[FR Doc. 80-33923 Filed 10-30-80; 8:45 am]

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federal register

Friday
October 31, 1980

Part VII

Department of Health and Human Services

Public Health Service

Health Maintenance Organizations; Employees' Health Benefits Plans; Final Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 110

Health Maintenance Organizations; Employees' Health Benefits Plans

AGENCY: Public Health Service, HHS.

ACTION: Final Regulations.

SUMMARY: This rule amends the Public Health Service regulations by setting forth revised requirements for certain employers, States, and political subdivisions of States to include in any health benefits plans offered to their employees the option of membership in qualified health maintenance organizations (HMOs). These changes are made as a result of public comments received on the notice of proposed rulemaking (NPRM) published on July 18, 1979. Certain minor technical and editorial changes have also been made.

EFFECTIVE DATE: This rule is effective on December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building—3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: On July 18, an NPRM was published in the Federal Register (44 FR 42083-91) proposing changes to 42 CFR Part 110, Subpart H, issued under Title XIII of the Public Health Service Act, as amended (the Act). Section 1310 of the Act (42 U.S.C. 300e-9) requires certain employers, States, and political subdivisions of States to include in the health benefits plans offered their employees the option of membership in qualified health maintenance organizations (HMOs).

Interested persons were given an opportunity to submit comments on the proposed amendments by September 17, 1979. Forty-four comments were received by September 17, 1979, and three were received after that date. All comments received were considered in revising these regulations.

As an introductory note, the Department wishes to emphasize that to the extent that the employing entity (the collective term for employers, States and political subdivisions of States) and qualified HMOs can negotiate successfully the inclusion of the HMO option(s) in the employing entity's health benefits plan, it encourages such negotiation. However, in order for an HMO to maintain its status as a qualified HMO, it must provide services and be organized and operated in accordance with Subpart A of this Part ("Requirements for a Health Maintenance Organization"). Thus, in negotiating with a qualified HMO, an employing entity may not insist upon any terms which would require the HMO to violate any Subpart A requirements.

The comments received, responses thereto, and the changes made, if any, are summarized below:

1. Proposed § 110.803(a) defined when the request for inclusion by an HMO must be received by an employing entity in terms of the expiration or renewal date of certain contracts. Subparagraph (2)(ii) of that section stated that a collective bargaining agreement that is "for a fixed term in excess of one year and has provisions for periodically changing wages, hours, or conditions of employment * * *" is to be considered as either expired or renewable at the time provided by the agreement for discussion of these changes. Two commenters suggested that the term "periodically changing" was imprecise in that it covered both those provisions of the contract that changed automatically on a periodic basis without the need for discussion as well as those provisions that provided for a periodic discussion of changes. The Department notes that it intended for this provision to apply only when the contract contained the latter type of provision. It notes further that the section, as proposed, was also inadvertently broader than intended in that it referred to provisions for periodically changing "wages, hours, or conditions of employment." The Department intended that only provisions that provided for renegotiating health benefits should be considered in determining when the HMO should submit its request for inclusion. The Department believes that more precision is necessary in order to clarify both of these points. Accordingly, the phrase "* * * and provides that its terms regarding health benefits may be renegotiated during the term of the agreement * * *" has been substituted in § 110.803(a)(2)(ii) in place of the phrase "has provisions for periodically changing wages, hours, or conditions of employment." The same change has been made in § 110.807(a)(2), which relates to when the offer of the HMO option is to be raised in the collective bargaining process.

2. The purpose of § 110.803(c) is to require the HMO to furnish the employing entity with a broad description of the way the HMO is organized and operated, including sufficient information for it to determine whether it is subject to a request for inclusion by the HMO and, if so, and if there are competing HMOs, to determine which HMO(s) to offer. Section 110.803(c)(4) requires an individual practice association (IPA) type HMO to furnish to the employing entity a list of the IPA members by name, specialty, address, days and hours of operation and whether they are accepting new patients from the HMO membership, with the listing current within 90 days of the HMO's request for inclusion. One commenter requested that the HMO be required to list only the number of physicians in the IPA and another suggested that the HMO should list the telephone numbers of the IPA physicians instead of their days and hours of operation. The Department agrees that the proposed requirement is burdensome on the HMO and that employing entities do not need all of the information it would have required the HMO to provide. The Department believes that a more appropriate way to reduce the burden on the HMO is to delete the requirement that it include the addresses and days and hours of operation of the IPA physicians. Accordingly, § 110.803(c)(4) has been amended to require the HMO to list the IPA members by name, specialty, and whether they are accepting new patients from the HMO membership.

Other commenters noted the information required to be submitted about the IPA, as well as that required to be submitted by the non-IPA type HMOs under § 110.803(c)(5), could be inaccurate or out-of-date at the time of enrollment. The Department thinks that a listing current within 90 days of the HMO's request for inclusion is sufficient to meet the needs of the employing entity when the HMO makes this request. It emphasizes, however, that § 110.108(c) of Subpart A of this Part provides clearly that the HMO has the obligation to disclose fully and fairly information to prospective enrollees at the time of the offer of enrollment, including a general description of participating providers, as well as the locations and hours of service of the HMO.

3. Proposed § 110.803(c)(9) would have required the HMO to provide the employing entity with a report of the financial condition of the HMO consisting of its most current financial statements in addition to its most recently audited annual set of financial statements. One commenter opposed this requirement as being not only burdensome to the HMO, but also

potentially misleading to the employing entity in that the HMO's most current financial statements were not required to be audited. Other commenters suggested that the provision be revised to require the HMO to include a narrative description of its current financial position, as this would be more comprehensible to the layman. The Department agrees that this section should be changed in the interest of minimizing the burden on the HMO while at the same time providing that accurate, relevant information will be available to the employing entity. Accordingly, this section has been revised by deleting the requirement that the HMO must submit its most current financial statements. It now requires the HMO to provide only its most recently audited annual financial statements.

4. Proposed § 110.803(c)(12) would have required an HMO to provide the employing entity its proposed rates for basic and supplemental services to be charged by the HMO on the effective date of the HMO coverage. Under certain conditions, copayment levels and the corresponding premium rates were also required to be stated. A number of commenters requested clarification of this provision. In response to an inquiry as to which rating structures need to be included, the Department notes that, as a minimum, the HMO must provide its rates for an individual and for two or more persons. In response to an inquiry as to when, if ever, an HMO must furnish rates for supplemental health services and copayments, the offering of which are subject to negotiation (see discussion below in section 15), the Department notes that rates for the supplemental health services and copayments yet to be negotiated are not required to be provided to the employing entity at the time of the HMO's request for inclusion.

Additionally, a number of commenters were concerned that the HMO's statement of its proposed rates would be construed by the employing entity as a guarantee by the HMO that these would be its actual rates. These commenters felt that such an interpretation of the provision would be unfair because an HMO, at the time it requests inclusion, may not necessarily know: (a) The day on which the coverage for employees selecting the HMO option will begin; (b) the HMO's own cost experience in the interim before final rates are determined; and (c) the employing entity's preferred rating structure.

The Department notes that it did not intend to require the HMO to submit, at the time of its request, guaranteed rates. It agrees with the commenters that this interpretation of § 110.803(c)(12) would be unreasonable. It also believes that, because of the uncertainties inherent in estimating rates, HMOs should be given the option of stating their current rates (and the dates these rates become effective) instead of their estimated rates. Accordingly, the Department has revised the section. It now requires HMOs to state either (a) their current rates, including copayments, if any, for basic (and uniformly included supplemental) health services and the dates these rates became effective, or (b) their estimated rates for these services.

5. Proposed § 110.803(d) would have required the employing entity to respond, within 30 days of receipt of a request by an HMO for inclusion, with information enabling the HMO to determine whether the employing entity is required to offer the HMO option upon proper request.

The comments received by the Department as to this proposal and its responses thereto are as follows: (a) A number of commenters requested that the proposed 30 day response period be extended to assure that the employing entity had sufficient time to gather the necessary information. The Department agrees that a longer response period would be beneficial and has changed the 30 day response period to 60 days. The Department has extended similarly to 60 days the proposed 30 day period in § 110.803(e), which applies to the length of time the employing entity has to notify the HMO when it has concluded that the HMO's request is inadequate; (b) Two commenters recommended that since an employing entity is not subject to section 1310 of the Act unless 25 or more of its employees reside in the service area of the HMO, such an entity should be required to include information regarding its employees' health benefits plan only if it has 25 or more employees who reside within the service area of the HMO. The Department agrees with this comment and has incorporated this change into the regulation; (c) One commenter requested that, in order to inform the HMO more precisely, the employing entity should include, in addition to its contribution levels, the dates on which they became effective. The Department agrees that this information would be helpful to the HMO in deciding how to proceed with its request for inclusion in the employing entity's health benefits plan and has incorporated this requirement in the final regulations; and (d) One commenter requested that private employers, in addition to public entities, be required to furnish the HMO with a description of the health benefits that are required to be included in health benefits plans under State law or regulation. The Department notes that the reason that the regulation is limited to public entities is that there are laws or regulations in some States requiring certain benefits, including limitations and exclusions, that are applicable only to employees of public entities, in contrast with those laws or regulations requiring certain benefits that are applicable to all employees in a State. Since the Department believes that this latter, more general type of information is readily available to HMOs, it does not find it necessary to increase the burden on private employers by requiring them to furnish this information to the HMO.

6. Section 110.803(e) pertains to the notification of the HMO by the employing entity that the HMO's request for inclusion is inadequate. As noted above in section 5, the section has been modified, in response to public comment, to allow the employing entity 60 days to notify the HMO. Three commenters objected to this proposed section on the grounds that the HMO, and not the employing entity, should be responsible for submitting a valid request. The Department notes that the HMO is, of course, responsible for submitting an accurate request for inclusion. However, the Department believes that, if the employing entity intends to refuse to include the HMO alternative in its health benefits plan because it believes the HMO's request to be insufficient, it is only reasonable that the entity notify the HMO of the basis for its conclusion.

One commenter recommended that employing entities be allowed, as a condition of the HMO's participation in the health benefits plan, to make their own determinations as to the fiscal soundness of an HMO which has requested inclusion. The Department believes that this type of scrutiny of an HMO is unnecessary. It notes that federally qualified HMOs are required, under § 110.108(a) of the regulations, to have fiscally sound operations and that the Department monitors carefully their compliance with that requirement. Moreover, to permit each employing entity to make this determination as a requirement for the HMO's inclusion in the health benefits plan would lead to inconsistent determinations and would undermine the purposes of section 1310 by allowing the exclusion of HMOs that the Department has determined are eligible for inclusion.

7. Section 110.803(f) describes when an HMO must submit a new request for

inclusion in a health benefits plan of an employing entity. Four commenters recommended that, regardless of whether any employees enroll in the HMO during the initial offering, the entity should be required to continue to offer the HMO during the entire health benefits year so that new employees, transfers, and others who subsequently become eligible to enroll in the HMO (see § 110.806(e)(2) for a complete list) have the opportunity to do so. Other commenters took the opposite position; namely, that if the HMO does not get any enrollees during the initial offering period, it should have to submit a new request in order for any subsequently eligible employees to enroll. The Department believes that the former position reflects accurately the purposes of section 1310 of the Act in that it assures that more employees will be offered the option of membership in a qualified HMO. Accordingly, the regulation has been changed to require that the employees described in § 110.806(e)(2) be given the opportunity to enroll in the HMO during the entire health benefits year, regardless of whether any other employees of that entity have enrolled previously in the HMO.

8. Section 110.804 sets forth the details of how the HMO option is to be offered by the employing entity to its employees. One commenter suggested that, as a condition to the offering of the HMO, the HMO should be required to execute a contract with the employing entity binding the HMO to assure the delivery of health services to employees who subsequently enroll in the HMO. The Department notes that, in order to obtain Federal qualification, an HMO must provide assurances satisfactory to the Secretary that it will arrange for the provision of all medically necessary basic health services to its members. (See § 110.102(a)). Since the Department monitors, on an ongoing basis, the compliance of HMOs with their assurances, it does not believe that the contract suggested above between the employing entity and the HMO is necessary.

9. Section 110.805 describes which HMOs must be included in a health benefits plan. Paragraph (c) of this section, which is intended to promote competition among HMOs, describes alternate HMOs which may be offered by the employing entity instead of an HMO which made a timely request. A new section (c)(4) was proposed to limit the alternate HMOs which were otherwise eligible to be offered to those which were "included in the health benefits plan on terms no less favorable to the employing entity's employees (with regard to the employing entity's monetary contribution) than those on which the HMO submitting the timely request would have been included." A number of commenters objected to and suggested deletion of the proposed § 110.805(c)(4). They stated that the phrase "no less favorable" was ambiguous and could result in the offering of an alternate HMO that, even though the employer's monetary contribution was no less favorable to the employee, (a) underbid the timely HMO by offering employees a less favorable package of health benefits, or (b) was less favorable to employees in that it would cost them more out-of-pocket (e.g. for copayments).

The Department, while noting that § 110.805(c)(4) was intended to protect employees, acknowledges that the provision fails to contribute to that end because it does not protect employees in situations such as those described above. The Department has decided to delete this provision because of the difficulties inherent in trying to determine on a qualitative basis whether a plan is less favorable to an employee, and because it is not convinced that there is a problem with employer behavior in this regard. However, the Department is interested in receiving information from the public as to whether § 110.805(c) is being used in a manner that affects employees adversely. Upon receipt of such comments, it will reconsider what action, if any, is appropriate.

10. Section 110.806(a) requires that each employing entity provide each qualified HMO which is included in its health benefits plan with "fair and reasonable" access to eligible employees. The section then details what, at a minimum, this access shall include. While one commenter wanted the HMO's access to employees to be more flexible, others suggested that the term be defined in specific detail. The Department believes that the regulation adequately defines access by setting forth the minimum requirements for fair and reasonable access. It notes that an employing entity may, of course, agree to permit the HMO more favorable access than that required by the regulation.

11. Section 110.806(c), which sets forth the rules for the group enrollment period, requires the employing entity to have a group enrollment period with no waiting periods or exclusions or limitations based on health status as a condition of enrollment in the HMO or transfer to non-HMO coverage from an HMO. Two commenters recommended changing this section to allow a prospective HMO enrollee to remain with his original carrier if on the effective date of change to HMO coverage the enrollee is an inpatient and the original carrier responsibility continues through confinement. The Department notes that it has no authority to mandate the application of coordination of benefits agreements. However, as stated in § 110.806(c), nothing in these regulations prohibits voluntary agreements between HMOs and other carriers which are included in the health benefits plan, such as the one suggested above.

12. Section 110.806(d), as proposed, required the employing entity to "assure that employees selecting the option of HMO membership will not, because of this selection, lose their eligibility for other health benefits, such as dental or prescription drug coverage, for which they were previously eligible or would be eligible if selecting a non-HMO option and which are not included in the services provided by the HMO on a prepaid basis." This requirement, for convenience, will be referred to below as the "continued eligibility" requirement.

Twenty commenters addressed the continued eligibility requirement in their letters. The comments are summarized as follows: (a) One commenter urged the Department to retain the language as proposed, citing the requirement as critical for HMOs to compete in the marketplace; (b) one commenter, while approving the proposed regulation, urged its expansion to assure eligibility for any employment-related benefits; (c) five commenters objected to the provision, claiming it would unduly burden and result in additional administrative costs to employers; (d) eleven commenters felt the proposed regulation should be limited to "free-standing" or "self-contained" benefits, that is, benefits which are offered as a separate, discrete package and not integrated into a basic medical insurance policy or a major medical plan; many of these commenters requested clarification as to the level and scope of benefits the Department was proposing be subject to the requirement; and (e) four commenters urged that the requirement apply only to free-standing benefits, except that dental benefits should be extracted from a comprehensive package of indemnity benefits because the dental benefit is "significant."

The Department notes that the purpose of section 1310 and its implementing regulations is to assure that employees are given a true option

to choose among competing alternatives in health benefits plans, including HMOs. The continued eligibility requirement, which assures that employees who choose to enroll in an HMO are not penalized by that choice with respect to free-standing health benefits available to employees is, among other provisions, a means of achieving that statutory purpose.

In light of the public comments received, however, the Secretary has revised the regulation to require an employing entity, at the request of the HMO, to provide for continued eligibility only as to those benefits which are "free-standing" and not offered by the HMO to its members as part of the HMO benefit package. The term "free-standing" is defined at § 110.806(d)(2). Further, the provision at § 110.806(d) is applicable only when the HMO does not offer a particular health benefit in whole or in part. Because, in the experience of the Department, this is most likely to occur with respect to the offering of three distinct health benefits, prescription drugs, dental services, and optical services, the Department has limited the applicability of § 110.806(d) to these benefits. Should the public submit information regarding any other free-standing health benefits for which employees selecting the HMO option would be likely, in the absence of the continued eligibility requirement, to lose their eligibility, the Department will consider further rulemaking to broaden the requirement.

In view of the response that this proposed section elicited, the Department believes that it is appropriate to clarify this section by adding to the regulation specific examples of what the employing entity is, and is not, required to continue to make available to its employees selecting an HMO option. This addition to the regulations includes examples showing when the employing entity is required to continue to make available the free-standing benefits not available through the HMO to its employees because the HMO option being offered does not provide for any level of that particular benefit. The regulation also includes examples showing when the employing entity need not continue to make available the free-standing, non-HMO coverage to employees selecting the HMO option.

In addition, as noted in one of the examples under § 110.806(d), nothing in this regulation requires that the coverage for the free-standing benefit be made optional (or mandatory) for employees selecting the HMO option if coverage for the benefit is not optional (or mandatory) for employees selecting the non-HMO option.

The Department also notes that § 110.806(d) does not address whether the employing entity must continue to make available to employees who select the HMO option non-health related benefits, such as life or disability insurance. While the Department has decided not to include in these regulations a requirement that employing entities continue to make these non-health benefits available, it is concerned that any employing entity that does not do so may be acting in a manner inconsistent with other Federal statutes. The Department intends to report any discriminatory or anti-competitive conduct to the appropriate Federal agencies for monitoring in this regard. Moreover, it notes that under § 110.808(c), the employing entity may only exclude from its contribution to the HMO option those portions of the contribution allocable to benefits (either related to health or not) for which eligible employees continue to be covered notwithstanding selection of the HMO option.

Finally, the Department notes that, while it is now limiting this requirement to free-standing benefits, the HMO and employer may agree to give employees access to coverage for an "integrated" benefit.

13. Section 110.806(e)(2) specifies when the employng entity shall make available the opportunity to select among different existing alternatives within a health benefits plan outside of the group enrollment period. Proposed § 110.806(e)(2)(ii) specified that this opportunity must be provided, among others, to eligible employees who, "have been transferred or have changed their place of residence, resulting in * * * loss of membership in a qualified HMO in which they were previously enrolled." A commenter noted that this language would not have given an otherwise eligible employee the opportunity to select a new option if he or she transferred or moved out of the service area of the HMO in which he or she was enrolled and was allowed by that HMO to retain membership. While this employee would not have lost membership in a qualified HMO, the services of the HMO would not longer be readily available and accessible since the employee would reside outside the HMO's service area. In order to accommodate this situation, the Department has changed the phrase, "resulting in loss of membership in a qualified HMO in which they were previously enrolled" to "resulting in residence outside the service area of a qualified HMO in which they were previously enrolled."

14. Section 110.806(e)(2)(iii) requires the employing entity to make available the opportunity to select among different existing alternatives within a health benefits plan to eligible employees who are covered by any alternative which ceases operation. One commenter felt this requirement should be deleted since it placed an unreasonable burden on employing entities. Another commenter suggested that the provision be amended to allow for a reasonable period of time for the transition of these employees to a new health benefits option. Since the Department believes that the section as proposed is reasonable in light of the importance of assuring that all employees are provided the opportunity for continuous health care coverage, it has not changed this section.

15. Two different proposed sections addressed the determination of which supplemental health services were to be included with the required basic health services in the HMO's prepaid benefit package. Proposed § 110.806(f)(3) would have allowed the HMO to select, for all employees, the supplemental health services to be included as part of its prepaid benefit package. Proposed § 110.808(a)(3) would have allowed the HMO to add supplemental health services to its prepaid benefit package if the amount of the HMO's premium is less than the employing entity's contribution to the HMO alternative. A number of commenters objected to these proposed rules on the following grounds: (a) They would only only increase the cost of health care but also eliminate the potential cost savings of offering an HMO, which is a major reason for the attractiveness of HMOs to employing entities; and (b) The inclusion of supplementals is more properly a subject for the negotiation process; in fact, allowing the HMO to select supplemental defeats the provisions of § 110.806(f) (1) and (2), which give the employing entity the right either to negotiate the supplemental health services to be offerd through its collective bargaining process or to select them through the same decision-making process it uses with respect to the non-HMO alternatives in its health benefits plan.

The Department notes that the HMO Amendments of 1976 (Pub. L. 94-460) amended section 1301(b)(1) of the Act to allow HMOs to include supplemental health services in their basic health services provided to their members for a basic health service payment. The Conference Committee, in its report

adopting this provision as proposed by the House of Representatives, noted that the provision was necessary because "there are some States which require HMOs under State law to offer services which are not included among the defined basic health services." (H.R. Rep. #94-1513, 94th Cong., 2d Sess. 19 (1976)). The House Committee, in its report, explained its amendment by stating that "(It) would simplify the marketing of benefits by HMO's (sic) allowing them to choose a single benefits package which was competitive in the area which is served and to market that single package to all of its members. The present requirements (making the choice optional with members) have proved cumbersome for HMO's (sic) which find that each member, or group of members chooses a different set of supplemental health services for which to contract, with the result that the HMO must provide and administer a great variety of different benefit packages to its different groups of members." (H.R. Rep. #94-518, 94th Cong., 1st Sess. 16 (1975)).

Thus, the legislative history shows clearly that Congress intended to allow HMOs to determine on a non-negotiable basis which supplemental health services to include in their prepaid benefit packages, if those supplemental services are (a) required to be offered under State law or (b) included uniformly by the HMO in the prepaid benefit package offered to all of its members.

Given this background, the Department has concluded that it is inappropriate to provide that the offering of all supplemental health services by the HMO is subject to negotiation. However, it does believe that it is consistent with section 1301(b)(1) of the Act and its legislative history to limit the HMO's right to determine on a non-negotiable basic which supplemental health services to include to the two situations described above.

In addition, based on the revision to § 110.806(d) ("Continued availability of other health benefits") described in item #12 above, the Department has concluded that a conforming amendment to this provision is appropriate. Accordingly, the Department has added a third situation in which the HMO may require the offering of certain supplemental health services as part of its basic health services package: When coverage for the supplemental health service at issue is available through the non-HMO option and that coverage is not available to employees selecting the HMO option. For example, if the coverage is available in an integrated (i.e., not free-standing) health service benefit plan, and thus is not required by § 110.806(d) to be made available to employees selecting the HMO option, the HMO may require the offering of this supplemental health service as part of its prepaid health services package. This result would also occur if the HMO and the employer had mutually agreed that the continued availability requirement of § 110.806(d) would not be applied with respect to a given supplemental health service.

A supplemental health service which did not fall in any of the three categories described above would properly be the subject of negotiation between the employing entity and the HMO, as well as the collective bargaining process, if any. The Department believes that this approach not only furthers the legislative intent by reducing the administrative burden on HMOs, but also does not interfere unduly with the employing entity's collective bargaining or other decision-making processes. Accordingly, § 110.806(f)(3) has been modified to reflect this approach.

Further, in light of the analysis set forth above, the Department has reconsidered the appropriateness of proposed § 110.808(a)(3) (which would have allowed HMOs to add prepaid supplemental health services so as to raise its premium up to the amount of the employing entity's contribution to the non-HMO alternative). Consistent with the revision to § 110.806(f)(3), proposed § 110.808(a)(3) has been deleted.

16. Section 110.808(a) sets forth the general principles for determining the employing entity's contribution to the HMO option. Proposed subparagraph (2) of that section stated that the amount of this contribution shall be equal, in terms of dollars, "to the largest amount of contribution per employee paid to any other option which is available to all eligible employees included in the health benefits plan * * *" (up to the amount of the HMO's premium). A number of commenters noted that using "all eligible employees" as a standard for determining contribution was not only inequitable but also would have an inflationary impact on those companies which determine their contributions based on the earning levels of each particular employee. Since the Department agrees with these commenters, it has changed § 110.808(a)(2) to require contribution by the employing entity based on the largest amount of contribution "for that individual employee".

17. Proposed § 110.808(a)(4) (now § 110.808(a)(3)) required the employing entity to increase the amount of its contribution for the HMO option whenever its contribution to other alternatives in its health benefits plan increases (up to the amount of the HMO premium). A number of commenters objected to this provision because they believe it to be inflationary and likely to be detrimental to the relationship between HMOs and employers. They also pointed out that applying this requirement in the middle of the health benefits year might result in altering an employing entity's contribution which was fixed by a contract with the HMO. Other commenters suggested that the Department add that the employing entity has the right to decrease the amount of its contribution for the HMO option whenever its contribution to other health plan alternatives decreases.

The Department believes that these comments have merit with respect to the proposed rule's applicability to the case where the employing entity's contribution to the HMO option is fixed by contract. Accordingly, the Department had decided to modify the provision. The employing entity is now required to increase its contribution to the HMO option during the health benefits year unless (a) the employing entity's contribution is fixed by contract or other arrangement with the HMO, or (b) the employing entity and HMO come to any other agreement on this issue. Of course, if the employing entity's contribution to the non-HMO alternative is to be revised only prospectively for the following health benefits year, then this revised contribution is to be used in determining the employing entity's contribution for the HMO premium. (See § 110.808(g)(1).) The Department also notes that while nothing in the statute or regulations prohibits an employing entity from decreasing its contribution to the HMO option at the time that its contribution to its other alternatives decreases, the parties may, of course, provide otherwise.

Finally, the Department encourages HMOs and employing entities to make provisions in advance on the subject of adjustments to the contribution rate in the event that the employing entity's contribution to other alternatives in its health benefits plan changes midterm during the health benefits year. It believes that agreement in advance on this issue would be beneficial to the relationship between HMOs and employing entities.

18. At the same time that the proposed subpart H rules were published, § 110.809 was promulgated as a final

regulation. (44 FR 42082, July 18, 1979). This section sets forth the conditions under which an employer must arrange for its employees' contributions for membership in a qualified HMO to be paid through payroll deductions. Although § 110.809 was effective immediately, it was also included in the NPRM, and the Department requested comments on it as well as on the proposed amendments to subpart H. The Department received the following comments on this provision: (a) A recommendation for deletion on the basis that the cost of setting up payroll deductions for a number of small HMOs would be prohibitive; (b) a suggestion that a grace period of one year be allowed for an employer to implement a payroll deduction system where one does not presently exist; and (c) a suggestion that a minimum number of enrollees in the HMO be required before the employing entity had to offer a payroll deduction. The Department notes that neither the statute (section 1310(c)) nor the regulation requires an employing entity to institute a payroll deduction system for HMO enrollees if it doesn't already provide such a system for paying employees' contributions for other options in the health benefits plans. The first and second suggestions are therefore not appropriate. The Department cannot adopt the suggestion in the third comment because it is inconsistent with section 1310(c).

19. The Department has also made certain minor technical and editorial changes.

The Assistant Secretary for Health of the Department of Health and Human Services, with the approval of the Secretary of Health and Human Services, amends 42 CFR Part 110, Subpart H, as set forth below.

Dated: June 30, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: October 21, 1980.

Patricia Roberts Harris,

Secretary.

Subpart H—Employees' Health Benefits Plans

Sec.
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Authority: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); secs. 1301–1318, as amended, 92 Stat. 2131–2141 (42 U.S.C. 300e–300e–17)

Subpart H—Employees' Health Benefits Plans

§ 110.801 Definitions.

In addition to the terms defined in § 110.101 and 110.602, as used in this subpart:

"Bargaining representative" means a representative designated or selected for the purposes of collective bargaining under the National Labor Relations Act, as amended, (29 U.S.C. 151 *et seq.*) or under the Railway Labor Act, as amended, (45 U.S.C. 151 *et seq.*) or under a public entity collective bargaining agreement, or under the laws of any State or political subdivison thereof, or other employee representative designated or selected under any law.

"Carrier" means a voluntary association, corporation, partnership, or other organization which is engaged in providing, paying for, or reimbursing all or part of the cost of health benefits under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier.

"Collective bargaining agreement" means an agreement entered into between an employing entity and the bargaining representative of its employees, and includes agreements entered into on behalf of groups of employing entities with the bargaining representative of their employees in accordance with the provisions of the National Labor Relations Act, as amended (29 U.S.C. 151 *et seq.*), or the Railway Labor Act, as amended, (45 U.S.C. 151 *et seq.*) or the laws of any State or political subdivision thereof.

"Designee" means any person or entity authorized to act on behalf of an employing entity or a group of employing entities to offer the option of membership in a qualified health maintenance organization to their eligible employees.

"Eligible employee" means an employee who is eligible to participate in a health benefits plan.

"Employee" means any individual employed by an employer or public entity on a full- or part-time basis.

"Employer" shall have the meaning given that term in Section 3(d) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C 203(d), 203(x)), except that the term "employer" does not include (1) the Government of the United States, the government of the District of Columbia or any territory or possession of the United States, a State or any political subdivision thereof, or any agency or instrumentality (including the United States Postal Service and Postal Rate Commission) of any of the foregoing; or (2) a church, convention or association of churches, or any organization operated, supervised, or controlled by a church, convention, or association of churches which organization (i) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1954, and (ii) does not discriminate (A) in the employment, compensation, promotion, or termination of employment of any personnel, or (B) in the extension of staff or other privileges to any physician or other health personnel, because such persons seek to obtain or obtained health care, or participate in providing health care, through an HMO.

"Employing entity" means an employer or public entity.

"Employing entity-employee contract" means a legally enforceable agreement (other than a collective bargaining agreement) between an employing entity and its employees for the provision of, or payment for, health benefits for its employees, or for its employees and their eligible dependents.

"Group enrollment period" means the period of at least 10 working days each calendar year during which each eligible employee is given the opportunity to select among the alternatives included in a health benefits plan.

"Health benefits" means health benefits and services.

"Health benefits contract" means a contract or other agreement between an employing entity or a designee and a carrier for the provision of, or payment for, health benefits to eligible employees or to eligible employees and their eligible dependents.

"Health benefits plan" means any arrangement for the provision of, or payment for, any of the basic and supplemental health benefits described in §§ 110.102 and 110.103 of this Part offered to eligible employees, or to eligible employees and their eligible dependents, by or on behalf of an employing entity.

"Public entity" means a State as defined by section 2(f) of the Public Health Service Act (42 U.S.C. 201(f)), a political subdivision of a State, or any agency or instrumentality of the foregoing. "Political subdivision" includes counties, parishes, townships,

cities, municipalities, towns, villages, and incorporated villages.

"To offer a health benefits plan" means to make participation in a health benefits plan available to eligible employees, or to eligible employees and their eligible dependents, and to make a financial contribution to the plan whether the financial contribution by the employing entity on behalf of these employees is made directly or indirectly, (e.g. through payments on any basis into a health and welfare trust fund).

§ 110.802 Applicability.

The regulations of this subpart apply in each calendar year to:

(a) Each employer which was required during any calendar quarter of the previous calendar year to pay its employees the minimum wage specified by Section 6 of the Fair Labor Standards Act of 1938 (or would have been required to pay its employees the minimum wage but for Section 13(a) of that Act) and which during any calendar quarter of the previous calendar year employed an average of not less than 25 employees; and

(b) Each public entity, as a condition of the payment to the State of funds under Sections 314(d), 317, 318, 1002, 1525, or 1610 of the Public Health Service Act, which during any calendar quarter of the previous calendar year employed an average of not less than 25 employees, if the employer or public entity:

(1) Offers, or if there is offered on behalf of the employer or public entity, in the calendar year beginning after any calendar quarter of the previous calendar year in which the employer or public entity employed an average of not less than 25 employees, a health benefits plan to its eligible employees; and

(2) Has received a written request for inclusion in the employer's or public entity's health benefits plan (which request meets the requirements of § 110.803) from one or more qualified HMOs which provide basic health services in an HMO service area in which at least 25 employees of the employer or the public entity, respectively, reside.

§ 110.803 Requirements for a request for inclusion of the HMO option in a health benefits plan; employing entity response.

(a) *Time limitations.* (1) Unless otherwise agreed to by the HMO and the employing entity or designee, an HMO's request for inclusion in an employing entity's health benefits plan must be received by the employing entity or designee no more than 365 days and not less than 180 days before the expiration or renewal date of a health benefits contract or employing entity-employee contract, and no more than 365 days and not less than 180 days before the expiration date of a collective bargaining agreement, or in the case of a public entity, such longer period as may be prescribed by State law.

(2) For the purposes of this paragraph:

(i) A collective bargaining agreement that is automatically renewable or without fixed term shall be treated as having an expiration or renewal date on the earliest anniversary date of the collective bargaining agreement.

(ii) A collective bargaining agreement that is for a fixed term in excess of one year and provides that its terms regarding health benefits may be renegotiated during the term of the agreement shall be treated as having an expiration or renewal date at the time provided by the agreement for discussion of these changes.

(b) *To whom the written request is to be directed.* The request for inclusion must be in writing and (1) in the case of an employer, be directed specifically to the employer's managing official at the employer site being solicited or to the employer's designee; and (2) in the case of a public entity, be directed to the Chief Executive Officer of the public entity, or to the public entity's designee.

(c) *Information which the request must include.* The request must (1) Provide evidence that the Secretary has determined that the HMO is a qualified HMO in accordance with section 1310(d) of the Act and Subpart F of this part;

(2) Describe the HMO's service area or proposed service area and give the dates basic and supplemental health services will be provided in the area or areas;

(3) Indicate whether the services of health professionals which are provided as basic health services are provided through health professionals who are (i) members of the staff of the organization, or (ii) members of a medical group(s), or (iii) members of an individual practice association(s), or (iv) health professionals who have contracted with the HMO for the provision of these services or (v) any combination of the above;

(4) If the HMO provides health services through an individual practice association(s), provide a listing of member physicians by name, specialty, and whether they are accepting new patients from the HMO membership. This listing must be current within 90 days of the date of the request for inclusion;

(5) If the HMO provides health services other than through an individual practice association, provide for each ambulatory care facility the facility's address, days and hours of operation, a statement whether it is accepting new patients from the HMO membership, and the names and specialities of the facility's providers of basic and supplemental health services. This information must be current within 90 days of the date of the request for inclusion;

(6) List the hospitals where HMO members will be provided basic and supplemental health services;

(7) Identify (i) the nature of the HMO entity, i.e., for profit or non-profit, public or private, sole proprietorship, partnership, or stock or non-stock corporation, , (ii) the members of the HMO's policymaking body, and (iii) the principal managing officer of the HMO;

(8) Provide a statement of the HMO's capacity to enroll new members and the likelihood of any future limitations on enrollment;

(9) Provide the HMO's most recently audited annual financial statements;

(10) Provide proposed implementing agreements between the HMO and the employer, public entity, or designee for the HMO offering;

(11) Provide sample copies of solicitation brochures and membership literature which will be used in the offer of the HMO alternative to employees;

(12) State either (i) the HMO's current rates, including copayments, if any, for basic (and uniformly included supplemental) health services and the dates these rates became effective, or (ii) the HMO's estimated rates for these services.

(d) *Employing entity response.* An employing entity or designee shall respond in writing to an HMO's request for inclusion no later than 60 days after the receipt of the request and shall state whether the employing entity has 25 or more employees who reside within the service area of the HMO. If so, the employing entity or designee shall also state the expiration or renewal dates of its health benefits contracts, employer-employee contracts, and public entity-employee contracts covering these employees, the amount of the employing entity's current contribution (and, where applicable, the employee's contribution) for health benefits, including the dates those contribution levels became effective, and the expiration dates of any collective bargaining agreements covering these employees. In addition, in this response, a public entity or its designee shall furnish the HMO with a description of health benefits, including limitations and exclusions, required under State law or regulation for health benefits plans for employees of the public entity.

(e) *Effect of inadequate request.* If the request for inclusion does not meet the requirements of paragraphs (a)–(c) of this section, the employing entity is not required to include the HMO alternative in its employees' health benefits plan under § 110.805 until the HMO makes its request in accordance with those paragraphs. In such a case, the employing entity or its designee shall, within 60 days after receipt of the request, notify the HMO in writing of the basis for its conclusion that the request does not meet the requirements of paragraphs (a)–(c) of this section.

(f) *New request for inclusion.* If an employing entity includes the HMO alternative in a health benefits plan in accordance with a request meeting the requirements of paragraphs (a)–(c) of this section, the employing entity shall offer the HMO alternative to the employees described in § 110.806(e)(2) during the entire health benefits year. However, if no employees enroll during the health benefits year, the HMO seeking inclusion in the health benefits plan for subsequent enrollment periods shall submit a new request in accordance with paragraphs (a)–(c) of this section.

(g) *Discretionary offering of HMO alternative.* Nothing in this subpart[2] prevents the employing entity or designee from offering the HMO alternative at any time by mutual agreement with the HMO.

§ 110.804 Offer of HMO option to employees.

(a) *Inclusion of HMO option.* An employing entity subject to § 110.802 shall, at the time a health benefits plan is offered to its eligible employees, include in the plan the option of membership in qualified HMOs in accordance with this section.

(b) *Employees to whom the HMO option must be offered.* Each employing entity subject to this subpart shall offer the option of membership in a qualified HMO to each eligible employee, or to each eligible employee and his or her eligible dependents, who reside within the service area of the qualified HMO being offered.

(c) *Manner of offering the HMO option.* (1) For the employees of an employing entity subject to this subpart who are represented by a bargaining representative, the offer of membership in a qualified HMO (i) must first be made to the bargaining representative, and (ii) if the offer is accepted by the representative, must then be made to each represented employee.

(2) For those employees not represented by a bargaining representative, the offer must be made directly to those employees in accordance with this subpart.

§ 110.805 HMOs which must be included in a health benefits plan.

(a) *HMOs providing basic health services through varying arrangements with health professionals.* If more than one qualifed HMO engaged in the provision of basic health services in an area in which eligible employees of an employing entity subject to this subpart reside has requested inclusion in the employer's or public entity's health benefits plan as provided by § 110.802(a)(2)(ii), and if:

(1) One or more of these organizations provides basic health services through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups), and

(2) One or more of these organizations provides basic health services through (i) an individual practice association (or associations), or (ii) a combination of such an association (or associations), medical group (or groups), staff, and individual physicians and other health professionals under contract with the organization, then, of the qualified HMOs included under this section in a health benefits plan of an employing entity subject to this subpart, at least one shall be an organization which provides basic health services as described in subparagraph (1) of this paragraph and at least one shall be an organization which provides basic health services as described in subparagraph (2) of this paragraph. For purposes of this paragraph, individual physicians and other health professionals who have contracted with the HMO do not include health professionals who are members of the HMO's staff, of medical groups, or of entities which would be medical groups but for the requirements of subparagraph (3)(i) of the definition of medical group in § 110.101.[1]

(b) *Additional HMOs which must be included.* An employing entity subject to this subpart shall offer the option of membership in additional qualified HMOs to its eligible employees, described in subparagraphs (1) and (2) of this paragraph, if the additional qualified HMOs demonstrate that their service areas include the place of residence of at least 25 employees of the employing entity:

(1) Who do not reside in the service area of qualified HMOs already included in the employing entity's health benefits plan; or

(2) To whom membership in qualified HMOs already included in the health benefits plan is not available because these HMOs have closed their enrollment of additional eligible employees of the employing entity.

(c) *Alternate HMOs which may be included.* An employing entity subject to this subpart is not required to include in the health benefits plan offered to eligible employees the option of membership in the specific qualified HMO which initiated the request for inclusion in the health benefits plan if (1) the employing entity or designee includes in the health benefits plan the option of membership in one or more other qualified HMOs that may not have made a request within the time limit of § 110.803(a) but are willing to be included, (2) these latter HMOs are of the same type (i.e., as described in paragraph (a)(1) or (2) of this section) as the HMO which submitted the timely request, and (3) all of the employees of the employing entity residing in the service area of the HMO submitting the timely request reside in areas served by these latter HMOs.

§ 110.806 How the HMO option is to be included in the health benefits plan.

(a) *HMO access to employees.* The employing entity shall provide each qualified HMO which is included in its health benefits plan with fair and reasonable access, not less than 30 days prior to and during the group enrollment period, to employees referred to in § 110.804(b) for purposes of presenting and explaining its program in accordance with § 110.108(c) of this Part. This access shall include, at a minimum, the opportunity for the distribution of educational literature, brochures, announcements of meetings, and other relevant printed materials meeting the requirement of § 110.108(c) to each employee referred to in § 110.804(b). In no event shall the employing entity provide qualified HMOs access to eligible employees which is more restrictive or less favorable than the access it provides other offerors of alternatives included in the health benefits plan, whether or not these offerors elect to avail themselves of that access.

(b) *Review of HMO offering materials.* The HMO shall give the employing entity or designee the opportunity to review, revise, and approve HMO educational and offering materials before distribution. Revisions shall be limited to correcting factual

[1] These requirements are that the members of the medical group "as their principal professional activity (over 50 percent individually) engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility (over 35 percent in the aggregate of their professional activity) for the delivery of health services to members of an HMO."

errors and misleading or ambiguous statements, unless otherwise agreed to by the HMO and the employer or public entity or designee, or as may be required by law. The employing entity or designee shall complete promptly any of these revisions in the offering material so as not to delay or otherwise interfere with the group enrollment period.

(c) *Group enrollment period; prohibition of waiting periods, exclusions, and limitations.* An employing entity or designee including the option of membership in a qualified HMO under this subpart as part of the health benefits plan offered to its eligible employees shall provide for a group enrollment period, prior to the effective date of the HMO coverage established under paragraph (g) of this section, without application of waiting periods or exclusions or limitations based on health status as a condition of enrollment in the HMO or transfer to non-HMO coverage from an HMO. Nothing in this subpart precludes the uniform application of coordination of benefits agreements between the HMOs and the other carriers which are included in the health benefits plan.

(d) *Continued availability of other health benefits.* (1) At the request of a qualified HMO, the employing entity or its designee shall provide that employees selecting the option of HMO membership will not, because of this selection. lose their eligibility for free-standing dental, optical, or prescription drug benefits for which they were previously eligible or would be eligible if selecting a non-HMO option and which are not included in the services provided by the HMO to its members as part of the HMO prepaid benefit package.

(2) For purposes of this paragraph, the term "free-standing" refers to a benefit which (i) is not integrated or incorporated into a basic health benefits package or major medical plan, and (ii) is either (A) offered by a carrier other than the one offering the basic health benefits package or major medical plan, or (B) subject to a separate premium from the premium for the basic health benefits package or major medical plan.

Illustrative Examples: Set forth below are examples of the employing entity's obligation with respect to the continued eligibility of employees selecting the HMO option for these free-standing health benefits:

1. The health benefits plan includes a free-standing dental benefit. The HMO does not offer any dental coverage as part of its health services provided to members on a prepaid basis. The employing entity must provide for the continued eligibility of those employees selecting the HMO option for dental coverage.

Note: If the dental coverage is not optional for employees selecting the non-HMO option, nothing in this regulation requires that the coverage be made optional for employees selecting the HMO option. Conversely, if this coverage is optional for employees selecting the non-HMO option, nothing in this regulation requires that the coverage be mandatory for employees selecting the non-HMO option.

2. If the non-HMO option provides free-standing coverage for optical services (such as refraction and the provision of eye glasses), and the HMO does not, the employing entity must provide for the continued eligibility for those employees selecting the HMO option for optical coverage.

3. The non-HMO option includes dental coverage in its major medical package, with a common deductible applied to dental as well as non-dental benefits. The HMO provides no dental coverage as part of its prepaid health services. Because the dental coverage is not free-standing, the employing entity is not required to provide for the continued eligibility for dental coverage for those employees selecting the HMO option, although it is free to do so.

(e) *Affirmative written selections.* (1) During the group enrollment period in which the alternative of membership in any particular qualified HMO is offered to an eligible group of employees for the first time, the employing entity or designee shall present the health benefits plan alternatives to each eligible employee residing in the service area of the HMO with the requirement that an affirmative written selection be made among the different alternatives included in the health benefits plans. In subsequent group enrollment periods, it shall make available a selection among the alternatives; however, a written selection is required only when the eligible employee elects to change from one alternative to another.

(2) In addition to the group enrollment period, the employing entity or designee shall make available the opportunity to select among different existing alternatives within a health benefits plan to eligible employees who: (i) Are new employees, (ii) have been transferred or have changed their place of residence, resulting in eligibility for membership in a qualified HMO for which they were not previously eligible by place of residence, or resulting in residence outside the service area of a qualified HMO in which they were previously enrolled, or (iii) are covered by any alternative which ceases operation. At the time these employees are eligible to participate in the health benefits plan, the employing entity or designee shall make available, without waiting periods or exclusions or limitations based on health status as a condition, the opportunity to enroll in an alternative HMO or transfer to a non-HMO coverage from an HMO, and shall require these employees to make an affirmative written selection among the different alternatives included in the health benefits plan.

(f) *Determination of copayment levels and supplemental health services.* The selection of a copayment level and of supplemental health services to be contracted for is to be made as follows:

(1) For those employees represented by a collective bargaining representative, the selection of copayment levels and supplemental health services is subject to the collective bargaining process.

(2) For those employees not represented by a bargaining representative, the selection of copayment levels and supplemental health services to be offered to eligible employees is subject to the same decisionmaking process used by the employing entity with respect to the non-HMO alternatives in its health benefits plan.

(3) In all cases, the HMO has the right to include with its basic health services provided to its members for a basic health services payment, on a non-negotiable basis, those supplemental health services (i) that are required to be offered under State law, or (ii) that are included uniformly by the HMO in its prepaid benefit package, or (iii) coverage for which is available to employees selecting the non-HMO option but not available to employees selecting the HMO option.

(g) *Effective date of coverage.* Unless otherwise agreed to by the employing entity, or designee, and the HMO, the effective date of coverage by the HMO for employees selecting the HMO option shall begin on the day the non-HMO coverage expires or is renewed without lapse.

§ 110.807 When the HMO is to be offered to employees.

The employing entity or designee shall offer eligible employees the option of membership in a qualified HMO at the earliest date permitted under the terms of existing collective bargaining agreements, employer-employee or public entity-employee contracts, or contracts for health benefits. Should the HMO's request for inclusion in a health benefits plan be received at a time when these existing contracts or agreements do not provide for including a qualified HMO in the health benefits plan, the inclusion of the HMO in the health benefits plan shall occur at the time that new agreements or contracts are offered or negotiated and shall be consistent with the following paragraphs:

(a) Unless mutually agreed otherwise, if a collective bargaining agreement is in

force at the time the request for inclusion in the health benefits plan is made by the HMO to the employing entity or designee, the request shall be raised in the collective bargaining process (1) when a new agreement is negotiated, (2) if the agreement is for a fixed term in excess of one year and provides that its terms regarding health benefits may be renegotiated during the term of the agreement, at the times provided by the agreement for discussion of these changes, or (3) in accordance with a specific process to review HMO offers.

(b) Unless mutually agreed otherwise, for those employees not covered by a collective bargaining agreement, the employing entity or designee shall include the HMO option in any health benefits plan offered to eligible employees when the existing employer-employee contract or public entity-employee contract is renewed or when a new health benefits contract or other arrangement is negotiated. If an employer-employee or public entity-employee contract or a health benefits contract has no fixed term or has a term in exess of one year, the contract shall be treated as renewable on its earliest anniversary date. If the employing entity or designee is self-insured, the budget year shall be treated as the term of the existing contract.

(c) Unless mutually agreed otherwise, for employing entities with multiple contracts or other arrangements included as part of the health benefits plan which may have different expiration or renewal dates, the employing entity shall include the HMO option, in accordance with paragraphs (a) and (b) of this section, for each contract or arrangement at the time the contract or arrangement is renewed or reissued or the benefits provided under the contract or arrangement are offered to employees.

§ 110.808 Contributions for HMO option.

(a) *General principles.* (1) The employing entity or designee shall include the HMO option in the health benefits plan on terms no less favorable, with respect to the employing entity's monetary contribution or designee's cost for health benefits calculated in dollars and cents, than those on which the other alternatives in the health benefits plan are included. However, the employing entity or designee is not required to pay more for health benefits as a result of offering the option of membership in a qualified HMO than it would otherwise be required to pay for health benefits by a collective bargaining agreement or other employer-employee contract or public entity-employer contract in effect at the time the HMO is included in the health benefits plan.

(2) An employing entity or designee which calculates the health benefits contribution on a per employee earnings level basis must apply that same calculation to the HMO contribution. The amount of the employing entity's or designee's contribution per employee for the HMO option must be equal, in terms of dollars and cents, to the largest amount of the contribution that would be paid for that individual employee to any other alternative which is included in the health benefits plan, but shall not be required to exceed the amount of the HMO premium.

(3) The employing entity or designee shall increase the amount of its contribution for the HMO option at the time the contribution to other alternatives in the health benefits plan increases (up to the amount of the HMO premium), unless (i) the employing entity's or designee's contribution is fixed by a contract or other arrangement between the employing entity or designee and the HMO, or (ii) otherwise agreed to by the employing entity or designee and the HMO.

(b) *Administrative expenses.* The employing entity or designee may not consider administrative expenses incurred in connection with offering any alternative in the health benefits plan in determining the amount of its contribution to the HMO. However, if the employing entity or designee has special requirements for other than standard solicitation brochures and membership literature, it shall determine and distribute any administrative costs attributable to these requirements, in the case of the offering of the HMO option, in a manner consistent with its method of determining and distributing these costs for the non-HMO alternatives.

(c) *Exclusion for contribution for certain benefits.* In determining the amount of the employing entity's contribution or designee's cost for the HMO option, the employing entity or designee may exclude those portions of the contribution allocable to benefits (e.g., life insurance or insurance for supplemental health benefits) for which eligible employees or eligible employees and their eligible dependents will be covered notwithstanding selection of membership in an HMO, and which are not offered on a prepaid basis by the HMO to the employing entity's employees.

(d) *Contributions determined by collective bargaining agreements or by other contracts or by law.* Where the specific amount of the employing entity's contribution for health benefits is fixed by a collective bargaining agreement, by an employer-employee or public entity-employee contract, or by law, the amount so determined shall constitute the employing entity's obligation for contribution toward the HMO premiums on behalf of eligible employees or eligible employees and their eligible dependents.

(e) *Allocation of portion of a contribution determined by a collective bargaining agreement.* Where the employing entity's contribution for health benefits is determined by a collective bargaining agreement, but the amount so fixed includes contribution for benefits in addition to health benefits, the employing entity shall determine, or shall instruct its designee to determine, the portion of its contribution applicable to health benefits in accordance with paragraph (g) of this section.

(f) *Contributions not determined by collective bargaining agreements or by other contracts or by law.* For employees not covered by a collective bargaining agreement, employer-employee or public entity-employee contract, or by a law specifying the contribution for health benefits, the employing entity's contribution to the HMO on behalf of eligible employees or eligible employees and their eligible dependents shall be determined in accordance with paragraphs (a), (b), (c), and (g) of this section on the basis of the total cost of providing the health benefits offered to the employees for the most recent period for which experience is available.

(g) *Calculation of cost.* An employing entity's contribution or designee's cost for alternatives other than the qualified HMO, included in the health benefits plan shall be determined in the following manner, unless otherwise agreed to by the HMO and the employing public entity or designee:

(1) *Prospective calculation.* If the employing entity's contribution or designee's cost for non-HMO alternative health benefits is determined solely on the basis of a fixed prospective amount (not subject to retrospective adjustment) then the amount of the prospective payment made by or on behalf of the employing entity to the non-HMO alternative for the provision of health benefits to eligible employees or to eligible employees and their eligible dependents shall constitute the employing entity's contribution toward the HMO premium.

(2) *Retrospective calculation.* If the employing entity's contribution or designee's cost for non-HMO alternative health benefits is determined by a contract with a carrier on any form of retrospective experience rating basis,

including any determination of current premiums which reflects, takes into account, or is otherwise based on any form of supplementation or any rebate, refund or other redistribution of premiums collected in any previous year for which experience is available, any billing contract arrangement, any plan of self-insurance, any direct service plan provided by the employing entity or designee, or any other form of health benefits plan wherein the actual cost to the employing entity or designee is determined retrospectively, an estimated cost shall be used to determine the obligation for contribution toward the HMO premium. The employing entity or designee shall determine this estimated cost based on consideration of the following factors: (i) The employing entity's or designee's cost experience for the non-HMO alternatives with respect to the most recent benefit period for which the experience is available at the time when the employing entity's prospective contribution or designee's obligation to the HMO is to be determined; (ii) a reasonable allowance for inflation based on historical cost trends and the anticipated future costs increases; (iii) where applicable and consistently applied, cost differences experienced in the provision of health benefits for separate regional or local areas of employment; (iv) anticipated changes in the composition and experience of the covered population actually being served by the non-HMO alternatives attributable to the shift of enrollment to the HMO; (v) any changes in health benefits to be provided by the non-HMO alternatives during the period for which the estimated contribution is to be determined; (vi) any other anticipated material change in the experience rating basis under any health benefits contract for the benefits period.

(h) *Retention of data.* An employing entity or designee shall retain the data used to compute its level of contribution to the alternatives included in the health benefits plan for three years. The Secretary may review this data either on her own initiative or in response to a request to the Secretary from an HMO or an employee of the employing entity which sets forth reasonable grounds supporting the request to determine whether the level of contributions determined by the employing public entity or designee complies with this subpart.

§ 110.809 Payroll deductions.

Each employing entity which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required, and which is required by § 110.802(a) to offer its employees the option of membership in a qualified HMO, shall, with the consent of an employee who exercises this option, arrange for the employee's contribution, if any, for HMO membership to be paid through payroll deductions.

§ 110.810 Relationship of Section 1310 of the Public Health Service Act to the National Labor Relations Act, as amended, and the Railway Labor Act, as amended.

The obligation of an employing entity subject to this subpart to include the option of membership in a qualified HMO in any health benefits plan offered to its eligible employees shall be carried out consistently with the obligations imposed on that employing entity under the National Labor Relations Act, the Railway Labor Act, and other laws of similar effect.

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Part VIII

Department of Health and Human Services

Public Health Service

Requirements for a Health Maintenance Organization; Final Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 110

Health Maintenance Organizations; Requirements for a Health Maintenance Organization

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule amends the Public Health Service regulations by setting forth revised requirements for the organization and operation of federally qualified health maintenance organizations (HMOs). These amendments are made as a result of (1) public comments on the interim regulations published on July 18, 1979, and (2) public comments on the notice of proposed rulemaking (NPRM) governing relationships between federally qualified HMOs and other parties, also published on July 18, 1979.

EFFECTIVE DATE: This rule is effective on December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: On July 18, 1979, interim regulations were published in the Federal Register (44 FR 42060-71) to amend 42 CFR Part 110, Subpart A, issued under Title XIII of the Public Health Service Act (the Act). Interested persons were given an opportunity to submit comments concerning these regulations by September 17, 1979. Fifteen persons submitted comments on the interim final regulations. Also on July 18, 1979, an NPRM was published in the Federal Register (44 FR 41838-41) concerning the relationships between federally qualified HMOs and other parties. The Secretary invited comments by September 17, 1979, and stated that after the public comments were received, the policies would be revised as warranted and incorporated into regulations or set forth as interpretive rulings, as appropriate. Ten persons submitted comments on the NPRM.

The following are summarized below: (1) The comments received, responses thereto, and the changes made, if any, on the Subpart A interim final regulations; (2) the comments received, responses thereto, and the changes made, if any, in the policies stated in the NPRM on relationships between federally qualified HMOs and other parties, including which of these policies have been added, and where, to the Subpart A regulations; and (3) the changes made to correct technical problems in the regulations.

The Department also notes that on April 29, 1980, at 45 FR 28654-63, it published in the Federal Register a series of informational questions and answers based on the interim regulations for Subpart A. The Department refers the public to that document for further information on the requirements of Subpart A. It notes that the document will be amended as appropriate in the near future to reflect the revisions made to the Subpart A regulations by this notice.

Subpart A Interim Final Regulations

1. Section 110.102 addresses the required health benefits for basic health services, including short-term rehabilitation and physical therapy. Several commenters requested clarification of the duration of these "short-term" services. The regulations have been changed to specify that short-term rehabilitation services and physical therapy must be provided if the HMO determines that the provision of these services can be expected to result in significant improvement of a member's condition within a period of two months. The physical therapy requirement has been moved from § 110.102(a)(2)(ii) to § 110.102(a)(2)(iii) to clarify that short-term physical therapy is required on both an outpatient and inpatient basis.

2. Section 110.102(a)(5)(ii), pertaining to referral services for the abuse of or addiction to alcohol and drugs, has been amended to indicate that prolonged rehabilitation services for alcohol or drug abuse or addiction in a specialized inpatient or residential facility need not be offered by an HMO as a basic health service. The Department notes, however, that an HMO may choose to offer prolonged rehabilitation services as a supplemental health service. This change is in response to a request by a commenter that this information, which was included in the preamble of the interim regulations, be incorporated into the final regulations.

3. Section 110.102(d) lists the permissible exclusions from the required basic health services. Section 110.102(d)(9) has been modified at the request of a commenter who noted that the exclusion of vision and hearing care as a basic health service failed to take into consideration that some vision and hearing services may be a part of physician services, such as care for diseases of the eye and ear, as well as preventive health services, as in the case of eye and ear examinations for children through age 17 to determine the need for vision or hearing correction. The exclusion for vision and hearing care has been clarified to indicate that this care need not be provided as a basic health service except as required by sections 1302(1)(A) and 1302(1)(H)(vi) of the Act and §§ 110.102(a)(1) and 110.102(a)(8) of these regulations.

4. Section 110.104(a)(2), pertaining to non-conforming medical groups, has been changed and is now § 110.104(a)(3). This revised section clarifies that after the four-year period which follows the month in which the HMO was qualified, the HMO may provide services through a non-conforming medical group if it meets the definition of medical group as set forth in § 110.101 or if the Secretary has determined that the entity meets the conditions set forth in § 110.104(a)(3)(ii). A suggestion to permit the four-year period allowed for the use of a non-conforming medical group to commence from the date of the HMO's contract with the group has been rejected because section 1301(b)(3)(B)(ii) of the Act indicates that the four-year period is to be calculated from the month after the HMO's qualification date.

5. One commenter requested clarification of the requirements that apply to the HMO's contracts for health services under § 110.104(c). In response, the Department has separated this paragraph into two subparagraphs to delineate clearly the difference between the requirements for (1) contracts between the HMO and medical groups or IPAs, and (2) direct service contracts between the HMO and health professionals. Section 110.104(c)(1) now lists the requirements for the former type of contract and § 110.104(c)(2) clarifies that the contract between the HMO and its health professionals must include provisions for appropriate continuing education in addition to four of the provisions which an HMO must include in its contracts with medical groups or IPAs: a description of the responsibilities of the parties to the contract; the agreed upon compensation for services; an agreement that the contracting parties will look solely to the HMO for compensation for services provided to HMO members; and a provision specifically requiring participation by health professionals in the quality assurance activities which the HMO is required to have under § 110.108(j).

6. Section 110.105(e) states that HMOs may charge a late payment penalty on accounts receivable which are in arrears. The Department has not adopted the suggestion that the regulations require 30 days written notice or limit the HMO's late payment

penalty charges to amounts which are not in dispute. These limitations are not properly within the scope of the Act. Of course, an HMO may agree to these limitations.

7. Section 110.108(a)(1) requires an HMO to have a fiscally sound operation. In the preamble to the interim final regulations, the Secretary expressed the intention of using a ratio of current assets to current liabilities of at least one-to-one as a benchmark in administering the cash flow requirement of § 110.108(a)(1)(ii). A commenter noted that current liabilities may exceed current assets at any given date, because the former may include a significant amount of prepaid dues (deferred income) and the latter a relatively low amount for receivables. Further, the proposed ratio test was cited as an inappropriate benchmark for evaluating adequacy of cash flow because cash flow is dynamic and the ratio test is a static measure of liquidity. The Department agrees with these comments and notes that the adequacy of cash flow will now be examined on a case-by-case basis to assure that the HMO can meet its obligations as they become due. Accordingly, the requirement at § 110.108(a)(1)(ii) has been changed to require an HMO to provide evidence of its ability to meet its obligations as they become due, as determined by sufficient cash flow and by adequate liquidity. The evaluation of the maintenance of adequate liquidity will start with the ratio test of current assets to current liabilities of at least one-to-one, but will allow for valid deviations such as the situation noted in this paragraph.

8. The Department received a number of inquiries as to the scope of § 110.108(a)(2)(i), which sets out the standards for the satisfactory administrative and managerial arrangements with respect to the HMO's policymaking body. In particular, the inquiries have focused on the requirement that the policymaking body *"exercises oversight and control* over the HMO's policy and personnel to assure that management actions are in the best interest of the HMO and its membership" (Emphasis added). In order to determine whether the HMO's policymaking body has the capability to and does in fact carry out these responsibilities and thus meets the requirements of § 110.108(a)(2)(i), the Department requires the HMO to demonstrate that its policymaking body has the appropriate skills (e.g., planning, financial management and evaluation skills) to perform these oversight and control functions.

9. The Department has received a number of questions as to whether it is permissible for federally qualified HMOs to expel or refuse to reenroll their members who have reached age 65. The Department's position has always been that the expulsion of such persons by an HMO is inconsistent with Title XIII of the Act. (The expulsion of the aged by HMOs receiving Federal financial assistance may also violate the Age Discrimination Act of 1975, as amended. (42 U.S.C. 6101 *et seq.)*) In order to avoid confusion in this regard, the Department has decided to incorporate this prohibition expressly into the regulations. Accordingly, § 110.108(f), which prohibits an HMO from expelling or refusing to reenroll any member, as well as from refusing to enroll individual members of a group, on the basis of the health status or health care needs of the member or individual, has been modified by adding age as an impermissible basis for such actions by the HMO. It is still permissible, of course, for HMOs to require that, as a condition of continued eligiblility for membership, dependents of a subscriber, upon reaching a specified age, convert to nongroup membership in accordance with § 110.108(g).

10. Section 110.108(g) had required an HMO to offer conversion privileges to subscribers leaving a group "on the same terms and conditions as are available to a nongroup subscriber." Because this requirement was phrased in terms of "subscribers," a number of commenters expressed confusion as to the conversion privileges which the HMO is required to offer "members" who would otherwise lose their eligibility for HMO membership. Since the language was inadvertently narrower than intended, the regulation has been changed to require an HMO to offer membership on the same terms and conditions as are available to a nongroup subscriber to:

(1) Each subscriber (and enrolled dependents) leaving a group; and

(2) Each member who would otherwise cease to be eligible for HMO membership because of his or her age or the death or divorce of a subscriber.

11. Section 110.108(k) pertains to certification of providers. The Department agrees with a comment that it is not necessary to require non-institutional providers to be certified by Medicare or Medicaid. It notes that the requirements of this section are intended to insure that HMO institutional providers are certified in accordance with Federal or national certification standards. Since individual providers are required to meet State licensure requirements, and since certification of certain health professionals under Title XVIII or Title XIX of the Social Security Act is for reimbursement purposes only, the requirements have been changed to require that the HMO offer institutional services only through institutional providers that maintain such certification. Hospitals, however, may satisfy the "certification" requirement either by certification under Title XVIII or by accreditation by the Joint Commission on Accreditation of Hospitals. The requirements as to clinical laboratories through which the HMO provides services (except for laboratories exempted from section 353 of the Public Health Service Act, "Licensing of Laboratories," by paragraphs (d)(2), (i) or (1) of that section), must either be certified under Medicare or Medicaid or be licensed under section 353. The Department notes that these regulations do not apply to the HMO's own laboratory, although the laboratory may otherwise be subject to the requirements of section 353 or Medicare or Medicaid.

12. Section 110.108(o) covers reporting and disclosure requirements for HMOs and § 110.108(o)(1) requires HMOs to furnish specific reports to the general public upon request. One commenter inquired where a request by the public for information which an HMO has reported to the Department under § 110.108(o)(1) should be directed. The Department notes that requests regarding information reported under this subsection may be directed to the HMO, in accordance with the HMO's reporting procedure, or to the Department's Office of Health Maintenance Organizations.

13. A number of commenters noted that § 110.108(o)(2)(ii), which sets out which transactions between an HMO and a party in interest must be disclosed to the Secretary, imposed a heavy reporting burden on HMOs. Accordingly, the section has been changed. It would require the reporting only of *significant* business transactions between the HMO and a party in interest, instead of the previous requirement that *all* such business transactions be reported. The term "significant business transaction" is adapted from the Department's Medicare-Medicaid regulations at 42 CFR 420.201, which govern the disclosure of ownership and control information by providers, intermediaries, and carriers. For purposes of § 110.108(o)(2)(ii), the term is defined (see § 110.101) as "any business transaction or series of transactions during any one fiscal year

of the HMO, the total value of which exceeds the lesser of $25,000 or five percent of the total operating expenses of the HMO."

14. Section 110.108(o)(2)(ii)(B) requires an HMO to disclose, among other items, certain transactions between itself and a party in interest for the furnishing of services. A commenter suggested that since the ordinary employee-employer relationship does not constitute a suspect or potentially abusive transaction, services provided by employees of the HMO in the normal course of their employment should be excluded from services which are subject to disclosure. The Secretary agrees with this comment and has changed § 110.108(o)(2)(ii)(B) to exclude transactions for these services from those subject to disclosure.

NPRM on Relationships Between Federally Qualified HMOs and Other Parties

The NPRM addressed issues that arose under five general headings: (1) The legal structure of an HMO, (2) the HMO's conduct of other activities, (3) the activities of providers affiliated with the HMO, (4) arrangements for HMO contract services, and (5) maximizing HMO enrollment. The Secretary has decided to finalize the policies which were detailed in the NPRM as follows: (1) Certain of the policies set forth in the NPRM, as clarified in response to comments, are now incorporated into the subpart A regulations, as detailed in the first section below, and (2) the remainder of the policies set forth in the NPRM, as clarified in response to comments, are summarized in the second section below. These latter policies have been adopted as official policies of the Department and are set forth in the informational document referred to above (45 FR 28654–63).

Third Party Policies Incorporated Into the Subpart A Regulations

1. Section 110.104(a) addresses the requirements for providers of basic and supplemental health services. A new § 110.104(a)(2) has been added, which modifies the policy set forth in the NPRM that would have permitted sharing of physicians by alternative model HMOs, but only to the extent that the physicians the IPA shares with the alternative model HMO (i.e., either a staff or medical group model) constituted less than 50 percent of the physicians participating in the IPA. Two commenters, citing a lack of statutory authority, objected to this requirement and questioned the basis for the 50 percent limitation. The Department notes that the purpose behind the enactment of section 1310(b), which requires employers in certain circumstances to offer their employees the option of membership in different model HMOs, is to encourage competition among different model HMOs (as well as between HMOs (as well as between HMOs and other health care providers) by providing employees with real "alternatives from which to choose for their care." (H.R. Rep. #93–451, 93rd Cong., 1st Sess. p. 39). If alternative model HMOs were to offer services to HMO members through the same physicians, the result would defeat the essential purpose of section 1310(b) by limiting genuine consumer choice. Accordingly, the Department believes a limitation is necessary to assure that the purpose of section 1310(b) is fulfilled. However, it agrees that a 50 percent limitation, in the absence of other information, may not be appropriate. Therefore, the regulation at § 110.104(a)(2) permits physician sharing between an IPA and medical group or staff HMO of 50 percent or more, but only if this sharing is approved by the Secretary as being consistent with the purposes of section 1310(b). The Secretary will, on a case-by-case basis, review the characteristics of those HMOs which share physicians in excess of the 50 percent limitation, taking into account the following factors: (1) The total number of practicing physicians in the service area of each HMO which proposes to share physicians with another HMO, (2) the number of physicians to be shared as a percentage of the IPA's total pool, (3) the specialties of the shared physicians, (4) the overlap of the service areas of the HMOs which propose sharing, (5) the practice location of the shared physicians in relation to the location of the other HMO physician providers, and (6) such other factors as the Secretary may consider necessary in determining whether the sharing of physicians enables the HMOs to meet the purpose of section 1310(b).

The Department notes that there is no limitation of physician sharing by competing IPAs or by competing IPA model HMOs, since the purpose of encouraging different model HMOs to compete with each other is not applicable in these situations. All HMOs must, of course, assure the accessibility and availability of services to their members.

2. Section 110.108(a)(1), which requires the HMO to have a fiscally sound operation, has been expanded to incorporate the policy set out in the NPRM that all HMOs shall maximize their enrollment.

Although the NPRM invited the public to suggest standards to determine whether on HMO is maximizing its enrollment, none of the four comments received suggested any such standards. For example, one commenter, noting that flexible indicators were preferable to standards, suggested that the Department meet with representatives of the HMO industry to develop such indicators. Another commenter suggested standards for determining whether an HMO has failed, as opposed to succeeded, in maximizing its enrollment. Noting that none of the comments received suggested for determining whether an HMO is maximizing its enrollment, the Department has determined that it is not feasible to set such uniformly applicable standards. Rather, is has decided that it is more appropriate to implement this policy by requiring (at § 110.108(a)(1)(vii)), that each HMO submit a plan to maximize its enrollment. The Department notes that it will only examine the extent to which the HMO has maximized its enrollment as it relates to the HMO's continued fiscal soundness.

The Department also notes that while membership growth is essential to the development and maintenance of a financially viable HMO, HMOs must monitor their growth in the context of per member per month revenues and costs. Accordingly, the HMO's efforts to maximize enrollment must be consistent with sound management.

3. Section 110.108(h)(1) sets forth the requirement that at least one-third of the HMO's policymaking body must be members of the HMO. This section has been modified to incorporate the policy set forth in the NPRM that the one-third of the policymaking body who are members of the HMO must reside in or in proximity to the HMO's service area. This policy is based on the clear Congressional intent to require member participation in the HMO policymaking body in order to assure that input is available from individuals who represent the viewpoint of users of the HMO's services.

The Department received a request to clarify this requirement with respect to (1) an HMO with regional components and one overall policy body, and (2) different HMOs with policymaking bodies consisting of the same members. The regulation now specifies that the one-third member portion of the policymaking body shall consist of individuals who live in or in proximity to the service area of at least one regional component of the HMO or at least one of the HMOs, respectively.

4. The NPRM reiterated the policy that an HMO may not offer prepaid health benefits which do not meet the requirements of the Act. This prohibition is already included in the regulations, at § 110.102(e), which prohibits an HMO from offering to provide or arrange for the provision of prepaid basic health services which do not meet the requirements of § 110.102(a).

5. A new § 110.109, *Prohibited Activities,* has been added. This section prohibits an HMO, including its employees in the normal course of their employment, from selling, marketing, or promoting, directly or through arrangements with other entities, health insurance or health service benefit plans for health benefits which are included in the health benefits package offered by the HMO to an individual or a group. Thus, for any individual or group, the HMO may not sell, market, or promote health insurance or a health service benefit plan for a benefit for which the member is eligible to receive services under his or her prepaid benefit package. In the NPRM, the Department had proposed to prohibit the "promotion or sale" by an HMO of "competing health insurance." Two commenters, noting that this prohibition could be evaded by the sale of competing health insurance through the marketing staff of an HMO who are licensed as individuals, suggested that the prohibition be extended to selling, promoting, or marketing through the HMO's employees or through other arrangements (such as by an arrangement with another entity). Another commenter noted that the phrase "competing health insurance" was vague and imprecise. Since the Department agrees with these comments, it has structured the prohibition to (1) apply to an HMO and to its employees, (2) encompass marketing as well as selling or promoting, and (3) apply to health insurance and health service benefit plans, instead of competing health insurance. However, the Department has limited the prohibition, as to any individual or group, to benefits which the HMO includes in the prepaid health benefit package offered to that individual or group. Thus, for example, if an HMO does not include dental services in the prepaid benefit package it offers to an individual, it would not be prohibited from offering that individual coverage for dental services through an indemnity insurance or health service benefit plan.

Five commenters opposed the proposed restrictions on an HMO's activities. These commenters suggested that the Secretary did not have the statutory authority to limit the HMO's activities. They also characterized the proposed policy as anti-competitive and as detrimental to HMOs, on the basis that an HMO would be prohibited from engaging in certain activities while similar restrictions were not placed on its competitors. The Department believes that the restriction is consistent with the statute. The Department notes that the purpose of Congress in enacting Title XIII of the Act was to foster competition by making HMOs available as a genuine alternative health delivery system, rather than to foster entities which sell, promote or market health insurance or health service benefits plans which compete with the HMO's benefit package. (See S. Rep. No. 93-129, 93rd Cong., 1st Sess. pp. 7, 8 (1973) and H.R. Rep. No. 93-451, 93rd Cong., 1st Sess. p. 8 (1973).) The Department notes that permitting an HMO or its employees to engage in the activities prohibited by § 110.109 would defeat the purpose of Title XIII because it would reduce the incentives for the HMO to offer its qualified prepaid health benefits package in a competitive manner, which might then threaten the fiscal soundness of the HMO. Accordingly, the Department views this limited prohibition as being within the scope of its authority under Title XIII and necessary for its proper implementation.

As to the comments suggesting that the proposed restriction was anti-competitive, the Department believes that the limitation which it has added to § 110.109 has addressed these concerns. Because the HMO is not prohibited from offering indemnity insurance or health service benefit plan coverage for services it does not include in its prepaid health benefit plan, it would be free to respond to a competitive situation by doing so. The HMO would, of course, have the alternative option of offering the services at issue on a prepaid basis as part of its prepaid health benefit package. In the Department's view, this array of options available to the HMO enhances the HMO's competitive posture.

The former §§ 110.109 and 110.110 have been renumbered as §§ 110.110 and 110.111, respectively.

One commenter inquired whether it is permissible for an HMO to own or control a subsidiary that is a separate legal entity and, if so, whether there are any prohibitions on the activities of an HMO's subsidiaries. Nothing in the Act prohibits an HMO from having a subsidiary that is a separate legal entity. Furthermore, at this time there are no prohibitions on the activities of an HMO's subsidiaries. For example, the prohibition at § 110.109 applies to the HMO entity only; it does not apply to subsidiaries of HMOs.

The Department is, however, currently collecting data on the activities of HMO subsidiaries. In particular, the Department is evaluating whether HMO subsidiaries are (1) offering to provide or arrange for prepaid services which do not meet the requirements of Title XIII, or (2) selling, marketing, or promoting, directly or through arrangements with other entities, health insurance or health service benefit plans in the manner prohibited (as to the HMO itself) by the new § 110.109. The Department intends to analyze these data to determine what prohibitions, if any, should be applicable to the activities of HMO subsidiaries. If it appears that some prohibitions might be appropriate, the Department will issue a notice of proposed rulemaking setting forth its proposed policies, invite public comments, and finalize the policies and incorporate them into regulations or set them forth as interpretive rulings, as appropriate.

Other Third Party Policies

1. As set forth in the NPRM, an HMO is required to be a separate legal entity; it may not be a cost center or separate line of business of a sponsor organization. However, an HMO may be a subsidiary of another legal entity as long as the HMO is itself a legal entity with its own policymaking body.

Three commenters, concerned about the requirement noted in the NPRM that each HMO must b a separate legal entity, suggested an exemption from this requirement for public HMOs. Section 1301(a) of the Act and § 110.101 of these regulations, which include in the definition of an HMO the requirement that it be a legal entity, do not distinguish between public and private HMOs. However, the Secretary notes that a public HMO may be administered by a cost center or a department of a public entity, as long as the HMO is the legal entity.

2. The policy that officers, directors, and employees of a sponsoring organization may be included in the non-member portion of the HMO's policymaking body remains as described in the NPRM.

3. The policy that the Department does not intend to regulate the scope of the activities in which a medical group may engage when it is not providing services to members of its affiliated HMO remains as stated in the NPRM. In response to a comment, the Secretary notes that this policy applies to the non-

HMO activities of an individual practice association as well.

4. The policies as to the extent to which HMOs may contract with other parties to perform certain administrative functions which the HMO elects not to perform itself remains as stated in the NPRM. (See 44 FR 41840, section 4).

Technical Changes

1. Section § 110.104(b) has been changed to clarify that payments made by an HMO for physician services from a non-conforming medical group that meets the requirements set forth in § 110.104(a)(3)(ii) will not be counted against the 15 percent limitation on contracting which applies to an HMO four years following the month after its qualification.

2. Section § 110.104(c)(1)(vi) (formerly § 110.104(c)(4)) has been corrected to indicate that the requirement for professional liability coverage applies to medical groups and IPAs *or* the health professionals associated with them, rather than to medical groups, IPAs *and* health professionals associated with them. The interim final regulations contained the correct language in the preamble; however, there was a typographical error in the regulation itself.

3. Section § 110.108(a)(1)(iii) requires that certain HMOs, in order to demonstrate that they have a fiscally sound operation, submit a financial plan. With the publication on April 9, 1980, at 45 FR 24352–7, of regulations implementing section 1305A of the Act ("Loans and Loan Guarantees for Acquisition and Construction of Ambulatory Health Care Facilities"), the Department will soon be initiating the process of making these awards. Accordingly, § 110.108(a)(1)(iii) has been amended to require an HMO seeking a Federal loan or loan guarantee under section 1305A, as well as certain other HMOs, to submit a financial plan to the Secretary.

4. Section § 110.108(a)(v), which requires the HMO to procure and maintain in force a fidelity bond or bonds in an amount not less than $100,000, has been changed to clarify that the $100,000 minimum is applicable to "each" individual who is entrusted with the handling of the HMO's funds.

5. Sections § 110.108(o)(2)(i) and (3) of the interim regulations required an HMO to furnish to the Secretary the information required to be disclosed under the regulations implementing Sections 1124 and 1902(a)(38) of the Social Security Act, at 42 CFR 420.206 and 42 CFR 455.104, respectively. (These references have been changed to reflect the correct citations.) In the interim regulations, the requirements for the disclosure of this information were inadvertently different: While the Section 1124 information was required to be reported to the Secretary annually, the Section 1902(a)(38) information was required to be reported to the Secretary within 35 days of a request and to HMO members upon reasonable request. In order to treat similarly all of the information required to be disclosed under these provisions of the Social Security Act, the provision in former § 110.108(o)(3) has been combined with § 110.108(o)(2)(i). Section 110.108(o)(2) now requires that the information described above (in addition to the information about significant business transactions with parties in interest) be reported annually to the Secretary and be available to members upon reasonable request. The rest of § 110.108(o) has been renumbered accordingly.

The Assistant Secretary for Health of the Department of Health and Human Services, with the approval of the Secretary of Health and Human Services, amends 42 CFR Part 110, Subpart A, as set forth below.

Dated: June 6, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: October 21, 1980.

Patricia Roberts Harris,

Secretary.

Subpart A is revised to read as follows:

Subpart A—Requirements for a Health Maintenance Organization

Sec.
110.101 Definitions.
110.102 Health benefits plan: Basic health services.
110.103 Health benefits plan: Supplemental health services.
110.104 Providers of basic and supplemental health services.
110.105 Payment to the HMO for basic health services.
110.106 Payment to the HMO for supplemental health services.
110.107 Availability, accessibility, and continuity of basic and supplemental health services.
110.108 Organization and operation.
110.109 Prohibited activities.
110.110 Special requirements: Titles XVIII and XIX of the Social Security Act.
110.111 Special requirements: Federal employees' health benefits program.

Authority: Sec. 215 of the Public Health Service Act, as amended, 58 Stat. 690 (42 U.S.C. 216); secs. 1301–1318 of the Public Health Service Act, as amended, 92 Stat. 2131–2141 (42 U.S.C. 300e–300e–17).

Subpart A—Requirements for a Health Maintenance Organization

§ 110.101 Definitions.

As used in this part: "Act" means the Public Health Service Act.

"Basic health services" means health services described in § 110.102(a).

"Community rating system" means a system of fixing rates of payments for health services which meets the requirements of § 110.105(a)(3).

"Comprehensive health services" means as a minimum the following services which may be limited as to time and cost:

(1) Physician services (§ 110.102(a)(1));

(2) Outpatient services and inpatient hospital services (§ 110.102(a)(2));

(3) Medically necessary emergency health services (§ 110.102(a)(3)); and

(4) Diagnostic laboratory and diagnostic and therapeutic radiologic services (§ 110.102(a)(6)).

"Direct service contract" means a contract for the provision of basic or supplemental health services or both between an HMO and (1) a health professional other than a member of the staff of the HMO, or (2) an entity other than a medical group or an IPA.

"Full-time student" means a student who is enrolled for a sufficient number of credit hours in a semester or other academic term to enable the student to complete the course of study within not more than the number of semesters or other academic terms normally required to complete that course of study on a full-time basis at the school in which the student is enrolled.

"Health maintenance organization" (HMO) means a legal entity which provides or arranges for the provision of basic and supplemental health services to its members in the manner prescribed by, is organized and operated in the manner prescribed by, and otherwise meets the requirements of, section 1301 of the Act and the regulations of this subpart.

"Health professionals" means physicians (doctors of medicine and doctors of osteopathy), dentists, nurses, podiatrists, optometrists, physicians' assistants, clinical psychologists, social workers, pharmacists, nutritionists, occupational therapists, physical therapists, and other professionals engaged in the delivery of health services who are licensed, practice under an institutional license, are certified, or practice under authority of the HMO, a medical group, individual practice association, or other authority consistent with State law.

"Individual practice association" (IPA) means a partnership, association, corporation, or other legal entity:

(1) Which delivers or arranges for the delivery of health services and which has entered into a written services arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy. The written services arrangement shall provide:

(i) That these health professionals shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(ii) To the extent feasible:

(A) For the sharing by these health professionals of health (including medical) and other records, equipment, and professional, technical, and administrative staff; and

(B) For the arrangement and encouragement of the continuing education of these health professionals in the field of clinical medicine and related areas.

"Medical group" means a partnership, association, corporation, or other group:

(1) Which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, and podiatrists) as are necessary for the provision of health services for which the group is responsible;

(2) A majority of the members of which are licensed to practice medicine or osteopathy; and

(3) The members of which:

(i) As their principal professional activity (over 50 percent individually) engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility (over 35 percent in the aggregate of their professional activity) for the delivery of health services to members of an HMO;

(ii) Pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services;

(iii) Share health (including medical) records and substantial portions of major equipment and of professional, technical, and administrative staff;

(iv) Arrange for and encourage continuing education in the field of clinical medicine and related areas for the members of the group and health professionals employed by the group; and

(v) Establish an arrangement whereby a member's enrollment status is not known to the health professional who provides health services to the member.

"Medical group members" means (1) a health professional engaged as a partner, associate, or shareholder in the medical group, or (2) any other health professional employed by the group who may be designated as a medical group member by the medical group.

"Medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services. The Secretary will designate these areas as described in § 110.203(d).

"Member," when used in connection with an HMO, means an individual who has entered into a contractual relationship with the HMO or on whose behalf a contractual arrangement has been entered into with the HMO by a subscriber under which the HMO assumes the responsibility for the provision to the member of basic health services and such supplemental health services as may be contracted for.

"Non-conforming medical group" means an entity which would be a medical group for the purposes of this part but for its failure to satisfy the requirements in paragraph (3)(i) of the definition in this section of "medical group" that the members of a medical group: (1) Spend over 50 percent of their professional time in the coordinated practice of their profession and (2) as a group have substantial responsibility (over 35 percent in the aggregate of their professional time) for the delivery of health services to members of an HMO. Except for purposes of § 110.104(a), regarding the providers of basic health services which an HMO may use, a "non-conforming medical group" shall be considered as a "medical group" for purposes of this subpart.

"Nonmetropolitan area" means an area no part of which is within a standard metropolitan statistical area as designated by the Office of Management and Budget and which does not contain a city whose population exceeds 50,000 individuals.

"Party in interest" means: (1) Any director, officer, partner, or employee of an HMO, any person who is directly or indirectly the beneficial owner of more than 5 percent of the equity of the HMO, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 percent of the assets of the HMO, and, in the case of an HMO organized as a nonprofit corporation, an incorporator or member of the corporation under applicable State corporation law;

(2) Any entity in which a person described in paragraph (1)—

(i) Is an officer or director;

(ii) Is a partner (if the entity is organized as a partnership);

(iii) Has directly or indirectly a beneficial interest of more than 5 percent of the equity; or

(iv) Has a mortgage, deed of trust, note, or other interest valuing more than 5 percent of the assets of such entity;

(3) Any member of the immediate family of an individual described in paragraph (1).

"Policymaking body" of an HMO means a board of directors, governing body, or other body of individuals which has the authority to establish policy for the HMO.

"Qualified HMO" means an HMO found by the Secretary to be qualified within the meaning of Section 1310 of the Act and Subpart F of this part.

"Rural area" means any area not listed as a place having a population of 2,500 or more in Document #PC(1)A, "Number of Inhabitants," Table VI, "Population of Places," and not listed as an urbanized area in Table XI, "Population of Urbanized Areas" of the same document (1970 Census or most recent update of this document, Bureau of Census, U.S. Department of Commerce).

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

"Service area" means the geographic area as defined through zip codes, census tracts, or other geographic subdivisions, found by the Secretary to be the area within which the HMO provides or arranges for basic and supplemental health services that are available and accessible to its members as required by section 1301(b)(4) of the Act.

"Significant business transaction" means any business transaction or series of transactions during any one fiscal year of the HMO, the total value of which exceeds the lesser of $25,000 or 5 percent of the total operating expenses of the HMO.

"Staff of the HMO" means health professionals who are employees of the HMO and who:

(1) Provide services to HMO members at an HMO facility subject to the staff policies and operational procedures of the HMO;

(2) Engage in the coordinated practice of their profession and provide to members of the HMO the health services which the HMO has contracted to provide;

(3) Share medical and other records, equipment, and professional, technical, and administrative staff of the HMO;

(4) Participate in continuing education in their professional field as provided or arranged for by the HMO; and

(5) Provide their professional services in accordance with a compensation arrangement, other than fee-for-service, established by the HMO. This arrangement may include, but is not limited to, fee-for-time, retainer or salary.

"Subscriber" means a member who has entered into a contractual relationship with the HMO or who is responsible for making payments for basic health services (and contracted for supplemental health services) to the HMO or on whose behalf these payments are made.

"Supplemental health services" means the health services described in § 110.103(a).

"Unusual or infrequently used health services" means: (1) Those health services which are projected to involve fewer than 1 percent of the encounters per year for the entire HMO membership, or,

(2) Those health services the provision of which, given the enrollment projection of the HMO and generally accepted staffing patterns, is projected will require less than 0.25 full time equivalent health professionals.

§ 110.102 Health benefits plan: Basic health services.

(a) An HMO shall provide or arrange for the provision of basic health services to its members as needed and without limitations as to time and cost other than those prescribed in the Act and these regulations, as follows:

(1) Physician services (including consultant and referral services by a physician), which shall be provided by a licensed physician, or if a service of a physician may also be provided under applicable State law by other health professionals, an HMO may provide the service through these other health professionals;

(2)(i) Outpatient services, which shall include diagnostic services, treatment services and x-ray services, for patients who are ambulatory and may be provided in a non-hospital based health care facility or at a hospital; (ii) inpatient hospital services, which shall include but not be limited to, room and board, general nursing care, meals and special diets when medically necessary, use of operating room and related facilities, use of intensive care unit and services, x-ray services, laboratory, and other diagnostic tests, drugs, medications, biologicals, anesthesia and oxygen services, special duty nursing when medically necessary, radiation therapy, inhalation therapy, and administration of whole blood and blood plasma; (iii) outpatient services and inpatient hospital services shall include short-term rehabilitation services and physical therapy, the provision of which the HMO determines can be expected to result in the significant improvement of a member's condition within a period of two months;

(3) Instructions to its members on procedures to be followed to secure medically necessary emergency health services both in the service area and out of the service area;

(4) Twenty outpatient visits per member per year, as may be necessary and appropriate for short-term evaluative or crisis intervention mental health services, or both;

(5) Diagnosis, medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs:

(i) Diagnosis and medical treatment for the abuse of or addiction to alcohol and drugs shall include detoxification for alcoholism or drug abuse on either an outpatient or inpatient basis, whichever is medically determined to be appropriate, in addition to the other required basic health services for the treatment of other medical conditions;

(ii) Referral services may be either for medical or for nonmedical ancillary services. Medical services shall be a part of basic health services; nonmedical ancillary services (such as vocational rehabilitation and employment counseling) and prolonged rehabilitation services in a specialized inpatient or residential facility need not be a part of basic health services;

(6) Diagnostic laboratory and diagnostic and therapeutic radiologic services in support of basic health services;

(7) Home health services provided at a member's home by health care personnel, as prescribed or directed by the responsible physician or other authority designated by the HMO; and

(8) Preventive health services, which shall be made available to members and shall include at least the following:

(i) A broad range of voluntary family-planning services;

(ii) Services for infertility;

(iii) Well-child care from birth;

(iv) Periodic health evaluations for adults;

(v) Eye and ear examinations for children through age 17, to determine the need for vision and hearing correction; and

(vi) Pediatric and adult immunizations, in accord with accepted medical practice.

(b) In addition, an HMO may include a health service described in § 110.103 as a supplemental health service in the basic health services which it provides or arranges for its members for a basic health services payment.

(c) To the extent that a natural disaster, war, riot, civil insurrection, epidemic or any other emergency or similar event not within the control of an HMO results in the facilities, personnel, or financial resources of an HMO being unavailable to provide or arrange for the provision of a basic or supplemental health service in accordance with the requirements of this subpart, the HMO is required only to make a good-faith effort to provide or arrange for the provision of the service, taking into account the impact of the event. For purposes of this paragraph, an event is not within the control of an HMO if the HMO cannot exercise influence or dominion over its occurrence.

(d) The following are not required to be provided as basic health services:

(1) Corrective appliances and artificial aids;

(2) Mental health services, except as required under section 1302(1)(D) of the Act and paragraph (a)(4) of this section;

(3) Cosmetic surgery, unless medically necessary;

(4) Prescribed drugs and medicines incidental to outpatient care;

(5) Ambulance services, unless medically necessary;

(6) Care for military service connected disabilities for which the member is legally entitled to services and for which facilities are reasonably available to this member;

(7) Care for conditions that State or local law requires be treated in a public facility;

(8) Dental services;

(9) Vision and hearing care except as required by sections 1302(1)(A) and 1302(1)(H)(vi) of the Act and paragraphs (a)(1) and (a)(8) of this section;

(10) Custodial or domiciliary care;

(11) Experimental medical, surgical, or other experimental health care procedures, unless approved as a basic health service by the policymaking body of the HMO;

(12) Personal or comfort items and private rooms, unless medically necessary during inpatient hospitalization;

(13) Whole blood and blood plasma;

(14) Long-term physical therapy and rehabilitation;

(15) Durable medical equipment for home use (such as wheel chairs, surgical beds, respirators, dialysis machines); and

(16) Health services which are unusual and infrequently provided and not necessary for the protection of individual health, as approved by the Secretary upon application by the HMO.

(e) An HMO may not offer to provide or arrange for the provision of basic health services on a prepayment basis which do not include all the basic health services set forth in paragraph (a) of this section or which are limited as to time and cost except in a manner prescribed by this part.

§ 110.103 Health benefits plan: supplemental health services.

(a) Each HMO may provide to its members any of the following health services, which may be limited as to time and cost:

(1) Services of facilities for intermediate and long-term care;

(2) Vision and hearing care not included as a basic health service;

(3) Dental services;

(4) Mental health services not included as a basic health service;

(5) Long-term physical medicine and rehabilitative services (including physical therapy);

(6) Prescription drugs prescribed in the course of the provision by the HMO of basic outpatient or supplemental health services; and

(7) Other health services which are not included as basic health services.

(b) An HMO shall determine the level and scope of supplemental health services included with basic health services provided to its members for a basic health services payment or those services offered to its members as supplemental health services.

(c) An HMO is authorized, in connection with the prescription or provision of prescription drugs, to: (1) Maintain, review, and evaluate a drug use profile of its members receiving these services, (2) evaluate patterns of drug utilization to assure optimum drug therapy, and (3) provide for instruction of its members and of health professionals in the use of prescription and non-prescription drugs. Each HMO providing these services shall insure that:

(i) The program is developed jointly by the physicians and pharmacists associated with the HMO;

(ii) The objectives of the program are explained to all health professionals and members of the HMO;

(iii) Individual rights are protected and that all information regarding and identifying an individual is available only to appropriate health professionals of the HMO and to the individual member at his request;

(iv) The primary thrust of the program is optimum drug therapy for the individual member of the HMO; and

(v) The information obtained in drug utilization review is utilized in educational programs for health professionals and members of the HMO.

§ 110.104 Providers of basic and supplemental health services.

(a)(1) The HMO shall provide that the services of health professionals which are provided as basic health services will, except as provided in paragraph (e) of this section, be provided or arranged for through (i) health professionals who are staff of the HMO, (ii) a medical group or groups, (iii) an IPA or IPAs, (iv) physicians or other health professionals under direct service contracts with the HMO for the provision of these services, or (v) any combination of staff, medical group or groups, IPA or IPAs, or physicians or other health professionals under direct service contracts with the HMO.

(2) A staff or medical group model HMO may have as providers of basic health services physicians who have also entered into written services arrangements with an IPA or IPAs, but only if either (i) these physicians number less than 50 percent of the physicians who have entered into arrangements with the IPA or IPAs, or (ii) if the sharing is 50 percent or greater, the Secretary approves the sharing as being consistent with the purposes of section 1310(b) of the Act.

(3) Within the 4 year period beginning with the month following the month in which an HMO becomes a qualified HMO, physician services which are basic health services may also be provided by a non-conforming medical group. After this 4 year period, the HMO may use this entity to provide physician services which are basic health services only if (i) the entity meets the definition of medical group in § 110.101, or (ii) the Secretary determines that the principal professional activity (over 50 percent individually) of the entity's members is the coordinated practice of their profession, and if the HMO has demonstrated to the satisfaction of the Secretary that the entity is committed to the delivery of medical services on a prepaid group practice basis by either:

(A) Presenting a reasonable time-phased plan for the entity to achieve compliance with the "substantial responsibility" requirement of Subparagraph (3)(i) of the definition of "medical group" in § 110.101. The HMO shall update the plan annually and shall demonstrate to the satisfaction of the Secretary that the entity is making continuous efforts and progress towards compliance with the requirements of the definition of "medical group," or,

(B) Demonstrating that compliance by the entity with the "substantial responsibility" requirement is unreasonable or impractical because *(1)* the HMO serves a non-metropolitan or rural area as defined in § 110.101, or *(2)* the entity is a multi-specialty group which provides medical consultation upon referral on a regional or national basis, or *(3)* the majority of the residents of the HMO's service area are not eligible for employer-employee health benefits plans and the HMO has an insufficient number of members to require utilization of at least 35 percent of the entity's services.

(b) After the expiration of the first fiscal years of an HMO beginning after the month in which it become a qualified HMO, the HMO may not, in any fiscal year, enter into contracts for basic and supplemental health services with physicians other than members of staff, medical groups, of IPAs if the amounts paid under these contracts exceed (1) 15 percent of the total estimated amount to be paid in that fiscal year by the HMO to physicians for the provision of basic and supplemental health services by physicians, or (2) if the HMO principally serves a rural area, 30 percent of that amount. However, this paragraph does not apply to payments under a contract for the purchase of physician services from a non-conforming medical group that meets the conditions set forth in § 110.104(a)(3)(ii).

(c) HMOs shall include: (1) In their contracts with medical groups or IPAs for the provision of basic and supplemental health services at least the following:

(i) A description of responsibilities of the parties to the contract;

(ii) The agreed upon compensation for services;

(iii) An agreement that the medical group or IPA, its members and the health professionals contracting with it, will look solely to the HMO for compensation for services provided to the HMO's members. This agreement shall not extend to copayments or payments for supplemental health services on other than a prepaid basis, but the contracting party shall not assert any claim for compenstion against members in excess of these copayments or payments for these supplemental health services;

(iv) Provisions requiring participation by health professionals in quality assurance activities;

(v) A description of mechanisms, such as risk sharing, financial incentives, or other incentives, to be applied to monitor utilization and to control costs

of basic and supplemental health services and to achieve utilization goals; and

(vi) Assurances that medical groups and IPAs, or the health professionals associated with them, will be protected by professional liability coverage, either through insurance or self-insurance;

(2) In their contracts with health professionals for the provision of basic and supplemental health services (except for unusual or infrequently used services) at least the following:

(i) The provisions described in paragraphs (c)(1)(i), (ii), (iii), and (iv) of this section; and

(ii) Provisions requiring appropriate continuing education.

(d) Staff model HMOs shall have effective procedures to monitor utilization and to control cost of basic and supplemental health services, and to achieve utilization goals.

(e) Paragraph (a) of this section does not apply to the provision of the services of a physician—

(1) Which the HMO determines are unusual or infrequently used services; or

(2) Which, because of an emergency, it was medically necessary to provide to the member other than as required by paragraph (a) of this section; or

(3) Which are provided as part of the inpatient hospital services by employees or staff of a hospital or provided by staff of other entities such as community mental health centers, home health agencies, visiting nurses' associations, independent laboratories, or family planning agencies.

(f) Supplemental health services shall be provided or arranged for by the HMO and need not be provided by providers of basic health services under contract with the HMO.

(g) Each HMO shall:

(1) Pay the provider, or reimburse its members for the payment of reasonable charges for basic health services (or supplemental health services which the HMO agreed to provide on a prepayment basis) for which its members have contracted, which were medically necessary and immediately required to be obtained other than through the HMO because of an unforeseen illness, injury, or condition, as determined by the HMO;

(2) Adopt procedures to review promptly all claims from members for reimbursement for the provision of health services described in paragraph (g)(1) of this section, including a procedure for the determination of the medical necessity for obtaining the services other than through the HMO; and

(3) Provide instructions to its members on procedures to be followed to secure these health services.

§ 110.105 Payment for basic health services.

(a) *Basic health services payment.* Each HMO shall provide or arrange for the provision of basic health services for a basic health services payment which:

(1) Is to be paid on a periodic basis without regard to the dates these services are provided;

(2) Is fixed without regard to the frequency, extent, or kind of basic health services actually furnished;

(3) Except as provided in paragraph (c) of this section, is fixed under a community rating system, as described in paragraph (b) of this section; and

(4) May be supplemented by nominal copayments which may be required for the provision of specific basic health services. Each HMO may establish one or more copayment options calculated on the basis of a community rating system.

(i) An HMO may not impose copayment charges that exceed 50 percent of the total cost of providing any single service to its members, nor in the aggregate more than 20 percent of the total cost of providing all basic health services.

(ii) To insure that copayments are not a barrier to the utilization of health services or membership in the HMO, an HMO may not impose copayment charges on any subscriber (or members covered by the subscriber's contract with the HMO) in any calendar year, when the copayments made by the subscriber (or members) in that calendar year total 100 percent of the total annual premium cost which that subscriber (or members) would be required to pay if he (or they) were enrolled under an option with no copayments. This limitation applies only if the subscriber (or members) demonstrates that copayments in that amount have been paid in that year.

(b) *Community rating system.* Under a community rating system, rates of payment for health services may be determined on a per-person or per-family basis and may vary with the number of persons in a family. Except as otherwise authorized in this paragraph, these rates must be equivalent for all individuals and for all families of similar composition. Rates of payment may be based on either a schedule of rates charged to each subscriber group or on a per-member-per-month (or per-subscriber-per-month) revenue requirement for the HMO. In the former event, rates may vary from group to group if the projected total revenue from each group in substantially equivalent to the revenue which would be derived if the schedule of rates were uniform for all groups. In the latter event, the payments from each group of subscribers shall be calculated to yield revenues substantially equivalent to the product of the total number of members (or subscribers) expected to be enrolled from the group and the per-member-per-month (or per-subscriber-per-month) revenue requirement for the HMO. In addition, a community rating system must meet the following requirements:

(1) Rates of payment may not vary because of actual or anticipated utilization of services by individuals associated with any specific group of subscribers. These provisions do not preclude changes in the rates of payment which are established for new enrollments or reenrollments and which do not apply to existing contracts until the renewal of these contracts.

(2) Rates of payment shall reflect differences in benefits and copayment requirements.

(3) The following differentials may be established under a community rating system.

(i) Nominal differentials in rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of potential subscribers:

(A) Individual (nongroup) subscribers (including their families),

(B) Small groups of subscribers (100 subscribers or fewer),

(C) Large groups of subscribers (over 100 subscribers).

(ii) Differentials in rates may be established for subscribers enrolled in a HMO: (A) Under a contract with a governmental authority under section 1079 ("Contracts for Medical Care for Spouses and Children: Plans") or section 1086 ("Contracts for Health Benefits for Certain Members, Former Members and their Dependents") of Title 10 ("Armed Forces"), United States Code; or (B) under any other governmental program (other than the health benefits program authorized by chapter 89 ("Health Insurance") of Title 5 ("Government Organization and Employees"), United States Code; or (C) under any health benefits program for employees of States, political subdivision of States, and other public entities.

(iii) an HMO may establish a separate community rate for separate regional components of the organization upon satisfactory demonstration to the Secretary of the following:

(A) Each regional component is geographically distinct and separate from any other regional component; and

(B) Each regional component provides substantially the full range of basic health services to its members, without extensive referral between components of the organization for these services, and without substantial utilization by any two components of the same health care facilities. The separate community rate for each regional component of the HMO must be based on the different costs of providing health services in the respective regions.

(c) *Exceptions to community rating requirement.* (1) In the case of an HMO which provided comprehensive health services on a prepaid basis before it became a qualifed HMO, the requirement of community rating shall not apply to the HMO during the forty-eight month period beginning with the month following the month in which it became a qualifed HMO.

(2) The requirement of community rating does not apply to the basic health services payment for basic health services provided a member who is a full-time student at an accredited institution of higher education.

(d) *Charges for benefits covered by workers' compensation law or insurance policy.* The requirements respecting the basic health services payment do not apply to the provision of basic health services to a member for an illness or injury for which the member is entitled to benefits under a workers' compensation law or an insurance policy, but only to the extent these benefits apply to these services.

(1) For the provision of services for an illness or injury for which a member is entitled to benefits under a workers' compensation law, the HMO may, if authorized by this law, charge or authorize the provider of the services to charge, in accordance with the charges allowed under the law: (i) The insurance carrier, employer, or other entity which under the law is to pay for the provision of the services, or (ii) the member, to the extent that the member has been paid under the law for the services.

(2) For the provision of services for an illness or injury for which a member is entitled to benefits under an insurance policy, an HMO may charge or authorize the provider of the services to charge: (i) The insurance carrier under the policy, or (ii) the member, to the extent that the member has been paid under the policy for the services.

(e) *Late payment penalty.* HMOs may charge a late payment penalty on accounts receivable which are in arrears.

§ 110.106 Payment for supplemental health services.

(a) An HMO may require supplemental health services payments, in addition to the basic health services payments, for the provision of each health service included in the supplemental health services set forth in § 110.103 for which subscribers have contracted, or it may include supplemental health services in the basic health services provided its members for a basic health services payment.

(b) Supplemental health services payments may be made in any agreed upon manner, such as prepayment or fee-for-service. Supplemental health services payments which are fixed on a prepayment basis, however, shall be fixed under a community rating system, unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student at an accredited institution of higher education. In the case of an HMO which provided comprehensive health services on a prepaid basis before it became a qualifed HMO, the community rating requirement shall not apply to that HMO during the forty-eight month period beginning with the month following the month in which it became a qualifed HMO.

(c) When the HMO provides supplemental health services on a prepayment basis for which the member is entitled to benefits under a workers' compensation law or an insurance policy, the HMO may take the actions described in § 110.105(d)(1) or (2) (respecting charges for basic health services which are benefits under a workers' compensation law or insurance policy) as appropriate.

§ 110.107 Availability, accessibility, and continuity of basic and supplemental health services.

Within the HMO's service area, basic health services and those supplemental health services for which members have contracted shall be:

(a) Provided or arranged for by the HMO;

(b) Available and accessible to each of the HMO's members promptly as appropriate with respect to:

(1) Geographic location, hours of operation, and provisions for after-hours services (medically necessary emergency services must be available and accessible 24 hours a day, 7 days a week); and

(2) Staffing patterns within generally accepted norms for meeting the projected membership needs; and

(c) Provided in a manner which assures continuity, including but not limited to:

(1) Provision of a health professional who is primarily responsible for coordinating the member's overall health care; and

(2) Development of a health (including medical) recordkeeping system through which pertinent information relating to the health care of the patient is accumulated and is readily available to appropriate professionals.

§ 110.108 Organization and operation.

(a) *Fiscally sound operation and administrative and managerial arrangements.* (1) Each HMO shall have a fiscally sound operation as demonstrated by:

(i) Total assets being greater than total unsubordinated liabilities. In this evaluation, loan funds awarded or guaranteed under section 1305 of the Act are not included as liabilities, and if the funds have not been disbursed to the HMO by the Secretary or by an escrow agent, they are not included as assets;

(ii) Sufficient cash flow and adequate liquidity to meet obligations as they become due;

(iii) A net operating surplus. If the HMO has not earned a cumulative net operating surplus during the three most recent fiscal years, did not earn a net operating surplus during the most recent fiscal year, does not a have positive net worth, or is seeking a Federal loan or loan guarantee under sections 1305 or 1305A of the Act, the HMO shall submit a financial plan satisfactory to the Secretary to achieve net operating surplus within available fiscal resources. This plan shall include:

(A) A detailed marketing plan;

(B) Statements of revenue and expense on an accrual basis;

(C) Sources and uses of funds' statements; and

(D) Balance sheets;

(iv) A plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which payment has been made, continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge, and payments to unaffiliated providers for services rendered;

(v) A fidelity bond or bonds, procured and maintained by the HMO, in an amount fixed by its policymaking body but not less than $100,000 per individual, covering each officer and employee entrusted with the handling of its funds. The bond may have reasonable deductibles, based upon the financial strength of the HMO;

(vi) Insurance policies or other arrangements, secured and maintained by the HMO and approved by the Secretary to insure the HMO against losses arising from professional liability claims, fire, theft, fraud, embezzlement, and other casualty risks; and

(vii) A plan to maximize its enrollment in a manner consistent with sound management.

(2) Each HMO shall have administrative and mangerial arrangements satisfactory to the Secretary, as demonstrated by at least the following:

(i) A policymaking body which exercises oversight and control over the HMO's policies and personnel to assure that management actions are in the best interest of the HMO and its membership; and

(ii) Personnel and systems sufficient for the HMO to organize, plan, control and evaluate the financial, marketing, health services, quality assurance program, administrative and management aspects of the HMO. At a minimum, the HMO shall be managed by an executive whose appointment and removal are under the control of the HMO's policymaking body.

(b) *Financial risk.* Each HMO shall assume full financial risk on a prospective basis for the provision of basic health services, except that it may obtain insurance or make other arrangements: (1) For the cost of providing to any member basic health services the aggregate value of which exceeds $5,000 in any year;

(2) For the cost of basic health services provided to its members other than through the HMO because medical necessity required their provision before they could be secured through the HMO; and

(3) For not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for that fiscal year.

(c) *Broadly representative enrollment.* After full and fair disclosure of its benefits, coverage, rates, grievance procedures, location, and hours of service, and a general description of its participating providers and financial condition, each HMO shall offer enrollment to persons who are broadly representative of the various age, social, and income groups within its device area. In the case of an HMO which has a medically underserved population located in its service area, not more than 75 percent of the HMO members may be enrolled from the medically underserved population unless the area in which that population resides is also a rural area.

(d) *Open enrollment.* If the HMO has either provided comprehensive health services on a prepaid basis for a period of at least 5 years or has an enrollment of at least 50,000 members, it shall have an open enrollment period at least once during the fiscal year next following each fiscal year in which it did not have a financial deficit. (For purposes of this paragraph, financial deficits must be reported and certified by an independent Certified Public Accountant.) The period of open enrollment shall be determined under paragraph (d)(1) of this section. During open enrollment, the HMO shall accept individuals for membership in the order in which they apply for enrollment and, except as provided in paragraph (d)(2) of this section, without regard to preexisting illness, medical condition, or degree of disability.

(1) An open enrollment period for an HMO shall be the lesser of—

(i) 30 days, or

(ii) The number of days in which the organization enrolls a number of individuals at least equal to 3 percent of its total net increase in enrollment (if any) in the fiscal year preceding the fiscal year in which the open enrollment period is held. In determining the total net increase in enrollment in an HMO, the HMO need not include any individual who is (A) enrolled in the HMO through a group which had a contract or other arrangement for health care services with the HMO when the HMO was determined to be a qualified HMO, or (B) entitled to insurance benefits under Title XVIII of the Social Security Act or to medical assistance under a State plan approved under Title XIX of that Act and was enrolled in the HMO when the HMO was determined to be a qualified HMO.

(2) An HMO is not required to enroll individuals who are confined to an institution because of (i) chronic illness, (ii) permanent injury, or (iii) other infirmity which would cause economic impairment to the HMO, as demonstrated to the satisfaction of the Secretary, if these individuals were enrolled.

(3) And HMO may defer the effective date of benefits for individuals enrolled under this paragraph for up to 90 days after the date of enrollment.

(4) An HMO may require an individual applying for membership at periods other than the required annual open enrollment period to submit to and pay for a health status questionnaire or a health examination. An HMO may deny enrollment based on results of this questionnaire or health examination.

(5) The Secretary may, under paragraph (e) of this section, waive the requirements of this paragraph for an HMO which demonstrates that compliance with the provisions of this paragraph would jeopardize its economic viability.

(e) *Waiver of open enrollment.* In order to obtain a waiver under paragraph (d)(5) of this section, the HMO shall submit documentation that it has prospectively determined on an actuarial basis, using data available in the area or from similar organizations elsewhere, that the average utilization of services of potential individual members would so increase costs as to jeopardize the economic viability of the organization if it maintained an open enrollment period.

(f) *Health status and enrollment.* The HMO shall not expel or refuse to re-enroll any member nor refuse to enroll individual members of a group, on the basis of the health status, health care needs, or age of the member or individual. For purposes of this paragraph, a "group" is an entity which consists of members who enroll in the HMO through a contract or other arrangement which provides for the enrollment of two or more subscribers. Nothing in this subpart prohibits an HMO from requiring that, as a condition of continued eligibility for membership, dependents of a subscriber, upon reaching a specified age, convert to nongroup membership consistent with the terms of § 110.108(g).

(g) *Conversion of membership.* Each HMO shall offer membership on the same terms and conditions as are available to a nongroup subscriber to:

(1) Each subscriber (and his enrolled dependents) leaving a group; and

(2) Each member who would otherwise cease to be eligible for HMO membership because of his or her age or the death or divorce of a subscriber.

(h) *Policymaking body.* (1) In the case of a private HMO, no later than one year after becoming operational as a qualified HMO, at least one-third of the membership of its policymaking body must be members of the HMO who reside in or in proximity to the service area of the HMO. An HMO with regional components and one overall policymaking body must assure that the individuals satisfying the one-third member requirement reside in, or in proximity to, the service area of at least one of the HMO's regional components. HMOs with policymaking bodies consisting of the same individuals must assure that the individuals satisfying the one-third member requirement reside in, or in proximity to, the service area of at least one of the HMOs.

(i) No member having ownership of or financial interest in, or employed by, or gaining financial reward from direct dealings with, the HMO or a plan-

affiliated institution or organization, and no members of the immediate family of such member shall be included in the minimum one-third member representation on the policymaking body. However, none of the foregoing prohibits the payments of directors' fees or other similar fees, or interest and dividends derived from membership in an HMO cooperative, to persons serving on the policymaking body.

(ii) There shall be equitable representation on the member portion of the policymaking body of members from the medically underserved populations served by the HMO in proportion to their enrollment relative to the entire enrollment; except that if the membership from these medically underserved populations is at least 5 percent of the total enrollment, then those populations shall not be without representation.

(2) In the case of public HMO, have an advisory board to its policymaking body operating the HMO which board meets the requirements of subparagraph (1) of this paragraph, and to which may be delegated policymaking authority for the HMO.

(i) *Grievance procedures.* Each HMO shall have and use meaningful procedures for hearing and resolving grievances between the HMO (including the staff of the HMO, the medical group, and the IPA) and the members of the HMO. These procedures must assure that: (1) Grievances and complaints will be transmitted in a timely manner to appropriate decisionmaking levels within the HMO which have authority to take corrective action; and (2) appropriate action will be taken promptly, including a full investigation if necessary and notification of concerned parties as to the results of the HMO's investigation.

(j) *Quality assurance program.* Each HMO shall have an ongoing quality assurance program for is health services which:

(1) Stresses health outcomes to the extent consistent with the state of the art;

(2) Provides review by physicians and other health professionals of the process followed in the provision of health services;

(3) Uses systematic data collection of performance and patient results, provides interpretation of these data to its practitioners, and institutes needed change; and

(4) Includes written procedures for taking appropriate remedial action whenever, as determined under the quality assurance program, inappropriate or substandard services have been provided or services which should have been furnished have not been provided;

(k) *Certification of institutional providers.* Each HMO shall assure that institutional providers through which it provides basic and supplemental health services (1) are certified either under Title XVIII of the Social Security Act (Medicare) in accordance with 42 CFR Part 405 or under Title XIX of the Social Security Act (Medicaid) in accordance with the regulations governing participation of providers in the Medical Assistance Program; or (2) in the case of hospitals, are either accredited by the Joint Commission on Accreditation of Hospitals or certified by Medicare; or (3) in the case of clinical laboratories (except for laboratories exempted from section 353 of the Public Health Service Act by paragraphs (d)(2), (i), or (1) of that section), certified by Medicare or Medicaid or licensed under section 353.

(l) *Continuing education of health professionals.* Each HMO shall provide, or make arrangements for, continuing education for its health professional staff;

(m) *Health education.* In support of the provision of health services, each HMO shall actively provide its members:

(1) Health education services including instruction in personal health care measures;

(2) Information about its services, including education on generally accepted medical standards for use and frequency of its services; and

(3) Nutritional education and counseling;

(n) *Medical social services.* In support of the provision of health services, each HMO shall offer its members medical social services, which shall include appropriate assistance in dealing with the physical, emotional and economic impact of illness and disability. These services may include pre- and post-hospitalization planning, referral to services provided through community health and social welfare agencies, and related family counseling;

(o) *Reporting and disclosure requirements.* (1) While safeguarding the confidentiality of the doctor-patient relationship, each HMO shall provide an effective procedure to develop, compile, evaluate, and report to the Secretary, to its members, and to the general public, at the times and in the manner the Secretary requires, statistics and other information relating to:

(i) The cost of its operations;

(ii) The patterns of utilization of its services;

(iii) The availability, accessibility, and acceptability of its services;

(iv) To the extent practical, developments in the health status of its members;

(v) Information demonstrating that the HMO has a fiscally sound operation;

(vi) Other matters as the Secretary may require;

(2) Each HMO shall report to the Secretary annually, within 180 days of the end of its fiscal year (unless for good cause shown, the Secretary authorizes an extension of time):

(i) The information required to be reported by disclosing entities under regulations implementing section 1124 and section 1902(a)(38) of the Social Security Act (see 42 CFR 420.206 and 42 CFR 455.104), respectively.

(ii) A description of the following significant business transactions between the HMO and a party in interest, and a justification that the costs of these transactions do not exceed the costs which would be incurred if these transactions were to be with someone who is not a party in interest (or if they do, a justification that the higher costs are consistent with prudent management and fiscal soundness requirements):

(A) Sale, exchange, or leasing of property;

(B) Furnishing for consideration of goods, services (including management services, but excluding health services provided to members by staff, medical groups, IPAs, or any combination thereof and services provided by employees of the HMO in the normal course of their employment), or facilities; and

(C) Lending of money or other extension of credit.

(3)(i) Report to the Secretary annually, within 180 days of the end of its fiscal year (unless for good cause shown, the Secretary authorizes an extension of time), a combined financial statement for the organization and such entity if:

(A) Thirty-five percent or more of the costs of operation of the HMO go to a party in interest; or

(B) Thirty-five percent or more of the revenue of a party in interest is from the HMO.

The combined financial statements must display in separate columns the financial information for the HMO and each of these parties in interest. Inter-entity transactions must be eliminated in the consolidated column. These statements must have been examined by an independent auditor in accordance with generally accepted accounting principles, and must include appropriate opinions and notes.

(ii) The Secretary may, upon a written request from an HMO and for good

cause shown, waive the requirement that its combined financial statement include the financial information required in this paragraph with respect to a particular entity.

(p) *Human diginity.* Each HMO shall be organized and operated in a manner intended to preserve human dignity;

(q) *Confidentiality of health records.* Each HMO shall establish adequate procedures to insure confidentiality of its members' health (including medical) records; and

(r) *Referral information.* Each HMO shall make arrangements either directly or through its providers to assure that the HMO or the health professional coordinating the member's overall health care is kept informed about the services provided to its members by referral resources.

§ 110.109 Prohibited activities.

An HMO may not sell, market or promote, to an individual or group, directly or through arrangements with other entities, health insurance or a health service benefit plan for health benefits which the HMO includes in the prepaid health benefits package offered to that individual or group. In addition, the HMO may not permit its employees to do so in the normal course of their employment.

§ 110.110 Special requirements: Titles XVIII and XIX of the Social Security Act.

(a) As provided in section 1307(d) of the Act, an HMO which otherwise complies with section 1301(b) and section 1301(c) of the Act, and with the applicable regulations of this subpart, and which enrolls members who are entitled to insurance benefits under Title XVIII of the Social Security Act or to medical assistance under a State plan approved under Title XIX of that Act, may still be considered as an HMO, if with respect to its Title XVIII and Title XIX members it provides services and is operated as required by Title XVIII or XIX, as appropriate, and regulations thereunder.

(b) Notwithstanding any inconsistent requirements of this subpart, an HMO which enters into a contract with the Secretary under Title XVIII of the Social Security Act or with a State under Title XIX of that Act shall, with respect to its members entitled to insurance benefits or medical assistance under those titles, comply with the applicable Title XVIII or Title XIX requirements, including deductible and coinsurance requirements, enrollment mix and enrollment practice requirements, in accordance with the provisions of Title XVIII or the Title XIX State plan of the State with which it is contracting. Copayment options which are not in accordance with a Title XIX State plan may not be imposed on Title XIX enrollees.

(c) Any grievance procedures authorized under Title XVIII or Title XIX of the Social Security Act are not superseded by the provisions of § 110.108(i).

§ 110.111 Special requirements: Federal employee health benefits program.

An entity which provides health services to a defined population on a prepaid basis and which has members who are enrolled under the health benefits program authorized by chapter 89 of Title 5, United States Code, may be considered as an HMO for purposes of receiving assistance under this Part if with respect to its other members it (a) provides health services in accordance with section 1301(b) of the Act and the applicable regulations of this part and (b) is organized and operated in the manner prescribed by section 1301(c) of the Act and the applicable regulations of this part.

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Part IX

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Qualifying Conditions and Reimbursement of Health Care Prepayment Plans

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 418

Medicare Program; Qualifying Conditions and Reimbursement of Health Care Prepayment Plans

AGENCY: Health Care Financing Administration, (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: The proposed rules set forth Medicare qualifying conditions and principles of reimbursement for prepaid health care organizations that furnish or arrange to furnish medical and other health services under Part B of Medicare and are reimbursed on a reasonable cost basis. The proposed reimbursement principles are similar, to the extent possible, to those for Health Maintenance Organizations reimbursed on a reasonable cost basis. The purpose of these proposed rules is to clarify and simplify existing policy and to assure uniform treatment of both types of prepayment organizations under Medicare.

DATES: In order to assure consideration, comments should be received on or before December 30, 1980.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, MD 21235.

If you prefer, you may deliver your comments to: Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., in Washington, D.C. or to Room 789, East High Rise Building, 6401 Security Boulevard, in Baltimore, Maryland.

When commenting please refer to BPP-3-P. Agencies and organizations are requested to submit their comments in duplicate. Comments will be available for public inspection, beginning approximately 2 weeks after publication, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202) 245-7890.

FOR FURTHER INFORMATION CONTACT: Frank Emerson, 301-597-2968.

SUPPLEMENTARY INFORMATION: A prepayment organization may be broadly defined as an organization that furnishes, or arranges for furnishing, comprehensive health services to its enrollees in return for a predetermined, periodic payment.

Section 1833(a)(1)(A) of the Social Security Act, 42 U.S.C. 1395l(a)(1)(A), allows prepayment organizations, under certain conditions, to elect to be paid on a reasonable cost basis for medical and other health services covered by Medicare instead of being paid on a reasonable charge basis, as is more customary for most Part B services.

These proposed rules set forth for the first time in regulations the conditions for coverage and reimbursement for prepayment organizations that elect this option. At the present time, group-practice prepayment plans (GPPPs) may qualify for reasonable cost reimbursement under section 1833(a)(1)(A) on the basis of administrative guidelines (see GPPP Manual, HIM-8) which set only minimal qualification criteria.

These regulations are being proposed because there is a need: (1) to include in regulations the qualification and reimbursement criteria for reasonable cost reimbursement under section 1833(a)(1)(A); (2) to adopt qualification criteria that more specifically and precisely distinguish prepayment organizations eligible for reasonable cost reimbursement from other modes of health care delivery and reimbursement and from health maintenance organizations; and (3) to conform reasonable cost reimbursement for health care prepayment plans and health maintenance organizations (HMOs). The regulations also are prompted by the enactment of section 1876 of the Social Security Act, 42 U.S.C. 1395mm, which deals with the qualification and reimbursement of HMOs in the Medicare program. Prior to this provision there was a lack of specificity in the statutory language and little guidance accompanying the legislative history regarding prepayment organization qualifications and reimbursement. With the addition of the Medicare HMO provision, however, and the several HMO amendments to the Public Health Service Act, the Medicare program was given more detailed legislative direction on these matters. Where appropriate, the requirements in these regulations are consistent with those for HMOs.

The Department has placed strong emphasis on developing HMOs as an alternate health care delivery system. Therefore, the decision to pattern these amendments after the cost-basis HMO regulations has been adopted, in part, to aid this effort. Imposing the same principles should facilitate a health-care prepayment plan's transition to HMO status.

In addition, by patterning the proposal in certain key respects on the existing HMO regulations, we hope to improve both the quality of care and the cost accountability of prepayment organizations by imposing stricter, more specific requirements and eliminating provisions in the administrative guidelines that are no longer appropriate. It should also give us the opportunity to evaluate more accurately how well these organizations are meeting the objective of furnishing better service to Medicare beneficiaries.

Terminology

The term "health care prepayment plan" (HCPP) is used in these proposed regulations to describe prepayment organizations that elect to receive payment on a reasonable cost basis under section 1833(a)(1)(A) of the Act for medical and other health services.

The term HCPP also distinguishes these organizations from HMOs, which are reimbursed for hospital, physician and other covered Part A and Part B services. HCPPs, on the other hand, may be reimbursed only for medical (including physician) and other health services covered under Part B. Another important difference is that HMOs, unlike HCPPs, can qualify for incentive payments (i.e., HMOs can retain a certain portion of savings resulting from efficient operation). In addition, HMOs have to meet a more comprehensive set of qualification requirements.

Basic Requirements

The proposed regulations set forth the following basic requirements for prepayment organizations, other than HMOs, that wish to receive reimbursement from the Medicare program for medical and other health services they furnish to Medicare beneficiaries:

(1) Qualification criteria and reimbursement principles for prepayment organizations that elect reasonable cost reimbursement as HCPPs; and

(2) Payment of other prepayment organizations on the same reasonable charge basis that is generally used to reimburse physicians and suppliers of services under Part B of Medicare.

Qualification of HCPP's

These proposed regulations broadly define an HCPP as an organized health care delivery system that accepts responsibility for the organization, financing and delivery of health care services for a defined population on a prepayment basis. Thus, HCPPs are distinguished from other types of health delivery systems in that they do not have a purely health care financing role, or a purely delivery role. Rather, they

are concerned with obtaining and financing an assured source of supply of health care services adequate to meet the demands of their enrollee populations. The other basic distinguishing characteristic is that the financing of the health care services is done on a prepayment basis, that is, the organizations meet the costs of these health care services through periodic payments from plan enrollees. These periodic payments (premiums) are made to the organizations without regard to the frequency or extent of services furnished to any particular enrollee or whether the enrollee has received services.

The specific requirements that an organization must meet in order to qualify as an HCPP are set forth in the regulations as a series of conditions and, where appropriate, standards that expand upon the conditions.

These conditions relate to: (1) The range of services provided; (2) the arrangement the HCPP makes for covered services it does not provide directly; (3) the composition of the HCPP's physician and other medical staff; (4) enrollee access to services; and (5) fiscal accountability; (6) and the written agreement with the Administrator.

1. *Range of Services.*

The proposed regulations require that an HCPP must provide at least the following services to its Medicare enrollees: physicians' services; and diagnostic X-ray, laboratory and other diagnostic tests. We consider these to be the essential health services and represent the minimum from among the medical and other health services Part B covers that a HCPP should offer its Medicare enrollees. The HCPP may, of course, offer other services covered under Part B and may also furnish inpatient hospital services and other services Medicare covers under Part A. Physicians' services are, of course, the core of services furnished by health care prepayment plans. (See S. Rep. No. 404, Part I, 89th Cong., 1st Sess. 43 (1965).) Diagnostic tests are also required to assure that physician services offered by the plan are reinforced by the availability of essential diagnostic support. This requirement would also make the Part B services required to be furnished by the HCPP regulations consistent with those required for certain HMO's. (See 42 CFR 405.2005(b). However, the HCPP may not receive payment under the provisions of this regulation for services furnished by a provider of services, whether covered under Part A or Part B. HCFA will make payment for these services directly to the provider of the services (hospital, HHA, or SNF) through its Medicare fiscal intermediary.

2. *Provision of Services.*

The proposed regulations provide that an HCPP must furnish its services through institutions, entities and persons approved by the Medicare program. For example, if services are furnished by independent laboratories, portable X-ray suppliers or end-stage renal disease facilities, the laboratory or supplier must have been approved as meeting the applicable conditions for coverage as described in Subparts M, N and U of 42 CFR Part 405, the Medicare regulations. Similarly, if an HCPP furnishes services provided by a hospital, skilled nursing facility, home health agency, or a provider of outpatient physical therapy services, these providers must have approved provider agreements under the Medicare program.

These regulations also require that for an HCPP to qualify, a physician must provide medical direction of the HCPP's health care staff. HCPP's would not be required to have a physician on the premises at all times during office hours in order to qualify, nor would a physician be required to directly supervise all nonphysician health care professionals. However, if a physician was not present, one would have to be available through direct telecommunication for consultation, and to assist with medical emergencies. This is supportive of the Department's efforts to provide basic health care services to medically underserved populations. These populations live in areas designated as having a shortage of personal health services, due principally to insufficient numbers of physicians and high numbers of people eligible for Medicare and Medicaid. We have not proposed a requirement that a physician be on the premises for specific amounts of time or how frequently. We would like to receive comments on the need for, and terms of, such a requirement.

While some latitude in physician direction and supervision is proposed for purposes of the qualifying conditions for HCPP's, we must point out, however, that coverage of nonphysician services under Part B of Medicare is limited. Generally, under current policy, only those nonphysician services performed "incident to a physician's professional service" are covered, and then only when a physician is actually present and immediately available to provide assistance and direction. These Part B coverage requirements would apply to services furnished by HCPPs in the same way they apply to services furnished by any health care facility or individual to Medicare beneficiaries.

The Department is reviewing current policies on payment for nonphysician services performed "incident to a physician's professional service". We would welcome comments on the current reimbursement policy and recommendation for change.

Another provision requires that if the HCPP provides covered services to its Medicare members through agreements with physicians, other than those employed by the HCPP, or with suppliers that are not owned, operated, or controlled by the HCPP, the HCPP is responsible for insuring that the services furnished under these agreements are efficient, effective, and economical.

3. *Access to Services.*

To assure that services can be obtained when needed, the proposed regulations require that the specified minimum range of covered services furnished by an HCPP to its Medicare enrollees must be: (1) furnished by the HCPP directly or under agreements; (2) available and accessible to each of its enrollees promptly; and (3) furnished in a manner that assures continuity of each enrollee's health care. Additionally, in order to assure continuity of care, the HCPP must maintain an adequate medical recordkeeping system and must assure that a health care professional in its organization is responsible for coordinating each enrollee's overall health care.

4. *Organization and Operation of Services.*

The proposed regulations also require an HCPP to have a fiscally sound operation and to meet certain other organizational and operational requirements that HMOs under Medicare are required to meet.

With respect to fiscal solvency, these regulations require that the organization have a financial plan that demonstrates, among other things: (1) a positive cash flow, (2) the ability to establish reserves, and (3) provision against the risk of insolvency. In assessing the fiscal solvency of an HCPP, we will take into consideration any Public Health Service grant funds, as well as any other revenues.

The other organizational and operational requirements that an HCPP must meet include minimum standards dealing with the re-enrollment of Medicare beneficiaries and grievance procedures.

These administrative requirements represent the minimum we believe necessary to provide a reasonable expectation of financial stability and of the organization's capacity to serve its enrollees in an efficient manner. They are based on our experience to date with cost-based HMOs under Medicare

and on generally accepted sound business practices.

5. *Organization of physician services.* The proposed regulations provide that physician services furnished by the HCPP to its Medicare enrollees must be furnished through one of the following: (1) employees of the organization; (2) a medical group or an individual practice association; (3) physicians who have contracted with the HCPP to furnish services; (4) any combination of staff, medical group, individual practice association, or physicians that have contracts with the HCPP; or (5) an entity that for the first 3 years as an HCPP would qualify as a medical group under these regulations but its physician members do not meet all of the requirements for professional activity (e.g., time spent in delivery of services to the HCPP's enrollees).

Request for Comments on Proposed Criteria From Current Cost Basis Group Practice Prepayment Plans

We anticipate that all of the cost basis group practice prepayment plans currently participating in Medicare will be able to meet the requirements contained in these proposed regulations. However, we do not have sufficient information available to confirm this. We would appreciate receiving from the plans comments concerning whether there are requirements they will not be able to meet and, if so, what timetable they think will be appropriate to come into compliance with these regulations.

Reimbursement of HCPPs

1. *Reimbursement options for prepayment organizations.* There are three reimbursement options under Medicare for prepayment organizations. They may be characterized as the HMO option, the reasonable charge option, and the reasonable cost option. Section 1876 of the Act authorizes the Medicare program to provide reimbursement to HMOs on either a reasonable cost or an incentive basis for services covered under Parts A and B of the program. Section 1833(a) provides that, in general, reimbursement for items and services covered under Part B of the Medicare program shall be 80 percent of the reasonable charge for such items and services, after subtracting the beneficiaries' deductibles and taking into account other applicable limitations under the law. Section 1833(a)(1)(A) permits prepayment organizations to receive 80 percent of the reasonable cost of medical and other health services covered under Part B furnished to their Medicare enrollees, after taking into account the beneficiaries' deductibles and other limitations.

Organizations qualifying as HMOs are reimbursed under 42 CFR Part 405, Subpart T. Prepayment organizations electing the reasonable charge option are paid according to administrative guidelines (see discussion below under *Reimbursement of Other Prepayment Organizations*). These proposed regulations would clarify and establish uniform reimbursement policy for prepayment organizations that elect the option to receive payment of reasonable cost for medical and other health services covered under Part B.

2. *Reimbursement Policy Changes.* The current administrative guidelines for paying GPPPs offer a number of different methods of reimbursement. They do not provide for reimbursement of certain costs unique to prepayment organizations, such as marketing costs. On the other hand, they do allow, in some situations, the payment of an "equalization factor" which is a payment for long-range capital needs in excess of budgeted costs. (This payment is allowed only if the premiums the GPPP's non-Medicare enrollees are charged includes a similar amount for this purpose.)

As indicated above, we believe it desirable to adopt reimbursement criteria for HCPPs similar to those for HMOs that are reimbursed on a reasonable cost basis. For instance, marketing and certain other costs that are unique to the prepayment form of health care delivery would now be included as allowable costs for HCPPs. Also, these regulations would not provide for the payment of an equalization factor since future capital needs are not recognized in the definition of reasonable cost. (Section 1861(v)(1)(A) of the Act limits reasonable cost to costs "actually incurred" in the efficient delivery of needed health services such as those defined in 42 CFR Part 405, Subpart D.)

3. *Reasonable Cost Reimbursement.* The reimbursement sections of these regulations are patterned, to the extent possible, on the reimbursement regulations for cost-basis HMOs which follows in large part, the principles of reimbursement for costs incurred by providers of services under Medicare (see 42 CFR Part 405, Subpart D). A prepayment organization that elects and qualifies to receive payment under this method will receive 80 percent of the reasonable cost of covered medical and other health services furnished directly or under arrangements to its enrolled Medicare beneficiaries, after subtracting the amount of any deductibles for which its Medicare enrollees are responsible. Its Medicare enrollees will be liable for: (1) amounts required under Medicare for deductible and coinsurance. These regulations follow the HMO regulations in regard to the method an HCPP may use to collect from its Medicare enrollees amounts for deductible and coinsurance. This means that an HCPP may choose to collect these amounts in a number of different ways such as a premium, membership fee, or a charge per unit of service. However, regardless of the method the HCPP uses, the total amount it collects for deductible and coinsurance may not exceed the actuarial value of the deductible and coinsurance its Medicare enrollees would have paid for deductibles and coinsurance had they not been enrolled in the HCPP; and (2) amounts for noncovered services.

Payments to an HCPP will: (1) be made monthly on a per capita basis, in accordance with Medicare instructions, for those Medicare beneficiaries enrolled in the HCPP; (2) approximate as closely as possible the reimbursable cost the HCPP is incurring in furnishing covered Part B services to its Medicare enrollees; and (3) be adjusted, if necessary, during the reporting period (usually 1 year) to bring payments in line with its estimated reimbursable costs. A settlement will be made following the close of the reporting period to bring interim payments made during the period into conformance with the amount payable under Medicare rules.

4. *Apportionment and Allocation of Costs.* The proposed regulations also set forth specific methods for allocating costs among different departments of the HCPP, and for the apportionment of an HCPP's costs between its Medicare enrollees and other patients. However, § 418.45(g) and § 418.47(d) of the proposed regulations permit an HCPP, subject to the approval of HCFA, to use methods of cost allocation or apportionment of costs which differ from those provided in the proposed regulation. Because of the need for standardization and consistency in HCPP cost reporting, an HCPP which desires to use an alternative method is required to demonstrate that the method it proposes to use results in a more accurate and equitable allocation or apportionment than the standard methods described in the proposed regulations.

Section 418.45(e) of the proposed regulations permits an HCPP, subject to HCFA approval, to adjust the statistics that are used to compute the apportionment of costs for the direct professional services of physicians and

other health care personnel. The adjustment is made to reflect differences in the time and complexity of covered Part B services furnished directly or under arrangements to Medicare enrollees of the HCPP. This adjustment, known as "weighting", is permitted since the direct services of physicians and other health care personnel vary in time and complexity from patient to patient, depending on the patient's condition and other factors. Current guidelines permit use of a standard time differential ("time factor") in the apportionment of the costs of physician services. This time factor recognizes the cost differential related to the expenditure of physicians' time in providing services to patients who are 65 years of age or older as compared to the time spent in treating younger patients. However, it should be noted that the standard time differential, currently 20 percent, is under study by HCFA and may be modified as the results of studies and other relevant data become available to HCFA.

5. *Reimbursement for Provider Services, and for Services Furnished by an HCPP to Nonenrolled Beneficiaries.*

While the proposed regulations would permit an HCPP to furnish covered Part B services to its Medicare enrollees under an agreement with a provider of services (i.e., a hospital, a skilled nursing facility, or a home health agency and, for limited purposes of furnishing outpatient physical therapy or speech pathology services a clinic, rehabilitation agency, or public health agency), HCFA will make payment for these provider services directly to the provider through its fiscal intermediary, rather than to the HCPP.

An HCPP may furnish covered Part B services to Medicare beneficiaries who are not enrollees of the HCPP. However, even though the HCPP is being paid on a cost basis with respect to its Medicare enrollees, payment for services to non-enrolled Medicare beneficiaries would be made to the HCPP through its area Medicare carrier on a reasonable charge basis.

6. *Differences from Cost-Basis HMO Regulations.*

As mentioned earlier, the reimbursement sections of these regulations are patterned on the reimbursement regulations for cost-basis HMOs. Since HCPPs, however, are not reimbursed for as wide a range of services as cost-basis HMOs are reimbursed (see 42 CFR Part 405, Subpart T), these regulations do not follow exactly the regulations for cost-basis HMOs. For instance, we have not included in these regulations reimbursement requirements for services furnished to an HCPP's enrollees by a "provider of services", since such services are not reimbursable to HCPPs, as may be in the case of HMOs.

Also, in an effort to make these regulations easier to understand, we have used somewhat different language from that in the cost-basis HMO regulations.

Reimbursement of Other Prepayment Organizations

The administrative guidelines currently used by the Medicare program (see GPPP Manual, HIM-8) for reasonable charge reimbursement of prepayment plans have permitted payment under a number of different methods (e.g., statistical visit, charges related to premium, or non-bill, etc.), not all of which are subject to the payment limitations for reasonable charges set forth in 42 CFR Part 405, Subpart E. The proposed regulations would bring reasonable charge reimbursement completely into line with 42 CFR Part 405, Subpart E. This is the same reasonable charge basis used to pay physicians, suppliers and non-hospital clinics. Payment would continue to be made to these prepayment plans as is done for physician and suppliers through the area Medicare carrier.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Chapter IV, Subchapter B, is amended as follows:

1. In part 405, Subpart B, § 405.241 is revised to read as follows:

§ 405.241 Payment of supplementary medical insurance benefits to prepayment organizations.

A prepayment organization that has not qualified as a health care prepayment plan (HCPP) or health maintenance organization (HMO) will be paid through its Medicare carrier, for Part B services furnished to its Medicare enrollees, on the basis of reasonable charges in accordance with § 405.240 and § 405.251. These organizations will be paid 80 percent of reasonable charges after subtracting their enrollees' deductible amounts and taking the other limitations under Part B into consideration. (See 42 CFR Part 418 for definition and reimbursement of HCPPs. See 42 CFR Part 405, Subpart T, for definition and reimbursement of HMOs.)

2. A new Part 418 is added to read as follows:

PART 418—HEALTH CARE PREPAYMENT PLANS

Subpart A—General Provisions

Sec.
418.1 Scope of part.
418.2 Definitions.

Subpart B—Qualifying Conditions

418.21 Basic requirements.
418.23 Agreement with the Administrator.
418.24 Termination of agreements.
418.25 Operating experience.
418.27 Range of services.
418.29 Provision of services.
418.31 Access to services.
418.33 Organization and operation.

Subpart C—Reimbursement

418.41 General principles.
418.43 Allowable costs.
418.45 Cost apportionment.
418.47 Financial records, statistical data, and cost finding.
418.49 Interim per capita payments.
418.51 Final settlement.

Authority: Sections 1102, 1833(a)(1)(A), 1861(v) and 1871 of the Social Security Act, 42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(v) and 1395hh.

Subpart A—General Provisions

§ 418.1 Scope of part.

(a) *Basis.* This part is based on section 1833(a)(1)(A) of the Social Security Act, 42 U.S.C. 1395l(a)(1)(A) which provides that, under certain conditions, an organization that furnishes or makes available, on a prepayment basis, medical and other health services covered by Supplementary Medical Insurance (Part B of the Medicare program) may elect to be reimbursed on the basis of reasonable costs, rather than reasonable charges.

(b) *Purpose.* This part specifies the qualifying conditions that an organization described in paragraph (a) of this section must meet in order to be reimbursed on a reasonable cost basis under section 1833(a)(1)(A) of the Act, and the rules under which HCFA will determine reasonable cost reimbursement. Such an organization is referred to in this part as a health care prepayment plan (HCPP).

§ 418.2 Definitions.

As used in this part, unless the context indicates otherwise:

"Act" means the Social Security Act.

"Administrator" means the Administrator of the Health Care Financing Administration, or a HCFA official or employee with authority to act on the Administrator's behalf.

"Beneficiary" means an individual enrolled in Part B of the Medicare program.

"Coinsurance" and "Deductible" mean the amounts a Medicare enrollee of an HCPP incurs for covered Part B services as described in §§ 405.240, 405.243, 405.245 and 405.246 of Part 405. 42 CFR 418.41(e) describes the manner in which these payments will be made.

"Covered Part B services" means items or services specified in § 418.27, and any additional medical and other health services that the HCPP furnishes to its Medicare enrollees.

"Deductible"—See definition of "Coinsurance" and "Deductible."

"General instructions" means manuals and other written guide materials for the Medicare program issued by HCFA.

"HCFA" means the Health Care Financing Administration.

"Health Care Prepayment Plan (HCPP)" means an organization that:

(1) Is responsible for the organization, financing and delivery of covered Part B services to a defined population on a prepayment basis;

(2) Elects to be reimbursed on a reasonable cost basis; and

(3) Meets the qualifying conditions, including the agreement with the Administrator, specified in Subpart B of this part.

"Health maintenance organization" means a health care delivery organization that furnishes services covered under both Part A and Part B of Medicare in accordance with section 1876 of the Act (42 U.S.C. 1395mm) and Part 405, Subpart T of this subchapter.

"Individual practice association" means a partnership, corporation, association, or other legal entity that:

(1) Furnishes medical items and services primarily through physicians who practice in their individual offices and who are reimbursed in accordance with a compensation agreement established by the association; and

(2) Meets the requirements of § 418.29(e).

"Medical group" means a partnership, corporation, association, or other legal entity that furnishes medical items and services primarily through physicians who:

(1) Generally share facilities and substantial portions of major equipment and professional, technical, and administrative staff;

(2) Are usually reimbursed on other than a fee-for-service basis; and

(3) Furnish their services in the manner specified in § 418.29(d).

"Medical and other health services" means items and services covered under section 1861(s) of the Act (see Subpart B of Part 405 of this subchapter).

"Medicare enrollee" means an enrollee of an HCPP who is a beneficiary under Part B of Medicare.

"Part A" means the Hospital Insurance Program for the Aged and Disabled under title XVIII of the Act.

"Part B" means the Supplementary Medical Insurance Program for the Aged and Disabled under title XVIII of the Act.

"Provider of services" means an entity as defined in section 1861(u) of the Act (42 U.S.C. 1395x(u) and in § 405.605 of Part 405 of this subchapter.

"Reporting period" means the period specified by HCFA for which an HCPP must report its costs and utilization.

"Services furnished directly by the HCPP" means covered Part B services which the HCPP furnishes its enrollees directly through:

(1) Physicians and other health care personnel who are employees of the HCPP;

(2) A group of physicians, a medical center or other facility (other than a provider of services) that is related to the HCPP by common control or ownership; or

(3) A combination of 1 and 2 above.

"Services and supplies (including drugs and biologicals which cannot be self-administered) furnished by the HCPP that are incident to a physician's professional service" means services and supplies that are:

(1) Generally furnished in physicians' offices or clinics;

(2) Furnished either without charge or included in the HCPP's costs;

(3) Furnished as an incidental, but integral part of a physician's professional service;

(4) In the case of a service furnished by a non-physician, the service must be furnished under the direct, personal supervision of a physician, i.e., a physician is present in the HCPP and immediately available to provide assistance or direction; and

(5) Furnished by a member of the health care staff who is an employee of the HCPP or a physician or group of physicians that furnishes services under arrangements with the HCPP.

"Services furnished under arrangements by the HCPP" means covered Part B services which the HCPP furnishes to its enrollees under arrangements with:

(1) A group of physicians organized on a group-practice or individual-practice basis; or

(2) Physicians and other Health care personnel who are not employees of the HCPP.

Under the terms of an arrangement, the receipt of Medicare payment by the HCPP, with respect to services for which the Medicare enrollee is entitled to have payment made under this part, discharges the liability of the enrollee, or any other person to pay for the services.

Subpart B—Qualifying Conditions

§ 418.21 Purpose and basic requirement.

(a) The purpose of these qualifying conditions is to assure that an organization has the ability to provide a specified range of medical services on a prepayment basis efficiently, effectively and economically to an enrollee population. Generally, each qualifying condition is explained by a series of standards. By applying the standards, HCFA can determine the extent and degree to which an organization is complying with each condition indicated.

(b) To qualify or continue as an HCPP under Medicare, an organization or HCPP must be in compliance with all of the conditions and applicable standards set forth in §§ 418.23 through 418.33.

Therefore, when the term "HCPP" appears in a condition or standard, it applies as well to "organizations" not yet participating as HCPPs, unless the context indicates otherwise.

§ 418.23 Agreement with the administrator.

(a) *General requirement.* In order to participate and receive payment as an HCPP under the Medicare program, an organization must enter into written agreement with the Administrator as an HCPP. This agreement shall include a provision that the HCPP agrees not to charge its Medicare enrollees for covered Part B services amounts that exceed their deductible and coinsurance.

(b) *Filing of agreement.* An interested organization must:

(1) Request two copies of an agreement from HCFA;

(2) Submit any information on its qualifications requested by HCFA; and

(3) Submit both copies of the agreement signed by an authorized representative to the Administrator.

(c) *Acceptance of agreement by the Administrator.* The Administrator will return to the HCPP one copy of the agreement with a notice of acceptance specifying the effective date, if the Administrator:

(1) Determines that it would be consistent with efficient and effective program administration to do so;

(2) Determines, on the basis of evidence relating to the qualifications of the organization, that it meets the requirements of this part and other applicable HCFA regulations. The

evidence may include that obtained onsite, if an onsite evaluation is found necessary by the Administrator and agreed to by the organization.

(d) *Content and terms of the agreement.* Under the agreement, the HCPP agrees to the following:

(1) *Maintaining compliance with conditions.* Agrees to maintain compliance with the requirements set forth in this part and to report promptly to HCFA any failure to do so.

(2) *Allowable charges.* Agrees not to charge the Medicare enrollee, a beneficiary, or any other person for items and services for which such individual is entitled to have payment made under the provisions of this part (or for which the individual would have been entitled if the HCPP complied with the applicable procedural and other requirements set forth in this part) except for any deductible or coinsurance amounts for which the individual is liable.

(3) *Required refunds.*

(i) The HCPP agrees to refund as promptly as possible any money incorrectly collected as charges, premiums, or otherwise, from such individuals or from someone on their behalf.

(ii) "Money incorrectly collected" means charges collected in excess of the amount for which the individual was liable under § 418.23(a) and § 418.23(d). It includes amounts collected at a time when the individual was believed not to be entitled to Medicare benefits but:

(A) The individual is later determined to have been entitled to Medicare benefits; and

(B) The individual was entitled or enrolled with the HCPP during the term of the HCPP's agreement with the Administrator.

(4) *Additional provisions.*

(i) The HCPP agrees not to impose any limitations on the acceptance of Medicare enrollees or beneficiaries for care and treatment that it does not impose on all other individuals.

(ii) The agreement may contain any additional provisions that the Administrator finds necessary or desirable for efficient and effective program administration.

(e) *Duration of agreement.* Except for the term of the initial agreement, the agreement shall be for a term of one year and may be renewed annually by mutual consent. The term of the initial agreement shall be set by the Administrator.

(f) *Appeal rights.* If the Administrator refuses to enter into or renew an agreement, the organization is entitled to an administrative hearing conducted by a hearing officer designated by the Administrator, if it files a written request for a hearing within 30 days of the date of the Administrator's written notice of refusal. The parties to the hearing shall be the organization and a representative of the Administrator. The decision of the hearing officer shall be final and binding upon the parties. The hearing officer shall conduct the hearing so as to assure due process to the parties and shall be guided by the provisions of 42 CFR 405.2081–405.2087, 405.2089–405.2090 relating to similar hearing for HMOs.

§ 418.24 Termination or nonrenewal of agreements.

(a) *Termination or nonrenewal by HCPP.*

(1) *Notice to Administrator.* If the HCPP does not wish to renew its agreement at the end of the term, it shall give written notice thereof to the Administrator at least 90 days before the end of the term of the agreement. If the HCPP wishes to terminate its agreement before the end of the term, it shall file with the Administrator a written notice stating the intended effective date of termination.

(2) *Action by the Administrator.*

(i) The Administrator may approve the effective termination date proposed by the HCPP, or set a different date no later than 6 months after the proposed effective termination date in the HCPP's notice.

(ii) The Administrator may approve a date which is less than 6 months after the HCPP's proposed effective termination date if he determines that termination on that date would not:

(A) Unduly disrupt the furnishing of services to the community serviced by the HCPP; or

(B) Otherwise interfere with the efficient administration of the Medicare program.

(3) *Cessation of business.* If an HCPP ceases to furnish services to the community, that shall be deemed to be a voluntary termination of the agreement by the HCPP effective on the last day of business.

(b) *Termination or nonrenewal by the Administrator.*

(1) *Cause for termination or nonrenewal.* The Administrator may terminate or not renew an agreement if he determines that the HCPP:

(i) No longer meets the requirements under this part; or

(ii) Is not in substantial compliance with the provisions of the agreement, the requirements of this part, any other applicable HCFA regulations, or any applicable provisions of title XVIII of the Act; or

(iii) Has undergone a change of ownership.

(2) *Notice of termination or nonrenewal.* The Administrator will give notice of termination or nonrenewal to the HCPP at least 90 days before the effective date stated in the notice.

(3) *Appeal by the HCPP.* An HCPP may appeal the termination or nonrenewal of its agreement in accordance with the provisions set forth in § 418.23(f). The appeal does not postpone the effective date of termination.

(c) *Effect of termination or nonrenewal.* Payment will not be available for services furnished by the HCPP on or after the effective date of termination or nonrenewal.

(d) *Notice to the public.* Prompt notice of the date and effect of termination or nonrenewal shall be given to the public, through publication in local newspapers:

(1) By the HCPP, if it has initiated the nonrenewal or termination, and as to a termination, the HCPP shall not give notice until after the Administrator has approved or set a termination date;

(2) By the Administrator, when he has initiated termination or nonrenewal of the agreement.

(e) *Conditions for reinstatement after termination or nonrenewal of agreement by the Administrator.* When an agreement with an HCPP is terminated or is not renewed by the Administrator, the HCPP may not file another agreement to furnish services under the Medicare program unless the Administrator:

(1) Finds that the cause for the termination or nonrenewal of the prior agreement has been removed; and

(2) Is assured that the cause for the termination or nonrenewal will not recur.

§ 418.25 Operating experience.

Condition. The HCPP must have been providing, and as an HCPP continue to provide, the range of covered Part B services specified in § 418.27 to a sufficient number of individuals, enrolled on a prepayment basis, to assure HCFA that there is a reasonable basis for determining a rate of reimbursement in accordance with this subpart.

§ 418.27 Range of services.

Condition. The HCPP must at a minimum furnish to its Medicare enrollees, directly or under arrangements with others, the following medical and other health services:

(1) Physicians' services; and

(2) Diagnostic X-ray tests, laboratory, and other diagnostic tests.

§ 418.29 Provision of services.

(a) *Condition.* The HCPP must provide covered Part B services to its Medicare enrollees through institutions, entities, and persons that have qualified under the applicable requirements of title XVIII of the Social Security Act (see paragraph (b) of this section), and applicable State or local regulatory authorities.

(b) *Standard: Conformance with Medicare conditions of participation and conditions for coverage.*

(1) A provider of services that furnishes items or services to the HCPP's Medicare enrollees must have qualified under the applicable conditions of participation specified in Subparts J, K, L, and Q of part 405 of this subchapter.

(2) Independent laboratories, portable x-ray suppliers, or end-stage renal disease facilities that provide services to the HCPP must have qualified under the applicable conditions for coverage specified in Subparts M, N and U of part 405 of this subchapter.

(c) *Standard: Organization of physician services.*

(1) Except for physicians' services that are unusual or infrequently used, the physicians' services furnished by an HCPP to its Medicare enrollees must be furnished through:

(i) Its employees of the HCPP;

(ii) A medical group (subject to provisions of paragraph (d) of this section);

(iii) An individual practice association (subject to the provisions of paragraph (e) of this section);

(iv) Physicians who have contracted with the HCPP for the provision of their services (subject to the provisions of paragraph (c)(2) of this section);

(v) Any combination of staff, medical group, individual practice association, or physicians specified under paragraph (c)(1)(i) through (iv) of this section who have contracts with the HCPP; or

(vi) An entity that, during the organization's first 3 years as an HCPP in the Medicare program, would be a medical group but for the requirements for professional activity in paragraph (d)(3) of this section. After this 3-year period, these services may be provided by the entity only if HCFA determines that the principal professional activity of the entity's members (over 50 percent individually) is the coordinated practice of their profession, and:

(A) At least 20 percent of the physicians in the HCPP's service area are members of the entity;

(B) The HCPP has an insufficient number of enrollees to require the use of 35 percent of the entity's services; or

(C) The entity serves two or more HCPPs or HMOs that, in the aggregate, use at least 35 percent of the entity's services.

(2) After the organization's first 3 years as an HCPP in the Medcicare program, HCFA will not make reimbursement for costs incurred under contracts with physicians under paragraph (c)(1)(iv) of this section, if the amount projected to be paid under these contracts in a reporting period exceed:

(i) 15 percent, or

(ii) 30 percent, if the HCPP serves principally a rural area,

of the total amount projected to be paid by the HCPP to all physicians for the furnishing of physicians' service.

A waiver of this requirement may be granted by HCFA for good cause shown.

(d) *Standard: Requirements for a medical group.* A medical group that furnishes services to an HCPP must meet the following requirements:

(1) It must have a written services agreement with the HCPP to furnish services to the HCPP's enrollees;

(2) It must be composed of health professionals, a majority of whom are licensed to practice medicine or osteopathy, and of other health professionals (including dentists, optometrists, and podiatrists) that are considered necessary for the provision of health services for which the group is responsible; and

(3) Each of its members devotes at least 50 percent of his time to the practice of his profession, and the group devotes at least 35 percent of its total professional activity to the delivery of health services to enrollees of an HCPP or HMO;

(4) Its members must pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services;

(5) Its members must share health and medical records and substantial portions of major equipment and the services of professional, technical, and administrative staff;

(6) Its members must share the services of such additional other health care professionals (e.g., paramedical, ancillary, and other non-physician personnel directly involved in the provision of health care) as are available and appropriate for the effective and efficient delivery of the services of the group; and

(7) it must have an arrangement whereby an enrollee's enrollment status is not known to the health professional who furnishes health services to the enrollee.

(e) *Standard: Requirements for an individual practice association.* An individual practice association that furnishes services to an HCPP must meet the following requirements:

(1) It must have a written services agreement with the HCPP to furnish services to the HCPP's enrollees; and

(2) It must deliver or arrange for the delivery of health services and have a written service agreement or agreements with health professionals, a majority of whom are licensed to practice medicine or osteopathy. The written service agreement must provide:

(i) That the health professionals will furnish their services in accordance with a compensation agreement established by the association; and

(ii) To the extent feasible, for the sharing by these health professionals of health, medical and other records, major equipment, and the services of professional, technical, and administrative staff.

(f) *Standard: Physician Direction.* The HCPP's health delivery system must assure that a physician provides medical direction of its health care activities, and consultation for and medical supervision of the health care professionals who are directly involved in the furnishing of health care. The HCPP must demonstrate that:

(1) A physician provides medical direction for the HCPP's health care activities and consultation for, and medical supervision of the health care staff;

(2) If a physician is not present during the times the clinic or office is open to furnish medical services, a physician is available through direct telecommunication for consultation, and for advice and assistance with medical emergencies; and

(3) Each patient is under the care of an HCPP physician or a physician who furnishes services under an arrangement with the HCPP.

(g) *Standard: Effective arrangements.* If covered Part B services are furnished by an HCPP to its enrollees under arrangements with physicians who are not employees of the HCPP, or suppliers of services that are not owned, operated or controlled by the HCPP, these arrangements must be an efficient, effective, and economical means of furnishing services.

(h) *Standard: Conformance with State and local requirements.* An HCPP and its officers must meet all requirements that are imposed by State and local regulatory or licensing authority.

§ 418.31 Access to services.

(a) *Condition*: An HCPP must assure that its services are accessible to its enrollees and there is continuity of care.

(b) *Standard: Availability and accessibility of services.* An HCPP must assure that covered Part B services, as well as other services its enrollees are entitled to receive, are available promptly and accessible within generally accepted community norms and in sufficient quantity for effective care.

(c) *Standard: Continuity of care.* An HCPP must furnish health care in a manner that assures continuity of care, including, but not limited to:

(1) Provision for a health care professional who is primarily responsible for coordinating each enrollee's overall health care; and

(2) Development of a health and medical record-keeping system through which all pertinent information relating to the health care of the enrollee is accumulated and is readily available to appropriate professionals.

(3) Maintaining communications with health resources to which it has referred enrollees to assure that it is kept informed about the services provided to them.

§ 418.33 Organization and operation.

(a) *Condition.* The HCPP must have a fiscally sound operation and must meet the standards specified in this section.

(b) *Standard: Solvency.* The HCPP must have a fiscally sound operation that demonstrates:

(1) A positive cash flow, including provisions for retirement of existing and proposed indebtedness;

(2) The ability to establish reserves, in compliance with applicable State laws pertaining to the fiscal responsibility of those reserves;

(3) Adequate provision has been made against the risk of insolvency that allows for:

(i) Continuation of benefits for the duration of the contract period for which payment has been made; and

(ii) Continuation of benefits to enrollees who are confined on the date of insolvency in an inpatient facility, until their discharge; and

(4) That the organization has obtained and maintains in force a fidelity bond or bonds covering every officer and employee entrusted with the handling of its funds. The amount of the bond may be fixed by the organization's board of directors or other policy-making body, but the amount may not be less than $100,000.

(c) *Standard: Re-enrollment.* The HCPP may not expel or refuse to re-enroll any Medicare enrollee because of his health status or health care needs.

(d) *Standard: Grievances.* The HCPP must have a grievance system that provides fair and equitable procedures for hearing and resolving grievances between the HCPP (including the staff of the HCPP, a medical group or an individual practice association) and its enrollees that, at a minimum:

(1) Facilitates the submission of grievances, including procedures for transmitting them in a timely manner to appropriate decision-making levels within the HCPP that have authority to take corrective action;

(2) Provides for a full investigation of the grievance and assures that appropriate action is taken promptly in every case; and

(3) Provides for timely notification to the Medicare enrollee (or his representative) as to what action is being taken.

(e) *Standard: Statistical and other information systems.*

(1) The HCPP must have effective procedures to develop, compile, and evaluate statistics and other information relating to:

(i) The cost of its operations;

(ii) The patterns of utilization of its services;

(iii) The availability, accessibility, and quality of its services;

(iv) To the extent practical, developments in the health status of its enrollees; and

(v) Other matters as HCFA may require.

(2) The HCPP must report the information specified in paragraph (e)(1) of this section, at the time and in the manner specified by HCFA, to HCFA, its enrollees, and the general public.

(f) *Standard: Confidentiality.* The HCPP must establish adequate procedures to insure the confidentiality of its enrollees' health and medical records and of the physician-patient relationship but shall not rely on such procedures to deny HCFA information needed to make proper reimbursement or otherwise for the efficient and effective administration of its program responsibilities.

Subpart C—Reimbursement

§ 418.41 General principles.

(a) *Reimbursement on a reasonable cost basis.*

(1) HCFA will pay an HCPP on the basis of the reasonable cost the HCPP incurs in furnishing covered Part B services to its Medicare enrollees, after taking into consideration the enrollees' deductibles, coinsurance and other applicable limitations under Part B. Reasonable cost is defined in section 1861(v)(1)(A) of the Act and Subpart D of Part 405 of this subchapter. The costs incurred by the HCPP in furnishing covered Part B services to its Medicare enrollees are reimbursable if proper and necessary, reasonable in amount, and appropriately apportioned among the HCPP's Medicare enrollees, other enrollees, and non-enrolled patients. In order to be considered reasonable, actual costs of the HCPP may not exceed those a prudent and cost-conscious buyer would incur in furnishing care.

(b) *Covered services not reimbursed under this subpart.*

(1) Services reimbursed under Part A are not reimbursable to an HCPP. HCFA will make payment for these services directly to the hospital, or other provider of services, on a reasonable cost basis through the provider's Medicare fiscal intermediary (for more details, see subpart D of Part 405 of this chapter).

(2) Covered Part B services furnished by a provider of services to an HCPP's Medicare enrollees are not payable to the HCPP. HCFA will make payment for these services to the provider on behalf of the Medicare enrollee through the provider's Medicare fiscal intermediary. This requirement does not affect Medicare payment to the HCPP for physicians' services furnished to its Medicare enrollees for which the physicians are compensated by the HCPP.

(3) HCFA will make payment to an HCPP for covered Part B services furnished by the HCPP to a Medicare beneficiary who is not enrolled in the HCPP if the beneficiary assigns his rights to payment in accordance with § 405.1675 of this subchapter. Payment will be made on a reasonable charge basis through the HCPP's Medicare carrier.

(c) *Interim payments.* HCFA will pay an HCPP a monthly interim per capita rate of payment in accordance with § 418.49 of this subpart. The interim payment will be subject to retroactive adjustment at the end of each reporting period as specified in § 418.51.

(d) *Deductions from reasonable cost.* In determining the amount due an HCPP for covered Part B services furnished its Medicare enrollees, HCFA will deduct from the reasonable cost actually incurred by the HCPP an amount equal to the actuarial value of the deductible and coinsurance amount that would otherwise be applicable to those services if the Medicare enrollees who received the services had not been enrolled in the HCPP.

(e) *Deductible and Coinsurance Payments.* The requirements for

deductible and coinsurance shall be satisfied by payment to the HCPP by the Medicare enrollee or by someone on his behalf of equivalent amounts that do not exceed the actuarial value of the deductible and coinsurance for which its Medicare enrollees otherwise would have been liable had they not enrolled in the HCPP. The payment of such amounts may be made as a premium, membership fee, charge per unit, or similar charge (or as a portion thereof if such a charge represents prepayment for non-covered services).

§ 418.43 Allowable costs.

(a) *General principle.* Allowable costs are those direct and indirect costs incurred by an HCPP which are proper and necessary for the efficient delivery of covered Part B services. Allowable costs include, subject to the conditions and limitations of this part, those costs related to furnishing services to enrollees, as well as costs of enrollment, marketing, membership, and similar costs that are proper and necessary to the HCPP's operations.

(b) *Provider cost reimbursement principles applicable to HCPP's.*

The allowability of an HCPP's costs in furnishing covered Part B services to its Medicare enrollees is generally determined according to the principles of Medicare reimbursement for provider costs (see Subpart D of Part 405 of this chapter). These cost principles include (but are not limited to) the following:

(1) *Depreciation.* An appropriate allowance for depreciation on buildings and equipment is an allowable cost, in accordance with §§ 405.415, 405.417, and 405.418.

(2) *Interest expense.* Necessary and proper interest on both current and capital indebtedness is an allowable cost, in accordance with § 405.419.

(3) *Bad debts.* Bad debts are deductions from revenue and may not be included in allowable costs except as follows:

(i) If an HCPP has made a reasonable effort to collect them, bad debts attributable to deductible and coinsurance amounts for services furnished under this part for which a Medicare enrollee is liable in a reporting period are reimbursable under this part, subject to the conditions in § 405.420.

(ii) If these deductible and coinsurance amounts are paid, in full or in part, by a Medicare enrollee or someone on his behalf through a monthly premium or other periodic amount, the amount of allowable bad debts for a Medicare enrollee for a reporting period is limited to an amount which does not exceed three times the monthly rate for the actuarial value of the deductible and coinsurance amounts.

(4) *Charity and courtesy allowances.* Charity and courtesy allowances are deductions from revenue. They may not be included in allowable costs, in accordance with § 405.420.

(5) *Cost of educational activities.* An appropriate part of the net cost of approved educational activities engaged in by an HCPP is an allowable cost, in accordance with § 405.421.

(6) *Research costs.* Costs incurred for research purposes, over and above patient care, are not allowable costs in accordance with § 405.422.

(7) *Grants, gifts, and income from endowments.* Grants, gifts, and income from endowments are treated in accordance with § 405.423.

(8) *Value of services of nonpaid workers.* The value of services of nonpaid workers of an HCPP is not an allowable cost, except as provided in § 405.424.

(9) *Purchase discounts and allowances and refunds of expenses.* Discounts and allowances that an HCPP receives on purchases of goods and services and refunds of previous expense payments must be deducted from the costs to which they relate, in accordance with § 405.425.

(10) *Compensation of owners.* A reasonable allowance of compensation for services of owners is an allowable cost, if the services are actually performed and are necessary as specified in § 405.426.

(11) *Cost to related organizations.*

(i) Except as provided in paragraph (b)(11)(ii), costs applicable to services, facilities, and supplies furnished to an HCPP by an organization related to the HCPP by common ownership or control must be included in the allowable costs of the HCPP at the cost to the related organization, in accordance with § 405.427. These costs may not exceed the price of comparable services, facilities, or supplies that would be paid by a prudent buyer purchasing elsewhere.

(ii) For purposes of this part, a medical group, or other facility or supplier, is not considered a related organization solely because of a risk-sharing or incentive agreement with an HCPP for reimbursement or compensation for services furnished the HCPP's enrollees, or solely because substantially all services furnished by the medical group or other facility or supplier are furnished to enrollees of the HCPP. However, if one of the organizations clearly exercises significant management or ownership influence or control over the other, or has the power to do so, the HCPP and the organization shall be considered to be related.

(12) *Medicare limitation on reimbursement.* Section 405.455, which limits payments to the lesser of the reasonable cost or the customary charges for covered services, does not apply with respect to covered Part B services furnished by an HCPP to its Medicare enrollees.

(c) *Enrollment and marketing costs.*

(1) Necessary and proper enrollment and marketing costs incurred by an HCPP in offering covered Part B services to potential enrollees are allowable in accordance with this part. These costs include selling, advertising, promotional, and other marketing costs and may not exceed an amount that would be incurred under prudent and cost-conscious management.

(2) In determining whether enrollment and marketing costs are reasonable in amount, HCFA shall take into account the relatively higher costs that the HCPP may incur in initially offering its plan to Medicare beneficiaries.

(d) *Membership costs.*

Membership costs that are incurred in maintaining and servicing contracts for prepayment enrollees are allowable costs. These costs include, but are not limited to, reasonable costs incurred in connection with maintaining statistical, financial, and other data on enrollees.

(e) *Cost of physicians' services furnished directly by an HCPP.*

(1) *Principle.* The cost incurred by an HCPP for the compensation of physicians furnishing covered Part B services, who are employees or partners of the HCPP, or who are members of a group of physicians related to the HCPP by common ownership or control as determined under paragraph (b)(11) of this section, is an allowable cost to the extent it is reasonable. Reasonableness of compensation is based on compensation paid similar physicians furnishing similar services in a comparable setting. The portion of compensation cost that exceeds what is normally incurred for similar services is not an allowable cost.

(2) *Application.* Compensation for the direct patient care services of physicians (e.g., salaries, wages, incentive payments, fringe benefits, etc.) shall be distinguished from payments to physicians for administrative services (e.g., expenses attributable to facilities, equipment, support personnel, supplies, etc.) in determining whether compensation is allowable. Physicians compensation may take various forms, but it is intended that the aggregate compensation allowable be reasonable in relation to the services personally furnished. Reasonableness of

compensation is determined by comparison with compensation paid for comparable services and responsibilities.

(f) *Cost of physicians' services or other supplier services under arrangements.*

(1) Subject to the limitations described in paragraphs (f) (2), (3) and (4) of this section, the amount paid by an HCPP to a physician or physician group (organized as a medical group or as an individual practice association) or other supplier of services for covered Part B services furnished under arrangements is an allowable cost to the extent it is reasonable, as determined in paragraph (e) of this section.

(2) The amount paid by an HCPP for covered Part B services furnished under arrangements on a fee-for-service basis is an allowable cost to the extent it does not exceed the reasonable charges for the services as defined in subpart E of Part 405 of this subchapter.

(3) If an individual practice association has written agreements with its physicians that include acceptance by them of effective incentives (such as risk-sharing or other financial incentives) designed to avoid unnecessary or costly use of health services, then the amount paid by an HCPP for covered Part B services furnished under arrangements is an allowable cost to the extent it is reasonable, as determined under paragraph (e) of this section.

(4) If an individual practice association does not have written agreements with its physicians as specified in paragraph (f)(3) of this section, the amount paid by an HCPP for covered Part B services furnished under arrangements is an allowable cost to the extent it does not exceed the reasonable charges for the services as defined in subpart E of Part 405 of this subchapter.

(g) *Special Medicare program requirements.*

(1) The following costs that are incurred by an HCPP solely for purposes of the Medicare program and are unique to the Medicare program's HCPP provisions will be reimbursed in full by Medicare:

(i) the reasonable cost of reporting individual beneficiary enrollment accretion and deletion data; and

(ii) the reasonable cost of special data required from an HCPP by the Medicare program solely for program evaluation and planning purposes.

(2) These costs must be separately budgeted and approved in advance of the reporting period.

(3) The costs of acquiring and maintaining data which the HCPP is required to maintain and furnish HCFA under any other provision of this part will be apportioned in accordance with § 418.45. These costs include the normal administrative costs incurred by the HCPP in obtaining reimbursement from the Medicare program, including the cost of maintaining and reporting statistical, accounting, and actuarial data to determine the amount of reimbursement due and the cost of preparing cost reports.

§ 418.45 Cost apportionment.

(a) *General policy.* Total allowable direct and indirect costs of an HCPP shall be apportioned among Medicare enrollees of the HCPP, other enrollees, and any non-enrolled patients of the HCPP, as specified in this section and using methods approved by HCFA. (See § 418.43(g) for the reimbursement of costs incurred in meeting special Medicare program requirements.) The two basic objectives of this apportionment are that, to the extent reasonably possible:

(1) Non-Medicare enrollees or non-enrolled patients of the HCPP will not bear the costs of delivering care to Medicare enrollees of the HCPP; and

(2) The Medicare program will not bear the costs of delivering care to non-Medicare enrollees or non-enrolled patients of the HCPP.

(b) *Apportionment of covered Part B services furnished directly by an HCPP.* The total allowable direct and indirect costs of covered Part B services furnished directly by an HCPP shall be apportioned for each department on the basis of the ratio of the covered Part B services furnished to Medicare enrollees of the HCPP to total services furnished by the department to all enrollees of the HCPP and other patients. (For example, there would be separate apportionments for such departments as medical, laboratory and radiological services.) The sum of the apportioned costs for each department furnishing covered Part B services is the total share of the costs the Medicare program will bear.

(c) *Apportionment of covered Part B services furnished under arrangements.* The share of the cost of covered Part B services furnished under arrangements by an HCPP that the Medicare program bears shall be determined as follows, subject to the conditions and limitations set forth in paragraph (g) of this section:

(1) If the HCPP pays for the services on a basis other than charges, the amount the HCPP pays, to the extent it is reasonable, shall be apportioned for each department on the basis of a ratio of the covered Part B services furnished to the HCPP's Medicare enrollees to total services furnished to all the HCPP's enrollees and other patients covered by the payment.

(2) If apportionment on the basis specified in paragraph (c)(1) of this section results in the Medicare program bearing the costs of delivering care to individuals who ar not Medicare enrollees of the HCPP (i.e., because of the special nature of the terms of the HCPP's financial agreement with a group of physicians), the share that the Medicare program bears shall be determined on some other appropriate basis approved by HCFA.

(3) If the HCPP pays for covered Part B services on a charge basis, the share that the Medicare program bears shall be the charges paid by the HCPP under the terms of the agreement for these services if these charges do not exceed the reasonable charges for the services, as defined in Subpart E of Part 405 of this chapter. This limitation does not apply in the case of HCPP payments to a physician group organized on an individual practice basis that meets the requirements specified in §418.43(f)(3).

(d) *Apportionment of other services for which an HCPP assumes financial responsibility.* The share that the Medicare program bears for the cost of covered Part B services payable under this part, other than those furnished directly or under arrangements, shall be determined in accordance with paragraph (c) of this section, unless payment of a greater amount is approved by HCFA. For example, payment of the charges of a physician or other Part B supplier (rather than the reasonable charge for the service as defined in Subpart E of Part 405 of this chapter) may be justified if:

(1) The physician or other Part B supplier furnishes services to enrollees of the HCPP on an infrequent basis;

(2) These charges represent an insignificant amount of total reimbursement to the HCPP by the Medicare program; and

(3) These charges do not exceed the amounts charged by the physician or other Part B supplier to other patients for similar services.

(e) *Weighting for services of physicians and other health care personnel furnished directly or under arrangements.*

(1) *General policy.*

(i) If an HCPP meets the requirements set forth in paragraph (e)(2) of this section, it may adjust the statistics that are used to compute the apportionment of costs for the direct professional services of physicians and other health care personnel (i.e., salaries, wages, incentive payments, fringe benefits, etc.) to reflect differences in the time and complexity required to furnish covered

Part B services to the HCPP's Medicare enrollees as opposed to other patients. This adjustment will be referred to as "weighting".

(ii) An HCPP may not weight costs related to equipment, medical records, supplies, and other costs not related to the direct professional services of physicians and other health care personnel.

(iii) An HCPP may use only one method of weighting for services.

(2) *Conditions for weighting of services.* An HCPP may weight services used to compute the apportionment of costs of covered Part B services furnished directly or under arrangements if:

(i) The weighting is approved in advance by HCFA;

(ii) The weighting is based on statistics or adequate data acceptable to HCFA;

(iii) The services furnished Medicare enrollees of the HCPP, other enrollees, and non-enrolled patients used in apportionment ratios are weighted on the same basis to assure an equitable apportionment of costs;

(iv) The weighting is applied only to services furnished to HCPP patients in the ambulatory health care setting (e.g., medical center or clinic) if the weighting system is based on a methodology which relies primarily on data collected from services delivered to non-institutionalized patients exclusively;

(v) The payment limitations set forth in § 418.43(f)(1) are applied; and

(vi) Apportionment is on the basis of services, as specified in paragraphs (b) and (c)(1) of this section.

(f) *Methods of apportionment of administrative and general costs of an HCPP*

(1) An HCPP's enrollment and marketing costs (see section 418.43(c)), membership costs (see section 418.43(d)), and other administrative and general costs shall be apportioned on the basis of a ratio of the Medicare enrollment to the total HCPP enrollment if these costs:

(i) Benefit the total enrolled population of the HCPP; and

(ii) Are not directly associated with providing medicare care.

(2) General mangement and other administrative and general costs of an HCPP that bear a significant relationship to services furnished by the HCPP shall be included in the overall costs of the HCPP. These costs shall be apportioned on the basis of the percentage of the HCPP's total other costs that have been apportioned to the Medicare program, as set forth in this section.

(g) *Other methods of apportionment.*

(1) An HCPP may use a method of apportionment of costs other than the methods specified in this section if:

(i) The method results in a more accurate and equitable apportionment of allowable costs;

(ii) The method is justifiable from an administrative and cost standpoint;

(iii) The HCPP submits a written request to HCFA at least 90 days before the start of the reporting period for which the alternate method is to be used; and

(iv) HCFA approves the request.

(2) If an HCPP obtains HCFA's approval to use an alternate method of apportionment of costs under paragraph (g)(1) of this section, it may not revert to another method without first obtaining HCFA's approval as specified in paragraph (g)(1) of this section.

(3) For an initial reporting period, an HCPP that does not have the capability to collect the statistical and financial data needed to apportion allowable costs as required by this section may, after first obtaining the approval of HCFA, use another method for doing so. However, the HCPP must present a plan that satisfies HCFA that it will have this collection capability by the end of its second reporting period.

§ 418.47 Financial records, statistical data, and cost finding.

(a) *General principle.* In order for HCFA to make a proper determination of reimbursable costs to an HCPP, the HCPP must maintain financial and other records, in the form and detail specified by SCFA, on the covered Part B services it furnishes, either directly or under arrangements, to its Medicare enrollees. These records must:

(1) Contain accurate and sufficient detail on incurred costs, enrollment, and statistical data; and

(2) Follow standardized definitions, accounting, statistics, and reporting practices that are widely accepted in the health care industry, except where the provisions of this subpart require the use of specialized methods.

(b) *Accounting standards.* An HCPP must provide adequate cost and statistical data, based on its financial and statistical records, which are capable of verification by qualified autitors. The cost data must be based on an approved method of cost finding and on an accrual basis of accounting. Cost data from a governmental institution that operates on a cash basis of accounting will be acceptable; however, appropriate depreciation on capital assets will be allowable rather than the expenditure for the capital asset.

(c) *Departmental basis for reporting data.* An HCPP must report by departments (i.e., medical care, laboratory, X-ray) the statistical and financial data for covered Part B services it furnishes directly unless it receives approval from DCFA to use an alternate method as provided in paragraph (d) of this section. It must furnish statistics that indicate the frequency and type of service provided, in the form and detail prescribed by HCFA. Costs allocable to more than one department, such as medical records, must be distributed to each such department in proportion to the benefits received by the department. Other general and administrative costs that bear a significant relationship to the services furnished by the HCPP, that cannot be assigned to a specific department, must be allocated on the basis of costs already distributed or allocated to the department.

(d) *Other methods of allocating costs.*

(1) An HCPP may use a method of allocating costs other than by department if:

(i) The method results in a more accurate and equitable allocation of allowable costs;

(ii) The method is justifiable from an administrative and cost standpoint;

(iii) The HCPP submits a written request to HCFA at least 90 days before the start of the reporting period for which the method of allocationg costs is to be used; and

(iv) HCFA approves the request.

(2) If an HCPP obtains HCFA's approval to use an alternate method of allocating costs under paragraph (d)(1) of this section, it may not revert to another method without first obtaining HCFA's approval as specified in paragraph (d)(1) of this section.

(e) *Data on services provided through arrangements.*

If covered Part B services are furnished by an HCPP under arrangements, the HCPP must furnish statistical, financial, and other information with respect to those services in the form and detail specified by HCFA.

(f) *Administrative cost data.*

(1) If an HCPP uses a separate department (or organization) to perform administrative services that benefit the HCPP's administration and the HCPP's major functional components, these costs must be allocated or distributed to each component in reasonable proportion to the benefits received by the component.

(i) Examples of administrative services are centralized purchasing, accounting, data processing, etc.

(ii) Examples of major functional components are a medical center and other activity owned by the HCPP.

(2) Other allocable administrative service costs that cannot otherwise be distributed shall be allocated on the basis of costs already distributed or allocated to the component (see § 418.45(f)(2).

(g) *Audit and inspection authority.* An HCPP must permit the Department of Health, Education, and Welfare and the Comptroller General to audit or inspect any books and records of the HCPP and of any related organization that pertain to the determination of amounts payable for covered Part B services furnished its Medicare enrollees.

§ 418.49 Interim per capita payments.

(a) *Principle of payment.* Prior to the first day of each month HCFA shall pay an HCPP an interim per capita rate of payment for each Medicare enrollee of the HCPP, for whom the Medicare program is responsible for making such a payment under this part.

(b) *Determination of rate.* The interim per capita rate of payment is equal to 80 percent of the estimated per capita reasonable cost (after subtracting an amount equal to the actuarial value of the HCPP's Medicare enrollees' deductible) of providing covered Part B services to the HCPP's Medicare enrollees. HCFA will determine the interim per capita rate annually on the basis of the HCPP's annual operating and enrollment forecast (see paragraph (c) of this section). This rate may be revised during the reporting period as explained in paragraph (e) of this section.

(c) *Budget and enrollment forecast.*

(1) An HCPP must submit to HCFA an annual operating budget and enrollment forecast, in the form and detail specified by HCFA, at least 30 days before the beginning of each reporting period. A reporting period shall be 12 consecutive months, except that the HCPP's initial reporting period for participating in Medicare may be as short as 6 months or as long as 18 months.

(2) The budget and enrollment forecast must be based upon information and statistical data that can be verified by HCFA. This information and data includes, but is not limited to, all ledgers, books, records, and original evidence of costs and statistical data that pertain to the determination of reasonable cost.

(3) If an HCPP does not submit the budget and enrollment forecast on a timely basis, HCFA may:

(i) Establish an interim per capita rate of payment on the basis of the best available data that HCFA is reasonably certain will not result in an overpayment being made; or

(ii) If there is not sufficient data on which to establish an interim per capita rate of payment, advise the HCPP that interim payments will not be made until the required reports are submitted.

(d) *Interim cost and enrollment report.* An HCPP must submit to HCFA an interim cost report and enrollment data applicable to the first 6-month period of the HCPP's reporting period in the form and detail specified by HCFA. The interim cost report shall be submitted not later than 45 days after the close of the first 6-month period of the HCPP's reporting period.

(e) *Adjustments of rate.* HCFA may adjust the interim per capita rate, to the extent necessary, in order to maintain the interim payments at the level of estimated current reasonable costs. HCFA shall make these adjustments on the basis of adequate data supplied by the HCPP in its interim estimated cost and enrollment report or on such other evidence that HCFA may have that the rate based on actual costs differs from the current rate. Typical examples where adjustments may be necessary are:

(1) A change in the number of Medicare enrollees in the HCPP that affects its per capita cost rate;

(2) A significant change in the costs estimated when the annual operating budget was prepared; or

(3) A significant change in the use of covered Part B services by the HCPP's Medicare enrollees.

(f) *Adjustments of interim payments.*

(1) If an HCPP does not furnish the reports and data required under this part on a timely basis in order for HCFA to determine proper interim payments, HCFA may, in order to assure that an overpayment will not be made, offset the interim payments. Interim payment shall remain offset until the HCPP submits the required reports and data and HCFA can make a reasonable estimate of per capita costs.

(2) HCFA may make lump-sum payments from time to time during a reporting period to adjust the total amounts paid during the reporting period to the level of incurred costs.

(3) If HCFA determines that an overpayment has been made to the HCPP, HCFA may offset the overpayment against all or part of the interim payments until the overpayment has been recovered.

§ 418.51 Final settlement.

(a) *General requirement.* HCFA and an HCPP must make a final settlement, and payment of amounts due either to the HCPP or to HCFA, following the submission and review of the HCPP's annual cost report and the supporting documents specified in paragraph (b) of this section.

(b) *Annual cost report as basis for final settlement.*

(1) *Form and due date.* An HCPP must submit to HCFA a cost report and supporting documents in the form and detail specified by HCFA, no later than 90 days following the close of a reporting period.

(2) *Contents.* The report must include:

(i) The HCPP's per capita incurred costs of providing covered Part B services to its Medicare enrollees during the reporting period, including any costs incurred by another organization related to the HCPP by common ownership or control;

(ii) The HCPP's methods of apportioning costs among its Medicare enrollees, enrollees who are not Medicare beneficiaries, and other non-enrollees, including Medicare beneficiaries receiving health care services on a fee-for-service or other basis; and

(iii) Information on enrollment and other data as specified by HCFA.

(3) *Extension of time to submit cost report.* HCFA may grant an HCPP an extension of time to submit a cost report for good cause shown.

(4) *Failure to report required financial information.* If an HCPP does not submit the required cost report and supporting documents within the time specified in paragraph (b)(1) of this section, and has not requested and received an extension of time for good cause shown, HCFA may:

(i) regard the failure to report this information as evidence of likely overpayment and reduce or suspend interim payments to the HCPP; and

(ii) Determine that amounts previously paid are overpayments, and make appropriate recovery.

(c) *Determination of final settlement.* Following the HCPP's submission of the reports specified in paragraph (b) of this section in acceptable form, HCFA will make a determination of the total reimbursement due the HCPP for the reporting period and the difference, if any, between this amount and the total interim payments made to the HCPP. HCFA will send to the HCPP a notice of the amount of reimbursement by the Medicare program. This notice will:

(1) Explain HCFA's determination of total reimbursement due the HCPP for the reporting period; and

(2) Inform the HCPP of its right to have the determination reviewed at a hearing as provided in Part 405, Subpart R of this subchapter.

(d) *Payment of amounts due.*

(1) Within 30 days of HCFA's determination, HCFA or the HCPP, as

appropriate, will make payment of any difference between the total amount due and the total interim payments made to the HCPP by HCFA.

(2) If the HCPP does not pay HCFA within 30 days of HCFA's determination of any amounts the HCPP owes HCFA, HCFA may offset further payments to the HCPP to recover, or to aid in the recovery of, any overpayment identified in its determination.

(3) Any offset of payments HCFA makes under paragraph (d)(2) of this section shall remain in effect even if the HCPP has requested a hearing on the determination under the provisions of Part 405, Subpart R.

(e) *Tentative settlement.*

(1) If a final settlement cannot be made within 90 days after the HCPP submits the report specified in paragraph (b) of this section, HCFA will make an interim settlement by estimating the amount payable to the HCPP.

(2) HCFA or the HCPP will make payment within 30 days of HCFA's determination under the tentative settlement of any estimated amounts due.

(3) The tentative settlement is subject to adjustment at the time of a final settlement.

(Secs. 1102, 1833 (a)(1)(A) and (e), 1861(v), and 1871 of the Socail Security Act (42 U.S.C. 1302, 1395 (a)(1)(A) and (e), 1395x(v) and 1395hh)

(Catalog of Federal Domestic Assistance Programs No. 13.774—Medicare—Supplementary Medical Insurance)

Dated: October 13, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: October 14, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-34041 Filed 10-30-80; 8:45 am]

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October 31, 1980

Part X

Department of Energy

Economic Regulatory Administration

Domestic Crude Oil Entitlements

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-80-36]

Domestic Crude Oil Entitlements

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a proposed rulemaking and public hearings on amendments to the Mandatory Petroleum Allocation Regulations modifying the treatment of domestic crude oil under the entitlements program, 10 CFR 211.67, to allocate more equitably the benefits of access to price-controlled crude oil. The proposal would reduce post-entitlement cost differences between equivalent price-controlled and uncontrolled domestic crude oil caused by the changes in relative market values among all uncontrolled crudes since 1973. This would be accomplished by establishing separate entitlement obligations for refineries in PADDs I–IV and refineries in PADD V on each barrel of price-controlled crude oil (other than Alaska North Slope Crude Oil). These obligations would be equal to the difference between the average cost of uncontrolled domestic crude oil and the average cost of price-controlled crude oil in PADDs I–IV and PADD V.

We are also proposing two alternatives which would address the cost differentials between high and low sulfur crude oil in PADDs I–IV.

It is proposed that any final rule that is adopted would be effective with respect to refiners' receipts and runs-to-stills beginning January 1, 1981, reflected in the Entitlements Notice to be issued in March 1981.

DATES: Written comments must be received on or before December 30, 1980.

Hearing dates; San Francisco, California, November 18, 1980; Washington, D.C., December 3, 1980.

Requests to speak by 4:30 p.m. p.s.t. November 12, 1980, for the San Francisco hearing; by 4:30 p.m. e.s.t. November 25, 1980, for the Washington, D.C. hearing.

ADDRESSES: All comments and requests to speak at the Washington, D.C. hearing should be submitted to the Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-80-36, Department of Energy, Room B-210, 2000 M Street, N.W., Washington, D.C. 20461.

Requests to speak at the San Francisco hearing should be submitted to the U.S. Department of Energy, Region IX, Attn: Terry Osborn, 333 Market Street, San Francisco, California 94105.

Hearing locations: San Francisco hearing; Holiday Inn Fisherman's Wharf, Pacific South Room, second level, 1300 Columbus Avenue, San Francisco, California 94133; Washington, D.C. hearing; James Forrestal Building, 1000 Independence Avenue, S.W., Room GE-086 (Auditorium), Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

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

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

Daniel J. Thomas (Office of Petroleum Price Regulations), Economic Regulatory Administration, Room 7116, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3263.

Margaret Carroll (Office of Petroleum Allocation Regulations), Economic Regulatory Administration, Room 7202-G, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3254.

David A. Welsh (Office of Crude Oil Operations), Economic Regulatory Administration, Room 6128-Q, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3459.

William Funk or Peter Schaumberg (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6736 or 252-6754.

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I. Background

A. The Entitlements Program

In 1974, the crude oil entitlements program was adopted by the Federal Energy Administration, a predecessor agency of the Department of Energy (DOE), to allocate the benefits of price-controlled domestic crude oil equitably among all sectors of the petroleum industry, and among all users. The entitlements program was designed to reduce the cost disparities among refiners caused by the crude oil price controls. Without the program refiners with access to domestic price-controlled crude oil would have enjoyed a significant advantage over refiners with access primarily to higher priced crude oil, principally imports.

Briefly stated, the Mechanics of the entitlements program in 10 CFR § 211.67 are as follows: Each month refiners report to DOE's Economic Regulatory Administration (ERA) with respect to their crude oil runs-to-stills, receipts of controlled and uncontrolled (*i.e.*, exempt from price controls) categories of crude oil (old oil, upper tier, exempt domestic crude oil, upper tier Alaska North Slope (ANS) oil and imported crude oil), and their actual weighted average acquisition costs for each such category. From this data, ERA determines and publishes a National Domestic Crude Oil Supply Ratio ("DOSR"), which is the ratio for the reported month of all refiners' receipts of price-controlled crude oil to all refiners' crude oil runs-to-stills, subject to certain adjustments. Each refiner is allocated a number of entitlements determined by that refiner's crude oil runs-to-stills multiplied by the DOSR, and is required to have entitlements for all the price-controlled crude oil that it received. By way of illustration, if the DOSR is .25 and a particular refiner received 100 barrels of crude oil that month, that refiner would be issued 25 entitlements. If, for example, the refiner actually received more than 25 barrels of old oil in that month, it would be required to purchase entitlements from a refiner that received less than the average. The price of an entitlement is determined by taking the difference between the weighted average cost per barrel of old crude oil and the weighted average cost of all uncontrolled crude oil (imported and domestic exempt crude oil) for all refiners.

In addition to the substantial increases in world crude oil price and the gradual decontrol of domestic crude

oil over the past year, other changing price relationships have affected the entitlements program. These include an increase in low sulfur crude premiums, a widening of the range of imported crude oil prices not necessarily reflecting quality differentials, and an increase in the prices paid for exempt domestic crude oil.

Since the current entitlements program operates on a *weighted average cost* basis for both controlled and uncontrolled crudes, the post-entitlement cost of those uncontrolled crudes (whether domestic or imported) that vary significantly from the average cost will necessarily be substantially higher or lower than the post-entitlement cost of equal value and quality domestic price-controlled crudes. By way of illustration, if a refiner purchases exempt crude oil at a price $5 above the weighted average cost for exempt crude oil, the post-entitlement cost for that crude oil will be $5 above that of a refiner buying price-contraolled crude oil (since the net cost is raised to the average exempt crude cost by the addition of an entitlement obligation).

In recent months ERA has received numerous requests to remove cost disparities among crude oils so as to establish more equitable product pricing. In response, we recently adopted the Alaska North Slope Crude Oil Entitlements rule, 45 FR 46752 (July 10, 1980), to reduce differentials in refiners' crude acquistion costs by allocating the benefits of price-controlled Alaska North Slope (ANS) crude oil to all refiners on a more equitable basis. Many requests sought reduction of other domestic crude cost differences; others have requested that the cost differences among imported crude oils be reduced.

This proposed rulemaking is concerned with reducing cost differences between controlled and uncontrolled domestic crude oils that are caused by domestic crude oil price controls and not price relationships between uncontrolled domestic and foreign crude oil. Crude cost disparities between controlled and uncontrolled domestic crudes are caused by the mechanics of the entitlements program and DOE can properly correct these problems. However, disparities among uncontrolled crude costs are a function of the domestic and international marketplace and therefore, will not be addressed in this rulemaking.

B. The Domestic Crude Oil Cost Disparities

The existing entitlement program establishes entitlement obligations as the difference between the *weighted average cost* of each tier of price-controlled crude oil and the *weighted average cost* of exempt crude oils (both foreign and domestic). Recently, in PADDs I–IV, the sum of the actual price of old oil and the cost of an entitlement (or the actual price of upper tier crude oil plus the prescribed fraction of an entitlement) was several dollars less that the posted price for the same quality exempt domestic crude oil. Our data indicate that refiners with access to price-controlled crude oil enjoyed as much as a $6–8.00 per barrel post-entitlements advantage in January 1980. In June 1980, the differential had decreased to approximately $2–5.00 per barrel. The difference between exempt domestic and imported crude oil narrowed, reflecting a greater volume of available crude oil in the market, the softening of crude prices and to some extent changes in the calculation of the entitlement price (*i.e.*, removing ANS upper tier crude oil from the calculation of the average uncontrolled crude cost).

This post-entitlement crude cost differential stems directly from the fact that the entitlement price is derived from the *weighted average cost* of all uncontrolled crude oil (which includes imported crude oil, stripper, heavy, incremental tertiary, tertiary incentive, newly discovered, and other domestic crude oil exempted from controls under the phased decontrol program) which has been substantially less than the uncontrolled domestic crude postings in PADDs I–IV and higher than the uncontrolled domestic postings in PADD V. In particular, two categories of crude oil cause the average uncontrolled cost (and thereby the entitlement price) to be relatively low, exempt PADD V production and lower priced contract imports.

Substantial volumes of imported crude oil at contract prices that are markedly below the posted price for comparable quality crude oils (whether imported or domestic uncontrolled) cause a reduction in overall average uncontrolled cost. Similarly, most exempt crude oil in PADD V (except ANS) is sold at prices well below national weighted average prices because of its low gravity and high sulfur content. As compared to the weighted average costs in PADDs I–IV for exempt domestic crudes, prices in PADD V average about $10.00 per barrel less. By including costs of these crudes in the average uncontrolled price computation, the price of an entitlement is reduced.

Since the entitlement price is calculated using national weighted average uncontrolled crude oil costs, the average post-entitlement cost of controlled domestic crudes in PADDs I–IV will be lower than the *average* post-entitlement cost uncontrolled domestic crudes in PADDs I–IV. By way of illustration, if the average lower tier crude oil costs $7.00 per barrel and the entitlement price is $25.00, the post-entitlement cost (excluding any "runs credit" reduction) would be $32.00, yet the cost for a barrel of exempt crude oil of similar quality may have been as high as $39.00, creating a $7.00 advantage for the controlled crude oil. Conversely, in PADD V the post-entitlement cost for the controlled crude may have been higher than the cost of comparable quality exempt crudes by as much as $6.00.

This wide post-entitlement disparity in refiner acquisition costs between similar qualities of domestic crude (often from the same field) solely due to whether one crude is controlled and the other uncontrolled, appears to be inequitable. Therefore, we are proposing an adjustment to the entitlements program to reduce this post-entitlement cost disparity between controlled and uncontrolled crudes.

In PADDs I–IV, price-controlled crudes are selling for approximately the same price whether they have low or high sulfur content. In 1974, when the entitlements program was instituted, the low sulfur premium was only about 10 cents per barrel.Today, however, the sulfur differential of exempt domestic crudes is in the range of $2.00 per barrel. Three out of every four barrels of exempt domestic crude in PADDs I–IV are low sulfur. Therefore, if, as a result of the changes proposed in this rulemaking, controlled crude costs in PADDs I–IV are increased to the level of the *weighted* average exempt domestic crude, average high sulfur price-controlled crude costs might be in excess of the costs for the comparable quality exempt crude. We therefore also are proposing to reduce the entitlement obligations on price-controlled high sulfur crudes in PADDs I–IV so as to equalize their average post-entitlement cost with the average cost of exempt high sulfur crudes in PADDs I–IV.

The situation in PADD V is essentially the reverse of that in PADDs I–IV. The weighted average post-entitlement cost of controlled crude oil in PADD V generally exceeds the average cost of uncontrolled crudes in PADD V. This is due to the fact that PADD V exempt crudes, a majority of which are heavy crudes of 20° API or less, are of significantly lower quality and therefore lower in value and price than those in PADDs I–IV. Notwithstanding the

overall lower quality, PADD V price-controlled crudes incur the same entitlement obligation as the corresponding tier in PADDs I–IV, resulting in post-entitlement costs in excess of PADD V exempt crudes. To some extent this higher average cost may be justified, as it reflects the higher average quality of price-controlled crude oil in PADD V as compared to the uncontrolled crude oil in PADD V, which includes all crude oil of 20°API or less. This rulemaking proposes an adjustment to the entitlements program in PADD V to compensate for the unique features of that market as compared with PADDs I–IV.

In the alternative to the changes for PADDs SI–IV and PADD V described above, we are proposing changes to the entitlements program which would address only the sulfur differential described above for PADDs I–IV. In other words, the existing entitlements program would remain unchanged except for an adjustment which would reflect a $2.00 sulfur differential, which currently exists among prices of exempt high and low sulfur crudes, in the post-entitlement cost of controlled crudes in PADDs I–IV.

II. Rulemaking Objectives

By proposing amendments to the crude oil entitlements regulations we seek to achieve several objectives. Primarily, we hope to minimize the inequities in crude oil acquisition costs caused by the current regulatory scheme, which result in refiners of controlled crude oil in PADDs I–IV having proportionately lower costs, and refiners of controlled crude oil in PADD V having higher costs. The principal effect of this rule would be to narrow the ranges of crude costs within both PADDs I–IV and PADD V, and to improve competitive equity between refiners purchasing domestic controlled and domestic exempt crudes.

In addition, we are proposing to amend the entitlements regulations to adjust the entitlement obligations for high sulfur controlled crude oil to reflect the sulfur differential in PADDs I–IV.

DOE ultimately may adopt some or all of the modifications to the entitlements program proposed herein. Comments should address separately the proposals for PADDs I–IV and PADD V, and the sulfur differential. However, in view of gradual decontrol, recent reductions in exempt crude postings and the sulfur differential and the expiration of price controls in September 1981, no corrective action may be taken. Therefore, we specifically solicit comments as to whether the inequities in the current entitlements program require any changes at this time.

III. Proposed Changes

A. First Alternative Proposal

The regulation proposed herein would modify the method for calculating the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts, and thereby its entitlement obligations. In PADDs I–IV, the obligation would be icreased for receipts of controlled crude oil so that the post-entitlement cost for old oil and upper tier crude oil (excluding ANS upper tier crude oil) would be raised to the weighted average post-entitlement cost of domestic uncontrolled crude oil in PADDs I–IV (excluding ANS crude oil). After this initial adjustment, the entitlement obligation would be reduced for high sulfur controlled crude oil so as to bring the average post-entitlement cost of high sulfur controlled crude oil in line with average costs for high sulfur exempt domestic crudes in PADDs I–IV. In PADD V, the entitlement obligation for receipts of price-controlled crude oil would be reduced so that the post-entitlement cost for old oil and upper tier crude oil (excluding ANS upper tier crude oil) in PADD V would be lowered to the weighted average post-entitlement cost of domestic uncontrolled crude oil in PADD V.

1. PADDs I–IV

Under the existing regulations, each barrel of old oil is equal to one barrel of deemed old oil. Under this proposal, § 211.67(b)(2) would be revised to provide a deemed old oil ratio (DOOR) for old oil and a new method for calculating the DOOR for upper tier crude oil (exept ANS upper tier crude oil) included in a refiner's receipts in PADDs I–IV. The proposed change would raise the entitlement obligation for receipt of a barrel of old oil and thereby increase its cost.

Each barrel of old oil included in a refiner's adjusted crude oil receipts in that month at refineries in PADDs I–IV (which for purposes of this regulation would include Puerto Rico and the Virgin Islands) would constitute a fraction of a barrel of deemed old oil, though the fraction generally would be greater than one. The numerator of the fraction would be equal to the refiners' reported weighted average cost per barrel in PADDs I–IV of exempt domestic crude oil (which includes all domestic crude oil exempt from the provisions of Part 212 for that month, except ANS crude oil because of its unique transportation and quality factors), less the refiners' reported weighted average cost per barrel in PADDs I–IV of old oil, less a value (X), for the sulfur differential. The denominator of the fraction would be the entitlement price for that month.

Excluding the subtraction for the sulfur differential, discussed below, the principal difference between the proposed DOOR and the existing treatment for old oil would be to raise the average post-entitlement cost of old oil in PADDs I–IV to the average cost of exempt domestic crudes in PADDs I–IV.

By way of illustration, if the weighted average cost of old oil in PADDs I–IV is $7.00, the weighted average cost of uncontrolled crude is $34.00, the weighted average cost of exempt domestic crude in PADDDs I–IV is $36.00, and the entitlement price is $27.00, the effect of the proposed change would be as follows. Under existing § 211.67(b)(2), a barrel of old oil is equal to one barrel of deemed oil. Under the proposal, a DOOR would be established for old oil. The numerator would be equal to the average exempt domestic crude cost in PADDs I–IV ($36.00) less the average cost of old oil ($7.00). The denominator would be equal to the entitlement price ($27.00), with the result that a barrel of old oil is equal to 29/27ths of a barrel of deemed old oil. As a result of this increased obligation, the post-entitlement cost in this example for a barrel of controlled crude in PADDs I–IV would be raised $2.00 to the weighted average cost of exempt domestic crudes in PADDs I–IV.

The proposed change to § 211.67(b)(2) for receipts of upper tier crude oil in PADDs I–IV would be essentially the same as the change for old oil. Each barrel of upper tier crude oil (except ANS upper tier crude oil) included in a refiner's adjusted crude oil receipts in that month at refineries in PADDs I–IV would constitute the following fraction of a barrel of deemed old oil: the numerator would be equal to the refiners' reported weighted average cost per barrel in PADDs I–IV of exempt domestic crude oil (except ANS), less the refiners' reported weighted average cost per barrel in PADDs I–IV of upper tier crude oil (except ANS upper tier crude oil), and less a value, (X), for the sulfur differential; the denominator would equal the entitlement price for that month. As with old oil, the proposed DOOR for upper tier crude oil would be increased over the existing DOOR by the difference in that month between the weighted average cost of exempt domestic crude oil in PADDs I–IV and the weighted average cost of all uncontrolled crude oil, over the entitlement price.

The entitlements data for June 1980 used in the Draft Regulatory Analysis show that the cost differential between weighted average domestic exempt crude in PADDs I–IV (excluding ANS) and the average of all uncontrolled crudes was approximately $2.00. This would have been the increased obligation for a barrel of controlled crude oil had this proposed change been in effect in June. *See* the Draft Regulatory Analysis for a more complete explanation of the projected impact of this proposed rule on refiners' costs.

We are proposing to decrease the numerator of the proposed DOORs for both old oil and upper tier crude oil by a value, (X), to reflect the sulfur differential. Even though the increased entitlement obligations outlined above would roughly equalize price-controlled crudes with domestic exempt crudes in PADDs I–IV, price-controlled crude costs still would not reflect the cost differential for high and low sulfur content which currently exists among the domestic exempt crudes. At the time that the entitlements program first was instituted, there was approximately a 10 cent per barrel differential between high and low sulfur crudes. Thus the entitlements regulations provided for no quality distinction. Recently, however, the sulfur differential has been in the range of $2.00. As a result, refiners buying controlled high sulfur crude oil at effectively the same cost as low sulfur price-controlled crude are receiving oil worth about $2.00 less per barrel.

As noted earlier, the entitlements changes proposed above would raise the cost of price-controlled crude to the *weighted average* exempt domestic crude cost in PADDs I–IV. This average price is a composite of approximately three barrels of low sulfur crude for each barrel of high sulfur crude. Thus, if low sulfur exempt crude averages $38 per barrel, and high sulfur exempt crude averages $36 per barrel, the weighted average cost would be $37.50 and the proposed regulations would raise the cost of price-controlled crude to this level. As a result, price-controlled low sulfur crude still would be underpriced by $.50 versus the comparable exempt crude, and high sulfur price-controlled crude would exceed the exempt crude cost by $1.50.

We are proposing to compensate only for the high sulfur differential, since the average low sulfur exempt domestic crude cost in PADDs I–IV is relatively close to the average for both high and low sulfur exempt domestic crudes. Since our data is based on postings which may be higher than actual purchase prices, actual low sulfur exempt domestic crude costs may be somewhat lower than we project. Therefore, it is not clear that any adjustment is warranted to raise the cost of controlled low sulfur crudes. Conversely, it can be stated with certainty that exempt high sulfur crudes in PADDs I–IV cost substantially less on the average than the weighted average of both high and low sulfur exempt domestic crudes in those PADDs because of the three to one ratio of low to high sulfur production. As a result, if the cost of all price-controlled crudes in PADDs I–IV were raised by the proposed DOOR changes to the weighted average of both high and low sulfur exempt crudes in PADDs I–IV, the high sulfur controlled crudes would be overpriced as compared to the comparable quality exempt domestic crudes.

We therefore are proposing to reduce the entitlement obligation for high sulfur controlled crudes by subtracting a value, (X), from the numerator of the proposed DOORs for old oil and upper tier crude oil (except ANS upper tier crude oil) in PADDs I–IV. Our data show that there is now a definable price break of $2.00 per barrel at .6 percent sulfur and we propose to use this figure to delineate high and low sulfur crudes. For each barrel of old oil and upper tier crude oil (except ANS) included in a refiner's crude oil receipts in PADDs I–IV below .6 percent sulfur, (X) would be zero in the numerator of the DOOR for those barrels. Thus, no adjustment would be made for these low sulfur controlled crudes.

For each barrel of controlled crudes in PADDs I–IV included in a refiner's receipts which has a sulfur content of .6 percent or greater, we propose to set the value of (X) at $1.50. The $1.50 figure was derived above from the $2.00 difference between high and low sulfur exempt domestic crudes in PADDs I–IV. Because of the three to one volume ratio, high sulfur crudes average $1.50 below the composite average.

We specifically would like commenters to address the need for the sulfur adjustment, the proposed .6 percent sulfur breakpoint as well as the proposed $1.50 figure to be used in the DOOR calculation. Further, we solicit comment on any added reporting or other administrative burden that might result from this change.

2. PADD V

As was noted in an earlier section of the preamble, the situation in PADD V is essentially the reverse of that in PADDs I-IV. Exempt domestic crude oil in PADD V is low-priced because it generally is high in sulfur and low in gravity. As a result, when the weighted average cost in PADD V of old oil and upper tier crude oil (except ANS upper tier crude oil) are added to the cost of an entitlement or prescribed fraction of an entitlement, respectively, this net cost exceeds the weighted average cost of comparable quality exempt domestic crude oil in PADD V. We therefore are proposing to decrease the entitlement obligation for receipt of controlled crude oil in PADD V to narrow the cost differential between exempt domestic and controlled crudes in PADD V.

Under the proposal, § 211.67(b)(2) would be revised to provide a deemed old oil ratio for old oil and a new method for calculating the deemed old oil ratio for upper tier crude oil (except ANS upper tier crude oil) included in a refiner's crude oil receipts in PADD V. Under the existing regulations, each barrel of old oil is equal to one barrel of deemed old oil. The proposed change would establish a DOOR for old oil in PADD V, reducing the entitlement obligation for receipt of a barrel of old oil and thereby reducing its cost.

Each barrel of old oil included in a refiner's adjusted crude oil receipts in that month at refineries in PADD V (which for purposes of this regulation would include Guam) would constitute a fraction of a barrel of deemed old oil. The numerator of the fraction would be equal to the refiners' reported weighted average cost per barrel received at refineries in PADD V of exempt domestic crude oil (except ANS crude oil), less the refiners' reported weighted average cost per barrel received at refineries in PADD V of old oil. the denominator of the fraction would be the entitlement price for that month.

Since PADD V exempt domestic crudes are lower priced, the proposed DOOR would reduce the deemed old oil ratio to less than one for each barrel of old oil.

For example, if the weighted average cost of old oil in PADD V is $7.00, the weighted average cost of uncontrolled crude oil is $34.00, the weighted average cost of exempt domestic crude oil in PADD V is $24.00 and the entitlement price is $27.00, the effect of the proposed change would be as follows. The numerator of the fraction would be equal to the weighted average cost of exempt domestic crude in PADD V ($24.00) less the weighted average cost of old oil in PADD V ($7.00), which equals $17.00. The denominator would be the entitlement price ($27.00). Each barrel of old oil in PADD V would incur under this example a reduced entitlement obligation of 17/27ths of a barrel of deemed old oil. The 10/27ths

reduction in the ratio reflects the $10.00 difference between average uncontrolled crude ($34.00) and PADD V exempt domestic crude ($24.00).

The proposed change to § 211.67(b)(2) for receipts of upper tier crude oil in PADD V would be essentially the same as that for old oil. Each barrel of upper tier crude oil (except ANS upper tier crude oil) included in a refiner's adjusted crude oil receipts in that month at refineries in PADD V would constitute the following fraction of a barrel of deemed old oil: the numerator would be equal to the refiners' reported weighted average cost per barrel received at refineries in PADD V of exempt domestic crude oil (except ANS crude oil), less the refiners' reported weighted average cost per barrel received at refineries in PADD V of upper tier crude oil (except ANS upper tier crude oil); the denominator would equal the entitlement price for that month.

As with old oil, the proposed DOOR for PADD V upper tier crude oil would be decreased from the existing DOOR by the difference in that month between the weighted average cost of all uncontrolled crude oil and the weighted average cost of exempt domestic crude oil in PADD V, over the entitlement price.

If the proposed changes for PADD V are adopted, the existing provisions of § 211.67(a)(4), which provide for a California adjustment, no longer would be in effect.

ANS upper tier crude oil is a uniquely priced tier of crude oil because of its high transportation costs and because it is marketed in both PADDs I–IV and PADD V. We therefore are not proposing a change to the existing DOOR for ANS upper tier crude oil in § 211.67(b)(2).

We ultimately may adopt the proposed changes for both PADDs I–IV and PADD V, or for one region and not the other. In the event that we adopt changes only for one region, the existing deemed old oil ratios in § 211.67(b)(2) would continue to be applicable to the region for which no change is made.

B. Second Alternative Proposal

As an alternative to the first proposal described above, we are proposing amendments to the entitlements regulations to reflect in the costs of controlled crudes in PADDs I–IV the sulfur differential which exists among the exempt domestic crudes in those PADDs. This alternative proposal would make no provision for amending the regulations to adjust for any other differential which may exist between controlled and exempt domestic crude oils.

A thorough discussion of the sulfur differential is included in the analysis of the first alternative proposal, part of which included a sulfur adjustment. In brief, there currently exists a $2.00 per barrel differential between high and low sulfur exempt domestic crudes in PADDs I–IV, while there is only a 10 cent per barrel sulfur differential among the controlled crudes. Since there is a three to one ratio of low to high sulfur crudes in PADDs I–IV, in order to properly reflect the sulfur differential which exists among exempt domestic crude oil, controlled low sulfur crude should be increased in cost by $.50 and controlled high sulfur crudes should be reduced in cost by $1.50.

In the first alternative, we proposed not to include the $.50 upward adjustment for the reasons explained therein. However, since in this second alternative there would be no other crude cost adjustment before the sulfur adjustment (controlled crude costs would not have been raised to the weighted average cost of exempt crudes in PADDs I–IV), we propose to include for PADDs I–IV both the $1.50 downward adjustment for high sulfur controlled crude and the $.50 upward adjustment for low sulfur controlled crude to reflect the full $2.00 per barrel sulfur differential which exists among exempt domestic crudes in PADDs I–IV.

Under this proposal, the number of barrels of deemed old oil included in a refiner's crude oil receipts each month pursuant to § 211.67(b)(2) would be adjusted to reflect the sulfur differential. The number of barrels of old oil would be increased by the number of barrels of old oil and upper tier crude oil (except ANS upper tier crude oil) between zero and .6 percent sulfur content included in its crude oil receipts in that month at refineries in PADDs I–IV, multiplied by a fraction. The numerator of the fraction would be $.50. The denominator would be the entitlement price for that month. The effect of this provision would be to increase the refiner's entitlement obligations and add $.50 to the refiner's cost of each barrel of low sulfur controlled crude oil in PADDs I–IV.

In addition, the number of barrels of deemed old oil would be decreased by the number of barrels of old oil and upper tier crude oil (except ANS upper tier crude oil) greater than .65 percent sulfur content included in a refiner's crude oil receipts in that month at refineries in PADDs I–IV, multiplied by a fraction. The numerator of the fraction would be $1.50 and the denominator would be the entitlement price for that month. Thus a refiner's entitlement obligation would be reduced by $1.50 for each barrel of controlled high sulfur crude oil included in its receipts in PADDs I–IV.

We are not proposing any adjustment for sulfur in PADD V under this option. The factors which justify including the differential in PADDs I–IV do not exist in PADD V, principally because of the high proportion of high sulfur crude oil in that market.

Commenters are requested to address their comments to both the merits of this option versus the first alternative, the proposed .6 percent sulfur breakpoint and the $1.50 and $0.50 sulfur adjustments. Further, we solicit comments on any added reporting or other administrative burden that might result from this change.

C. Changes to Reporting Requirements

The implementation of any of the previously described proposals would require additional information to be provided by refiners to the entitlements program (ERA–49, Refiners Monthly Report). We therefore have proposed new reporting requirements for § 211.66(h) which would provide the volume and cost information necessary to compute the weighted averages for old oil, upper tier crude oil and uncontrolled domestic crude oil separately for refineries in PADDs I–IV and refineries in PADD V. The information required under the proposed reporting requirements also would enable ERA to implement a sulfur adjustment for PADDs I–IV.

A "draft" ERA–49 form which incorporates all of the changes has been submitted to the Energy Information Administration for review and clearance and is attached as an appendix to this proposed rule. Adoption of all or some of these modifications will depend on the content of the final rule in this proceeding.

D. Effective Date

We are proposing to make any regulatory changes effective for crude oil receipts and runs-to-stills in January 1981, which would be reflected in the entitlements notice for March 1981. Given that the post-entitlement cost differentials between controlled crudes and exempt domestic crudes in PADDs I–IV have recently decreased, reflecting lower exempt postings, perhaps there may be no need to adopt any of the proposed amendments as early as January. Alternatively, it may be that as a result of changes in the world crude oil market the differentials may increase or be at an unacceptable level by the time of the public hearings or the close of the public comment period. We therefore

solicit specific comments on whether the effective date of any final rule should be earlier or later than January 1, 1981.

IV. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act (the DOE Act), we have referred this proposed rule to the Federal Energy Regulatory Commission for a determination whether the proposed rule would significantly affect any matter within the Commission's jurisdiction. The Commission will have until the close of the public comment period to make this determination.

B. Section 7 of the FEA Act and NEPA Considerations

Pursuant to section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. § 787 *et seq.*, Pub. L. No. 93-275, as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

A copy of the notice was sent to the EPA Administrator. The Administrator indicated that he does not foresee these actions having an unfavorable impact on the quality of the environment as related to the duties and responsibilities of the EPA.

The Assistant Secretary for Environment has determined, after consultation with the Office of the General Counsel, that these amendments would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA, 42 U.S.C. § 4321 *et seq.*). Therefore, neither an environmental assessment nor an environmental impact statement will be necessary.

C. Executive Order 12044

In accordance with Executive Order No. 12044, "Improving Government Regulations" (43 FR 12661, March 24, 1978) and DOE's implementing Order 2030.1, "Procedures for the Development and Analysis of Regulations, Standards, and Guidelines" (44 FR 1032, January 3, 1979), a Draft Regulatory Analysis has been prepared which examines the impacts of the proposals set forth above. A summary of the Draft Regulatory Analysis is attached as an appendix to this notice. The entire Draft Regulatory Analysis is available for public inspection at Room B-110 of the Economic Regulatory Administration, 2000 M Street, N.W., Washington, D.C. Copies may be obtained from ERA's Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461.

You are invited to provide comments on the Draft Regulatory Analysis at the same time you submit comments on the proposed rule. The comments will be taken into account before the preparation of a Final Regulatory Analysis or any final rule that may be adopted.

V. Written Comments and Public Hearings Procedure

A. Written Comments

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the issues set forth in this notice of proposed rulemaking. All comments should be submitted by 4:30 p.m., e.s.t., 60 days from the date of publication of this notice in the Federal Register. Comments should be submitted to the appropriate address indicated in the "Addresses" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Domestic Crude Oil Entitlements," Docket No. ERA-R-80-36. Ten copies should be submitted. All comments received by the ERA will be available for public inspection in the DOE Freedom of Information Office, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., and in the ERA Office of Public Information, Room B-110, 2000 M Street, N.W. Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public Hearings

1. *Procedure for Request to Make Oral Presentation.* The time and place for the hearings are indicated in the "Dates" and "Addresses" sections of this preamble. If necessary to present all testimony, the hearings will resume at 9:30 a.m. on the next business day following the first day of each hearing.

You may make a written request for an opportunity to make an oral presentation at the hearings. The requests should contain a telephone number where you may be contacted during the day before the particular hearing at which you will speak.

If you are selected to be heard at the San Francisco, California hearing, we will notify you before 4:30 p.m., p.s.t. on November 14, 1980; if you are selected to be heard at the Washington hearing we will notify you before 4:30 p.m. e.s.t. on December 1, 1980. You are requested to submit 100 copies of your statement on the morning of the hearings at the hearing locations.

In the event that a hearing is cancelled, every effort will be made to publish advance notice in the Federal Register. Moreover, actual notice will be given to all persons scheduled to testify at the hearing. As it is not possible to give actual notice of cancellation or changes in the date or time of a hearing, persons planning to attend any hearing are advised to contact the public hearings division of the DOE office on the working day immediately preceding the date of the hearing to confirm that it will be held as scheduled.

2. *Conduct of the Hearings.* We reserve the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

An ERA or other DOE official will be designated to preside at the hearings. These will not be judicial or evidentiary type hearings. Questions may be asked only by those conducting the hearings. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements have been made and will be subject to time limitations.

You may also submit questions to be asked by the presiding officer of any person making a statement at either hearing to the addresses indicated above for requests to speak, for the location concerned, before 4:30 p.m. on the day before the hearing. If you wish to ask a question at one of the hearings, you may submit the question, in writing, to the presiding officer. If the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether time

limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

Transcripts of the hearings will be made. The entire record of the hearings, including the transcripts, will be retained by the ERA and made available for inspection in the DOE Freedom of Information Office, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., and in the ERA Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcripts from the reporter.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S. C. § 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., October 24, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

§ 211.66 [Amended]

1. Section 211.66 is amended by revising paragraph (h) to read as follows:

* * * * *

(h) *Monthly report.* On or prior to the fifth day of each month, commencing with the month of January 1981, each refiner shall file with the ERA a report certifying the following information as to the second month prior to the month in which the report is filed;

(1) The actual or estimated volume (to the best of the knowledge of the certifying officer) of old oil included in the crude oil receipts of that refiner separately for refineries located in PADDs I-IV and for refineries located in PADD V.

(2) The actual or estimated volumes (to the best of the knowledge of the certifying officer) of (i) ANS upper tier crude oil and (ii) upper tier crude oil, respectively, included in the crude oil receipts of that refiner separately for refineries located in PADDs I-IV and for refineries located in PADD V.

(3) Any permitted or required adjustments to the actual or estimated volumes of old, upper tier and ANS upper tier crude oil included in the crude oil receipts of that refiner separately for refineries located in PADDs I-IV and for refineries in PADD V.

(4) The volume of crude oil runs-to-stills of that refiner separately for refineries located in PADDs I-IV and for refineries located in PADD V, taking into account, and specifying the amount of, the adjustments provided for in § 211.67(d).

(5) The weighted average cost for that refiner (including transportation cost to the refinery) of old oil, upper tier crude oil (excluding ANS upper tier crude oil), ANS upper tier crude oil, other ANS crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), Naval Petroleum Reserve crude oil, heavy crude oil (as determined pursuant to Executive Order No. 12153), other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month and imported crude oil included in that refiner's crude oil receipts, separately for refineries located in PADDs I-IV and refineries located in PADD V. For refiners required to file transfer pricing report forms under § 212.84 of this chapter, the weighted average cost of imported crude oil reported under this subparagraph should be derived from the landed costs set forth in such reports.

(6) The estimated volume (to the best of the knowledge of the certifying officer) of old and upper tier crude oil (excluding ANS upper tier crude oil) which has a sulphur content equal to or greater than .6 percent, included in the crude oil receipts of that refiner for refineries located PADDs I-IV and for refineries located in PADD V.

(7) Such other information as the ERA may request.

First Alternative Proposal

§ 211.67 [Amended]

2. Section 211.67 is amended by revising paragraph (b)(2) to read as follows:

(b) * * *

(2) The number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for purposes of the definition of national domestic crude oil supply ratio in § 211.62 of this subpart, paragraph (b)(1) of this section, and paragraph (c) of this section shall be calculated as follows: (i) Each barrel of old oil included in its adjusted crude oil receipts in that month at refineries in PADDs I, II, III and IV (which for purposes of this paragraph includes Puerto Rico and the Virgin Islands) shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the refiners' reported weighted average cost per barrel received at refineries in PADDs I, II, III and IV of domestic crude oil (except ANS crude oil) the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the refiners' reported weighted average cost per barrel received at refineries in PADDs I, II, III and IV of old oil, and less (X), and the denominator of which is the entitlement price for that month; (ii) Each barrel of upper tier crude oil (except ANS upper tier crude oil) included in its adjusted crude oil receipts in that month at refineries in PADDs I, II, III and IV shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the refiners' reported weighted average cost per barrel received at refineries in PADDs I, II, III and IV of domestic crude oil (except ANS crude oil) the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the refiners' reported weighted average cost per barrel received at refineries in PADDs I, II, III and IV of upper tier crude oil (except ANS upper tier crude oil) and less (X), and the denominator of which is the entitlement price for that month; (iii) Each barrel of old oil included in its adjusted crude oil receipts in that month at refineries in PADD V (which includes Guam for purposes of this paragraph) shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the refiners' reported weighted average cost per barrel received at refineries in PADD V of domestic crude oil (except ANS crude oil) the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the refiners' reported weighted average cost per barrel received at refineries in PADD V of old oil, and the denominator of which is the entitlement price for that month; (iv) Each barrel of upper tier crude oil (except ANS upper tier crude oil) included in its adjusted crude oil receipts in that month at refineries in PADD V shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the refiners' reported weighted average cost per barrel received at refineries in PADD V of domestic crude oil (except ANS crude

oil) the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the refiners' reported weighted average cost per barrel received at refineries in PADD V of upper tier crude oil (except ANS upper tier crude oil) and the denominator of which is the entitlement price for that month; (v) Each barrel of ANS upper tier crude oil shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil and domestic crude oil the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less such weighted average cost per barrel to refiners of ANS upper tier crude oil, and the denominator of which is the entitlement price for that month; (vi) For each barrel of old oil or upper tier crude oil (except ANS upper tier crude oil) less than .6 percent sulfur content included in a refiner's adjusted crude oil receipts at refineries in PADDs I–IV, the value of (X) in subsections (i) and (ii) shall be zero; for each barrel of old oil or upper tier crude oil (except ANS upper tier crude oil) equal to or greater than .6 percent sulfur content included in a refiner's adjusted crude oil receipts at refineries in PADDs I–IV, the value of (X) in subsections (i) and (ii) shall be $1.50.

§ 211.67 [Amended]

3. Section 211.67 is amended by revising paragraph (a)(4) to read as follows:

(a) * * *

(4) For each month in the period June 1978 through December 31, 1980, the number of entitlements issued under paragraph (a)(1) of this section to each refiner shall be increased by: (i) the number of barrels of California lower tier crude oil included in its adjusted crude oil receipts in that month multiplied by a fraction, the numerator of which is $2.38 plus or minus $.09 for each degree API gravity (or fraction thereof) by which the weighted average gravity of all California lower tier crude oil included in that refiner's adjusted crude oil receipts in that month either falls below or exceeds, respectively, 18 degrees API, and the denominator of which is the entitlement price for that month; and (ii) the number of barrels of California upper tier crude oil included in its adjusted crude oil receipts in that month multiplied by a fraction, the numerator of which is $1.45 plus or minus $.09 for each degree API gravity (or fraction thereof) by which the weighted average gravity of all California upper tier crude oil included in that refiner's adjusted crude oil receipts in that month either falls below or exceeds, respectively, 18 degrees API, and the denominator of which is the entitlement price for that month; *provided that* the dollar value of additional entitlements issued under this subparagraph (4) shall not exceed the dollar value of the obligation (as calculated under paragraph (b) of this section) for the crude oil with respect to which such additional entitlements are issued. The refiner shall calculate and report the weighted average gravity of California lower tier crude oil and California upper tier crude oil separately, and in calculating such weighted average gravities shall (A) determine the gravity of such crude oil for each receipt of such crude oil in that month on the basis of the gravity of such crude oil at the time it becomes a receipt, and (B) determine a single monthly weighted average gravity for such crude oil by weight averaging (on a volumetric basis) all of such individual receipts in that month.

Second Alternative Proposal

§ 211.67 [Amended]

2. Section 211.67 is amended by adding a new paragraph (b)(3) which reads as follows:

(b) * * *

(3) The number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts each month shall be: (i) increased by the number of barrels of old oil and upper tier crude oil (except ANS upper tier crude oil) less than .6 percent sulfur content included in its adjusted crude oil receipts in that month at refineries in PADDs I–IV multiplied by a fraction the numerator of which is $.50 and the denominator of which is the entitlement price for that month, (ii) decreased by the number of barrels of old oil and upper tier crude oil (except ANS upper tier crude oil) equal to or greater than .6 percent sulfur content included in its adjusted crude oil receipts in that month at refineries in PADDs I-IV multiplied by a fraction the numerator of which is $1.50 and the denominator of which is the entitlement price for that month.

Appendix 1—Summary of Draft Regulatory Analysis

Problem

Average crude costs for refiners are dependent on degree of access to controlled crudes, the nature of the crudes, the costs of the exempt crudes, and whether the refinery is in PADD V or in PADDs I–IV. Of these factors, only cost differences due to degree of access to controlled crudes result from Department of Energy (DOE) regulations. The crude oil entitlements system was developed to equitably distribute the benefits of access to controlled crudes, and has generally accomplished that objective. However, changes in relative costs of exempt domestic and imported crudes have recently caused significant advantages and disadvantages to refiners with access to controlled crudes.

Two measures of the equitable distribution of access to controlled crude are used in this analysis. The first compares the net post-entitlement costs of comparable controlled and exempt domestic crudes using the posted prices of these crudes. This method is generally used by refiners to assess available purchase options. In June 1980, controlled crudes cost less than exempt in PADDs I–IV, and more in PADD V.

Table 1—Controlled Crude Cost Advantage

June 1980

PADD I–IV:
Low Sulfur—$5.00
High Sulfur—$2.00
PADD V——$5.00

The controlled crude cost advantage causes refiners to have lower or higher average costs than refiners with less controlled crude. In June 1980, refiners in PADDs I–IV had an average cost advantage of 4 cents for each extra percent of controlled crude. For example, a refiner with 50% controlled crude would have had a $1.20 advantage compared to one with 20% controlled crude. In PADD V, increased percentages of controlled crude resulted in higher crude costs, which is inverse to the general impact of access to controlled crude in PADDs I–IV.

The proposed regulation is expected to reduce the advantages or disadvantages of access to controlled crude oils, so as to accomplish more equitable distribution of the benefits of price controls on crude oil.

Objectives

The proposed regulation should reduce the controlled crude cost disparities based on postings, and reduce the impact of the access to controlled crude on each refiners average crude cost. Ideally, post-entitlement costs of controlled crudes should equal those of equivalent exempt crudes, so that refiners will be indifferent among controlled and exempt volumes. Through this objective may not be realized, regulations that reduce these cost disparities will accomplish more equitable distribution of the benefits of access to controlled crude oil and improve the competitive posture among all refiners.

Alternatives

Phased decontrol is reducing the impact of the cost disparity between exempt and controlled crudes. In addition, the exempt domestic and international crude markets may be restoring a price structure based on the quality and location of the crude, which should equate exempt domestic and imported crude costs in the United States. Therefore, one alternative is to continue the present entitlement system until crude oil controls end in October 1981.

Another alternative is to equalize controlled crude costs to those of comparable exempt domestic crude costs in each region, thereby reducing the cost disparities between controlled and exempt domestic crudes. Costs in PADD V and costs in PADDs I–IV would be use to calculate separate entitlement obligations for each region. The options consist of various combinations of this alternative and the present program.

Option 1

Establish separate entitlement obligations for PADD V and PADDs I–IV based upon exempt domestic crude costs for refineries in each region. the obligation for controlled ANS crude would also be calculated from the exempt domestic crude costs in PADDs I–IV.

Option 2

Same as Option 1 for PADD V and PADDs I–IV refineries. the obligation for controlled ANS would be calculated from the average cost of all uncontrolled (domestic and foreign) crudes as is done in the current entitlements program. The ANS rule was recently adopted, and may be modified in a separate proceeding so that further modification, as in Option 1, may be necessary.

Option 3

only obligations for refineries in PADDs I–IV would be calculated from the exempt domestic crude costs in that region. PADD V and controlled ANS would continue under the present method.

Refineries in PADDs I–IV have been the principal petitioners for better crude costs equalization. In addition, the major volume of controlled crude is in PADDs I–IV.

Option 4

The obligations for refineries in PADD V would be calculated from exempt domestic crude costs, excluding exempt ANS, in PADD V. PADD I–IV refineries and refiners of controlled ANS would continue to incur entitlement obligations calculated under the present system.

The largest per barrel cost discrepancies are in PADD V, though the volume of controlled crude within that region is only about 5% of the controlled crude in PADDs I–IV. This option would reduce these large discrepancies, without having a substantial effect on the rest of the counrty.

Significant increases since 1973 in the premium for low sulfur crudes also contribute to the cost disparity between exempt and controlled crudes in PADDs I–IV. Imposing additional obligations on low sulfur crudes, or reducing obligations on high sulfur crudes are also evaluated for their effects on crude cost disparities. Adjustments to the obligatins in PADDs I–IV on the basis of sulfur level of the controlled crude are evaluated for both the present entitlement system and Options 1, 2 and 3. Separate obligations for all low sulfur and all high sulfur controlled crudes on a national basis are also evaluated.

Impacts

Crude cost changes that occurred between June and September 1980 are expected to reduce the net cost disparities between controlled and exempt domestic crudes in PADDs I–IV. Exempt domestic crude postings were reduced to $34 for high sulfur and $36 for low sulfur crudes in PADDs I–IV and Saudi Arabia increased its prices by $2. There were no changes to the exempt postings in PADD V. The estimated effect of these changes on the cost disparities is shown in Table 2. The cost disparities for low dulfur and most high sulfur crudes in PADDs I–IV are projected to decline by almost $2. In PADD V, controlled crudes will continue to cost about $5 more than comparable exempt crudes. The posted prices for high gravity asphaltic crudes in PADDs I–IV have been reduced to the level of the PADD V crudes, and these asphaltic crudes now bear the same cost disparities as the PADD V crudes.

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Table 2

Post-Entitlement Cost Disadvantages of

Controlled Crudes

Present Entitlements System

	June 1980 (1)		September 1980 (2)	
	Lower Tier	Upper Tier	Lower Tier	Upper Tier
PADDS I-IV				
Lower Sulfur				
Louisiana North	-5.20	-5.22	-2.62	-2.64
Mirando	-5.27	-5.07	-2.69	-2.49
High Sulfur				
Mississipi East	-2.07	-2.37	-0.49	-0.79
So. Texas Mixed	-2.12	-2.47	-0.54	-0.84
Montana Heavy	-2.12	-2.00	-0.54	-0.42
E. Texas Asphaltic	-0.56	-0.75	+4.38	+4.19
PADD V				
Bellevue West 30°	+4.71	+4.78	+4.28	+4.47
Oxnard 26°	+5.10	+5.08	+4.67	+4.65
Whittier 22°	+5.49	+5.43	+5.06	+5.00

(1) Based on June 1980 postings and entitlement obligations for June 1980 receipts.

(2) Projected from September 1980 postings and estimated entitlement obligations for September 1980 receipts.

The phased decontrol program is gradually reducing the impact of these cost disparities. As the total volume of controlled crude decreases, the total effect of the disparities is reduced. In June 1980 half of all domestic crude was exempt. Approximately 3% is added to the exempt volume each month. However, refiners with access to controlled crudes will still be impacted by the disparities, and competitive inequities may exist well into 1981. Thus, retention of the present program relies on phased decontrol and uncertain market actions to reduce cost disparities and achieve more equitable distribution of the benefits of controlled crude oil.

Equalization of average controlled and exempt crude costs in each major region reduces the cost disparities by changing the entitlement obligations, rather than waiting for market price relationships to change. The impacts on posted price disparities in June 1980 of the four optional methods are shown in Table 3. In Option 1 and 2, disparities are reduced in both regions as these options would impose a domestic crude based obligation in both regions. Option 1 would also use the exempt domestic crude costs of refiners in PADDS I-IV to establish the entitlement obligation on controlled ANS. It's effect on costs of controlled ANS relative to exempt ANS was not determined as comparable posting data for ANS is not available. Option 3 reduces the disparities in PADDs I-IV, while Option 4 reduces them only in PADD V.

TABLE 3

NET COST DIFFERENCES OF CONTROLLED AND EXEMPT CRUDES(1)

JUNE 1980

	Present Program		Option 1		Option 2		Option 3		Option 4	
	Lower Tier Cost Diff	Upper Tier Cost Diff.	Lower Tier Cost Diff	Upper Tier Cost Diff.	Lower Tier Cost Diff.	Upper Tier Cost Diff	Lower Tier Cost Diff	Upper Tier Cost Diff.	Lower Tier Cost Diff	Upper Tier Cost Diff.
PADDS I-IV										
Low Sulfur										
Louisiana North	-5.20	-5 22	-3 29	-3 34	-3 29	-3 34	-3.29	-3.34	-5 20	-5 22
Mirando	-5.27	-5 07	-3.36	-3.19	-3.36	-3.19	-3.36	-3 19	-5.27	-5.07
High Sulfur										
Mississippi East	-2 07	-2.37	-0 16	-0 49	-0.16	-0 49	-0 16	-0 49	-2 07	-2.37
So Texas Mixed	-2.12	-2 47	-0.21	-0.59	-0 21	-0 59	-0.21	-0 59	-2 12	-2.47
Montana Heavy	-2.12	-2 00	-0 21	-0.59	-0.21	-0 59	-0 21	-0 59	-2.12	-2 00
E. Texas Asphaltic	-0.56	-0 75	+1.35	+1.13	+1 35	+1 13	+1.35	+1.13	-0 56	-0.75
PADD V										
Bellevue West 30°	+4.71	+4 78	-1.32	-1.44	-1.32	-1.44	+4.71	+4.78	-1.32	-1.44
Oxnard 26°	+5.10	+5 08	-0.57	-0.68	-0 57	-0.68	+5.10	+5.08	-0.57	-0.68
Whittier 22°	+5.49	+5.43	+0.18	+0.03	+0.18	+0.03	+5.49	+5.43	+0 18	+0.03

(1) A negative value indicates that the controlled crude has a lower cost than the exempt crude. Differences are equal to the controlled tier posting plus the entitlement obligation less the exempt tier posting

The reductions in PADDs I-IV disparities that would be caused by these alternatives in June 1980 are comparable to those that are expected to occur from exempt crude price changes between June and September 1980 We estimate that the average cost of exempt domestic crudes in PADDs I-IV will be close to that of all uncontrolled crude received in the United States in September 1980, and therefore, in that month, these options may have little effect on the disparities in PADDs I-IV Foreign and PADD I-IV market actions are not expected to reduce cost disparities in PADD V

The average exempt domestic crude cost in PADDs I-IV was $36 46 in June 1980, which is less than the posted prices plus a reasonable allowance for transportation of the high sulfur crudes in that region The reported average costs for these crudes ranged from under $15 to almost $41 a barrel A significant portion of exempt crude is obtained at less than the general level of posted prices As a result, on the basis of June data, under these options the increased entitlement obligation would be less than the amount needed to eliminate the tier cost disparities based on posted prices In the course of this analysis we also determined that the average costs of exempt domestic crudes in several earlier months were below the posting level Thus, there is an indication that cost disparities will remain under all of these options

Reducing the posted price disparities also reduces the impact of access to controlled crudes on the average costs of refiners The average crude costs of refiners relative to their degree of access to controlled crude are shown graphically on Tables 4 and 5 Table 4 shows that the average post-entitlement costs of refiners in PADDs I-IV generally declined about 4 cents per barrel with each one percent increase in the proportion of controlled crude under the present entitlements program Under Options 1, 2 and 3, this advantage would be reduced to about 1 cent per barrel, as shown in Table 5

TABLE 4

AVERAGE POST-ENTITLEMENT CRUDE COST
PADD I-IV REFINERS
PRESENT SYSTEM

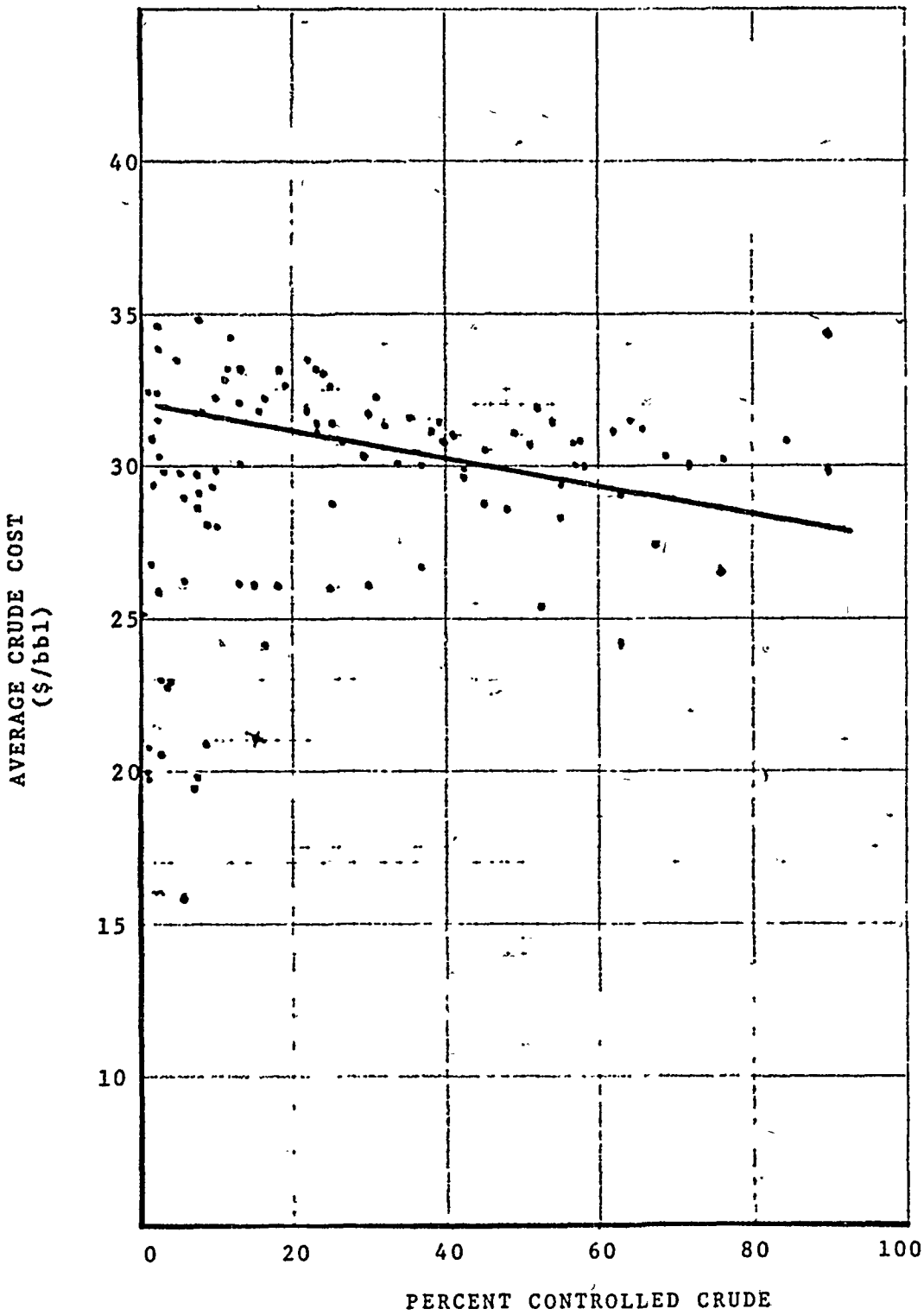
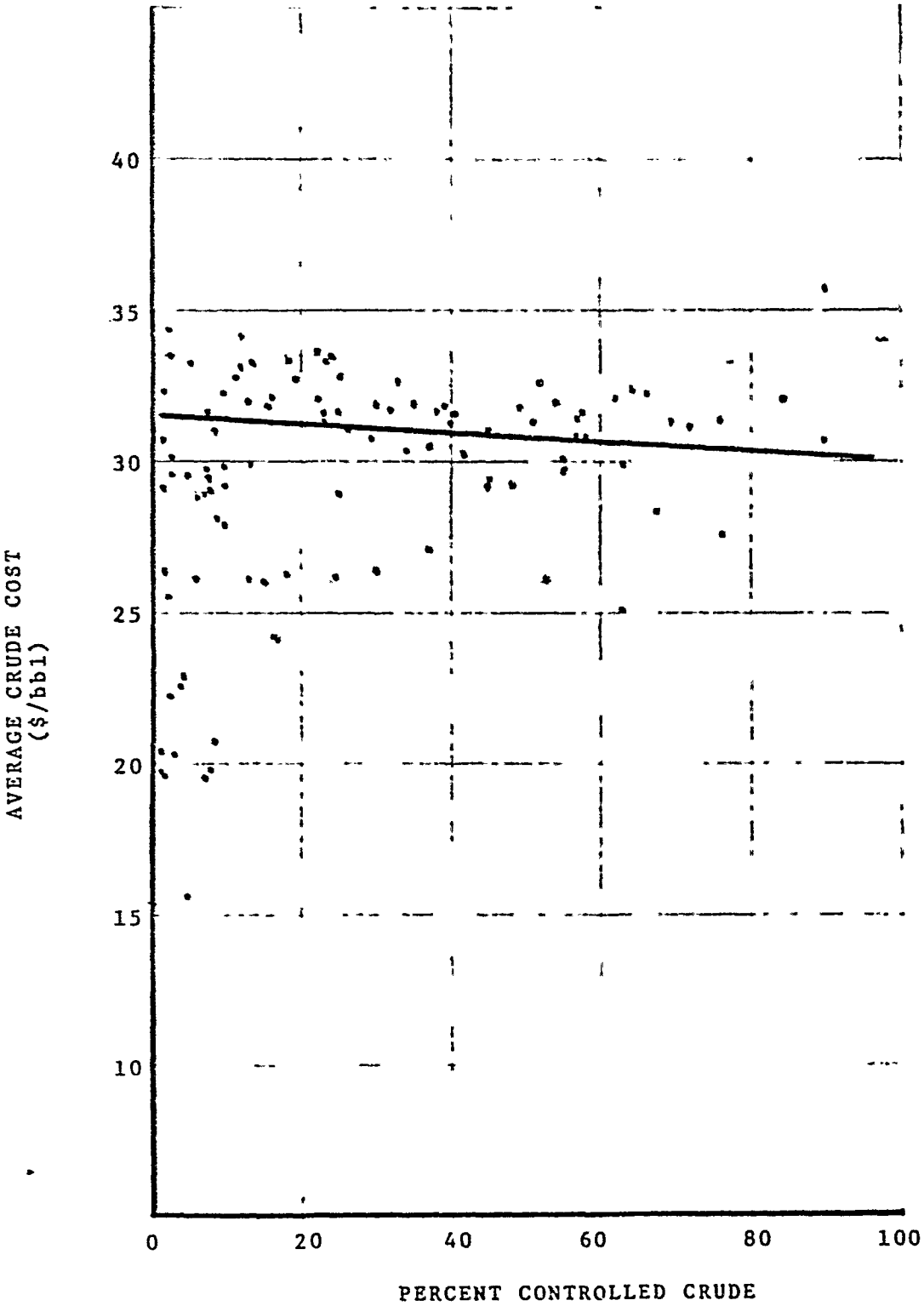


Table 5

AVERAGE POST-ENTITLEMENT CRUDE COSTS
PADD I-IV REFINERS
OPTIONS 1, 2, 3



The entitlement program by effectively requiring refiners with large proportions of controlled crude to transfer money to those with small fractions of controlled crude, causes a flow of money from PADD I-IV refiners to PADD V refiners As the major PADD V refiners also operate refineries in PADDs I-IV, some of this regional transfer occurs within these firms. Therefore, the cash flow from PADDs I-IV to PADD V may be overstated in terms of the impact of the cash flow on product costs in each region

All of these options increase the cash flow into PADD V Options 1, 2 and 4 reduce the obligations on controlled crudes in PADD V Option 3 increases the obligations in PADDs I-IV, and some of the added payment is distributed in PADD V (see Table 6)

Table 6

CASH FLOW FROM PADD I-IV TO PADD V REFINERIES

June 1980

	Cash Flow (Million Dollars)
Present Program	100
Option 1	140
Option 2	157
Option 3	126
Option 4	131

Reducing the obligation on controlled high sulfur crudes in PADDs I-IV would have reduced the cash flow by $50 million If an offsetting obligatory increase were imposed on low sulfur crudes in PADDs I-IV, the cash flows would be unchanged from those in Table 6 The reduction of the sulfur differential to $2 00 in September 1989, reduces the high sulfur reduction to $1 50 If adopted, the $1 50 reduction would reduce the cash flow into PADD V by $22 million in January 1981

Crude costs will be reduced for some refiners in PADDs I-IV, and for most refiners in PADD V under these options Each refiner's proportion of controlled crude determines the effect of each option on that refiner In the month of June 1980, the proportions of controlled crude which divide increased and decreased costs are shown in Table 7

Table 7

CUT-OFF POINT OF BENEFITS FOR REFINERS

June 1980

Option 1	
PADDs I-IV	Less than 22% of receipts in lower tier, upper tier, and controlled ANS
PADD V	All refiners benefit
Option 2	
PADDs I-IV	Less than 15% of receipts in lower tier and upper tier, excluding controlled ANS
PADD V	All refiners benefit
Option 3	
PADDs I-IV	Less than 19% of receipts in lower tier and upper tier, excluding controlled ANS
PADD V	All refiners benefit
Option 4	
PADDs I-IV	All refiners cost increased by a decreased run credit
PADD V	Refiners of controlled crude othe than ANS

As the national average crude cost is not changed under the entitlement program or these modifications, average consumer prices are not expected to be effected under these options Individual refiner's costs would be increased or decreased However as market forces rather than DOE regulations, are setting product prices it is reasonable to expect that many of these cost changes will not flow through to consumer costs

The added administrative burden for any of these options is minimal Refiners that operate only in one region would continue to report the same data in the same manner as under the current program The fourteen refiners that operate refineries in both regions would have to submit their entitlement data separately for each region Most of these refiners collect the data on a regional basis so they could readily report it by region

The calculation methods and formulae are similar to those now in use, so there would be little added burden on DOE in adopting and operating any of these options

In 1973 crude oil postings of low sulfur crudes were 10 to 15 cents above those for high sulfur crudes In June 1980, this premium had increased to $3 00 in PADDs I-IV However, in September 1980 it was reduced to $2 00 PADD V crudes, which had been at the same cost level as PADDs I-IV crudes in 1973, were posted at $10-12 below crudes in PADDs I-IV These price level differences reflect the mix of products refined from the different types of crudes in the two regions The change in the premium contributes to the crude cost disparities Therefore, two methods to adjust for the sulfur premiums were also evaluated in this analysis

Approximately three-quarters of the crude produced in PADDs I-IV have low sulfur content Therefore, in January 1981 the average posting would be about $1 50 above that for high sulfur crudes One method would reduce the entitlement obligations beginning with January 1981 crude receipts of controlled high sulfur crudes by $1 50 and raise them on controlled low sulfur crudes by $0 50 The other would only reduce the obligations on controlled high sulfur crudes Since these controlled crudes are expected to have a cost advantage over exempt crudes, any reduction in the entitlement obligation would increase their advantage

However, market price changes, or adoption of one of the options that will increase entitlement obligations, may cause the post-entitlement costs of controlled high sulfur crudes to exceed those of exempt high sulfur crudes If so, a reduction of the obligation for the controlled high sulfur crudes may be appropriate However, an added obligation on low sulfur controlled crudes would reduce the cost advantage of these crudes relative to exempt low sulfur crudes, and would increase rather than decrease their cost disparity

Dividing the crude receipts of all refiners into two categories, high and low sulfur, and establishing separate obligations for each category on a national basis was also evaluated Refiners would have to report volumes and costs of high and low sulfur crudes in each region which is expected to impose a substantial burden on them Most low sulfur crude is found in PADDs I-IV and costs are in a narrow range The high sulfur crudes, however, have a wide range of costs, reflecting the different price structures in PADDs I-IV and V. A national obligation is not expected to equalize costs in both regions for high sulfur crudes, but should do so for the vast majority of low sulfur crudes.

APPENDIX 2

ECONOMIC REGULATORY ADMINISTRATION
Washington, D.C. 20461

APPROVED
OMB 38-R0215
7-78

DOMESTIC CRUDE OIL ENTITLEMENTS PROGRAM
REFINERS MONTHLY REPORT

ERA-49

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ACCESSION NUMBER

DATE YEAR MONTH DAY

This report is mandatory under Public Laws 93-159, 94-163, and 93-275 as amended.

1. REPORTING FIRM IDENTIFICATION INFORMATION: *Check If Any Change In Identification Data*

a. Name

b. Street/Box/RFD

c. City

d. State

ZIP Code

f. Name of Contact Person

g. Telephone *(Including Area Code)*

h. Reporting Firm Short Name

i. Amendment Number

2. a. DATE OF REPORT: YEAR MONTH DAY

b. REPORTING PERIOD YEAR MONTH

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3. CERTIFICATION

I CERTIFY THAT THE INFORMATION SUBMITTED ON AND WITH THIS FORM IS FACTUALLY CORRECT; COMPLETE AND IN ACCORDANCE WITH ERA REGULATIONS (TITLE 10, CODE OF FEDERAL REGULATIONS) AND THE INSTRUCTIONS TO FORM ERA-49.

a. Name and Title of Certifying Official

b. Signature

c. Date Certified

THE U.S. CODE, (CRIMES AND CRIMINAL PROCEDURES), SECTION 1001, MAKES IT A CRIMINAL OFFENSE TO MAKE A WILLFULLY FALSE STATEMENT OR REPRESENTATION TO ANY DEPARTMENT OR AGENCY OF THE UNITED STATES AS TO ANY MATTER WITHIN ITS JURISDICTION.

ECONOMIC REGULATORY ADMINISTRATION
Washington, D.C. 20461

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DATE [ ] YEAR [ ] MONTH [ ] DAY

REPORTING FIRM SHORT NAME [ ] DATE OF REPORT YEAR [ ] MONTH [ ] DAY [ ]

4.1 CRUDE OIL RECEIPTS (PADDS 1-4) REPORTING PERIOD - YEAR [ ] MONTH [ ]

CATEGORY OF CRUDE OIL (A)	TOTAL VOLUME (BARRELS) (D)	TOTAL COST (E)	WEIGHTED AVERAGE COST PER BARREL (F)
11109 Old Oil		$ .00	$
11209 New Oil		$ .00	$
11219 Stripper Well Oil		$ .00	$
11229 Tertiary Oil		$ .00	$
11239 HEAVY OIL		$ .00	$
11249 Newly Discovered Oil		$ .00	$
11259 ANS Upper Tier		$ .00	$
11269 Other ANS		$ .00	$
11279 MARKET TIER		$ .00	$
11289 Synthetic Crude		$ .00	$
11299 Naval Petroleum Reserve		$ .00	$
11309 Imported Oil		$ .00	$
11399 TOTAL CRUDE OIL RECEIPTS		$ .00	$

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DATE: [ ] YEAR [ ] MONTH [ ] DAY

REPORTING FIRM SHORT NAME [ ] DATE OF REPORT YEAR [ ] MONTH [ ] DAY [ ]

4.2 CRUDE OIL RECEIPTS (PADD 5) | REPORTING PERIOD - YEAR [ ] MONTH [ ]

CATEGORY OF CRUDE OIL (A)	TOTAL VOLUME (BARRELS) (D)	TOTAL COST (E)	WEIGHTED AVERAGE COST PER BARREL (F)
12109 Old Oil		$ .00	$
12209 New Oil		$ .00	$
12219 Stripper Well Oil		$ .00	$
12229 Tertiary Oil		$ .00	$
12239 HEAVY OIL		$ .00	$
12249 Newly Discovered Oil		$ .00	$
12259 ANS Upper Tier		$ .00	$
12269 Other ANS		$ .00	$
12279 MARKET TIER		$ .00	$
12289 Synthetic Crude		$ .00	$
12299 Naval Petroleum Reserve		$ .00	$
12309 Imported Oil		$ .00	$
12399 TOTAL CRUDE OIL RECEIPTS		$ .00	$

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5 1 OLD OIL RECEIPTS (PADDS 1-4) REPORTING PERIOD – YEAR MONTH

OLD OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
21119 FOR OWN ACCOUNT AT OWN REFINERIES			
21129 FOR NON-REFINERS AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS			
NAME			
21131			
21132			
21133			
21134			
21135			
21136			
21137			
21138			
21139 FOR OWN ACCOUNT AT OTHER REFINERS			
21199 TOTAL OLD OIL RECEIPTS (21119 + 21129 + 21139)			
ADJUSTMENTS			
21219 FOR OWN ACCOUNT AT OWN REFINERIES			
21229 FOR NON-REFINERS AT OWN REFINERIES			
21239 FOR OWN ACCOUNT AT OTHER REFINERS			
21299 TOTAL ADJUSTMENTS (21219 + 21229 + 21239)			
21399 ADJUSTED MONTHLY RECEIPTS (21199 + 21299)			

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21409	NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS	
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21499	CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS	

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5-2 OLD OIL RECEIPTS (PADD 5) REPORTING PERIOD – YEAR ____ MONTH ____

OLD OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS – (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
22119 FOR OWN ACCOUNT AT OWN REFINERIES			
22129 FOR NON-REFINERS AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS			
NAME			
22131			
22132			
22133			
22134			
22135			
22136			
22137			
22138			
22139 FOR OWN ACCOUNT AT OTHER REFINERS			
22199 TOTAL OLD OIL RECEIPTS (22119+ 22129+ 22139)			
ADJUSTMENTS			
22219 FOR OWN ACCOUNT AT OWN REFINERIES			
22229 FOR NON-REFINERS AT OWN REFINERIES			
22239 FOR OWN ACCOUNT AT OTHER REFINERS			
22299 TOTAL ADJUSTMENTS (22219+ 22229+22239			
22399 ADJUSTED MONTHLY RECEIPTS (22199 +22299)			

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22409	FOR ERA USE *ONLY*	NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS
22499		CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS

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6 1 UPPER TIER OIL RECEIPTS (PADDS 1-4) REPORTING PERIOD - YEAR MONTH

UPPER TIER OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
31119 FOR OWN ACCOUNT AT OWN REFINERIES			
31129 FOR NON REFINERS AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS			
NAME			
31131			
31132			
31133			
31134			
31135			
31136			
31137			
31138			
31139 FOR OWN ACCOUNT AT OTHER REFINERS			
31199 TOTAL UPPER TIER OIL RECEIPTS (31119+31129+31139)			
ADJUSTMENTS			
31219 FOR OWN ACCOUNT AT OWN REFINERIES			
31229 FOR NON REFINERS AT OWN REFINERIES			
31239 FOR OWN ACCOUNT AT OTHER REFINERS			
31299 TOTAL ADJUSTMENTS (31219+31229+31239)			
31399 ADJUSTED MONTHLY RECEIPTS (31199+31299)			

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31499 CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS

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6 2 UPPER TIER OIL RECEIPTS (PADD 5) REPORTING PERIOD - YEAR MONTH

UPPER TIER OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
32119 FOR OWN ACCOUNT AT OWN REFINERIES			
32129 FOR NON REFINERS AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS			
NAME			
32131			
32132			
32133			
32134			
32135			
32136			
32137			
32138			
32139 FOR OWN ACCOUNT AT OTHER REFINERS			
32199 TOTAL UPPER TIER OIL RECEIPTS ((32119+32139+32139)			
ADJUSTMENTS			
32219 FOR OWN ACCOUNT AT OWN REFINERIES			
32229 FOR NON-REFINERS AT OWN REFINERIES			
32239 FOR OWN ACCOUNT AT OTHER REFINERS			
32299 TOTAL ADJUSTMENTS ((32219+32229+32239)			
32399 ADJUSTED MONTHLY RECEIPTS (32199+32299)			

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32409	FOR ERA USE *ONLY*	NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS
32499		CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS

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7 1 RUNS TO STILLS (PADDS 1-4) REPORTING PERIOD – YEAR MONTH

(A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
41119 FOR OWN ACCOUNT AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS			
NAME			
41131			
41132			
41133			
41134			
41135			
41136			
41137			
41138			
41139 TOTAL FOR OWN ACCOUNT AT OTHER REFINERS			
41189 TOTAL FOR OWN ACCOUNT (41119+41139)			
41169 FOR SYNTHETIC CRUDE OIL			
41129 FOR NON REFINERS AT OWN REFINERIES			
41159 EXPORTS OF REFINED PETROLEUM PRODUCTS OR RESIDUAL FUEL OIL			
41199 TOTAL RUNS TO STILLS (41119 + 41139 + 41169 + 41129 – 41159			
41219 Net Correction From Prior Month Amended Reports			
41259 Processing Agreements Net Correction *FOR ERA USE ONLY*			
41299 Corrected Monthly Runs To Stills For Calculations			
41399 Volumes *(Excluding Processing Agreements)* Not Qualifying For Small Refiner Bias			
PROCESSING AGREEMENTS FOR OTHER REFINERS AT OWN REFINERIES			
NAMES			
41141			
41142			
41143			
41144			
41145			
41146			
41147			
41148			
41149 TOTAL FOR OTHER REFINERS AT OWN REFINERIES			
41179 TOTAL FOR OTHERS (41129 +41149)			

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7 2 RUNS TO STILLS (PADD 5) REPORTING PERIOD – YEAR MONTH

(A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
42119 FOR OWN ACCOUNT AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS NAME			
42131			
42132			
42133			
42134			
42135			
42136			
42137			
42138			
42139 TOTAL FOR OWN ACCOUNT AT OTHER REFINERS			
42189 TOTAL FOR OWN ACCOUNT (42119 + 42139			
42169 FOR SYNTHETIC CRUDE OIL			
42129 FOR NON-REFINERS AT OWN REFINERIES			
42159 EXPORTS OF REFINED PETROLEUM PRODUCTS OR RESIDUAL FUEL OIL			
42199 TOTAL RUNS TO STILLS 42119 + 42139 + 42169 + 42129 – 42159			
42219 Net Correction From Prior Month Amended Reports			
42259 Processing Agreements Net Correction *FOR ERA USE ONLY*			
42299 Corrected Monthly Runs To Stills For Calculations			
42399 Volumes *(Excluding Processing Agreements)* Not Qualifying For Small Refiner Bias			
PROCESSING AGREEMENTS FOR OTHER REFINERS AT OWN REFINERIES NAMES			
42141			
42142			
42143			
42144			
42145			
42146			
42147			
42148			
42149 TOTAL FOR OTHER REFINERS AT OWN REFINERIES			
42179 TOTAL FOR OTHERS 42129 + 42149			

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8.1 ANS UPPER TIER (PADDS 1-4) REPORTING PERIOD - YEAR MONTH

UPPER TIER OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS (D)
51119 FOR OWN ACCOUNT AT OWN REFINERIES			
51129 FOR NON REFINERS AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS			
NAME			
51131			
51132			
51133			
51134			
51135			
51136			
51137			
51138			
51139 FOR OWN ACCOUNT AT OTHER REFINERS			
51199 TOTAL ANS UPPER TIER OIL RECEIPTS 51119 + 51129 + 51139			
ADJUSTMENTS			
51219 FOR OWN ACCOUNT AT OWN REFINERIES			
51229 FOR NON REFINERS AT OWN REFINERIES			
51239 FOR OWN ACCOUNT AT OTHER REFINERS			
51299 TOTAL ADJUSTMENTS 51219 + 51229 + 51239			
51399 ADJUSTED MONTHLY RECEIPTS 51199 + 51299)			

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51409	NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS	
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51499	CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS	

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8.2 ANS UPPER TIER (PADD 5) REPORTING PERIOD - YEAR MONTH

UPPER TIER OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
52119 FOR OWN ACCOUNT AT OWN REFINERIES			
52129 FOR NON-REFINERS AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS			
NAME			
52131			
52132			
52133			
52134			
52135			
52136			
52137			
52138			
52139 FOR OWN ACCOUNT AT OTHER REFINERS			
52199 TOTAL ANS UPPER TIER RECEIPTS 52119 + 52129 + 52139			
ADJUSTMENTS			
52219 FOR OWN ACCOUNT AT OWN REFINERIES			
52229 FOR NON-REFINERS AT OWN REFINERIES			
52239 FOR OWN ACCOUNT AT OTHER REFINERS			
52299 TOTAL ADJUSTMENTS (52219 + 52229 + 52239			
52399 ADJUSTED MONTHLY RECEIPTS (52199 + 52299			

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52409	FOR ERA USE *ONLY*	NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS
52499		CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS

ERA-49 (9-79)

ECONOMIC REGULATORY ADMINISTRATION
Washington, D.C. 20461

DOMESTIC CRUDE OIL ENTITLEMENTS PROGRAM

REFINERS MONTHLY REPORT

ERA-49

FOR ERA USE ONLY

ACCESSION NO

DATE YEAR MONTH DAY

REPORTING FIRM SHORT NAME DATE OF REPORT YEAR MONTH DAY

9 1 HIGH SULPHUR (PADDS 1-4) REPORTING PERIOD - YEAR MONTH

UPPER TIER OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
64119 FOR OWN ACCOUNT AT OWN REFINERIES			
64129 FOR NON REFINERS AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS			
NAME			
64131			
64132			
64133			
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64135			
64136			
64137			
64138			
64139 FOR OWN ACCOUNT AT OTHER REFINERS			
64199 TOTAL HIGH SULPHUR OIL RECEIPTS 64119 + 64129 + 64139			
ADJUSTMENTS			
64219 FOR OWN ACCOUNT AT OWN REFINERIES			
64229 FOR NON-REFINERS AT OWN REFINERIES			
64239 FOR OWN ACCOUNT AT OTHER REFINERS			
64299 TOTAL ADJUSTMENTS 64219 + 64229 + 64239			
64399 ADJUSTED MONTHLY RECEIPTS (64199 + 64299			

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64409 FOR ERA USE ONLY NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS

64499 CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS

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[FR Doc. 80-34002 Filed 10-30-80; 8 45 am]

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federal register

Friday
October 31, 1980

Part XI

Department of Health and Human Services

Food and Drug Administration

Therapeutically Equivalent Drugs; Availability of List

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 78N-0170]

Therapeutically Equivalent Drugs; Availability of List

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its public information regulations to make available a list of FDA-approved prescription drug products, together with therapeutic equivalence evaluations of products in the List that are available from more than one source. This document announces the availability of the Approved Prescription Drug Products List (the List), and responds to the public comments received on the proposed policy of making such a list available and on the content and format of the List.

EFFECTIVE DATE: December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Jr., Bureau of Drugs (HFD-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5220.

ADDRESS: Copies of the Approved Prescription Drug Products List may be obtained from: United States Government Printing Office, Washington, DC 20402 (refer to the publication by name).

SUPPLEMENTAL INFORMATION: In the Federal Register of January 12, 1979 (44 FR 2932), FDA proposed to amend § 20.117 (21 CFR 20.117) of its public information regulations to include in the list of available computer printouts approved prescription drug products with therapeutic equivalence evaluations. "Approved prescription drug products" refers to prescription drug products approved by FDA through new drug applications (NDA's) or abbreviated new drug applications (ANDA's) under the provisions of section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) or, in the case of antibiotics, through analogous applications known as Form 5's or Form 6's under section 507 of the act (21 U.S.C. 357). All drug products on the List have been fully reviewed and approved for safety and effectiveness by FDA. The List also includes therapeutic equivalence evaluations for multiple-source drug products. Those products on the List that are evaluated as therapeutically equivalent can be expected, in the judgment of FDA, to have equivalent therapeutic effect and equivalent potential for adverse effects when administered to the patient under the conditions specified in the labeling.

The List, which was prepared in response to requests from State health agencies for assistance in administering their drug product selection laws, was presented as a proposal so that interested persons could review and comment on the List and all aspects of the Federal Register proposal. The agency received more than 100 comments addressing most points covered in the proposal and the preface to the List, and also concerning specific drug products included or not included in the List. This document responds only to comments concerning the proposed policy of making this List available and to the comments on the preface (Part I) of the List. FDA is responding individually to comments about specific product listings (Part II of the List).

Although a number of comments opposed the preparation of the List, many comments supported the List by agreeing with statements made in the proposal and in the preface to the List. Many of these comments were from elderly persons on fixed incomes who said that they used drug products frequently. They urged FDA to help their physicians and pharmacists provide them with drug products that are less expensive and yet therapeutically equivalent. Other comments in support of the List came from Federal, State, and local health-related agencies and private institutions and organizations urging that FDA take action to foster the availability of less expensive, therapeutically equivalent drug products.

The regulation is being finalized essentially as proposed, 44 FR 2932, January 12, 1979. A few changes have been made, however, for clarification. The word "all" in the first line of the regulation has been deleted, and the word "marketed" has been added to the regulation. This reflects FDA's policy to include on the List only those prescription drug products that have been approved for marketing under sections 505 and 507 of the act, and which are currently being marketed. FDA will remove from the List any drug product which is no longer being marketed, even though there remains an approved application for that product. Unmarketed products may periodically appear on the List, however, until FDA becomes aware of their nonmarketed status. Conversely, when FDA becomes aware through the application review process that an approved drug product is being remarketed, it will again be included on the List. The proposed regulation has also been amended by deleting all references to "certificate holder" or "certificate." As explained in the preface to the List under Part E, "Precautions to Users of the List," the List identifies only the holder of the approved application in FDA files. Finally, the phrase "route of administration" was inadvertently left out of the proposal and has been added to the final regulation.

A summary of the substantive comments and the agency's responses follow:

I. Policy Considerations in Proposing List

1. One comment cited a journal article which included a survey finding that only 21 perent of those over 65 years of age were willing to accept a less expensive generic equivalent prescription. The survey also found that of those age 56 to 64, only 30 percent would accept a substitute drug. The comment concluded, based on this survey, that prescription drug users who are over age 56 are responsible for the lack of product substitution, rather than health professionals and the drug industry, as FDA contended in the proposal.

The agency believes that the article cited by the comment does not contain sufficient information about the survey for FDA to comment on its results. Even so, FDA notes that the article concluded: "It appears that a program of educating the elderly to the safety, efficacy, and economic merits of accepting equivalent products when not restricted by their physicians is in order." The agency agrees that reluctance in choosing less expensive duplicate prescription drug products in the place of more expensive brand name prescription drugs may be caused largely by a lack of information about the safety, effectiveness, and therapeutic equivalence of the duplicate drug products. FDA believes that the information provided by the List will help to lessen doubts that may exist regarding the safety, effectiveness, and economic advantage of therapeutically equivalent duplicate drug products.

2. Another comment said that the public would not be educated by the publication of the List as contended by FDA in the proposal. The comment said that while most people would know that a List exists, only a few would be familiar with the List's contents.

The agency believes that publication of the List will lend to increased consumer awareness of less expensive therapeutically equivalent prescription drug products. The availability of the List is announced in this Federal

Register document and copies will be provided to State health agencies. The release of such information usually prompts coverage in the public and trade press, which in turn broadens consumer awareness. Such increased awareness should stimulate greater consumer demand for less expensive therapeutic equivalents, and physicians and pharmacists should be influenced to respond to that demand by prescribing and dispensing such less expensive drug products.

3. One comment questioned FDA's statements in the proposal that the absence of a list of therapeutically equivalent drug products permits the continuation of a situation involving potential dangers to health as well as deception to consumers, because FDA has repeatedly assured the public that drug products on the market are safe and effective, that defective products will be quickly removed, and that advertising and promotion are monitored. The comment asked how FDA recognized dangers in the absence of a list and how the List would negate such dangers.

The agency believes that the publication of the information contained in the List will protect the public health by helping to eliminate a situation involving potential dangers to health as well as deception of consumers. First, in the absence of an official List, pharmacists or other persons responsible for pharmacy or institutional drug purchasing would be required to make their own evaluations of therapeutic equivalence. Such an evaluation, without the information that will be provided by the List, presents a risk that drug products that are not therapeutically equivalent may be purchased for substitution, with possible adverse health consequences to patients. Second, a List of therapeutically equivalent drug products is needed to balance and correct allegations about the therapeutic inequivalence of drug products that have appeared, for example, in advertisements in newspapers and on radio and television. These allegations imply that the minimum standards for drug quality are inadequate to assure such quality, that differences in pharmaceutically equivalent drug products generally produce differences in therapeutic effects, and that government regulation never assures therapeutic equivalence. FDA believes that the broad dissemination of these allegations to the general public, as well as to health professionals, may lead to a decline of public confidence in the quality of the nation's drug supply. For this reason, an authoritative statement from the Federal agency charged with monitoring and assuring the safety, effectiveness, and quality of drugs is needed.

It is also important to note that, contrary to what is implied in the comment, the absence of a list of therapeutically equivalent drug products does not mean that drug products on the market are not safe and effective, or that defective products will not be quickly removed, or that the agency is not monitoring advertising and promotion. The List is simply a compilation of those marketed drug products that have been approved by FDA under sections 505 and 507 of the act, with certain exceptions as explained in the proposal (at pp. 2948–2949) and elsewhere in this document. These products have already been fully reviewed and approved for safety and effectiveness by FDA. The List also includes therapeutic equivalence evaluations for those approved prescription drug products that are available from more than one source. Drug products evaluated as therapeutically equivalent are pharmaceutical equivalents that can be expected to give the same therapeutic effect when administered to the patient under the conditions specified in the labeling.

4. A comment contended that although the List may have been desirable a decade ago, it now is counterproductive. The comment argued that manufacturers of generic products have ample resources to promote their products without FDA "assistance", and that they foster their own image, their reputation for quality, and the benefits of substitution by a variety of means. Furthermore, the comment argued, health professionals today may easily obtain reliable information on generic drug products from manufacturers, distributors, medical journals, pharmacy journals, academic institutions, and individual expertise. The comment asserted that the fact that more than 40 States now permit generic substitution proves that these resources have already been effectively used.

The agency believes that publication of the List now would not be counterproductive merely because progress has already been made in generic drug product selection. All persons involved in drug product selection need accurate, complete, and understandable information about therapeutically equivalent prescription drug products. Such information properly may come from the Federal agency charged with monitoring and assuring the safety, effectiveness, and quality of the nation's drug supply. Pharmacies, hospitals, States, and private and public institutions and organizations continue to ask FDA to share its broad knowledge of the safety and effectiveness of drug products, so that they can continue to carry out their duties to protect and promote the public health, provide health care services safely and with efficiency and cost-effectiveness, and advise physicians and pharmacists on drug product selection.

5. One comment said that the Model State Drug Product Selection Act (Model Act) is intended to encourage and implement generic drug product substitution, and that the FDA List is purportedly not intended to be used for drug substitution—it is not, as stated in the proposal, a recommendation of which products persons should purchase, prescribe, or dispense. However, the comment said, the Model Act would require that each State formulary include all drug products determined by FDA to be therapeutically equivalent. The comment concluded that when combined with the Model Act, the FDA List is intended to be used for drug substitution.

Although FDA acknowledges that the List is intended, among other things, to assist the States in implementing drug product selection laws, the List is not a recommendation of which products to purchase, prescribe, or dispense. The Model Act, a joint effort of the Department of Health and Human Services (DHHS) and the Federal Trade Commission (FTC), is being made available to the States to assist them in enacting their own drug product selection legislation. The Model Act, if chosen by a State as a guide, would require an appropriate State health agency to establish a formulary that would list equivalent drug products, potentially including all drug products determined by FDA to be therapeutically equivalent. As one aspect of DHHS's cooperation with FTC, FDA has been asked to prepare a List of such products to be provided to the States. Thus, the List is intended to assist the States in establishing a formulary that would list therapeutically equivalent drug products; it is not intended to designate any drug products as preferable to others for purposes of generic substitution.

6. One comment contended that FDA has attempted to suppress the industry's right to be heard, to prevent open, uncensored discussion of the issues, and to destroy the credibility of the pharmaceutical industry in refusing to publish in the proposal the objections to

the List set forth in PMA's lawsuit to challenge the List. *Pharmaceutical Manufacturers Ass'n* v. *Kennedy*, 471 F. Supp. 1224 (D.Md. 1979). The comment said that this decision is especially offensive in view of the comprehensive nature of the Federal Register proposal.

The agency disagrees with this comment and believes that the issue it raises was adequately addressed in the proposal, which states at p. 2936:

> The objections of PMA to an FDA list of therapeutically equivalent drug products, as set forth in its complaint, need not be discussed point-by-point in this document. This preamble amply describes the reasons for issuing such a list, the legal, scientific, and regulatory bases on which such a list may be prepared and issued and the details of the list that FDA proposes to issue. Opportunity to comment and raise specific objections, in light of the specific proposal in this notice, is being provided to the public, including PMA. The objections of PMA, both in its complaint and, if PMA chooses, as particularized by its comments on this proposal, will be considered by FDA in determining how to proceed in this matter.

II. Legal Authority and Legal Status

7. One comment contended that it is beyond FDA's regulatory authority to make a judgment of therapeutic equivalence. The comment said that it is within FDA's authority to establish regulatory requirements for drug products intended for marketing, and to require those wishing to market such products to provide sufficient documentation assuring that the products meet those regulatory requirements. The only comparison of drug products that FDA could make based on this information, the comment asserted, would be an evaluation of the degree to which such products meet the established regulatory requirements, which do not include standards for therapeutic equivalence. Another comment said the List should be enacted through the Congressional legislative process and not by a regulatory agency.

FDA has concluded that it does have the authority to determine therapeutic equivalence on the basis of criteria explained in the proposal. FDA evaluates as therapeutically equivalent approved drug products that meet the following general criteria: (1) They are pharmaceutical equivalents in that (a) they contain identical amounts of the same acitve drug ingredient in the same dosage form; and (b) they meet compendial or other applicable standards of identity, strength, quality, and purity; (2) they are bioequivalent in that (a) they do not present a known or potential bioinequivalence problem; or (b) if they do present such a known or potential problem, they are shown to meet an appropriate bioequivalence standard; (3) they are adequately labeled; and (4) they are manufactured in compliance with current good manufacturing practice. These four criteria are applied to information already contained in FDA files regarding the safety, effectiveness, and quality of approved prescription drug products to make a nonregulatory evaluation of therapeutic equivalence. The four criteria are regulatory determinations which FDA is statutorily authorized to make. FDA's authority to require that drug products meet compendial standards is based on section 501(b) of the act; to require that certain drug products meet bioequivalency requirements on sections 201(p), 502, 505, and 701(a) of the act; to require adequate labeling on sections 502, 505, and 507 of the act, and 21 CFR 201.100; and to require compliance with current good manufacturing practice regulations on sections 501(a)(2)(B) and 701(a) of the act. The Degree to which drug products are found to be therapeutically equivalent is determined by the degree to which they meet the four criteria. This is a nonregulatory evaluation in which the agency simply applies the four criteria to drug product information in FDA files. Furthermore, the therapeutic equivalence evaluations do not constitute an order or a rule, they do not impose a requirement or restriction, nor do they constitute determinations that any products are in violation of the act or that any products are preferable to others.

FDA is authorized to make public its therapeutic equivalence evaluations on the basis of the following statutory provisions: section 310 of the Public Health Service Act directs the Secretary (whose authority is delegated to the Commissioner of Food and Drugs (21 CFR 5.1(a)(2))) to issue "information related to public health, in the form of publications or otherwise, for the use of the public" and to publish "other pertinent health information for the use of persons and institutions concerned with health services." Section 311(a) of the Public Health Serivce Act directs the Secretary to "advise the several States on matters relating to the preservation and improvement of the public health". Section 705(b) of the Federal Food, Drug, and Cosmetic Act authorizes the Secretary to disseminate information about drugs "in situations involving, in the opinion of the Secretary, imminent danger to health, or gross deception of the consumer." Section 306 of the act authorizes FDA to use written notices in place of formal enforcement actions when the public interest will be adequately served by such notices.

Regarding the comment that the List should be enacted through the Congressional legislative process and not by FDA, the agency believes that Congress authorized FDA's publication of the List through the statutory provisions cited in the preceding paragraph.

8. Several comments argued that FDA's reliance on section 705(b) of the act (21 U.S.C. 375(b)) is incorrect. Section 705(b) states in part: "The Secretary may also cause to be disseminated information regarding foods, drugs, devices or cosmetics in situations involving, in the opinion of the Secretary, imminent danger to health or gross deception to the consumer." The comments said that FDA's reliance upon this section is misapplied because the agency has not indicated an "imminent danger to health or gross deception of the consumer." FDA has only cited newspaper advertisements and radio and television spot announcements directed to the public which the agency believes are misleading. Such examples, the comments said, can hardly be classified as an "imminent danger." Furthermore, the comments said that the limitations imposed by section 705(b) of the act reflect congressional consideration of the agency's use of publicity. The comments explained that the legislative history of section 705(b) of the act shows that FDA was deliberately denied the discretion it now claims and that the agency was forbidden to interfere with competition among legally marketed prescription drug products solely to promote policy. The comments said that Congress considered and rejected an earlier version of secton 705(b) of the act that would have broadly authorized the Secretary to disseminate "such information regarding any food, drug, or cosmetic as he deems necessary in the interest of public health." By adopting the limited terms of section 705(b) of the act, the comment said, Congress deliberately circumscribed the agency's authority to use its influence to persuade the public to purchase or refrain from purchasing legally marketed products.

The agency disagrees with the comment that reliance on the section 705(b) of the act is misapplied. In relying on that section, the magnitude of the potential danger or deception need not be estimated because that section is not a limitation upon the authority of the agency. Rather, as explained in the proposal (at p. 2936), this statutory provision places within the express scope of the Secretary's duties

something that is one of the Secretary's implied functions. *Hoxsey Cancer Clinic* v. *Folson,* 155 F. Supp. 376, 378 (D.D.C. 1957). Because section 705(b) of the act merely expresses an implicit power of the Secretary and the Commissioner, it is not necessary to determine whether the specific conditions for invoking the explicit authority under that section now exists. It is important to note, however, that potential dangers do exist. Currently, in the absence of an official List, pharmacists would be required to make their own evaluations of therapeutic equivalence, usually without the comprehensive information available to the agency. Such evaluations without adequate information create a risk that drug products that are not therapeutically equivalent may be substituted and dispensed, with possible adverse health consequences to patients. In addition, a list of therapeutically equivalent drug products is needed to balance and correct deceptive materials disseminated widely in recent years alleging the therapeutic inequivalence of drug products. Many publications and other media still imply that the minimum standards for drug quality are inadequate to ensure such quality, that differences in pharmaceutically equivalent drug products generally produce differences in therapeutic effects, and that government regulation never assures therapeutic equivalence. The broad dissemination of these assertions to the general public, as well as to health professionals, may lead to a decline of public confidence in the quality of the nation's drug supply.

Regarding the comment that by adopting the more limited terms of section 705(b) of the act, Congress circumscribed FDA's authority to use its influence to persuade the public to purchase or refrain from purchasing legally marketed products, FDA does not believe that the List is an effort to persuade the public. The List contains only public information and advice; it imposes no requirement or restriction upon any person; it makes no recommendations as to which products persons should purchase, prescribe, or dispense, or, conversely, which products should be avoided. The List actually enhances the public's freedom of choice by providing information necessary to a decision whether a brand name drug or its therapeutically equivalent substitute should be selected.

9. Another comment said that the Federal Food, Drug, and Cosmetic Act precludes FDA from judging the therapeutic equivalence of different drugs as part of the new drug approval process. In evaluating new drug applications, the comment said FDA's role is limited to a review of the safety and efficacy of drugs. The comment explained that the legislative history of the 1962 amendments to the act shows that judging relative efficacy among different drugs is not a proper function for FDA. The comment said that therapeutic equivalence as used in the proposal is akin to relative efficacy as considered in 1962 because the preamble, in discussing the concepts of therapeutic equivalence and bioequivalence, discusses them in terms of the efficacy of drug products.

It is the agency's position that the part played by the new drug approval process in FDA's determination of therapeutic equivalence does not expand that process beyond a review of the safety and effectiveness of drug products. As explained in the response to the first comment in this Part, FDA evaluates as therapeutically equivalent those drug products that meet four general criteria. In addition, there are three major elements which comprise the scientific and regulatory foundations underlying the four general criteria: (1) Pharmaceutical equivalence, (2) bioequivalence, and (3) controls to ensure consistency of quality in, and pharmaceutical equivalence and bioequivalence among, individual batches produced by all manufacturers. This third element includes FDA's new drug approval process, as well as the antibiotic certification processes, the batch certification procedures, the good manufacturing practice regulations, and FDA's monitoring of the marketplace. The new drug approval process is an important part of FDA's program for determining the therapeutic equivalence of drug products. The process of reviewing and approving new drug applications enables FDA, in addition to determining pharmaceutical equivalence and bioequivalence of the drug products, to review the inactive ingredients in the drug products, to ensure the adequacy of labeling, and to evaluate any proposed specific manufacturing controls to ensure appropriate quality and batch-to-batch consistency. Only when all these elements meet regulatory requirements may an application be approved. Although the information submitted in support of a new drug application is part of the information FDA uses to make a therapeutic equivalence determination, a determination of therapeutic equivalence is separate from the new drug approval process. FDA emphasizes that it will continue to approve new drug applications only on the basis of safety, effectiveness, and any bioavailability requirement.

In addition, FDA's determination of therapeutic equivalence does not involve a judgment of relative efficacy. Relative efficacy refers to a comparison of the effectiveness of different therapeutic moieties, whereas therapeutic equivalence determinations involve different manufacturers' products containing the same active drug ingredients. Moreover, FDA's determination of therapeutic equivalence is not a judgment as to which manufacturer's product is "better" or "more effective."

10. Several comments charged that the agency is circumventing the express restrictions of section 705(b) of the act by invoking the generalized grants of publication authority conferred by the Public Health Service Act. The comments contended that in interpreting statutes the general must give way to the specific. The Public Health Service Act must be construed in harmony with section 705(b) to mean that only in limited circumstances should FDA enter the competitive arena on behalf of or against specific products. The comments also said that the dissemination of information envisioned by the Public Health Service Act relates to neutral scientific and epidemiological data designed to improve the quality of health care services. The comments explained that the publication grant codified in section 310 of the Public Health Service Act derives from former 42 U.S.C. 7, which authorized the study, investigation, and release of information related to the "diseases of man and conditions influencing the propagation and spread thereof." The original legislation was directed toward health rather than economic concerns, argued the comments, and there is no basis for supposing that the Public Health Service Act was intended to give the FDA authority to officially rate specific drug products in a purported effort to decrease consumer costs. The comments also said that the grant of authority in section 311(a) of the Public Health Service Act for advice to the States on public health matters cannot properly be read as giving FDA the power to prepare and disseminate the proposed List. To do so, said the comments, would not only displace the traditional authority of health professionals to independently judge the comparative quality of prescription drug products, but would redistribute the primary control of prescribing and dispensing from the States to the Federal Government.

The agency disagrees with the contention that FDA has incorrectly

interpreted and applied the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act. As explained in the response to comment 8 above, the agency does not agree that section 705(b) limits FDA's authority in this area, nor does it restrict FDA's application of the Public Health Service Act. In addition, publication of the List conforms exactly to the direction of sections 310 and 311(a) of the Public Health Service Act. The availability of approved drug products evaluated by FDA as therapeutically equivalent, as well as the identity of pharmaceutically equivalent drug products which are evaluated by FDA as not therapeutically equivalent, is important information related to the public health. The List provide information that is useful to persons and institutions concerned with health services, and it compiles information in FDA files that is relevant to drug product selection for use by those consumers, institutions, and State agencies who want it.

The agency also disagrees with the comment that the List usurps the authority of health professionals. An FDA evaluation of therapeutic equivalence in no way relieves practitioners of their professional responsibilities in prescribing and dispensing drug products with due care to individual patients. If the characteristics of a specific product are important in the therapy of a particular patient, the physician's specification of that product is appropriate. FDA recognizes that drug products that are therapeutically equivalent may still vary, for example, in color, shape, taste, or packaging and patients may not perceive them as identical or equally acceptable. For this reason, these drug products are not substitutable or interchangeable in all cases. FDA does not determine whether different drug products are substitutable or interchangeable for use by a particular patient; rather, this judgment rests with the practictioner who, in prescribing and dispensing drug products, can consider the unique characteristics, needs, or problems of the patient. Pharmacists, in dispensing drug products, must be familiar with, for example, the expiration times and labeling conditions for storage, particularly for reconstituted products, to ensure that patients are properly advised when one product is substituted for another.

Finally, the agency disagrees that the List would infringe on the States' authority in regulating the prescribing and dispensing of drug products. The List is intended to assist the States in carrying out their duties to protect and promote the public health, both in providing health care services safely and with efficiency and cost-effectiveness, and in advising physicians and pharmacists of the requirements of State drug product selection laws. The States continue to ask FDA to share its broad knowledge of the safety, effectiveness, and quality of the nation's drug supply.

11. Several comments said that the notice-and-comment procedure followed in adopting the List unlawfuly denies manufacturers and the general public the right to an evidentiary hearing. Some comments contended that an evidentiary hearing is necessary because the List will have a substantial economic and legal impact on drug manufacturers, and that physicians, pharmacists, consumers, and State agencies will be relying heavily on the List to select drug products and to develop State formularies. The comments contended that only the evidentiary hearing procedure would guarantee the accuracy and reliability of the final version of the List. The comments said that each determination of therapeutic equivalance in the List, if questioned by the manufacturer, deserves an adjudicatory hearing. Further, the comments said it is impossible for manufacturers, especially those with several drugs evaluated on the List, to adequately review all relevant available data bearing on the equivalence issues within the notice-and-comment period permitted.

Other comments contended that a hearing is required because of various types of factual determinations that are involved in the therapeutic equivalence determination. One drug manufacturer requested an evidentiary hearing concerning FDA's specific findings on the bioavailability or bioequivalence of its drug products. The comment said its products would be adversely affected because FDA intends that the List be used to influence the substitution of a second drug product for the drug product first prescribed. Another comment said that the therapeutic equivalence information proposed for the List may include official fact findings and declarations relating to specific drug products and manufacturers. Essential to each of these determinations, the comment contended, is a complex appraisal of scientific facts as well as an individual evaluation of manufacturer processes and quality control procedures. The comment said that these particular fact-oriented inquiries must be made in an adjudicatory setting. Another comment explained that the Federal Food, Drug, and Cosmetic Act provides procedures for determining the effectiveness of new drugs. Those procedures, the comment said, provide that a party aggrieved by FDA decisions concerning the effectiveness of that product has the opportunity to an evidentiary hearing to challenge the correctness and evidentiary basis of that decision. The comment contended that FDA's determinations of therapeutic equivalence are decisions concerning the effectiveness of the drug products considered equivalent, and the aggrieved manufacturer is entitled to an evidentiary hearing concerning the correctness and evidentiary basis for such decisions. The comment said that any other interpretation of the act would enable FDA to make public assertions about the effectiveness of a manufacturer's approved product that would have the practical effect of amending the labeling for that product without giving the manufacturer the opportunity to be heard and to challenge in an evidentiary proceeding the basis for such assertions. One comment said that when FDA publicly declares that drug products in a group containing the same active ingredient are therapeutically equivalent, the agency claims comparative efficacy or quality for each approved product in the group. The comment claimed that equivalence judgments such as these are, in effect, new claims for the products. If a manufacturer made a similar equivalence claim, the comment said, that manufacturer would be required to submit a supplemental application to amend its NDA (or ANDA) to encompass the additional claim (21 CFR 314.8(a)(4)(ii)). Such an application would trigger the adjudicatory procedures provided by statute for regulatory approvals, which include the right to request an evidentiary hearing. Similarly, another comment said in making therapeutic equivalence determinations, FDA should give notice that it is proposing to amend all approved NDA's (or ANDA's) for products containing the active ingredient to include the claim of therapeutic equivalence (21 CFR 314.200(a)). The comment said that each notice should cite all data and arguments that the agency relied on to substantiate the new claim, and should advise affected parties of their opportunity for a hearing (21 CFR 314.200(b)). The comment also said that if a hearing is subsequently requested, it should be granted in any case in which the requestor demonstrates that there is a genuine and substantial issue of

material fact as to the accuracy of the proposed claim. (21 CFR 314.200(g)(6).)

FDA is of the opinion that publication of the List does not require an evidentiary hearing. The agency believes that most of the comments misconstrue the legal status of the List. As explained in the proposal (at p. 2937), the List contains only public information and advice. It does not constitute an order or a rule as defined in the Administrative Procedure Act (5 U.S.C. 551(4)) and, consequently, adherence to the rulemaking procedures of that statute (5 U.S.C. 553) is not required. The List neither determines nor adjudicates the legal rights of any drug manufacturer or distributor; it does not impose any requirement or restriction upon any person; it does not interpret or apply the act in a manner that creates any obligation on any person; it makes no recommendation as to which products persons should purchase, prescribe, or dispense, or conversely, which products should be avoided. To the extent that the List identifies drug products approved for marketing under sections 505 and 507 of the act, it merely sets forth information to which the public is entitled under the Freedom of Information Act. Exclusion of a drug product from the List would not necessarily mean that the drug product is in violation of section 505 or 507 of the act, or that it is not safe or effective, or that it may not be therapeutically equivalent to other drug products. (For reasons explained on pages 2948–2952 of the proposal, several classes of drug products are excluded from the List: for example, prescription drug products approved as safe for marketing prior to 1962 and not yet determined to be effective, and drug products that have not been reviewed and approved through the new drug or antibiotic approval process.) Decisions on whether specific drug products are subject to the requirements of either section 505 or 507, or whether specific drug products have fulfilled those requirements, are made in clearly defined proceedings unrelated to the release of information on approval decisions. To the extent that the List sets forth FDA's evaluations of the therapeutic equivalence of drug products that have been approved, it contains FDA's advice to the public and to the States regarding an important public health matter. These evaluations do not constitute determinations that any products are in violation of the act or that any products are preferable to others. These are nonregulatory evaluations that are based on the application of certain criteria to information contained in FDA files. Most of the reasons cited by the comments for demanding an evidentiary hearing (for example, determinations of effectiveness and bioequivalence) concern determinations that were made by FDA in clearly defined proceedings when there existed the right to an evidentiary hearing. Thus, the notice and comment procedure used in adopting this List is sufficient.

The purely advisory character of the List was recognized by the court in P.M.A.'s unsuccessful attempt to enjoin FDA from issuing the List, *P.M.A. v. Kennedy, supra* at 1229, 1231, in which the court observed:

> The information contained in the Drug List includes a list of approved drug products found by FDA to be safe and effective as well as therapeutically equivalent to each other * * *. There is nothing to indicate that the Drug List and Price Guide do any more than list or compile data which has already been obtained via statutory procedure * * *. No agency is ordering any PMA member to engage in or refrain from any action. Nor is any agency doing anything which is binding on the parties.

FDA also believes that § 314.200(a), (b), and (g)(6), which provide for notice of opportunity for hearing when the agency proposes to refuse to approve a new drug application or to withdraw the approval of an application, do not apply in this situation. The agency stresses that the therapeutic equivalence evaluations are based on information already in FDA files as to the safety, effectiveness, and quality of approved drug products and as such are not new claims. Furthermore, the evaluations of therapeutic equivalence apply only to approved drug products and are based on their pharmaceutical equivalence, bioequivalence, labeling, and compliance with current good manufacturing practice regulations. Thus, the List does not constitute an agency action requiring a notice of opportunity for hearing under § 314.200(a).

12. One comment said that FDA's proposal is contrary to section 5 of the Federal Trade Commission (FTC) Act. The Federal Trade Commission has held that making an affirmative claim for a product without a "reasonable basis" for the claim is an unfair trade practice under section 5. A reasonable basis in the case of a drug product, according to FTC precedents, requires scientific studies, medical literature, or clinical experience. The comment said that FDA acknowledges the lack of such evidence by its reliance on the presumption that pharmaceutically equivalent drug products are also bioequivalent unless there exists contrary scientific evidence. The comment also noted that under the standards of "reasonable basis" there is a serious question whether FDA's representation that a particular drug is therapeutically equivalent to another drug would constitute an unfair trade practice if such representation were made by a drug manufacturer.

The FTC precedents referred to by the comment are not applicable to the labeling and advertising of prescription drugs. Nonetheless, FDA believes that its determinations of therapeutic equivalence do rest on a reasonable basis, including scientific studies, medical literature, and clinical experience. Part III(B) of the proposal explains that a therapeutic equivalence determination is based on the following scientific and regulatory foundations: (1) Pharmaceutical equivalence—drugs which contain identical amounts of the same active drug ingredient in the same dosage form, and which meet compendial or other applicable standards of identity, strength, quality, and purity; (2) bioequivalence—drugs not presenting a known or potential bioinequivalence problem, or, if such a problem is shown, the drugs meet an appropriate bioequivalence standard; and (3) controls to ensure consistency of quality in, and pharmaceutical and bioequivalency among, individual batches produced by all manufacturers, which includes the new drug approval and antibiotic certification processes, the batch certification process, good manufacturing practice regulations, and FDA's monitoring of the marketplace. In addition, an FDA evaluation of therapeutic equivalence refers to those drug products which meet the four general criteria listed in the response to comment 7 above. The scientific and regulatory foundations and the criteria described above involve the use of scientific studies, medical literature, and clinical experience. Accordingly, a reasonable basis does exist for FDA to make therapeutic equivalence determinations, and the contention that FDA acknowledges the lack of a reasonable basis for such determinations due to its reliance on a presumption that pharmaceutically equivalent drug products are also bioequivalent unless there exists contrary scientific evidence, ignores the basis for that presumption in scientific studies and clinical experience. As will be explained in the response to comment 18 below, scientific studies and clinical experience have shown that it is unnecessary to use human subjects and clinical resources to test a large number of drugs for which there is no evidence of bioavailability problems, or to reprove the safety and effectiveness

of an active ingredient which has already been established to be safe and effective.

13. One comment noted that the listed manufacturers are likely to use the therapeutic equivalence evaluations in their promotional materials. The comment argued, however, that citations to the List in advertising and sales information would violate principles in the prescription drug advertising regulations. For example, 21 CFR 202.1(e)(6)(iii) prohibits "literature references or quotations that are significantly more favorable to a drug than has been demonstrated by substantial evidence or substantial clinical experience." The comment argued that because many of the drug products at issue have been approved with less than the statute's mandate for "substantial evidence," the conclusions in the List must be based upon substantial clinical experience if they are to be cited in advertising as a basis for a claim of therapeutic equivalence. For newly approved imitative products, substantial clinical experience simply does not exist. In addition, the comment said that references to the List in advertising by the manufacturer of a newly approved imitative product would present "information from a study in a way that implied that the study represents larger or more general experience with the drug than it actually does." (21 CFR 202.1(e)(6)(v).) Finally, the comment said that use of the List in advertising would constitute an improper citation to "favorable data or conclusions from nonclinical studies of a drug, such as * * * in vitro, in a way that suggests they have clinical significance when in fact no such clinical significance has been demonstrated." (21 CFR 202.1(e)(6)(vii))

The agency disagrees that the use of therapeutic equivalence evaluations in advertising would violate the prescription drug advertising regulations. FDA's basis for determining therapeutic equivalence does meet the substantial evidence test in § 202.1(e)(6)(iii), and does include studies which have clinical significance as stated in § 202.1(e)(6)(vii). In addition, § 202.1(e)(6)(v) is not violated because reference to therapeutic equivalence evaluations would not imply a broader experience with the drug than has actually occurred. As explained in the proposal, an evaluation of therapeutic equivalence applies only to approved prescription drug products that are pharmaceutically equivalent, bioequivalent, adequately labeled, and are manufactured in compliance with current good manufacturing practice. Other considerations in determining therapeutic equivalence include conformity with compendial or other standards of identity, strength, quality, and purity. Some of the mechanisms FDA uses to determine therapeutic equivalence are the new drug approval and antibiotic certification processes, the batch certification procedures, the good manufacturing practice regulations, and the agency's monitoring of the marketplace. FDA also disagrees with the comment that the phrases "literature * * * more favorable" and "favorable data or conclusions" are applicable to the agency's therapeutic equivalence evaluations. As explained in the response to comment 11 above, to the extent that the List sets forth FDA's evaluation of therapeutic equivalence, it contains FDA's advice to the public and to the States regarding an important public health matter. The evaluations do not constitute determinations that any products are in violation of the act or that any products are preferable to others. They are based on the application of certain criteria to information contained in FDA files to make these nonregulatory evaluations.

The agency notes, however, that it is now considering whether the use of therapeutic equivalence evaluations would be appropriate in prescription drug advertising or in prescription drug product labeling. When an agency policy is developed on these issues, it will be publicly announced.

14. One comment contended that the proposed therapeutic equivalence codes in the List are not uniformly favorable. For example, drug products coded "BX" are adverse findings which should be communicated to health professionals through the package insert. The comment further contended that the regulations governing supplemental new drug applications appear to require that drug product labeling be modified to reflect FDA equivalence findings, since 21 CFR 314.8(d)(2) requires the deletion "from package labeling, promotional labeling, and drug advertising of false, misleading, or unsupported indications for use or claims for effectiveness." The comment also said it may be that mere approval and labeling of a product with the generic name of the drug implies that all products containing the same active ingredient are equivalent. In some States, the comment noted, substitution of such products for their fully approved counterparts is lawful. Yet, the comment said, drug product labeling fails to advise physicians and pharmacists of the fact that these products are not therapeutically equivalent. This would cause the drug labeling to be misleading for failure to reveal a material fact (21 U.S.C. 321(n)) and would require correction under 21 CFR 314.8(d)(2). The comment concluded that the regulatory principles discussed above dramatize the inconsistency of the proposed List with the well-established principles under which the Federal Food, Drug, and Cosmetic Act is now administered.

The agency disagrees with the comment. First of all, the "BX" code is not an adverse finding regarding a particular drug product, but merely indicates that at the present time the agency has insufficient data to determine whether the product is therapeutically equivalent under the stated criteria. Neither the "BX" code nor any of the other therapeutic equivalence evaluations constitute determinations that a product is in violation of the act or that a product is preferable to others. They are nonregulatory evaluations based on the application of the four criteria for therapeutic equivalence (i.e., pharmaceutical equivalence, bioequivalence, adequacy of labeling, and current good manufacturing practice) to information already contained in FDA files concerning the drug products. Second, the agency disagrees that § 314.8(d)(2) would require drug product labeling to be modified to reflect FDA therapeutic equivalence findings. For reasons already explained in the proposal and in the responses to comments number 11 and 12 above, the therapeutic equivalence evaluations are not "false, misleading, or unsupported indications for use or claims for effectiveness." Third, as explained in response to comment 13 above, the agency is considering whether information concerning therapeutic equivalence evaluations should be used in prescription drug product labeling or advertising. Pending that consideration, the agency has not determined that information concerning therapeutic equivalence or therapeutic inequivalence is a material fact under 21 U.S.C. 321(n). However, since prescription drug product labeling and advertising does not presently include information concerning therapeutic equivalence evaluations, such evaluations are not directly relevant to drug product labeling because the labeling provides adequate information for the safe and effective use of the drug product. "Therapeutically equivalent drug products" refers to drug products which are otherwise safe and effective and which can be expected, in the judgment of FDA, to have equivalent therapeutic effect and equivalent

potential for adverse effects when used under the conditions set forth in their labeling.

15. Several comments stated the belief that the List would be promoting the interchangeability of drugs. One of these comments said that by publishing the List, FDA will in effect become an insurer of drug interchangeability and therapeutic equivalency in the United States. The comment explained that the implications of this are significant. For example, any physician or pharmacist who is sued for malpractice because of the unintended result of a prescription drug product could rely in defense on the List. Another comment said that FDA should assume all medical and legal responsibility for drug substitutions that the physician and pharmacist carry out. A third comment said that States would rely on the List as an "implied guarantee" of the interchangeability of drugs, and that this would raise questions concerning Federal and State legal liability for the content of the List.

It is not FDA's intent to become an "insurer of drug interchangeability," nor is it the agency's intent to assume all responsibility for drug product substitution by physicians and pharmacists. As pointed out in the proposal, FDA believes that drug products that are therapeutically equivalent are not necessarily interchangeable in all instances. Because such products may still vary, for example, in color, shape, taste, or packaging, patients may not perceive them as identical or equally acceptable. FDA makes no judgment as to whether different drug products are substitutable or interchangeable for use by a particular patient; rather, this judgment rests with practitioners who, in prescribing and dispensing drug products, should consider the unique characteristics, needs, or problems of the patient. Regarding the comment concerning physician or pharmacist malpractice suits, an FDA evaluation of therapeutic equivalence in no way relieves practitioners of their professional duty to prescribe and dispense drug products with due care to individual patients. In those circumstances where the characteristics of a specific product, other than its active ingredient, are important in the therapy of a particular patient, the physician's specification of that product is appropriate. Also, pharmacists must be familiar, for example, with the expiration times and labeling conditions for storage, particularly for reconstituted products, to ensure that patients are properly advised when one product is substituted for another.

16. Another comment, noting that FDA is proposing to amend 21 CFR 20.177, which provides that certain computer printouts be made available for public inspection at FDA, said that the computer printouts referred to in this section include information on new drugs and abbreviated new drug applications, approval status, and other information on IND's and NDA's. In none of these, the comment said, does FDA make any additional administrative determinations. The comment argued that the List, however, which is proposed to be part of this same section, would include evaluations of therapeutic equivalence. The comment said that because these are not part of the IND or NDA approval process, they do not belong in this section of the regulations. The comment concluded that FDA does not distinguish between its authority to disclose, on the one hand, information readily available in agency records and, on the other hand, new information based on complex medical and scientific determinations of therapeutic equivalence.

FDA advises, as stated in the proposal (at p. 2937), that it is amending § 20.117 in conjunction with the List only to give the public a point of reference reflecting the availability of the List. Because the List is informational and advisory in nature, the agency believes that it is best identified in the regulations describing FDA records and information that are available to the public. Contrary to what is said in the comment, FDA believes that the List is relevant to information on NDA's and ANDA's. The List includes prescription drug products which FDA has had the authority and opportuntiy to evaluate and approve for safety and effectiveness. It also includes therapeutic equivalency determinations of these approved drug products based on the general criteria explained above.

17. One comment said that States will interpret the List as a Federal directive and not merely as FDA assistance to the States. The comment said that such a directive would be beyond FDA's legal authority.

The agency disagrees that States will interpret the List as a Federal directive. The legal status of the List was clearly explained in the Federal Register proposal (at p. 2939). Further, the proposal explained that one reason FDA is publishing the List is in response to requests from several States for assistance in developing their drug product selection legislation. Pharmacies, hospitals, States, and private and public institutions and organizations continue to ask FDA to share its broad knowledge of the safety and effectiveness and quality of drug products, so that they can continue to carry out their duties to protect and promote the public health, both in providing health care services safely and with efficiency and cost-effectiveness, and in advising physicians and pharmacists on drug product selection.

III. Therapeutic Equivalence

18. Several comments questioned FDA's presumption that pharmaceutically equivalent drug products are also bioequivalent unless there is scientific evidence to the contrary. Some of the comments said that the agency's presumption is not supported by scientific data and does not represent sound scientific reasoning. The comments contended that pharmaceutical equivalence and therapeutic equivalence should be determined on a case-by-case basis. Other comments cited examples of products to show the dangers in presuming that pharmaceutically equivalent drug products are also bioequivalent in the absence of evidence to the contrary, and said FDA's approach is premature because additional problems may not emerge until there is more experience with product interchange and more multisource products.

FDA disagrees with the criticism directed at its conclusion that pharmaceutically equivalent drug products are also bioequivalent unless there is scientific evidence to the contrary. FDA is of the opinion that only where scientific evidence demonstrates a known or potential problem of bioinequivalence should a manufacturer be required to establish that its product is bioequivalent to a reference product, which generally is the pharmaceutically equivalent product marketed by the holder of the original new drug application. In such a situation, individual products are presumed not to be bioequivalent until proven otherwise by adequate scientific studies.

Since the early identification of bioinequivalence problems, FDA has sought to ensure the bioequivalence of pharmaceutically equivalent drug products. The agency has undertaken two parallel activities: (1) The development of requirements for bioavailability testing and for demonstrating bioequivalence (now codified in 21 CFR Part 320), and (2) in anticipation of such requirements, a review of the evidence of bioavailability and bioequivalence in ANDA's for those pharmaceutically equivalent drug

products for which evidence of a bioinequivalence problem exists. This second activity has functioned well for the last 8 years and has provided considerable bioequivalence data and information from ANDA submissions. For these products there is a reliable basis for determining the bioequivalence of specific pharmaceutically equivalent drug products. In addition, much information has been obtained from FDA-supported research and from the scientific literature.

Because many of the issues raised by the comments were debated during the development of the above programs, FDA does not believe it is necessary to respond in detail at this time. The proposal (at pp. 2940–2943) discusses such earlier debates. FDA remains convinced that only where scientific evidence demonstrates a known or potential problem of bioinequivalence should a manufacturer be required to establish that its product is bioequivalent to a reference product. FDA believes that among the drugs that are currently marketed by more than one supplier, those drugs having known or potential bioinequivalence problems have now mostly been identified. For the remainder, bioequivalence can be presumed on the basis of pharmaceutical equivalence. As the Drug Bioequivalence Study Panel of the Office of Technology Assessment (OTA) concluded in 1974: "It is neither feasible nor desirable that studies of bioavailability be conducted for all drugs or drug products. Certain classes of drugs for which evidence of bioequivalence is critical should be identified. Selection of these classes should be based on clinical importance, ratio of therapeutic importance to toxic concentration in blood, and certain pharmaceutical characteristics." FDA believes it is neither in the interest of the public health nor a productive use of the nation's scarce research resources to require costly duplication of tests. A regulatory system that requires such duplicative testing is wasteful, anticompetitive, scientifically unsound, and ethically dubious.

19. One comment questioned FDA's presumption that compliance with dissolution standards ensures bioequivalence and, therefore, therapeutic equivalence. The comment said that in the current state of the art, the true test of effectiveness or equivalence of a drug product is the controlled clinical trials or, at a minimum, measurement of blood levels in man compared with those of an accepted reference product. Yet, the comment said, many products that were presumed to be equivalent to pioneer products in FDA's List have been subjected to neither test.

The agency believes that compliance with dissolution standards does help to ensure bioequivalence and therapeutic equivalence. The results of in vitro dissolution testing are a useful and reliable indication of uniformity in manufacturing a product, and the rate of dissolution does influence the bioavailability of the drug. The agency disagrees, however, that in vivo tests, clinical trials, or blood level determinations are required for every drug product to show effectiveness or equivalence. As explained in the response to comment 18 above, a manufacturer should be required to establish that its product is bioequivalent to a reference product only where scientific evidence demonstrates a known or potential problem of bioinequivalence, and, among the drugs that are currently marketed by more than one supplier, most drugs having bioinequivalence problems have now been identified. Thus, there is little or no scientific justification for involving human subjects and huge clinical resources to test a large number of drugs for which there is no evidence of bioavailability problems, or to reprove the safety and efficacy of an active ingredient which is already firmly established as safe and effective. In addition, unnecessary human testing cannot be ethically justified. It should be noted that in vivo tests are imposed for drugs having documented or potential bioequivalence problems.

20. One comment said the net number of drugs included in the List that are realistically eligible for source selection by the pharmacist at retail is only 134, or about 14 percent of the entire List. The comment noted that over half of these items are designated as "AB", meaning that FDA at some point thought they presented questions of bioequivalence and sought additional data from the manufacturers. These figures are significant, the comment argued, because FDA has said that relatively few drugs have inequivalence problems. In fact, the comment argued, the agency's own list of potential problem drugs constitutes more than half of the multisource market represented in the List. The comment also said that since so many multiple-source drugs are designated as "AB", FDA should make available the information that prompted a conclusion that these drugs are equivalent.

The agency advises that the purpose of the Approved Prescription Drug Products List is to provide a list of prescription drug products that FDA has had the authority and opportunity to evaluate for safety and effectiveness. In addition, the List contains evaluations of therapeutic equivalence for these approved drug products. In developing the List, FDA evaluated for therapeutic equivalence only multisource drug products, i.e., those pharmaceutical equivalents available from more than one manufacturer, since those are the only products that are eligible for source selection by health-care professionals. As stated in the response to the first two comments in this part of the preamble, FDA believes that among multisource drugs, most drugs having known or potential bioinequivalence problems have now been identified. For the remainder, bioequivalence can be presumed on the basis of pharmaceutical equivalence. In publishing the List, FDA is not claiming that all drug products are therapeutically equivalent or that all products are bioequivalent. As indicated by the comment, many drug products in the List are coded as therapeutically inequivalent, and many of these are so designated because of bioinequivalence problems. FDA's contention is that it has studied and is continuing to study bioavailability/bioequivalency among the nation's drugs and, based on information available to the agency, it is now able to evaluate the therapeutic equivalency of all multiple-source drug products that the agency has approved through the new drug approval process or the antibiotic certification process. In addition, FDA will revise these evaluations whenever warranted by new information, including bioavailability/bioequivalency data.

Regarding the comment that FDA should make available the information upon which it based its conclusion that "AB" drugs are therapeutically equivalent, the agency believes that the List, the preamble to the proposal, and this preamble to the final rule provide sufficient explanation and background for FDA's determinations of therapeutic equivalence. The agency does not believe it is either necessary or practical to include in the List the complete data that were reviewed by FDA scientists to determine the therapeutic equivalency of drug products on the List.

21. One comment said that because the List names 54 more drugs as having bioequivalence concerns than were named in the 1976 list of drug products with bioavailability problems, popularly known as the "Blue Book," inequivalence should be assumed in the absence of proof to the contrary. The

comment also noted that 11 products previously listed as "approved" in that publication are excluded from the List.

The agency disagrees that this increase in the number of drug products listed as having bioequivalence concerns is due entirely to previously unanticipated bioequivalence problems. The publication referred to (HEW Publication No. FDA/76-3009; see the Federal Register of February 5, 1976 (41 FR 5339)) included a list of drug products with known or suspected problems of bioinequivalence which were subject to approved new drug applications. That list excluded post-1962 drug products, DESI drugs requiring a full NDA as a basis of approval, controlled-release and enteric-coated products, and antibiotic products. Of the 54 drugs mentioned by the comment as being included in the 1979 List but not in the 1976 list, 24 were antibiotics which were excluded because oral antibiotics had undergone in vivo testing for approval and certification; 12 were post-1962 drugs; one (phenytoin) was reported missing from the 1976 list but actually was included; one (chlorotrianisene) was incorrectly coded as "BP" in 1979 List and should have been coded as "AA"; two were DESI drugs requiring a full NDA and thereby excluded from the 1976 list; and six were found inequivalent due to reasons other than bioequivalence. This leaves the following eight bioavailability-problem drugs which were included in the 1979 list but were inadvertently overlooked in compiling the 1976 list: Colchicine-probenecid (BP), medroxyprogesterone acetate (BP), prednisolone acetate (BP), testosterone (BP), fluoxymesterone (BP), amitriptyline (AB) and (BP), sulfamethoxazole (AB) and (BP), sulfamethizole (AB).

Regarding the comment which noted that 11 drugs were included in the 1976 list as approved but are excluded in the 1979 List, the agency advises that the marketing of most of these products has been discontinued by their manufacturers. Two of these 11 drugs, digitoxin and digoxin, are not included in the 1979 List and are specifically mentioned in the 1976 list as not requiring an NDA because of their "old drug" status. In summary, the 11 multiple-source compounds which are identified in the 1976 list as being approved, but which are not included in the 1979 List are: Aminosalicylic acid tablets, bendoflumethiazide tablets, and paramethasone acetate tablets—included in the 1979 list as single source drugs; potassium aminosalicylate powder and tablets—the powder is coded "AA" in the List, and the tablets are now single source; digoxin tablets and digitoxin tablets—the injectable form is on the list, and the tablet form is not the subject of an approved application and is therefore excluded from the 1979 List; benzoylpas calcium powder, calcium aminosalicylate granules and tablets, dienestrol tablets, sulfamethoxypridazine tablets, and sulfamethoxypridazine acetyl oral suspension—all have been discontinued by their manufacturer.

22. Another comment said the definition of "pharmaceutical equivalents" should require that the products contain the same inactive ingredients or that they be produced by the same manufacturing methodology or technique. The comment explained that manufacturing involves the process and the technique of production as well as the selection of so-called inactive ingredients to achieve the predetermined objective of the dosage form. Relatively minor alterations of any of these elements can influence the therapeutic effect of the product. One of the examples of this given by the comment is that magnesium stearate is on the generally recognized as safe (GRAS) list as a safe ingredient; however, when inappropriately used in a product formulation it can totally prevent absorption of a drug entity and ultimately lead to therapeutic failure. The analysis for safety is not sufficient to assume therapeutic equivalence. The comment also noted that FDA acknowledged in the definition of bioavailability that variations in inactive ingredients or manufacturing methodology or technique can result in variations in product performance.

Although FDA agrees with many points in this comment, the agency's experience with reviewing inactive ingredients does not support the statement that it is necessary and appropriate for "pharmaceutical equivalents" to contain the same inactive ingredients or to be produced under the same manufacturing method or technique. Inactive ingredients and manufacturing methodology are extremely important. Through the new drug approval process, FDA has the opportunity to review the proposed formulation and manufacturing procedures. The fact that they are not identical from manufacturer to manufacturer is one of the fundamental reasons why FDA has limited the List of drugs to "approved" drug products. The agency reviews inactive ingredients through a variety of mechanisms including the evaluation of individual inactive ingredients to ensure safety and the review of formulation information in new drug applications to ensure that appropriate ingredients are used. In addition, the agency imposes bioequivalence study requirements on drugs where there is reason to believe different formulations (of inactive ingredients) would pose bioequivalence problems.

23. One commenter said that during his service on the USP Committee of Revision the most serious problems encountered were those of FDA's concern with violations by substitution of potent medicaments with lower-cost, life-endangering substances that were both chemically and pharmaceutically equivalent, and in a sense even bioequivalent. Two examples of this substitution were: (1) The substitution of Cyanocobalamin (vitamin B^{12}) with an "equivalent" amount of cobalamin concentrate in high-potency injections which, because of protein and other impurities in the concentrate, produced shock in the patient and then death; (2) the substitution of reserpine with an "equivalent" amount of Rauwolfia extract, which produced side effects more serious than those of the potent but useful reserpine.

The agency believes that the comment has confused two terms that were defined in the proposal. The examples cited by the comment do not fit the definiton of "pharmaceutical equivalents." Cyanocobalamin and cobalamin concentrate as well as reserpine and Rauwolfia extract are not drug products that contain identical amounts of the identical active drug ingredient, i.e., the same salt or ester of the same therapeutic moiety in identical dosage forms. Rather, they are "pharmaceutical alternatives," i.e., drug products that contain the identical therapeutic moiety, or its precusor, but not necessarily in the same amount or dosage form or as the same salt or ester. FDA does not evaluate the therapeutic equivalence of pharmaceutical alternatives.

24. One comment questioned FDA's position that therapeutically equivalent drug products may vary in certain respects such as color, taste, shape, or packaging without affecting their equivalence. The comment argued that each of these characteristics, if changed in an NDA-approved product, would require a supplement to the NDA supported by bioequivalence and stability data. The comment noted that stability is crucial to the integrity of the drug entity and to the release characteristics of the drug from the drug product. In addition, changes in disintegration and/or dissolution rate can adversely effect the bioavailability

of the product. The comment said it is essential to define the ways in which drug products vary because these variations may directly affect compliance with therapeutic regimens.

The agency notes that the proposal explained that drug products that are therapeutically equivalent may still vary in characteristics such as color, shape, taste, or packaging. Because of this, patients may not perceive such drug products as identical or equally acceptable and, thus, it cannot be said that they are substitutable or interchangeable in all cases. FDA believes that in such cases the practitioner, in prescribing and dispensing drug products, should consider the unique characteristics, needs, or problems of the patients. However, so long as there exists this professional regard for the individual patient, FDA believes that if one therapeutically equivalent drug product is substituted for another, there is no substantial reason to believe that the patient will receive a drug product that is different in terms of the therapeutic effect intended.

FDA agrees with the comment that improper packaging may affect drug stability and, thus, the bioequivalence of drug products. This is taken into account in the NDA and ANDA approval process. In addition, supplemental requirements for these changes and whether bioavailability data or stability data are required in the supplement are covered in §§ 314.8 and 320.21 of the regulations.

25. One comment disagreed with FDA's statement that internal manufacturing standards used to provide greater patient convenience or patient acceptance of a drug product do not relate to the safety and effectiveness of the drug product but are considered pharmaceutical elegance. The comment argued that patient compliance is often related to patient convenience and the acceptance of a drug product and that patient compliance is directly related to the actual safety and effectiveness experienced with any drug therapy. The comment said that FDA has not sufficiently recognized the importance of patient compliance in the actual effectiveness of ingestible products, especially in light of FDA's recent reversal of its position that fasting versus with-meals labeling differences between E-mycin and the generic erythromycin does not defer the establishment of therapeutic equivalence evaluations for maximum allowable cost (MAC) purposes. Another comment disagreed with FDA's statement that manufacturers who adopt specifications beyond those needed to reasonably ensure drug product quality do so for the purpose of elevating product "elegance" and that such additional standards do not necessarily produce a "better" product. The comment cited FDA's argument in the *Lannett* case, i.e., "Everyone is aware that a dozen different chefs can use the same ingredients, the same recipe, and employ the same enthusiasm, but produce a dozen different versions of what should be the same meal. No less is true of drugs, particularly drugs which present bioavailability problems * * * Variations in manufacturing processes, equipment, storage, and inactive ingredients may and do give rise to dissimilarities among products * * *." The comment contended that FDA's argument in *Lannett* is compelling and should not be ignored at this time.

The agency agrees that patient compliance is often related to patient convenience and the patient's overall acceptance of a drug product. In addition, the degree to which a patient complies with the prescribed drug therapy will obviously be a factor in how effective that drug product will be. The agency also believes, however, that bioequivalent drug products which have standards beyond those required to establish their safety and effectiveness and bioavailability may have distinguishable differences in appearance, taste, and so on. As discussed in the proposal (at p. 2940), these differences may result in one product being preferred over another, but it would not be a "better" product in the sense that it is more effective or safe.

The agency believes that the comment is incorrect in contending that a MAC was not established for erythromycin-base tablets because of a recognizable difference in labeling, and that this could affect patient compliance and product performance. An MAC was initially recommended by FDA because all manufacturers of these dosage forms demonstrated the bioavailability/bioequivalency of their product through appropriate in-vivo studies. The agency reversed its position after a review of data submitted by the Upjohn Co. which showed that its enteric-coated erythromycin-base product provided significantly higher blood levels when administered in the presence of food than under fasting conditions. Perhaps the comment was referring to erythromycin stearate tablets. As the agency noted in the preface to the List, some firms were able to show that their product performed satisfactorily when administered shortly before meals and therefore was labeled to reflect that information. However, erythromycin stearate is much more adversely affected by food than is erythromycin-base enteric-coated drug products and, when administered shortly after food intake, is marginally acceptable. On this basis, FDA stated in the preface to the List that optimal product performance is achieved when erythromycin stearate is given under fasting conditions, and recommended that all products be so administered. Under these conditions, all products have been demonstrated to be bioequivalent.

FDA also disagrees with the comment's reference to the *Lannett* argument. In *Lannett*, the agency was concerned with firms producing a product without an approved new drug application. The comment apparently interpreted the quoted portion of the *Lannett* argument to mean that the agency does not believe that manufacturers under any circumstances can produce an equivalent drug product even when using the same ingredients. That interpretation is incorrect. The new drug application system is designed to ensure safe and effective drugs as well as comparable drug product performance, regardless of differences in inactive ingredients. Standards beyond those needed for safety, effectiveness, and bioavailability go to that product's pharmaceutical elegance and quality.

26. One comment said that FDA's position on the value of compendial standards in ensuring multisource product equivalence is inconsistent with that argued in the *Lannett* case. In *Lannett*, FDA stated that "only specially designed tests on each manufacturer's product rather than standards set forth in recognized compendia" can determine whether a me-too drug product is bioequivalent to the pioneer drug. However, in support of the 1979 List, FDA stated: "For these reasons, it is appropriate to conclude that current compendial and antibiotic standards and similar standards in new drug applications provide a reasonable basis for evaluating whether two or more drug products are pharmaceutically equivalent and thus may be therapeutically equivalent."

The agency has not been inconsistent with regard to the importance of compendial standards. The position of the manufacturer in the *Lannett* case was that its products met compendial standards and that nothing more was needed to ensure product quality and performance. The agency's position is that compendial requirements alone will

not ensure acceptable bioequivalence performance and that application standards are therefore essential to ensure bioequivalence. Where bioequivalence is not an issue, compendial requirements are important in ensuring product quality.

27. One comment disagreed with FDA's statement that the compendia have made significant improvements since the 1974 OTA report (e.g., the adoption of dissolution standards). The comment stated that pharmaceutical scientists have shown that much remains to be done with equipment and procedures before reproducible dissolution standards can be established.

The agency believes that significant improvements have been made in the compendia since the 1974 OTA report. One of the more notable accomplishments is that 25 dissolution standards were added to the *U.S. Pharmacopeia* (USP) (from 7 in 1970 to 32 in 1975), and 4 were added to the *National Formulary* (NF) (from 5 in 1970 to 9 in 1975). A somewhat wider application of dissolution requirements was made in the 1980 edition of the USP/NF. The agency recognizes that the reproducibility of dissolution testing has posed difficulties with some drugs. However, extensive assistance for dissolution testing and training programs for the paddle method provided by the agency's National Center for Drug Analysis have done much to improve this situation. The agency believes that the USP has been moving forward by developing improved equipment specifications and calibrators that are more precise and better defined than those previously used.

28. Another comment disagreed with the statement in the proposal that individual manufacturers who use standards exceeding those of the compendia refuse to make such standards public. The comment contended that improvement in test procedures developed by innovative companies are often used by innovators before their general use simply because of the substantial "compendial lag" that exists from the time a new test is submitted until it becomes official in the compendia.

Consistent with the statement in the proposal, FDA is aware of examples where manufacturers have failed to provide to the USP all of the specifications they use for producing a drug substance or product. However, the agency recognizes that improved test procedures may be used by innovators before their general use or before their adoption by the compendia. The necessary validation and review procedures that must be accomplished before new test procedures can be adopted officially and required of all manufacturers of a drug product require considerable time.

29. One comment stated that the proposed therapeutic equivalence evaluations incorrectly assume that certain drug products approved on the basis of less-than-full NDA's will perform in the same fashion as their fully approved counterparts.

The agency believes that the approval of drug products through the ANDA process is a valid basis for therapeutic equivalence determinations. The agency disagrees with the argument that the ANDA approval process is less demanding than the NDA approval process, and that product quality is less reliable among drug products covered by an approved ANDA. As explained in the proposal, an ANDA is authorized instead of a full NDA only after a decision has been made through the DESI review process that further clinical studies demonstrating the safety and effectiveness of the product are unnecessary. FDA requires that the person submitting an ANDA for a product demonstrate that the product is bioequivalent to the innovator's product, or in certain cases to a reference standard, unless the person submitting the ANDA can demonstrate that the bioavailability of its product is self-evident, or the agency decides that bioavailability is unimportant to the achievement of the product's intended uses. Because the safety and effectiveness of an ANDA's drug was previously demonstrated, and because of the bioequivalence requirement, it is clear that products approved through the ANDA process will perform in the same fashion as their counterparts approved through the full NDA process. Although some products were approved through the ANDA process before the bioequivalence requirements were implemented, FDA believes that it would be unnecessary and wasteful to now require proof of bioequivalence of all these products when there has been no documented evidence of or potential for bioinequivalence. For those products that do present known or potential bioequivalence problems, FDA can require bioavailability data at any time. FDA will not evaluate as therapeutically equivalent any products with a known or potential bioequivalence problem.

30. One comment stated that opinions vary on the inferences to be drawn from the existence of an approved ANDA based on the requirements for approval, and suggested that additional information is needed to help evaluate the strength of the inferences FDA draws from mere ANDA approval. Because the ANDA procedure makes little or no contribution to assurances about equivalence, the comment stated, the agency has an obligation to more precisely inform the public about what products on its List actually have bioavailability data on record. The comment said that FDA should supply a list of products showing (a) those for which a bioequivalence requirement was imposed by FDA, (b) those ANDA's which included in vivo bioavailability data, and (c) those for which FDA imposed a bioavailability requirement that was subsequently deferred. In addition, FDA should make public (1) the statistics relating to chemical inequivalence uncovered by the agency's program which tests categories of drugs on the basis of therapeutic importance, volume of usage, past quality problems, and other parameters, (2) the frequency and percentage of bioequivalence problems uncovered through FDA-funded clinical studies, and (3) any data the agency has to support its position that there are very few bioinequivalence problems among marketed multi-source products.

The agency believes, as explained in the respose to comment 29 above, that the ANDA procedure does contribute to assurances of therapeutic equivalence. In addition, the List provides the information called for by this comment. In regard to item (a) above, the List identifies all active ingredients and dosage forms that the agency believes pose actual or potential bioequivalence problems and identifies which firms have completed bioequivalence studies for these drug products. In regard to item (b) above, the List provides information as to which new drug applications have been accompanied by in vivo bioequivalence studies for those drug products. In regard to item (c) above, the List identifies those situations where the agency believes that a firm should demonstrate the bioequivalence of its products but has not yet done so. The information that the comment suggests that FDA make public, i.e., items (1), (2) and (3) above, are available from various sources. The data relating to chemical inequivalence referred to under item (1) of the comment is already available to the public under the Freedom of Information Act. The frequency and percentage of bioequivalence problems uncovered through FDA-funded studies has been publicized through publications in newsletters and scientific journals by the investigators who performed these studies. The data on which the agency

based its conclusions regarding the extent of bioinequivalence problems among marketed multisource products are referred to at length in the proposal (at pp. 2941–2943).

31. In the proposal, FDA explained that it assures the quality of marketed generic drug products through its authority to require premarketing approval of an ANDA that contains information about the manufacturing processes, ingredients, and labeling to be used by each firm marketing the drug. However, one comment contended that the *Lannett* decision has shown this assumption to be erroneous because FDA conceded that each of the drugs involved in that case was generally recognized as safe and effective as a generic entity, but the agency maintained that the individual product formulations were new drugs for which prior approval was required. The comment noted that the court rejected FDA's argument, and held that *Lannett's* products were not new drugs within the meaning of the act. The comment said that the agency could not compel *Lannett* to submit manufacturing and quality data for FDA's review and approval before it commenced marketing. The comment concluded that, under the *Lannett* holding, FDA can no longer effectively require that persons wishing to introduce generic products into the market first obtain approval of their manufacturing and quality control capabilities through the ANDA process.

The agency disagrees that, under the *Lannett* holding, it can no longer effectively require that persons wishing to introduce generic products into the market first obtain approval through the ANDA process. FDA continues to maintain that the language in *Lannett* regarding this issue was "dicta," and that the Court of Appeals for the Third Circuit held only that the district court incorrectly concluded that *Lannett* had not waived its right to an administrative hearing on the proper classification of its drugs. The Solicitor General decided not to seek certiorari to the U.S. Supreme Court in *Lannett* because such a petition could seek review only of the actual decision of the court of appeals, with which FDA does not disagree, rather than a review of the "dicta" in the court's opinion, with which FDA does disagree.

Subsequent to the *Lannett* decision, a different appellate court strongly supported FDA's position that generic copies of previously approved drugs are subject to premarketing approval. *Premo Pharmaceutical Laboratories, Inc.* v. *United States*, Nos. 79–6226, 79–6185 (2d Cir. July 29, 1980). FDA is continuing to require premarketing approval for generic drug products and believes that, if needed, the Supreme Court will review this issue. It should also be noted that only those drug products for which FDA has had the authority and opportunity to evaluate for safety, effectiveness, and quality are included in the List. Thus, in light of *Lannett*, the List is especially important because it enables physicians and pharmacists to identify FDA-approved drug products for selection.

32. Two comments said that one of the most important criteria established by FDA in judging whether or not two products can be considered equivalent in the manufacturer's record of compliance with FDA's Current Good Manufacturing Practice (CGMP) regulations. The comments said, however, that without accurate manufacturer compliance information, the List does not assure prospective users that the sources of supply listed are in fact performing competently. The comments pointed out that the appearance of a product on the List under the code "AA" or "AB" implies that the manufacturer is in compliance with CGMP regulations. But the comments said that an examination of the public record on the performance of suppliers whose names and products are listed in the New York generic drug product list does not support any general endorsement of the quality of listed firms. In some cases, the comments noted, the record shows major compliance failures that are recent and unresolved, despite the inclusion of both the company and the products inspected in the FDA List. The comments cited the following examples as taken from actual FDA inspection reports of Quality Assurance Profiles: Inspections at two of a firm's establishments revealed serious violations of CGMP requirements from August to September, 1978. On January 5, 1979, FDA issued its List including 10 of the firm's drugs. Four of those 10 had specifically been identified as not conforming to CGMP regulations. The comments said that on January 30, 1979, FDA issued to the firm a regulatory letter alleging that the August to September inspection findings were serious violations which, if not corrected, warranted further regulatory sanctions. The comments concluded that the FDA record demonstrated that the manufacturer was not in compliance with CGMP regulations when its products were placed on the List. The comments also said that there is at least one firm mentioned in the FDA List whose products were recently excluded by the New Jersey Drug Utilization Review Council from the State's generic drug product list. The firm's poor record of compliance with CGMP regulations was cited as the reason for the exclusion.

The agency agrees that compliance with CGMP regulations is necessary to assure batch-to-batch consistency in drug product quality and believes it has been successfully enforcing the CGMP regulations. Also, the agency substantively improved the CGMP regulations as published in the Federal Register of September 29, 1978. However, as indicated in the preface to the List, from time to time approved products—whether brand name or generic—may violate one or more requirements of the act. In such cases, the agency will initiate appropriate enforcement action to remove the violative product from the market. If the problem leading to the violation continues, FDA will undertake additional steps to eliminate the risk. Such regulatory action, however, is independent of the inclusion of products in the List. The sole criterion for inclusion of a marketed product in the List is its being the subject of an approved application. Marketed products will not be removed from the List until completion of FDA proceedings to withdraw approval of the product under section 505 or 507 of the act, as applicable. FDA believes that retention of a violative product on the List will not have any adverse health consequences because other legal procedures are available to the agency to prevent actual marketing of violative products.

It should also be noted that when there is a change in the information contained in FDA files concerning a multiple-source drug product that is on the List, there exists the potential that the drug product will no longer meet the criteria for therapeutic equivalence as initially evaluated. In this instance, FDA will reevaluate the drug's therapeutic equivalency by applying the current information to the criteria for therapeutic equivalence. If the reevaluation reveals that the listed therapeutic equivalence evaluation is no longer accurate, the evaluation will be revised accordingly.

33. FDA stated in the proposal that the latest revision of CGMP regulations would assure a high degree of batch-to-batch consistency of drug product quality. A comment contended that the extent to which CGMP regulations contribute to product uniformity among multiple sources is directly proportional to the uniformity of enforcement by

FDA's inspection programs. The comment claimed that inspection standards and frequency of inspection vary among different categories of manufacturers, and FDA inspectors vary considerably in their abilities to evaluate manufacturing and quality control standards. The comment also said that significant differences appear to exist in the enforcement practice of FDA's district offices. Another comment stated that CGMP regulations provide "minimum standards" and that a requirement of meeting minimum standards does not ensure the equivalence of multisource manufactured products.

FDA is aware of the need to achieve uniform enforcement not only of the CGMP regulations but in all of its compliance activities. The agency strives to meet this goal through a number of programs. For example, FDA has comprehensive training programs administered both nationally and regionally, such as its basic and advanced drug schools. These programs are designed to enhance the expertise of field inspectional staff and to promote a uniform approach to CGMP inspections. Uniformity is also promoted through the use, by headquarters and field personnel, of inspectional, compliance, and administrative programs in such staff manuals as the *Investigator Operations Manual*, the *FDA Compliance Programs Manual*, and the *Compliance Policy Guide Manual*. Uniform interpretation/application of the CGMP regulations is also promoted through headquarters-field communications, including periodic meetings of the staffs of the field districts and the Bureau of Drugs. In addition, the agency has a centralized review and approval process for all its regulatory actions.

The agency acknowledges that perfect uniformity of enforcement, as apparently envisioned by the commenter, is complicated by two unavoidable factors. First, no two cases of noncompliance with CGMP's are exactly alike. The type of response FDA may consider could therefore vary somewhat from case to case, and is based on such considerations as the severity and number of violations, the potential impact on drug product quality, safety, and effectiveness, the potential for a health hazard, and the effectiveness and promptness of any corrective measures. These considerations necessitate a certain amount of individual judgment, which is the second factor. Within the framework of established policies and procedures a certain degree of individual judgment must be exercised, from the observations of the field investigators to district managers to headquarters officials. The agency is convinced, however, that multiple levels of review incorporated in its compliance procedures are sufficient to counter any negative impact this factor may have on achieving the greatest possible degree of uniform enforcement. These multiple levels of review include the review of all proposed significant regulatory actions by the Bureau of Drugs, Office of the Commissioner, and the General Counsel before referral to the Department of Justice.

Regarding the frequency of FDA inspections, the agency acknowledges that some drug firms may, in fact, be inspected more often than others. Although the Federal Food, Drug, and Cosmetic Act requires at least biennial inspections of drug manufacturers, more frequent inspections may be made for a variety of reasons. For example, a firm's state of compliance may necessitate more frequent inspections to ensure that CGMP violations are corrected. The agency wishes to clarify, however, that not all FDA inspections involve comprehensive CGMP evaluations. For example, limited inspections may be conducted to obtain specific product stability data, to investigate consumer complaints, to collect samples and review production records under national surveillance programs, or to inspect drug products offered under contract to Federal agencies under the Government-Wide Quality Assurance Program. The agency believes that these inspections do not hinder uniform enforcement. In fact, uniform enforcement could be hampered if all firms were inspected with equal regularity, regardless of the circumstances.

Regarding the comment that the CGMP regulations constitute only the minimum current good manufacturing practice, the agency believes that when these standards are followed they provide a high degree of assurance of drug product quality. The agency wishes to emphasize, however, that compliance with CGMP regulations is only one of the factors which determines a finding of therapeutic equivalence. Pharmaceutical equivalence, bioequivalence, and adequacy of labeling are additional factors that are considered in determining a therapeutic equivalence evaluation.

34. One comment disagreed with FDA's contention that under section 507 of the act the monitoring of drug product manufacturing processes ensures batch-to-batch uniformity of individual product entities. The comment cited FDA as saying that from January 1974 through October 1978, 20,000 batches were submitted with the rejection rate averaging less than one-half of 1 percent. The comment said that FDA's argument in this area is misleading, and that antibiotic batch certification requires only a series of in vitro tests which, at best, ensure chemical purity, potency, and unit-to-unit dosage form chemical content. The comment said there is documented evidence of bioinequivalence of marketed products that have passed all FDA batch certification requirements (for example tetracycline, oxytetracycline, and digoxin). The fact that the rejection rate of antibiotic batches has averaged less than one-half of 1 percent for more than 4 years, the comment said, is hardly compelling evidence upon which to assess the relativity of batch certification to therapeutic equivalence. The comment said that the only conclusion which may be drawn from these data is that there is agreement between a particular manufacturer's assay and the assay of FDA's certification laboratory.

The agency believes that the antibiotic batch certification process does help to ensure batch-to-batch uniformity of antibiotic drug products. Generally, antibiotic batch certification requires a series of in vitro tests, and, at times, biological tests, to ensure chemical purity, potency, and unit-to-unit dosage form chemical content. When FDA becomes aware of a bioinequivalence problem with an antibiotic, it may require that the product meet dissolution test standards. The agency has already developed such required certification standards for tetracycline and oxytetracycline. When a bioinequivalence problem is detected, a dissolution standard is developed using a product for which FDA has clinical evidence of safety and effectiveness and blood level information. The dissolution test is then added to the monograph as a requirement for certification. It should be noted that in addition to the antibiotic batch certification process, FDA uses other mechanisms to control batch-to-batch consistency, namely, current good manufacturing practice regulations and FDA's monitoring of the drug supply in the marketplace.

35. The criteria for pharmaceutical equivalents include the requirement that the products "meet compendial or other applicable standards of identity, strength, quality, and purity." Two comments expressed the view that although FDA monitors marketed drug

products through its analytical laboratories and its field surveillance, it cannot assure the public that all products meet the applicable standards. The comments said recalls of drug products represent failures of the quality assurance system, and that in many cases those products have been used for patient care before the deficiency comes to the attention of the manufacturer or FDA. The comment noted that the *FDA Quarterly Reports* said that approximately 70 percent of the domestic human drugs examined and classified by FDA are found to be in compliance. Since a significant portion of the marketed drug products does not comply with regulatory requirements, the comment concluded, an assumption of therapeutic equivalence is unwarranted.

FDA is confident that drug products found to be pharmaceutically equivalent and bioequivalent will remain so and thus may be evaluated as therapeutically equivalent. In the proposal (at pages 2939–2947) the agency thoroughly explained its scientific and regulatory foundations for evaluating drug products as therapeutically equivalent. In addition to bioequivalence requirements, FDA controls batch-to-batch consistency through the new drug approval and antibiotic certification processes, the batch certification procedures, the CGMP regulations, and FDA's monitoring of the marketplace. This monitoring program involves a continuous effort to detect the occasional problems that may be associated with marketed prescription drug products and includes factory inspections, the Quality Assurance Program for Selected Marketed Drugs, the Drug Product Problem Reporting Program, the Antibiotic Post-Certification Sampling Program, the District-Initiated Sampling Program, the Government-Wide Quality Assurance Program, the Maximum Allowable Cost (MAC) Program, the Biopharmaceutics Research Program, manufacturers' reports of problems involving their own drug products, and manufacturers' reports of problems involving competitors' drug products. FDA believes that these diverse programs, each with different scope and purpose but somewhat overlapping perspectives on the prescription drug market, provide assurance that manufacturers and drug products deviating from established requirements will be detected with reasonable promptness. In addition, as explained in Part V below, the recent FDA *Analysis of Prescription Drug Recall Rates* showed that the recall rate for the population of drug products most likely to be the subject of drug product substitution was very low. This demonstrates that consumers, physicians, and pharmacists are very unlikely to encounter a multisource therapeutically equivalent drug product that will be the subject of a recall. Finally, as explained in the response to comment 32 above, regulatory action against violative drug products is independent of the inclusion of products in the List. Marketed products will not be removed from the List until completion of FDA proceedings to withdraw approval of the product under section 505 or 507, as applicable. However, FDA will revise its listed therapeutic equivalence evaluation if warranted by a change in the information in FDA files concerning a particular drug product.

36. One comment argued that in promoting drug product substitution, FDA has failed to consider the economic and public health aspects of "look-alike" drugs. The comment said the implications of "look-alikes" for patient safety are a serious concern: FDA recalls totaled nearly 2,000 over a recent 6-year period, and, according to the comment, the recall rate is many times higher for nonresearch-based manufacturers of generics than for research-intensive companies. The comment said that to the extent that lower-cost generic products are substituted for brand-name drugs, it is likely that generic drugs will have an ever-increasing share of the market, and it is reasonable to expect that the necessity for recalls, because of potentially dangerous mistakes, will increase proportionately. Furthermore, the comment said that with increased substitution, confusion by the consumer of manufacturer identity associated with "look-alike's" may be significant. For example, the comment said that consumers may think they have the brand name drug product, may use the brand name in referring to the look-alike, or may even mix the look-alike with the brand name product in the same bottle. Prompt manufacturer identification, the comment said, is essential to effective drug enforcement, and such identification can easily be delayed or even become impossible with look-alike's.

The agency disagrees with this comment. First of all, for the reasons set forth in the responses to comments 10 and 11 in Part II, FDA disagrees that the purpose of the List is to promote drug product substitution. In addition, the comment's reference to 2,000 recalls over a 6-year period mainly includes products which either do not require NDA's, or which require approved NDA's but which have been marketed illegally. Only about 1 percent of the 2,000 recalls involved approved drug products. It is thus invalid to assume that the approved drug product marketplace is filled with deficient drug products. The agency believes it is especially important, because of the many generic drugs available, whether or not they duplicate the appearance of brand name products, to publish a list of approved prescription drug products that meet FDA requirements and which identifies those products that are therapeutically equivalent, in order to help minimize the chance that products that are not therapeutically equivalent or that are unapproved are used in filling prescriptions. The agency recognizes the need for consumers to be informed when drug substitution occurs in order to prevent them from receiving another product without their knowledge. However, the agency has no evidence to warrant changing its position that the substitution of approved therapeutically equivalent "look-alike" products does not pose any significant problem.

37. One comment said the findings and recommendations of the 1974 OTA Report are presented in a selective, unbalanced, and self-serving manner by FDA in the proposal and that in citing quotations from Congressional hearings on the OTA Report, FDA quotes only a few select favorable statements. Furthermore, the comment said that Recommendation 11 of the OTC Report, which called for an official list of "interchangeable" drug products, was contingent on "considerations of current technology and of technology that we believe could be developed within the next few years." The comment stressed that among the deficits listed in the 1974 OTA Report were those associated with "current standards, particularly compendial standards." These standards, said the commenter, are still deficient, dissolution testing standards remain inadequate, there continues to be a compendial lag in adoption of new methodology, and manufacturer inspections are sporadic. The comment said that if FDA claims it has met the OTA's prerequisites to the preparation of a list proposed under Recommendation 11, it should place its case before an appropriate outside group of pharmaceutical and medical scientists for evaluations.

The agency disagrees that any attempt was made to selectively quote, to FDA's benefit, the recommendations of the 1974 OTA Report. Its

recommendations have been a matter of public record since July, 1974. Recommendation 11, referred to by the comment, proposed the establishment of an official list of drug products evaluated for therapeutic equivalence. The completion of other FDA actions, as explained in the proposal, now makes it feasible for FDA to implement this recommendation. Regarding the comment that compendial standards and dissolution testing standards are deficient, the agency's response to comment 27 above refutes that assertion. In addition, the response to comment 28 above addresses the charge regarding a compendial lag.

38. A comment pointed out that FDA makes definitive evaluations about therapeutic equivalency while at the same time makeing several disclaimers of responsibility for any consequences of these evaluations. The following examples were given. (1) FDA makes no recommendation as to which products persons should purchase, prescribe, or dispense or which products whould be avoided. (2) Because therapeutically equivalent drug products may vary as to color, shape, taste, or packaging, patients may not perceive them as identical or equally acceptable, and for this reason FDA should not state that such drug products are substitutable or interchangeable in all cases. (3) It is sound and appropriate for FDA and the public to rely on the requirements of law, compendial standards, and the drug approval process; however, FDA does not require the public to rely on these regulatory controls or to accept this conclusion. (4) FDA's evaluations of therapeutic equivalence are not binding on any State, physician, pharmacist, or patient.

The agency advises that it did not make any of the statements cited by the comment as disclaimers of responsibility for consequences of therapeutic equivalence evaluations. The proposal pointed out in explaining the legal status of the List that it does not constitute an order or a rule, impose a requirement or restriction upon any person, interpret or apply the act in a manner that creates any obligation on any person, or make a recommendation as to which products persons should purchase, prescribe, or dispense, or conversely, which products should be avoided. Further, because FDA obviously is not the prescriber or the dispenser, it is not in a position to determine whether different drug products are substitutable or interchangeable for use by a particular patient; this judgment rests with the practitioner or dispenser, who, in prescribing and dispensing drug products, can take into consideration the unique characteristics, needs, or problems of the patient. This responsibility is explained in the preface to the List under the heading "E. Precautions to Users of the List."

39. One comment suggested that FDA should publish a list of all prescription drug products marketed in the United States under existing regulations and summarize the specific regulatory standards that have been applied to the individual products and the degree to which producers and their products have complied with these standards. The comment said that such a list should include the following drug products: (1) "Grandfathered" drugs, (2) "old" drugs not subjected to DESI review, (3) "old" drugs subjected to, and passed by, DESI, (4) "old" drugs subjected to DESI but put in possibly effective, or ineffective status, (5) new drugs covered by NDA's or Form-5's, (6) new drugs covered by ANDA's or Form-6's, (7) drugs in interstate commerce but not currently in any of the categories, and (8) drugs in intrastate commerce and not subject to FDA authority. The comment also said FDA should make no representations concerning "equivalency" or "interchangeability".

The agency agrees that the availability of such a list would be desirable, but it does not agree that agency recommendations concerning therapeutic equivalence on drug products which are the subject of approved applications for safety and effectiveness should be withheld unless such a comprehensive list is available. Such a list would be extremely difficult to develop and keep current. Through publication of the List, FDA will make known those drug products it has reviewed and approved. The List represents the vast majority of prescription drugs used in this country.

IV. Specific Criteria Used in Preparation of List

40. Several comments objected to the exclusion of pre-1938 drugs from the List. The comments said that their exclusion was illogical and seriously restricted the usefulness of the List, since pre-1938 drugs represent the bulk of those drugs which are available from multiple sources. The comments also said that the pre-1938 drugs should be included in the List because most of these drugs are contained in the USP and thus are required to meet compendial standards of strength, quality, and purity. Therefore, it was stated, any pre-1938 drug for which compendial standards exist should be considered pharmaceutically equivalent and available for substitution unless there is evidence of a bioequivalence problem. One comment recommended that until pre-1938 drugs are included in the List, FDA should include prominent statements on the cover and title page explaining their exclusion.

The agency believes that pre-1938 drugs, including those in the USP, should be excluded from the List because these drugs are not the subject of approved NDA's. The List only contains information on products approved through the preclearance procedures of the act. FDA is able to evaluate as therapeutically equivalent only those drug products that the agency has had the authority and opportunity to evaluate and ensure for safety, effectiveness, and quality. The agency agrees, however, that pre-1938 drugs should be incorporated into the List once the information necessary to ensure their safety, effectiveness, and quality is available. The agency notes that the final version of the preface to the List states that pre-1938 drugs not subject to the premarket clearance procedures of the law are excluded from the List.

41. Comments also objected that drugs still being evaluated for effectiveness under the Drug Efficacy Study Implementation (DESI) were excluded from the List. These comments contended that neither the definition of pharmaceutical equivalence nor the definition of bioequivalence includes the concept of effectiveness and that bioavailability is not an issue in determining therapeutic equivalence. Thus, it was argued that the agency's assumption that pharmaceutically equivalent drug products are bioequivalent unless there is evidence to the contrary should also apply to DESI drugs that are pharmaceutically equivalent. The comments contended that this rationale has already been accepted by the Federal Government, because Butazolidin Alka, a drug presently listed as ineffective under DESI, was included in the List of Maximum Allowable Cost (MAC) drugs by the Health Care Financing Administration. The comments said that a drug may not be included on the MAC List if there is any regulatory action to establish a bioequivalence requirement, and the bioavailability issue is not considered in establishing a MAC drug. In publishing the List, the comments said that FDA should follow the same criteria, i.e., one of presumed bioequivalence, and the concept of bioavailability should not be considered.

As stated in the preface to the List, the agency has considered and rejected the option of including drug products still under review in the DESI process. The agency's position is that drug products still being evaluated for effectiveness under DESI should be excluded from the List until such time as the active ingredient or combination of ingredients has been fully evaluated and found to be effective. A primary question that must be answered before a DESI drug product may be fully approved for marketing is whether it is effective for its indications; only after this question has been answered does the secondary question of therapeutic equivalence become relevant.

FDA agrees that therapeutic equivalence theoretically may be possible for less-than-effective drugs. In addition, the agency agrees that bioequivalent and pharmaceutically equivalent drug products may be less than effective. But these factors have not been found to justify the agency's evaluation of the therapeutic equivalence of these drugs for inclusion on the List. At the same time, these factors do not prevent the agency from making a therapeutic equivalence evaluation for a drug for which the Pharmaceutical Reimbursement Board is considering establishing a maximum allowable cost. Phenylbutazone alka was included in the MAC program solely on the basis that at the time there was only a single manufacturer and distributor, even though the drug had been evaluated as less than effective, and administrative steps had been undertaken to remove the drug from the market. The comments were in error in stating that a drug may not be included on the MAC list if there is any regulatory action to establish a bioequivalence requirement. Many drugs for which a bioequivalence requirements is pending are included in the MAC program because FDA has assured the Phamaceutical Reimbursement Board that all current manufacturers of the drug have submitted adequate bioequivalence data to the agency.

42. Several comments said that the List identifies only "actual manufacturers" and unfairly discriminates against products marketed by distributors and relabelers who do not also manufacture the products they market. One comment maintained that the "failure of the List to include distributors keyed to each manufacturer will necessarily result in the users of the List generally perferring to deal with actual manufacturers or manufacturer/distributors since dealing with a distributor would require independent confirmation of the source of its drug product." Finally, a comment suggested that to assist the States in implementing their drug product substitution laws, FDA should require that drug product labels bear the name and address of the approved manufacturer.

The agency believes that the comments have misconstrued the basis on which drug firms are included in the List. The products in the List are identified by the names of the holders of approved applications, which are in most instances the actual manufacturers of the products, rather than by the names of the actual manufacturers themselves. This is because the application holder may have had its product manufactured for it by a contract manufacturer and may simply be distributing the product for which it has obtained approval. (A complete discussion of FDA's determination of "application holder" for purposes of the List can be found in the preface to the List under Part E, "Precautions to Users of the List".)

FDA does not believe that there is a feasible way at this time to maintain an up-to-date and complete list linking the products of each approved application holder with the distributors and relabelers handling those products. Products subject to an approved application are frequently manufactured for distributors, under the distributor's labeling, for marketing by the distributor. Because these distributors often shift their source of supply in the commercial marketplace without informing FDA, even if FDA were to attempt to expand the List to link distributors with holders of approved applications, it would not have ready access to the information necessary to do so.

The agency does not agree that the makeup of the List is such that users will necessarily prefer to deal with holders of approved applications rather than with distributors (i.e., those distributors who do not hold the approved applications for their products). The agency believes that in most cases the labels of products marketed by these distributors also identify (as the manufacturer or packer) the holder of the approved application for the labeled product. This label disclosure permits a would-be purchaser to relate the product to the List in a ready and convenient way. The agency encourages distributors to make the necessary disclosure on the drug product label to assist pharmacists, if they choose to substitute a therapeutically equivalent drug for the one prescribed, to select a drug product supplied by a listed holder of an approved application. Nonetheless, the agency may consider feasible alternatives that would identify distributors who are not the holders of approved applications.

It should be noted that although FDA would encourage labels to disclose voluntarily the name of the holder of the approved application for the product, the agency does not have authority to require such disclosure. The Federal law requires that a drug product label bear the name and place of business of the manufacturer, packer, or distributor (21 U.S.C. 502(b)(1)). The choice of which of these persons or which combination of these persons are to be identified is left to the labeler of the product and to the requirements of State law.

43. One comment stated that FDA should not evaluate as therapeutically equivalent drug products that infringe patents because including such drugs on the List violates constitutional principles as well as patent laws and discourages discovery and disclosure of new inventions. Another comment said that a pharmacist relying on the List may be sued for selling an "unlicensed" generic product. Therefore, the List should mention that FDA does not consider the patent status of drugs.

The patent laws do not have any bearing on the enforcement of the Federal Food, Drug, and Cosmetic Act, and the agency does not consider these laws when reviewing new drug applications and making drug product approval decisions. If a firm submits a new drug application for a patented drug, FDA reviews the application without considering any patent issue. If the application is approvable, it is approved. However, to inform the public of this policy the agency, as requested by the comment, will include a statement in the preface to the List to the effect that the patent status of a drug is not considered by the agency in its review of applications to market drugs.

44. One comment objected to the inclusion of single-source drugs in the List. The comment contended that the presence of single-source items is misleading and could even cause prescribing or dispensing errors. The comment said that physicians or pharmacists might assume, unless they carefully check the List, that different dosage forms or strengths of a drug under a single-source heading are equivalent.

The agency disagrees with the comment and believes that including single-source drug products approved for safety and effectiveness adds to the completeness of the List. The agency is confident that, as a result of their highly

technical and specialized training, practitioners and pharmacists will not assume that different dosage forms or strengths of a drug under a single-source heading are equivalent.

45. One comment noted that the Task Force of the American College of Neuropsychopharmacology's final report, which was recently prepared with the help of FDA staff members, deals with the question of equivalence among different versions of psychotropic drugs and recommends the establishment of criteria for developing bioequivalence data within this product class. According to the comment, the report said that bioinequivalence may occur because of the improper substitution of psychotropic drugs after the repeal of anti-substitution laws. The comment noted that many drugs on the List are psychotropic drugs and are designated as "AA", eligible for substitution. The comment said that the possible hazards to patients who rely on these products could be significant.

The agency agrees with the Task Force of the American College of Neuropsychopharmacology that it would be undesirable to use multisource pyschotropic drug products interchangeably unless their bioequivalence had been established. The Task Force, however, did not address all psychotropic drugs, but specifically addressed the tricyclic antidepressants and phenothiazines. These drugs have been coded to indicate a known or potential bioequivalence problem. The agency has published proposed bioequivalence regulations for these two drug classes requiring both in vivo bioavailability studies and in vitro dissolution testing to establish bioequivalence. (The proposal for tricyclic antidepressants published in the Federal Register of February 17, 1978 (43 FR 6965); the proposal for phenothiazines published in the Federal Register August 26, 1980 (45 FR 56832).)

46. One comment objected to FDA's position that there may be variations in the labeling instructions for drug administration among pharmaceutically equivalent products and that judgments of therapeutic equivalence can be made only when each product is taken in accordance with its particular labeling directions. The comment argued that because these products are listed as being therapeutically equivalent, they will be considered interchangeable.

The agency disagrees. As stated in the proposal, there may occasionally be variations among pharmaceutically equivalent products in the labeling instructions on dose and administration. For example, a particular brand of an antibiotic might require administration on an empty stomach, while another brand might permit administration without regard to food intake on the basis of blood level studies done after administration in the presence of food. Thus, an FDA evaluation of therapeutic equivalence applies only when these products are taken in accordance with labeling directions for the particular product. The preface to the List, Part E, "Precautions to Users of the List," explains this to practitioners. In addition, the agency's explanation of therapeutically equivalent drug products in this document, in the proposal, and in the preface to the List has included the phrase "when administered to the patient under the conditions specified in the labeling."

47. A few comments objected to FDA's procedure of permitting bioequivalence and therapeutic equivalence to be demonstrated by testing a single lot, especially in the use of controlled-release dosage forms. The comments argued that the results of a test on a single lot are not a sufficient basis for assuming continued equivalence in subsequent manufacturing operations. The comments said that FDA must evaluate a manufacturer's ability to produce bioavailable products on a sustained, on-going basis.

The agency believes that it is neither feasible nor necessary to conduct bioequivalence studies on individual lots of a product. Lot-to-lot uniformity can be assured by in vitro dissolution testing when specifications, manufacturing procedures, and controls are identical for all lots. When deficient dissolution performance or lot-to-lot variability is identified through in vitro dissolution testing, the product will be coded as therapeutically inequivalent even though acceptable bioequivalence has been demonstrated in a single lot. This is the procedure that was followed with imipramine and chlorothiazide tablets.

48. One comment stated that the proposal to restrict maximum allowable drug content variations to 1 percent should be reevaluated. This reevaluation should consider topically, orally, and insertion-administered drug products that are being developed or are on the market that are designed not to release their entire contents from their drug reservoirs during their prescribed dosage interval. The actual potency of these products, the comment said, is not normally the labeled drug content but rather, the labeled rate of drug release for the period of administration. The comment suggested that a more comprehensive format for the List be developed, allowing for the display of release rates and durations as well as total drug contents.

The agency notes that the maximum allowable content variation of 1 percent deals with equivalence among products having the same active ingredient but in somewhat different amounts. The agency uses a criterion of equivalence for products where labeled strengths do not vary by more than 1 percent. Most marketed drug products which vary in labeled amount of active ingredient will vary by more than 1 percent and are therefore considered, by the agency, to be pharmaceutical alternatives, not pharmaceutical equivalents. For example, butabarbital sodium tablets, 15 milligrams (mg) and 16.2 mg, are pharmaceutical alternatives because they vary in labeled amount of active ingredient by more than 1 percent. These two products would not be considered therapeutically equivalent because they are not pharmaceutical equivalents due to the differences in labeled amount of active ingredient. Specialized products in which the drug is released from the dosage form at a controlled rate have been evaluated separately using a criterion of equivalence that considers rate of release from the dosage form.

49. One comment said that FDA should consider how it might communicate potentially meaningful differences in the extent and rate of drug bioavailability over the period of administration for similar controlled-release products. This could be in the form of a quantitative performance or merit index that would provide a method of quantitatively discriminating between individual controlled-release products on the basis of how well these products were able to approach the constant maintenance of a target serum drug level. The comment said that an index would allow FDA to include the quantitative index value for each controlled-release product in future lists. This would provide the prescribing physician or dispensing pharmacist with a means to select the best drug bioavailability profile for each patient and, the comment said, it would ensure that similar controlled-release drug products with differing performance characteristics would not be inadvertently considered therapeutically equivalent.

While this commenter describes interesting criteria for evaluating controlled-release drug products that may deserve further consideration, the agency believes the suggestion is not currently relevant to the List. With regard to controlled-release drug

products, the proposal stated (at p. 2951) that these dosage forms are subject to bioavailability and bioequivalence differences primarily because different firms developing controlled-release products for the same active ingredient rarely employ the same approach to formulating their controlled-release products. The agency believes that different controlled-release dosage forms containing the same active ingredients in equal strengths should not be evaluated as bioequivalent unless equivalence between individual products has been specifically demonstrated through appropriate bioequivalence studies.

50. One comment suggested that an additional code should be added to the List to indicate drug products that are being considered therapeutically inequivalent for reasons of potential differences in a patient's compliance with a prescribed dosage regimen or because of differences in the labeled dosage regimen. The comment stated that all treatment regimens are not likely to be followed equally by self-medicating patients, and some drug products have particular characteristics that can either promote or impede patient compliance with a prescribed treatment regimen.

The agency believes that differences in patient compliance between brands should be minimal because the evaluation of products for therapeutic equivalence has been limited to those involving the same active ingredient, strength, and dosage form. Perhaps the comments were concerned that agency recommendations would extend to comparing controlled-release products or specialized dosage forms with conventional dosage forms. It should be apparent to any reader of the List that this has not occurred. Moreover, except in situations where product equivalence has been demonstrated, comparisons have not been made between controlled-release products. The agency has identified in the proposal actual or potential issues associated with legitimate significant differences between conventional dosage forms of pharmaceutical equivalents. Because each of these situations is unique and needs to be discussed individually, the agency does not agree that a new code would serve any purpose. Although the agency agrees that patient compliance warrants concern, it does not believe that the List is the proper vehicle to attempt to improve patient adherence to treatment regimen.

51. One comment noted that an alphabetical listing of the top 200 drugs for 1977 appeared in the April 1978 issue of *Pharmacy Times*. The comment said that these top 200 drugs represented 68.8 percent of all prescriptions, and that 53 of the top 200 drugs are not listed in FDA's proposed List. The comment said that for the generic copies of these 53 drugs, FDA is unable to make a determination of therapeutic equivalence. The comment also said that these 53 drugs are among the most well known prescription products in America.

The agency notes that the comment named only 16 of the 53 drugs it referred to. These 16 drug products are either pending resolution of safety or effectiveness questions and are listed in the appendix to the List, or are drugs marketed prior to 1938 that are not subject to the premarket clearance procedures of the law. Only those drug products fully reviewed and approved for safety and effectiveness by FDA are included in the List. The Drug Efficacy Study Implementation (DESI) process for 2 of the 16 drug products cited by the comment, Atarax and Aldactone, has recently been completed. These drugs were found to be safe and effective for their intended use and will therefore be included in a future supplement to the List.

52. One comment said that the determinations of therapeutic equivalence are unaccompanied by findings sufficient to apprise affected persons of the bases for such determinations. The comment said that in some cases (e.g., hydralazine), there appears to be no data to support FDA's determinations. The comment said the following information is needed to explain FDA's determinations:

a. For drugs coded "AA": whether such coding is the result of,

(1) Actual in vivo bioequivalence studies,

(2) In vitro bioequivalence studies correlated to in vivo data,

(3) Uncorrelated in vitro data (dissolution, for example),

(4) Data on only some drugs from which the equivalence of others has been presumed,

(5) Data on only one drug product from which the equivalence of others has been presumed, or

(6) The lack of any reports to FDA of equivalence problems.

The comment further said these drugs should be accompanied by information as to which of the "therapeutically equivalent" drugs had undergone the studies required in a full NDA and which drugs had undergone no clinical studies, as well as which drugs had been the subject of actual in vivo bioavailability studies. Other comments said that health professionals should know for which "AA" drugs therapeutic equivalence has been assumed and when it has been demonstrated.

b. For drugs coded "AB": the bioavailability study protocol followed by each manufacturer in demonstrating the bioequivalence of his drug product.

c. For drugs coded "BP": sufficient differentiation between those drug products approved on the basis of clinical studies and those approved without submission and review of such studies. The comment said that merely telling physicians and pharmacists that drug products may not be of equal efficiency without telling them which of those drug products had, in fact, been proven effective in humans may create the misleading impression that all drug products listed as "BP" are of suspect bioavailability or effectiveness. Other comments said that information concerning which "BP" drugs are supported by a full NDA, and is the basis for the determination of safety and effectiveness, should be known to the health professional.

The agency believes that the determinations in the List are accompanied by sufficient explanatory data. A drug product identified with an "AA" code in the List is a pharmaceutically equivalent product with no known or suspected bioequivalence issue. These products have been approved for safety and effectiveness by FDA, manufactured in accordance with current good manufacturing practice regulations, and meet compendial standards. The basis for FDA's evaluation leading to the "AA" code for drug products is discussed in detail in the preface to the List and in the proposal. The agency's approach in deciding which drugs pose bioequivalence problems follows the July 15, 1975 Office of Technology Assessment (OTA) Drug Bioequivalence Panel recommendations, which stated that it is not feasible, necessary, or desirable that studies of bioavailability be conducted for all drugs or drug products. To further subdivide code "AA" to indicate which drug products had gone through clinical studies and which drug products had been the subject of actual in vivo bioavailability studies or in vivo/in vitro correlated studies would be contrary to the OTA Panel approach which FDA adopted. Moreover, there is no basis for including information on what drug products meet a nonexistent requirement. For the record, few firms have carried out bioavailability/bioequivalence studies on "AA" class drugs.

It was not FDA's intent to display the bioequivalence/bioavailability study protocol of each manufacturer in the

List. As was explained in the List's preface, the "AB" code identifies an active ingredient in a dosage form for which the submission of bioavailability data is required for approval and indicates that the firm has performed an acceptable bioequivalence study on its product.

Regarding the comment on "BP" drugs, although the agency does not differentiate between those drug products approved on the basis of clinical studies and those drug products approved through the ANDA process, potential bioequivalence problem drugs are coded "AB" when the firm submits adequate data to show that its product is bioequivalent/bioavailable. An example of this is found in the List. Ciba's Metandren (methyltestosterone) tablets are coded "AB" because the firm has submitted adequate data to show bioavailability; all of the other firms' products are coded " BP" because none of the other firms has submitted such data.

In summary, the agency believes that the List, the preamble to the Federal Register proposal, and this preamble to the final rule, provide sufficient explanation and background for FDA's determinations of therapeutic equivalence. As explained further in the response to comment 54 below, the agency does not believe it is necessary or practical to include in the List the complete history and data upon which the agency relied to determine the therapeutic equivalence of a drug product.

53. Several comments said that explanations given in the List for the different coding classifications present potential problems. The comments said that some of these definitions are ambiguous and lead to a variety of possible interpretations. Examples of the problems noted by the comments include the definition for "AB" products. The comments said that the definition is unclear whether or not these drugs are substitutable. Regarding classification "AT" (topicals), the comments said that drug products are considered to be pharmaceutically equivalent if they contain the same active ingredients and are identical in strength, dosage form, and route of administration. It would seem resasonable to assume, said the comments, that the different bases used in many ointments and creams, while not active ingredients, significantly affect the rate, duration, and quantity of medication reaching the skin. Regarding classification "BX", the comments said this is a deceptive identification for drug originators because they would have had to provide a documented NDA with adequate clinical data in support of the therapeutic performance of the product. The comments said that the product of any manufacturer who has an original NDA should therefore be specifically identified as such, since the issue of multiple-source equivalence arose only after products were later introduced without requirement of full clinical studies.

The agency concurs with the suggestion to further define "AB". The paragraph in the preface to the List describing the "AB" code has been clarified to state that one product of a drug ingredient heading, coded "AB", is not therapeutically equivalent to a drug product under the same heading which is coded "BD" or "BP". Only those drugs coded "AB" under the ingredient and dosage form headings are recommended as being therapeutically equivalent.

Regarding the suggestion that different bases in topical ointments or creams could affect the rate, duration, and quantity of medication reaching the skin, FDA will review any data that show that a pharmaceutically equivalent product has produced a different therapeutic effect based upon a different base in an ointment or cream. Until that time, FDA will continue to consider products in the same topical dosage form as therapeutically equivalent in the absence of contrary data if they are pharmaceutically equivalent.

Regarding the comment that it was deceptive to identify the drug innovators with a "BX" code since they had to provide a documented NDA with adequate clinical data in support of the therapeutic performance of the product, the agency agrees and will delete the "BX" code from the innovator's product if that product is specifically known not to present the same basis of concern as do the other brands. On the other hand, the fact that an innovator initially performed clinical studies on a product does not necessarily mean that the innovator's product is not subject to the same concerns that led to the inclusion of the "BX" code on other products.

54. Another comment said that the therapeutic equivalence coding system used in the List presents difficulties in correctly identifying the products that are coded. The comment said it is likely that the explanation of the codes will not be read by the typical pharmacist with a busy schedule. The result will be the general assumption that all drugs listed under a particular heading are therapeutically equivalent. In addition, the comment said that the products listed as having bioequivalence problems may require further clarification. For example, phenytoin sodium oral capsule, Dilantin, has been grouped with three products that are probably not bioequivalent. Therefore, the comment said the possibility exists that the reader may incorrectly assume that any one of these drugs can justifiably be substituted for another.

FDA's primary purpose in preparing the List is to provide to the public the agency's information and advice on the therapeutic equivalence of approved multisource drugs. The agency intends to share more detailed information on the therapeutic equivalency of drugs with the States and other interested persons so that they may use this information in their decisions as to which drugs to include in their formulary and which drugs to purchase or dispense. State drug formulary committees have continually asked for the basis of FDA's therapeutic equivalence decisions. Moreover, it is important to explain the bases for these conclusions so that if States disagree, they can act differently. The agency notes, however, that although additional data and information are available upon request, it believes that the preface to the List, the Federal Register proposal, and this final rule, provide sufficient explanation and background for FDA's determinations of therapeutic equivalence. The agency does not believe it is necessary or practical to include in the List the complete history and data on a drug product that allowed FDA scientists to determine its therapeutic equivalence. For example, a recent FDA submission to the Pharmaceutical Reimbursement Board to substantiate the claim of the therapeutic equivalency of hydralazine tableted product was over 75 pages long. It is not feasible to disseminate or use as large a document that would result from the inclusion of these data and information for all drugs on the List.

The agency believes that health professionals should have little difficulty in understanding the codes, and will not make general assumptions that all drugs listed under a particular heading are therapeutically equivalent when the drugs have been clearly identified as therapeutically inequivalent. The coding system that FDA has devised is much less complicated than the pharmacological properties of the drug that are contained in the labeling, such as actions, indications, adverse reactions and so on. It should be noted that there were favorable comments from individuals and organizations who were very pleased with format of the List and had no difficulty in correctly identifying the therapeutic equivalence determinations by the displayed code.

V. The Lilly Study

FDA has said it can detect no differences in marketed drug products based on the type or the size of the manufacturer. However, a study conducted by Pauls and Kloer, "FDA Enforcement Activities Within the Pharmaceutical Industry: Analysis of Relative Incentive" (hereafter called the "Lilly study") argued that there are significant differences between products marketed by research-intensive companies and those marketed by non-research-intensive companies. The study concluded that non-research-intensive companies are at least seven times as likely to have a recall as are research-intensive companies. In the category of court actions, the study said that non-research-intensive companies have at least 43 times more court actions than do research-intensive companies. Many of the comments received on the proposal discussed the Lilly study and FDA's criticisms of it in the preamble to the proposal. Some comments defended the Lilly study's division of the industry into research-intensive and non-research-intensive companies, and explained the criteria by which this distinction was made. The comments also defended and further explained the Lilly study's selection process for the research-intensive firms. Other comments criticized Paul deHaan's analysis of the pharmaceutical industry as cited in the proposal and questioned his selection of companies and conclusions made about the industry. One comment showed that when analyzing the industry according to sales, conclusions similar to the Lilly study are reached. Some comments refuted FDA's claim that the Lilly study included recalls that had nothing to do with drug quality and even recalls that did not involve drug products. Another comment criticized FDA for not discussing FDA-initiated court actions, and showed that the incidence of such court actions support the conclusions of the Lilly study. Finally, one comment defended the Lilly study's finding that FDA's enforcement records do not demonstrate product and manufacturer uniformity regarding safe and high quality prescription drugs.

The agency advises that it has consistently disputed the assertion that the Lilly study is valid. The comments indicated that small differences in the selection of research-intensive firms do not have a significant impact on the results of the study. That may be true for the way the recall data are analyzed in the Lilly study, but when coupled with other objections the agency has raised regarding the way in which recall data were treated in the study, selection of the research-intensive firms is critical. One of the major criticisms the agency has made is that the study did not include a denominator by which to compare research-intensive and non-research-intensive and large and small firms. Further, the study tried to compare entities that are not comparable. That is, by comparing the quality of different drug products which have no possibility of being substituted under generic substitution practices, the Lilly study obscured the significance of any quality differences it purports to find. Rather than simply criticize the manner in which the Lilly study was performed, FDA has taken the same recall data and done a more extensive, and FDA believes more valid, analysis of the data. The *Analysis of Prescription Drug Recall Rates* (which is available from the National Technical Information Service (NTIS), Springfield, VA, order No. PB80-182611, and which has also been placed on file in the FDA Hearing Clerk's office) shows no significant quality differences between any meaningful set of comparisons (e.g., products of small firms vs. large firms, PMA vs. non-PMA products, and so on). In the study, the recall rate for the population of drug products most likely to be substituted was shown to be very low. This low rate demonstrates that consumers, physicians, and pharmacists are very unlikely to encounter a multisource therapeutically equivalent drug product in the list that will be the subject of a recall. In addition, and of equal importance, the differences in recall rates of product groups compared in the study are small and dependent on a few large recalls. These differences do not support the contention that a pharmacist or physician can make product selection decisions based upon the supposed superiority of identifiable product groups. The agency agrees with the Lilly study's premise that recall data are perhaps the best available surrogate measure of drug quality. The agency does not, however, agree that the Lilly study is a valid analysis of the FDA recall data, or that the recall data, when properly analyzed, lead to a conclusion that significant differences in drug quality can be ascribed to segments of the drug industry found among the manufacturers of the drugs that the agency has evaluated as therapeutically equivalent.

Regarding the comments' contention that FDA has not commented on that aspect of the Lilly study which compared the rate of court actions against research-intensive and other firms, the agency advises that although it has not analyzed court actions in detail, it is clear to the agency that court cases are not a valid measure of drug defects. Most court cases do not involve violations which reflect on drug quality specifically (in fact, much of the recent drug litigation has been in the area of new drug provisions of the act), and may result from a number of factors which are not relevant to drug quality, such as the firm's perception of the strength of its case, the relative economics of litigating versus market withdrawal, regulatory philosophy and approach, and other factors which are extraneous to the central quality issue.

With respect to the Lilly analysis of the Drug Product Problem Reporting System reports, the agency believes that such reports are not a basis for a reliable index of drug quality. In any voluntary reporting system there are many factors to take into account before a correlation between drug quality and the data can be made. Such systems, while invaluable as an early warning mechanism for problems, are susceptible to manipulation by efforts of some drug firms to discredit others. Certainly the nature of the complaints are not always drug quality related, and their seriousness varies to a considerable degree.

VI. Economic Considerations

A. Anti-Inflationary and Consumer Savings Potential of Drug Substitution

55. Several comments said that drug prices have played little part in the increased cost of health care. Some of the comments questioned the anti-inflationary potential of measures aimed at increased drug substitution, citing the relatively small share of pharmaceutical products in total national health care expenditures and the lower rate of increase in the Consumer Price Index for drugs relative to the total index and to its All Medical Care component.

The agency advises that the proposal acknowledged these points but also pointed out that "these facts do not mean, however, that cost savings in the prescription drug market would not be helpful to the economy, to the consumer, or to the taxpayer. They merely make clear that no single step will be adequate to restrain health costs." The comments have offered nothing to counter this. They argued, in effect, that retarding the rate of price increase of some categories of consumer products is not worth pursuing if there are other categories where prices are rising faster. This argument is not persuasive, especially when offered against a proposal which simply shares with the

public useful information already in FDA's possession.

56. Some comments said that the Federal Trade Commission (FTC) overstated the potential savings from drug substitution. In the proposal, FDA cited the *FTC Staff Report's* conclusion that "the potential for the realization of consumer savings is substantial." Various comments questioned the accuracy of the report's estimate of an upper limit to potential direct savings for drug substitution in the range of $245 million to $408 million. Some of the comments cited a trade publication report of an apparent reduction of the FTC estimate to only $70 million. Other comments questioned the methods and assumptions used by FTC or the validity of the results to which they led.

FDA is not in a position to defend in detail the FTC's methods or results, nor is there any need to do so. The studies cited by FTC, including its own study, focus on potential savings across all or most multisource drugs. FDA does not view the results as projections or forecasts of savings to be achieved, but does believe that they sufficiently demonstrate that the opportunities for savings are substantial, a conclusion not refuted by the comments. Moreover, the propriety and utility of publishing a List that identifies those drugs established as therapeutic equivalents does not depend on a precise estimate of drug substitution savings to consumers. The List is merely a systematic presentation of information used by FDA in its own work. In this respect it is parallel to FDA's earlier publication of a list of inequivalent drugs. Providing reliable information on therapeutically equivalent drugs can only enhance the ability of drug purchasers to recognize and take advantage of opportunities for direct savings by drug selection. Finally, it should be noted that the trade publication citation of an apparent reduction of the FTC estimate to only $70 million was inaccurate and the error was corrected in a later issue to advise that the estimated saving is consistent with the FTC estimate.

57. One comment pointed out that about 45 percent of the dollar value and 55 percent of the prescriptions for all drugs are multisource, and that 12.4 percent of all prescriptions are written generically, suggesting that "only" 32.6 percent of current prescription dollar volume could be multisource drugs subject to further product selection.

According to FDA's calculation, the latter figure should be 34.9 percent. That figure, applied to about $9 billion manufacturers' annual sales volume, translates to about $3.1 billion of manufacturers' sales, and that should be considered the minimum dollar volume of such drugs, since it is unlikely that all generically written prescriptions currently are filled with generic rather than brand name drugs. Regardless of the precise amounts, the agency's decision to publish the List is not contingent on the share of the current prescription dollar volume that is accounted for by multisource drugs.

58. Some comments cited various surveys and other evidence, including those cited in the FTC Staff Report, to indicate that varying proportions of physicians, pharmacists, and even consumers do not favor or practice product substitution. Some comments contended that the exclusion of drugs having known or suspected problems of inequivalence would diminish the potential for savings from product selection. Specifically, some comments indicated that 193 drugs identified as "problem drugs" with respect to bioequivalence in FDA's 1975 list represented an average of about 12 percent of all prescriptions in their respective therapeutic classes and that the currently proposed FDA List shows a net increase of 42 multisource "problem" drugs.

FDA acknowledges that the various multisource drugs are not equally subject to product selection. However, taking the dollar volumes offered at face value and assuming further, hypothetically, that multisource drugs without established equivalence now account for as much as 15 percent of all prescriptions (and hence 35 percent of multisource prescriptions subject to further product selection), the dollar volume of $3.1 billion calculated above would be reduced to $2.0 billion. That amount, which ignores future growth, still represents a considerable target for product selection.

59. Other comments addressed the question of generic vs. brand-name price differentials used in making estimates of direct savings from product selection. It was argued that wholesale price comparisons (based, for example, on *Red Book* figures) are inaccurate and that retail prices should be used. One comment stated, however, that an analysis based on retail prices is almost impossible. Another suggested comparing the average cost of brand drug prescriptions with the average cost for the same drug "when the pharmacist is already engaging in product selection."

FDA agrees that a retail price comparison would be useful (as would a comparison of actual transaction prices at wholesale), provided it distinguished between retail prices charged for generic drugs used to dispense generic prescriptions and brand drugs so used. Unfortunately, the comment did not provide any of the data it recommended. Another comment, however, suggested that consumer savings of at least 20 percent to 40 percent are possible at retail. If it is assumed that average retail savings of no more than 20 to 40 percent might apply to all of the $2 billion sales of multisource drugs subject to further product selection, total additional annual savings of $400 to $800 million are implied. Granted that the current rate of product substitution is well below 100 percent and is unlikely to reach 100 percent, the savings increment will be smaller in proportion to the actual rate of substitution ultimately expected. A rate of 50 percent, for example, would imply additional consumer savings of $200 to $400 million a year without taking account of the rapid prospective growth of multisource drug sales.

B. Federal, Private and State Administrative Costs

60. Several comments contended that the cost to FDA in publishing and maintaining the List could amount to hundreds of thousands of dollars and that manufacturers would have to incur costs of monitoring the List to assure its accuracy.

The agency advises that generating and keeping track of the information that will appear in the List is an internal cost that FDA will incur whether it publishes the List or not. There will be a modest internal cost increment for compilation and computer services to prepare annual issues and monthly updates of the List, but the only significant Federal costs of keeping the List current and publicly available will be those for printing, subscription list maintenance, and mailing by the Superintendent of Documents. FDA expects interest in the list to be sufficiently extensive to ensure subscription revenues adequate to cover these costs, based on an annual subscription rate of $20 ($25 if mailed to a foreign address). Assuming an external subscription volume of 10,000 and internal use of as much as 2,000, revenues from the mail subscription service would be approximately $200,000. The total printing costs for internal distribution would be less than $10,000.

Many State governments will reference the FDA List as the official formulary. They will either print and sell their own copies or recommend a subscription to the FDA List. The annual subscription cost of $20 per copy should cover State-generated demands also. The total demand for the List, direct and

indirect, is uncertain. In addition to retail and hospital pharmacies, physicians and libraries may also want to have access to the List. Clearly, however, the subscription method ensures that total printing and distribution costs will not exceed public wilingness to pay.

Finally, FDA sees no reason to believe that drug industry costs to review the updates of the List for omissions and accuracy would be other than insignificant, and no specific figure was offered by the comments.

61. Another comment said that administrative expenses to State governments in promoting generic substitution may cancel out any consumer savings and, further, that the FDA List will not lessen the expenses of these State activities.

The agency advises that the 46 States that have enacted drug product selection laws (almost half of which have been adopted since 1977) did so for their own reasons, and not to create a market for the FDA List. Conversely, the value of the List does not depend solely on its utility in State efforts to promote product selection. If the availability of a convenient and reliable List of therapeutically equivalent drugs leads to an increase of no more than 1 or 2 percent of prescriptions written and dispensed generically, multi-million dollar savings in drug costs would be realized each year. Similarly, as indicated in the proposal, the FDA List can help States in their own drug purchase programs, and eight States have requested such assistance. It should be noted that FDA's proposal also responds to the requests of at least 19 States for assistance in preparing formularies in support of their product selection laws. Providing a master List that could be used or adapted by each State for its own circumstances is clearly more cost-effective for FDA than assisting each State individually. The comments seemed to suggest, however, that FDA should not provide such a List unless the State programs are demonstrably cost-effective and/or the List will demonstrably reduce State administrative costs for the programs. The agency disagrees. Regarding the comment that the List will not ease State costs of developing formularies, the only evidence offered is that no formulary, including FDA's List, has been or can be used without review and adaptation to the needs of each State. The agency believes it is precisely the existence of a master List to be reviewed and adapted that offers economies to the States in the "start-up" costs of developing formularies and to FDA in assisting them.

C. Indirect Economic Effects

62. Several comments said that expenditures for drugs are the most cost effective in the health care ystem. The comments pointed out that drug therapy at modest cost may reduce the need for hospitalization at very high cost, and cited examples of new drug developments having that effect. Therefore, it was argued, regulating the drug market is a case of misplaced priorities in the control of health care costs.

Regarding the cost-effectiveness of drugs, FDA can only agree and would add that drugs are very cost effective when they reduce death and suffering as well as when they avoid hospitalization costs. The agency does not agree, however, that the social worth of a product is a valid reason for failing to reveal information useful to its purchasers, or that providing such information amounts to misplaced regulation of the market when it is fully expected to improve the efficiency of the market.

63. Several comments said that the promotion of drug substitution will divert revenues from research-intensive companies and thereby discourage research and development of new drug products. The comments pointed out that drug research and development, conducted by many brand name manufacturers, is financed almost exclusively from sales revenues. They argued that a reduction of such revenues would reduce incentives to "invest" in research and development and that this in turn would result in reduced introduction of innovative drugs with consequent long-term health benefit losses to consumers, and in adverse balance of payments effects due to impacts on U.S. drug exports and shifting of U.S. drug company research to foreign countries. Other comments said that through the List, FDA is encouraging a market which favors noninnovating generic product manufacturers.

The agency notes that these comments were not supported by evidence or analysis exploring the manner or degree of any effects on new drug research activity that might follow from increased generic drug product selection. It appears, however, that any reduction of new drug research incentive to a manufacturer as a result of product substitution would take the form of reductions in the present values of the revenue streams and, hence, in the rates of return expected from newly developed drugs. The *FTC Staff Report* referred to in the January 12, 1979 Federal Register proposal cited three separate studies on this topic by academic economists. One study estimated that if consumer savings (and manufacturer revenue losses) amounted to 4 to 11 percent of sales a year by 1984, then 0.6 to 1.7 fewer new single chemical entities might be introduced each year out of an average of 15. Another study estimated that, taking patent periods, profit rates, and revenue patterns into account, increased drug substitution would eliminate less than 4 percent of the present value of the expected stream of profits from an average new chemical entity. The study concluded that this would have negligible effects on drug research incentives and on the rate of innovation. The third study, using a similar model and somewhat different assumptions, estimated that product selection would produce a 10-percent reduction in the expected rate of return on an average new chemical entity and a consequent reduction in industry research and development expenditures of $46 million. The latter figure, however, was obtained by applying the research and development to sales ratios of 11.5 percent to an assumed $400 million reduction of multisource drug sales revenues. This procedure is not implausible, but its result can be regarded only as a benchmark rather than a reliable projection. FDA acknowledges that the effect of increased product substitution on new drug research and development activity cannot be foretold with confidence. No evidence or analysis was offered in the comments, however, to offset the implication of the economic studies cited above that the impact on incentives to research and development expenditures would be no more than moderate and possibly negligible. Further, it seems reasonable to suppose that any reduction in research and development effort would tend to focus on marginal, less financially attractive projects. Since substantial consumer savings appear to be required in order to produce anything more than small changes in the economic incentive for research and development, there is no reason to conclude that the tradeoff, if any, is unsatisfactory in terms of the public interest.

Finally, it is necessary to reiterate that in addition to providing support to State drug product selection programs, the FDA List also offers important information to physicians, pharmacists, and consumers who want to avail themselves of it. Because that information can easily be made available, FDA does not agree with the

proposition that the opportunity for a better-informed market for prescription drugs should be rejected simply because some members of the prescription drug industry contend that a less well-informed market is essential to continued drug innovation. If it turns out that a well-informed market is inconsistent with economic incentives for the development of safe and effective new drugs at a rate considered possible and socially desirable, the remedy should not be sought in the economically inefficient device of withholding or obscuring information. A problem of sufficient dimensions to be presented as a public issue would warrant, instead, an open and responsible public solution such as, for example, legislative action on more effective patent protection periods for new drugs. The existence of such a problem, however, has not been established.

64. Other comments contended that the promotion of drug substitution will reduce economic incentives for developing new uses and dosage forms of multisource drugs. The comment said that increased price competition fostered by the List could actually increase incentives to develop and promote new single-source drugs to the extent that it removes the economic incentive to promote, investigate, improve, or monitor multisource drugs. As a result of such a reallocation of research incentives, it was contended, "many multisource drugs may become orphans in favor of new but not necessarily significantly improved single source drugs."

The agency believes that it is by no means obvious that such a trade-off would be unfavorable. The comment did not explain the rationale for its suggestion that increased introductions of new single-source drugs might not include significant improvements. It seems reasonable to assume that a firm committing resources to new drug development would prefer to pursue promising opportunities for significant improvements if they were available. Viewed in this light, such a shift might appear to some as an attractive prospect, even after taking account of the possibility that consumer savings on multisource drugs might be reduced to some degree by more frequent introduction and use of higher-priced single-source drugs. However, the possibility of disincentives to the further improvement of "mature" drugs also warrants consideration independently of any assumptions about associated new drug development efforts. The comments contended that the cost of establishing an approved new use or even dosage form will not be incurred if their potential competitive advantage is nullified by the presence of substitutable equivalent products in the one case or their imminent presence in the other. Although FDA recognizes that it is entirely plausible that such situations may occur, the agency disagrees that such situations would occur generally in an environment of increased duplicate drug product selection. The agency believes that the latter would require, first, that the bulk of postmarket product investigation and evolutionary development occur after the product has not only become multisource but has acquired therapeutically equivalent competitors, rather than during its single-source phase. No evidence was offered by the comments that this would be the case. Second, for a firm that is a major producer of a multisource drug, new uses or dosage forms that result in increased sales of the drug may justify their development cost even though the revenue gains are shared with other producers. Such possibilities are, of course, open to generic as well as brand name manufacturers. Further, even proponents of drug product selection would be naive to suppose that product differentiation and differential pricing, and hence opportunities for profitable product improvement, will universally or quickly disappear from markets for multisource drugs. Granting the qualitative merit of the point, its practical implications are problematic, especially in terms of the likely incremental impact of the FDA List.

65. Several comments argued that the List will have an anticompetitive impact. One comment asserted that this is because the List discriminates by excluding distributors and relabelers of multisource drugs, as well as manufacturers of pre-1938 drugs and post-1938 drugs not approved. It was argued that listed manufacturers would be preferred by users of the List.

Aside from the possibility that distributors might include the names of manufacturers on their labeling, the agency believes that there is little merit in this contention. It appears relevant mainly to purchasing by pharmacies and it is difficult to give weight to the suggestion that such purchasers would remain ignorant of the identities of source manufacturers or would be significantly deterred by procedures for independent confirmation of the source if that were required. The issue of "unapproved" drugs seems hardly relevant inasmuch as the List by definition deals with "approved" drugs and FDA has not "approved" the categories of drugs in question. If the lack of "approved" status has not so far deterred physicians or pharmacists from selecting a drug, there seems little reason to suppose that nonappearance on a List of "approved" drugs would reverse the situation. With respect to the identification of distributors in the List, see the response to comment 42 above.

66. A few comments said that wider use of lower-cost, therapeutically equivalent drug products will adversely affect the quality of health care. It was argued that therapeutic equivalence of a generic product and the product of a research-intensive firm does not mean the health care associated with the use of these drugs is equivalent because the latter product includes an array of informational services that practitioners need to properly understand and prescribe the drug. Fostering the substitution of lower-cost drug products would result in curtailment of these necessary services.

The agency recognizes that valuable informational and educational services are woven into the complex fabric of drug promotional activities. Presumably, however, the period of greatest effort and expenditure for these services—and the period of their greatest need and worth to practitioners—is from the introduction of a new product to its "mature" phase, after which the effort tapers off. Indeed, it appears that the marketing "momentum" of a successfully branded drug that is established during the period of heavy promotional and informational activity may typically carry over far into the period when the drug has accumulated substantial multisource competition. By the time therapeutically equivalent generic products enter the picture, it would seem that most of the advantages to brand marketers and practitioners alike that are cited or alluded to in the comment will have been captured. While it can be agreed, therefore, that useful informational services add to the costs of research-intensive manufacturers, it does not follow that these costs will be inadequately compensated or that physicians will be inadequately informed as a result of such increased generic competition as may be fostered by the List.

D. Absence of a Regulatory Analysis

67. Several comments stated that FDA had proposed a significant regulation requiring regulatory analysis under Executive Order 12044. It was contended that major direct and indirect economic impacts would result from promotion of increased drug substitution, including (a) administrative costs to FDA and to manufacturers, and (b) adverse effects

on research and development of new drug products to the detriment of innovative manufacturers and ultimately to patients. It was asserted that the List will have an overall effect on the economy of more than $100 million and threatens to cost a large segment of the prescription drug industry millions of dollars yearly in diversion of sales revenues to noninnovating firms.

Direct administrative costs of the List to FDA and to manufacturers were discussed earlier and, as stated, FDA has discovered no reason to regard such cost increments as other than very modest. As explained in the proposal (at p. 2953), the agency has determined that the publication of the List is not covered by Executive Order 12044. First, the List is not a regulation, it is a compilation of information available to the agency. Second, the List will not, as the comment contends, have an overall impact on the economy of $100 million through claimed adverse effects on new drug research and development. Regarding this latter contention, it is necessary to distinguish between policies and programs favoring drug product selection and the separate existence of the FDA List. The law and policy of most of the States, in addition to purchasing and welfare programs of the Federal government, now actively promote drug product selection. There is no reason to believe that this objective will not be actively pursued—whether or not the FDA List is made public—since the effort was initiated long before development of the List began. Therefore, any adverse effects on sales revenues and research activities that research-intensive drug firms experience would occur whether or not FDA publishes the List. In determining whether a regulatory analysis is required, therefore, only the incremental impact of the List is relevant.

A $100 million impact on drug research and development expenditures would represent nearly 10 percent of the industry's total domestic research and development effort. To produce such a reduction on the basis of an 11.5 percent R&D to sales ratio would require that the independent impact of the List on industry sales revenues amount to about $870 million. If such a revenue impact were achieved by average savings of 20 to 40 percent on drugs shown on the List as therapeutically equivalent, the sales volume of such drugs subject to these (new) savings would have to be $2.18 to $4.35 billion, that is, new savings of 20 to 40 percent would have to be realized on every dollar of a sales volume equal to about 24 to 48 percent of total prescription drug sales. All of this sales volume, moreover, would have to be found among the drugs identified as therapeutically equivalent in the FDA List and, within those, among drugs subject to low-price and generic competition and on which such savings are not already being realized. Therefore, there is no combination of remotely reasonable assumptions by which the incremental impact of the List on drug substitution could produce a significant effect on drug industry research and development expenditures.

There are major defects also in the additional assertion that diversion of sales revenues from research-intensive to non-innovating drug firms would have a major economic impact requiring a regulatory analysis. It is not evident that revenue losses other than those corresponding to direct consumer savings (which savings were not claimed as a major economic impact subject to regulatory analysis) will necessarily be incurred by research-intensive firms. The latter do, after all, have the option of defending market shares by meeting generic price competition. If they choose to hold to a declining sales volume at higher prices, that presumably is the strategy they regard as more profitable. But there is nothing about the existence of the List that compels research-intensive firms to acquiesce in the diversion of sales revenue to noninnovative firms. In addition, it is not evident that all revenue losses to other drug firms would be to noninnovative firms. Research intensive drug firms also manufacture and distribute a substantial number of generic drugs.

The research-intensive firms who are members of the Pharmaceutical Manufacturers Association account for about 90 percent of total prescription sales. It may be supposed that a one-percentage-point "diversion" of revenue to non-PMA firms would be a less than major economic impact of the proposed List. This might amount to $90 million. In order to suffer such a loss of sales revenue to non-PMA firms, the PMA firms would have to refuse totally to meet price competition on therapeutically equivalent drugs marketed by non-PMA firms. Even assuming such a total refusal to compete, it must be assumed that not all of PMA firms' sales would be lost, since that would imply a total absence of brand loyalty among physicians and a total ability and desire to substitute non-PMA generic drugs at the pharmacy level. Hence, all of a sales volume of drugs considerably greater than $90 million would have to be both subject to and unresponsive to price competition and maximum practicable substitution by therapeutically equivalent non-PMA drugs in order to produce the $90 million transfer. More realistically, the assumption that PMA firms would meet the price competition further increases the dollar value of drugs that would have to meet these conditions. Finally, it would be necessary that all practicable substitutions would have to be achieved on this substantial volume of PMA drug sales—possibly several hundred million dollars—and would also have to be attributable to the availability of the FDA List.

FDA therefore affirms its earlier conclusion that the availability of the List will not produce a major economic impact through retarded drug research and develeopment or through diversion of sales revenues from research-intensive to noninnovative firms.

VII. Procedures for Preparing and Distributing the List

68. Several comments claimed that the List is a cumbersome document containing hundreds of entries and requiring familiarity with various caveats and disclaimers. The comments said its great length, the use of letter codes, the inclusion of single-source drugs, and the prefatory qualifications, as well as the failure to show supporting data, all combine to produce a document that is likely to generate confusion and error. Another comment said the many explanations, codes, and apparent disclaimers contained in the preface are difficult to relate to the information in the List. The List thus falls short as a ready reference source which can be used under daily working conditions. One comment said that because the List is "controversial", it will be necesary to develop special guides, codes, caveats, and disclaimers that provide sufficient information for its proper use. The comment said that this will make the List even more difficult to use and could cause confusion and error.

The agency disagrees that the List will prove as cumbersome and confusing as the comment contends. Drug information as presented by the List is a dynamic and complex area which unavoidably could cause some confusion. As explained in the proposal, FDA, in preparing the List, initially drew from information in its computerized files of approved NDA's, and antibiotic Form 5's. In order to minimize the potential for error, a complete list of approved NDA's, ANDA's, and antibiotic Form 5's, as of April 1978, was published as an interim document in May 1978 and sent to appropriate State officials and agencies, including health officers, boards of pharmacy, and drug

procurement agents, for review and comment. By notice published in the Federal Register of June 30, 1978 (43 FR 28557), this interim list was also made publicly available, with a request for additions, deletions, or corrections. In addition, on two separate occasions, FDA sent to each application holder data worksheets listing its products that FDA had identified as being approved and solicited corrections. The agency received an excellent response with considerable updating information, indicating a serious and careful review by the firms. The agency revised the List in response to these requests. Information regarding approved antibiotic Form 6's (the antibiotic drug submissions analogous to the ANDA) was also included for those antibiotic products last certified within the period of their expiration date. Although the therapeutic equivalence evaluations were not previously circulated, the preface to the List contains extensive explanatory information about them. These evaluations reflect FDA's application of specific criteria to the multisource drug products on the List. The agency believes that the code letters used to explain the basis for these evaluations will not cause confusion once the user becomes familiar with them.

69. Several comments claimed that the List will be virtually obsolete on the day it is published. The comment said that the New York list was subjected to repeated correction, including a notice of changes that was printed within 1 week of publication of the original list, monthly corrections, and at least two major quarterly revisions. Because of the size of the FDA List and the changing nature of the prescription drug market, the comments said it is not possible to publish a currently accurate list. The comments said that if the New York list is now obsolete after only 1 year, the FDA counterpart will be outdated in an even shorter time because FDA is able to investigate the market more rapidly and currently than the New York Department of Health. The comments also said various situations could cause rapid obsolescence such as products no longer being marketed, formulation changes, availability of new dosage forms, new sources of supply, major recalls, and important label changes. To demonstrate the difficulty in keeping these lists updated, the comments compared the List with the New York list. The comments pointed out that the FDA List includes nine product categories coded as nonequivalent, although these same nine products appear on the New York list as therapeutically equivalent. In addition, in New York it is illegal to substitute a tricyclic antidepressant. Nevertheless, several appear on the FDA List as equivalent.

The agency acknowledges the difficulty in keeping the List current. As explained in the response to comment 68, considerable effort was involved in preparing the List, including substantial assistance from the application holders. Because of this initial effort, few corrections were required for a final publication. The agency is planning to provide periodic supplements furnishing, among other things, new drug approval information and, if necessary, revised therapeutic equivalence evaluations. The agency's goal is to provide supplements at monthly intervals at least during the first year after the List is published. An updated List will be published on an annual basis, and each subscription will include all periodic supplements in a given year.

The agency recognizes there may be differences between the List and individual State lists. The FDA List is not an order or a rule, but contains only information and the agency's advice to the public and to the States regarding therapeutic equivalence evaluations, and as such should enable the States to carry out their duties to protect and promote the public health. Thus, a State may or may not adopt the same therapeutic equivalence evaluations as described in this List. Regarding the comment that nine drugs listed in the original New York Equivalency list as therapeutically equivalent are not equivalent in the FDA List, the agency advises that of those nine drug evaluations, three have been revised in the New York list to correspond to the FDA List, two drugs did not have discrepancies in their evaluations but were apparently misread by the commenter, two drugs in the FDA List had errors in coding, and two drugs are listed as having particular problems which are in the process of resolution.

70. One comment said that the preface to the List does not emphasize the key role of pharmacists in exercising independent professional judgments on behalf of patients in drug product selection. Rather than read through the 19 pages of technical language in the preface, the comment said, consumers will simply refer to the List and assume that all drug products that are pharmaceutical equivalents are identical and may be freely interchanged. Another comment said the List should be made available to the professional pharmacist who can then determine whether or not to make the List available to the public.

The agency advises that the purpose of the List is to provide the public with a compilation of drug products that the agency has evaluated and approved for safety and effectiveness. In addition, the List includes therapeutic equivalence evaluations of these approved drug products. The List does not define the role of the pharmacist and the patient in drug product selection. The responsibilities of the pharmacist in the area of drug product substitution are covered by most State drug product selection laws. FDA believes that most consumers will rely on the professional judgments of their physicians and pharmacists in choosing their drug therapy.

71. One comment said that to ensure that pharmacists do in fact substitute lower-priced generic drugs, the public should be adequately advised of FDA's policy. The comment noted that one California survey found that 85 percent of the pharmacists will substitute upon the request of the consumer. However, it was also found that on the average pharmacists were marking up the prices of generics more then they were marking up the prices of brand name drugs. In other words, pharmacists were not passing the cost savings in full to consumers. Instead, they were making higher profits on generics. Therefore, in the public interest, the comment recommended that FDA distribute the List and initiate a program to fully inform consumers of their right to request lower-priced therapeutically equivalent drug products. One means of doing this, the comment suggested, would be an educational program by FDA to promote consumer knowledge of generics and their availability and lower cost.

The agency advises that the List is publicly available, and its availability has received widespread attention in the media. The Department of Health and Human Services generally engages in a number of well-publicized programs to notify consumers that lower-priced drugs may be available. For example, the Maximum Allowable Cost (MAC) program's "Guide to Prescription Drug Costs," is a well-known reference for pharmacists and physicians. FDA believes that through these mechanisms, plus others that will accompany publication of this List, including its use by State governments, the public will be well aware of the availability of less expensive therapeutically equivalent drugs.

72. One comment said the List should be evaluated on a quarterly basis in a manner that would permit any

interested person to challenge the drugs listed as bioequivalent. The comment said that these challenges should be evaluated by an impartial advisory group outside of FDA consisting of professionals with expertise in such fields as medicine, clinical pharmacology, and associated scientific disciplines. The advisory group should have the authority to recommend the removal of a drug from the List if it decides that there is reasonable doubt that the product in question is actually bioequivalent. The comment said that FDA should remove such products from the List and reinstate only when scientific studies conclusively demonstrate that there is no significant bioequivalence problem.

It is the agency's opinion that such an advisory group is unnecessary because the results hoped to be accomplished by the advisory group can be achieved within the present FDA regulatory framework. Any interested person may at any time submit information to the agency which would challenge any findings in the List, including the determinations of therapeutic equivalence. In addition, FDA ensures the quality of marketed drug products through its many progams to monitor the marketplace. These programs are explained on pages 2946–2947 of the proposal.

The agency will, on a continuing basis, review all new information on drug products included in the List. If the information indicates that the therapeutic equivalency evaluation of a drug product on the List is no longer accurate, the evaluation will be revised accordingly. However, as stated in the response to comment 32 of this preamble, the sole criterion for inclusion of a marketed product in the List is its being the subject of an approved application. Marketed products will not be removed from the List until completion of FDA proceedings to withdraw approval of the application under section 505 or 507 of the act, as applicable.

73. One comment noted that the proposal calls for the List to be revised on a quarterly basis and that a method will be devised for publishing all revisions that took place during the preceding 90 days. The comment said that a more practical approach would be to have the revisions made on a continuing basis and published, as made, in the Federal Register. Also, additions to the List would be available for substitution on a timely basis. The comment noted that the Federal Register is readily available, authoritative, and widely read, and thus the best source for disseminating this information to the largest number of interested parties.

The agency believes that the suggestion to provide List revisions on a continuing basis in the Federal Register may have merit. However, for the present time, FDA has decided to publish supplements at monthly intervals (athough the agency originally proposed to revise the List quarterly). The supplements will contain a cumulative index to assist the user in updating the List. The List will be republished annually to include all updated information.

74. Another comment said that FDA should examine the feasibility of having the List printed on microfiche, since microfiche could be used for the entire formulary, and it is easy to use and has an inherent cost savings.

The agency advises that the List is intended, among other things, as a reference source of therapeutic equivalence evaluations to State health officials. The agency believes that many States will generate secondary informational materials for use by their licensed pharmacists and perhaps other health professionals. The use of microform techniques as a format will be considered if there is a demand for the agency List in such a format.

75. One comment said that although offering the List for sale through the Government Printing Office would be adequate for some interested groups, such groups as pharmacies, hospitals, State procurement agencies, and public health clinics should receive a copy of the List directly. If direct mailing is not economically feasible, the comments said that these groups should receive individualized notice of the availability of the List.

The agency advises that the availability of the List is announced in this Federal Register document, and copies will be provided to State health agencies. Such actions normally result in a much broader awareness of the availability of the publication through the public and trade press. In addition, the availability of the List will be announced in the *FDA Drug Bulletin*, which is sent approximately every two to three months to health professionals across the country.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201 et seq., 52 Stat. 1040 et seq. as amended (21 U.S.C. 321 et seq.)), the Public Health Service Act (sec. 1 et seq., 58 Stat. 682 et seq. as amended (42 U.S.C. 201 et seq.)), and the Freedom of Information Act (Pub. L. 90–23, 81 Stat. 54–56 as amended by 88 Stat. 1561–1565 (5 U.S.C. 552)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 20 is amended in § 20.117 by adding new paragraph (a)(3), to read as follows:

§ 20.117 New drug information.

(a) * * * (3) A listing of new drug applications, abbreviated new drug applications, antibiotic Form 5's, or antibiotic Form 6's, which were approved since 1938 and which are still approved, covering marketed prescription drug products except prescription drug products covered by applications deemed approved under the Drug Amendments of 1962 and not yet determined to be effective in the Drug Efficacy Study Implementation program. The listing includes the name of the active ingredient, the type of dosage form, the route of administration, the trade name of the product, the name of the application holder, and the strength or potency of the product. The listing also includes, for each active ingredient in a particular dosage form for which there is more than one approved application, an evaluation of the therapeutic equivalence of the drug products covered by such applications.

* * * * *

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

(Secs. 201 et seq., 52 Stat. 1040 et seq. as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., 58 Stat. 682 et seq. as amended (42 U.S.C. 201 et seq.); Pub. L. 90–23, 81 Stat. 54–56 as amended by 88 Stat. 1561–1565 (5 U.S.C. 552))

Dated: October 27, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

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October 31, 1980

Part XII

Equal Employment Opportunity Commission

Guidelines on Discrimination Because of Religion

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1605

Guidelines on Discrimination Because of Religion

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final guidelines.

SUMMARY: The Equal Employment Opportunity Commission is revising its *Guidelines on Discrimination Because of Religion* in response to public confusion concerning the duty of employers and labor organizations to reasonably accommodate the religious practices of employees and prospective employees. These Guidelines clarify this duty in an effort to protect employees and prospective employees from being discriminated against because of their religious practices or beliefs.

EFFECTIVE DATE: November 1, 1980.

FOR FURTHER INFORMATION CONTACT: Karen Danart, Acting Director, or Raj K. Gupta, Supervisory Attorney, Office of Policy Implementation, Room 4002, 2401 E Street, NW., Washington, D.C. 20506; (202) 634-7060.

SUPPLEMENTARY INFORMATION:

I. Background

Section 701(j) of Title VII of the Civil Rights Act of 1964, as amended, creates an obligation to provide reasonable accommodation for the religious practices of an employee or prospective employee unless to do so would create an undue hardship. In 1977, the Supreme Court rendered its decision in *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977). The Court's interpretation of an undue hardship led to much confusion in the employment sector. It left employers, employees and labor organizations unclear as to the extent of the statutory duty under Title VII to provide reasonable accommodation for the religious practices of an employee or prospective employee. The Commission held public informational hearings on this issue in April and May of 1978 in New York City, Los Angeles and Milwaukee. The hearings established that the public desired clarification of the Guidelines and that many employers had developed alternative methods for accommodating the religious practices of their employees and prospective employees which could generally be used by other employers.* To allow interested persons an opportunity to participate in all stages of its rulemaking process and in compliance with Executive Order 12044 (43 FR 12661, March 24, 1978, as amended by E.O. 12221, 45 FR 44249, July 1, 1980), the Commission noticed its intent to review its current *Guidelines on Discrimination Because of Religion* (44 FR 6200, January 31, 1979). On September 14, 1979, the Commission published a proposed revision (44 FR 53706) of its Guidelines which appear at 29 CFR 1605. The Proposed Guidelines were published for public comment for 90 days.

These Guidelines are a significant regulation under Executive Order 12044. There are no regulatory burdens or record keeping requirements necessary for compliance with the Guidelines. The Commission has determined that they will not have a major impact on the economy and that a regulatory analysis is not necessary.

In compliance with Executive Order 12067 (43 FR 28967, July 5, 1978), the Commission has consulted with the representatives of the necessary federal departments and agencies on the revision of its Guidelines.

II. An Overview of the Guidelines

A. *The Obligation to Reasonably Accommodate Religious Practices.* These Guidelines set forth the underlying principle of the Guidelines being superseded and of Section 701(j) of Title VII of the Civil Rights Act. The principle is: failure to reasonably accommodate the religious practices of an employee or prospective employee is an unlawful employment practice; and employers, labor organizations and other entities covered by Title VII (collectively referred to as "employer") have an obligation to accommodate religious practices, unless they can demonstrate that accommodation would result in undue hardship.[1]

The obligation to accommodate begins when an individual notifies the employer of the need for an accommodation. Once notified, the employer should consider the available alternatives for accommodating the religious practices of the individual involved. If there is more than one alternative available which would not cause undue hardship, the employer must offer the alternative which would least disadvantage the employment opportunities of the individual requiring the accommodation.[2]

B. *Alternatives for Accommodating Religious Practices.* The Guidelines include examples of alternatives which an employer should consider when an individual's religious practices conflict with the employer's work schedule. The examples suggest the use of voluntary substitutes and swaps, flexible scheduling, lateral transfer and change of job assignment.[3]

The Guidelines specifically address the accommodation of religious practices which do not permit an individual to join or pay dues to a labor organization.[4]

The principles of the Guidelines also apply to the accommodation of other religious practices, such as practices concerning dietary requirements, dress and other grooming habits, observation of a mourning period for a deceased relative, and prohibition of medical examinations.[5]

C. *Undue Hardship.* If any employer refuses to accommodate an individual's religious practices, it must justify the refusal by demonstrating that undue hardship would in fact result from each available alternative.[6] In determining whether an accommodation would require more than a *de minimis* cost, and, therefore, constitute undue hardship, the Commission will give due consideration to the identifiable cost in relation to the size and operating cost of the employer, and the number of individuals who actually need the accommodation.[7] The Guidelines recognize that generally, under *Hardison*, the regular payment of premium wages would constitute undue hardship.[8] However, the Commission will presume that the infrequent or temporary payment of premium wages and the payment of administrative costs are not more than *de minimis* and do not constitute undue hardship.[9] A mere assumption that many others, with the same belief as the individual seeking accommodation, may also need an accommodation, is not sufficient to prove undue hardship in the case of that particular individual.[10]

In reference to the *Hardison* holding on seniority,[11] the Guidelines state that there would be undue hardship if an accommodation required a variance from a bona fide seniority system. They also make it clear that, under Title VII, employers and unions may include provisions in a collective bargaining agreement which allow for voluntary

*The transcript of the hearings can be examined by the public at: The Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506.

[1] Section 1605.2(b).
[2] Section 1605.2(c).
[3] Section 1605.2(d)(1).
[4] Section 1605.2(d)(2).
[5] Section 1605.2(d)(1).
[6] Section 1605.2(e)(1).
[7] Section 1605.(2)(e)(1).
[8] *Hardison*, supra, 432 U.S. at 84.
[9] Section 1605.2(e)(1).
[10] Section 1605.2(c)(1).
[11] *Hardison*, supra, 432 U.S. at 80.

substitutes and swaps as a means of accommodating religious practices.

D. *Selection Practices.* The Guidelines address two selection practices which tend to exclude individuals from employment opportunities because of their religious beliefs: (1) the scheduling of tests and other selection procedures at a time when an individual cannot attend because of this or her religious practices;[12] and (2) inquiries which determine an applicant's availability to work during an employer's scheduled working hours.[13]

If an individual cannot take a test or comply with some other selection procedure because it is scheduled at a time which conflicts with his or her religious practices, the employer has an obligation to make a reasonable accommodation, for example, by allowing the person to take the test at another time.

Based on testimony from the hearings, discussions with representatives of organizations interested in the issue of religious discrimination, and comments from the public on the proposed Guidelines, the Commission concludes that the use of pre-selection inquiries which determine an applicant's availability has an exclusionary effect on persons whose religious practices conflict with an employer's working hours. An employer must, therefore, justify the use of these inquiries by business necessity.

E. *"Religious" Nature of a Practice or Belief.* The Guidelines do not confine the definition of religious practices to theistic concepts or to traditional religious beliefs. The definition also includes moral and ethical beliefs. Under the Guidelines, a belief is religious not because a religious group professes that belief, but because the individual sincerely holds that belief with the strength of traditional religious views. This definition is based on the Supreme court decisions in *Seeger*[14] and *Welsh*[15] and on the standard applied in Commission Decisions.[16]

III. Analysis of Public Comments and Changes to the Guidelines as Proposed

During the 90 day public comment period, the Commission received approximately 350 comments from employers, religious organizations, business associations, labor organizations, and private individuals. About one-half of the comments supported the proposed Guidelines. Most of these comments were from individuals and organizations that observe the Sabbath from sunset on Friday to sunset on Saturday. These commentators described many personal experiences of alleged discrimination and emphasized that, if adopted, the proposed Guidelines would greatly decrease the incidence of religious discrimination in the future. In contrast, the criticism of the proposed Guidelines came mostly from employers and business associations.

The following is an analysis of the major comments received and the changes made to the proposed Guidelines because of these comments. For each section of the final Guidelines, the analysis describes the major public comments, the substantive changes and, finally, the structural changes, such as the incorporation of all substantive footnotes into the text of the Guidelines.

Section 1605.1—"Religious" Nature of a Practice or Belief. Some commentators criticized the definition of religious practices as being too broad and vague, and felt that determining whether a person's belief was sincerely held would be difficult. They also believed that the standard which the Supreme Court developed in the leading selective service decisions, *Seeger* and *Welsh*, was an inappropriate standard for Title VII. The Commission has not made any substantive changes to this section because the definition is well established by court decisions under Title VII and by Commission Decisions. (See *Overview* II E.)

Structural changes: proposed footnote 1 is now incorporated into the text as the last sentence of this section. Footnote 2 of the proposed Guidelines is now footnote 1.

Section 1605.2—Reasonable Accommodation Without Undue Hardship.

(a) *Purpose.* The Commission did not receive any comments on this sub-section. Therefore, no substantive changes have been made.

Structural changes: footnote 3 of the proposed Guidelines, quoting Section 701(j) of Title VII, has been eliminated as unnecessary. Footnote 4 of the proposed Guidelines is now incorporated into the text.

(b) *Duty to Accommodate.* No comments were received on this sub-section. Therefore, there are no substantive changes.

Structural changes: the two sentences of proposed § 1605.2(b)(1) are now sub-sections (1) and (2) respectively. Proposed footnote 5 is now footnote 2. Proposed footnote 6 is now incorporated into the text as sub-section (3).

(c) *Reasonable Accommodation.* This new sub-section combines § 1605.2(b)(2) and (c)(2) of the proposed Guidelines. Many commentators objected to the requirement in proposed § 1605.2(b)(2) that an employer must "explore all possible methods of reasonable accommodation." They felt that the word "explore" was vague and that the obligation "to explore all possible methods" was too onerous. The new § 1605.2(c)(1) clarifies the Commission's position that an employer's obligation to reasonably accommodate an individual's religious practices involves a consideration of available alternative methods of accommodation; and that where an employer refuses to accommodate, it must show that undue hardship would in fact result from each available method of accommodation.

Some commentators believed that the requirement in proposed § 1605.2(c)(2) to "adopt the alternative which least disadvantages the individual" would be inconsistent with *Hardison.* In response to these comments, § 1605.2(c)(2) has been revised. It now states the criteria the Commission will use to determine whether an accommodation is reasonable. It is consistent with *Hardison* and with general Title VII principles. the employer does not have to offer an alternative which would cause undue hardship. However, when there is more than one means of accommodation which would not cause undue hardship, the employer must offer the alternative which least disadvantages the employment opportunities of the individual being accommodated.

Some commentators thought the Guidelines should state that employees have a duty to cooperate in the making of a reasonable accommodation. Because neither Section 701(j), nor any other Section of Title VII, imposes such an obligation on the employee, the Commission does not deem it warranted.

(d) *Alternatives for Accommodating Religious Practices.* In response to the comments, the words "must explore" have been substituted by the words "should consider".

Some commentators objected to the use of the word "satisfactory" when referring to voluntary substitutes. Therefore, in place of "satisfactory", the final Guidelines now use the phrase "substantially similar qualifications", which is the same phrase as that used in the Commission's 1967 Guidelines at 29 CFR § 1605.1(b).[17] The word "swap" has been added to the subtitle "Voluntary

[12] Section 1605.3(a).

[13] Section 1605.3(b).

[14] *United States* v. *Seeger*, 380 U.S. 163 (1965).

[15] *Welsh* v. *United States*, 398 U.S. 333 (1970).

[16] Section 1605.1.

[17] 32 FR 10296 (July 13, 1967).

Substitutes" in response to the comments.

Structural changes: Proposed § 1605.2(c) is renumbered as § 1605.2(d). Footnote 7 of the proposed Guidelines is now footnote 4. Footnote 8 of the proposed Guidelines has been eliminated.

(e) *Undue Hardship.*

(1) *Cost*—Several commentators argued that the test of *de minimis* in *Hardison* is actual, not relative, cost and that factors such as the size and operating cost of the employer as stated in § 1605.2(e)(1), should not be considered in determining cost. The Commission has reviewed this sub-section in light of the comments and finds that it is consistent with the holding in *Hardison*. However, in response to the comments, it has now been clarified that when investigating a charge, the Commission will presume that the infrequent or temporary payment of premium wages, and the payment of administrative costs do not constitute more than a *de minimis* cost. The language in the proposed Guidelines in this regard was misunderstood as suggesting that the incurring of these costs would always be viewed as *de minimis*.

(2) *Seniority.* Some employers mentioned that the unilateral implementation by the employer of suggested methods of accommodation, such as voluntary substitutes, flexible scheduling, lateral transfer and change of job assignment, could violate a seniority clause in a collective bargaining agreement. The language in this sub-section has been revised to make it clear that where such accommodation requires a variance from a bona fide seniority system, it would be considered as creating an undue hardship.

Structural changes: In the proposed Guidelines, this was sub-section (d) of § 1605.2. It is now sub-section (e).

Section 1605.3—Selection Practices. This section is derived from § 1605.2(e)(1) and (2) of the proposed Guidelines. Sub-section (a) is the same as proposed § 1605.2(e)(1). No comments were received on this sub-section, and no changes have been made.

Sub-section (b) was § 1605.2(e)(2) of the proposed Guidelines. This sub-section also incorporates the substance of footnotes 9 and 10. The sub-section has been rewritten to state the Commission's conclusion that the use of pre-selection inquiries into an applicant's availability has an exclusionary effect on the employment opportunities of persons with certain religious practices. The new language of this sub-section clarifies that unless an employer can show that its use of these inquiries, in fact, did not have an exclusionary effect on its employees or prospective employees, it must justify the use by business necessity. It also suggests an alternative selection procedure which would have a lesser exclusionary effect. Under this procedure, an employer could ask about an applicant's availability to work during the normal work hours apart from any required absences for religious needs; and after offering the position, but before hiring the applicant, it may inquire whether the applicant's religious practices would affect his or her availability in order to determine whether an accommodation is possible. Many employers objected to this alternative which was stated in footnote 10 of the proposed Guidelines. They emphasized their need to know, at the beginning of the selection process, when an individual is available to work. The Commission believes that this alternative is important and has left it in the final Guidelines. In an overwhelming number of cases, the decision by an employer to offer an employment opportunity is likely to remain unaffected by the post-offer information on the need for a religious accommodation. In those infrequent instances where the job is offered to an applicant who then states his or her need for a work schedule accommodation because of religious practices, an employer may be either able to accommodate the need or offer the job to another qualified applicant. Because of the infrequency of such situations and the minimal time required in offering the job to another applicant where the desired accommodation is not possible, the Commission believes that the suggested method would normally serve the employer's legitimate business interest, and also avoid unduly restricting the equal employment opportunities for the religious observers.

Appendix A to §§ 1605.2 and 1605.3—Background Information. No substantive changes to the appendix were necessary. Footnote 11 of the proposed Guidelines is now footnote 5 in the appendix.

Dated: October 28, 1980.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Accordingly, the Guidelines of the EEOC, 29 CFR Part 1605, are revised to read as follows:

PART 1605—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION

Sec.
1605.1 "Religious" nature of a practice or belief.
1605.2 Reasonable accommodation without undue hardship as required by Section 701(j) of Title VII of the Civil Rights Act of 1964.
1605.3 Selection practices.
Appendix A to §§ 1605.2 and 1605.3 Background information.

Authority: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq.

§ 1605.1 "Religious" nature of a practice or belief.

In most cases whether or not a practice or belief is religious is not at issue. However, in those cases in which the issue does exist, the Commission will define religious practices to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. This standard was developed in *United States* v. *Seeger*, 380 U.S. 163 (1965) and *Welsh* v. *United States*, 398 U.S. 333 (1970). The Commission has consistently applied this standard in its decisions.[1] The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee. The phrase "religious practice" as used in these Guidelines includes both religious observances and practices, as stated in Section 701(j), 42 U.S.C. 2000e(j).

§ 1605.2 Reasonable accommodation without undue hardship as required by Section 701(j) of Title VII of the Civil Rights Act of 1964.

(a) *Purpose of this section.*

This section clarifies the obligation imposed by Title VII of the Civil Rights Act of 1964, as amended, (sections 701(j), 703 and 717) to accommodate the religious practices of employees and prospective employees. This section does not address other obligations under Title VII not to discriminate on grounds of religion, nor other provisions of Title VII. This section is not intended to limit any additional obligations to accommodate religious practices which may exist pursuant to constitutional, or other statutory provisions; neither is it intended to provide guidance for statutes which require accommodation on bases other than religion such as § 503 of the Rehabilitation Act of 1973.

[1] See CD 76-104 (1976), CCH ¶6500; CD 71-2620 (1971), CCH ¶6283; CD 71-779 (1970), CCH ¶6180.

The legal principles which have been developed with respect to discrimination prohibited by Title VII on the bases of race, color, sex, and national origin also apply to religious discrimination in all circumstances other than where an accommodation is required.

(b) *Duty to accommodate.*

(1) Section 701(j) makes it an unlawful employment practice under § 703(a)(1) for an employer to fail to reasonably accommodate the religious practices of an employee or prospective employee, unless the employer demonstrates that accommodation would result in undue hardship on the conduct of its business.[2]

(2) Section 701(j) in conjunction with § 703(c), imposes an obligation on a labor organization to reasonably accommodate the religious practices of an employee or prospective employee, unless the labor organization demonstrates that accommodation would result in undue hardship.

(3) Section 1605.2 is primarily directed to obligations of employers or labor organizations, which are the entities covered by Title VII that will most often be required to make an accommodation. However, the principles of Section 1605.2 also apply when an accommodation can be required of other entities covered by Title VII, such as employment agencies (§ 703(b)) or joint labor-management committees controlling appreciceship or other training or retraining (§ 703(d)). (See, for example, § 1605.3(a) "Scheduling of Tests or Other Selection Procedures.")

(c) *Reasonable Accommodation.*

(1) After an employee or prospective employee notifies the employer or labor organization of his or her need for a religious accommodation, the employer or labor organization has an obligation to reasonably accommodate the individual's religious practices. A refusal to accommodate is justified only when an employer or labor organization can demonstrate that an undue hardship would in fact result from each available alternative method of accommodation. A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship.

(2) When there is more than one method of accommodation available which would not cause undue hardship, the Commission will determine whether the accommodation offered is reasonable by examining:

(i) The alternatives for accommodation considered by the employer or labor organization; and

(ii) The alternatives for accommodation, if any, actually offered to the individual requiring accommodation. Some alternatives for accommodating religious practices might disadvantage the individual with respect to his or her employment opportunites, such as compensation, terms, conditions, or privileges of employment. Therefore, when there is more than one means of accommodation which would not cause undue hardship, the employer or labor organization must offer the alternative which least disadvantages the individual with respect to his or her employment opportunities.

(d) *Alternatives for Accommodating Religious Practices.*

(1) Employees and prospective employees most frequently request an accommodation because their religious practices conflict with their work schedules. The following subsections are some means of accommodating the conflict between work schedules and religious practices which the Commission believes that employers and labor organizations should consider as part of the obligation to accommodate and which the Commission will consider in investigating a charge. These are not intended to be all-inclusive. There are often other alternatives which would reasonably accommodate an individual's religious practices when they conflict with a work schedule. There are also employment practices besides work scheduling which may conflict with religious practices and cause an individual to request an accommodation. See, for example, the Commission's finding number (3) from its Hearings on Religious Discrimination, in Appendix A to §§ 1605.2 and 1605.3. The principles expressed in these Guidelines apply as well to such requests for accommodation.

(i) Voluntary Substitutes and "Swaps".

Reasonable accommodation without undue hardship is generally possible where a voluntary substitute with substantially similar qualifications is available. One means of substitution is the voluntary swap. In a number of cases, the securing of a substitute has been left entirely up to the individual seeking the accommodation. The Commission believes that the obligation to accommodate requires that employers and labor organizations facilitate the securing of a voluntary substitute with substantially similar qualifications. Some means of doing this which employers and labor organizations should consider are: to publicize policies regarding accommodation and voluntary substitution; to promote an atmosphere in which such substitutions are favorably regarded; to provide a central file, bulletin board or other means for matching voluntary substitutes with positions for which substitutes are needed.

(ii) Flexible Scheduling.

One means of providing reasonable accommodation for the religious practices of employees or prospective employees which employers and labor organizations should consider is the creation of a flexible work schedule for individuals requesting accommodation.

The following list is an example of areas in which flexibility might be introduced: flexible arrival and departure times; floating or optional holidays; flexible work breaks; use of lunch time in exchange for early departure; staggered work hours; and permitting an employee to make up time lost due to the observance of religious practices.[3]

(iii) Lateral Transfer and Change of Job Assignments.

When an employee cannot be accommodated either as to his or her entire job or an assignment within the job, employers and labor organizations should consider whether or not it is possible to change the job assignment or give the employee a lateral transfer.

(2) Payment of Dues to a Labor Organization.

Some collective bargaining agreements include a provision that each employee must join the labor organization or pay the labor organization a sum equivalent to dues. When an employee's religious practices to not permit compliance with such a provision, the labor organization should accommodate the employee by not requiring the employee to join the organization and by permitting him or her to donate a sum equivalent to dues to a charitable organization.

(e) Undue Hardship.

(1) Cost.

An employer may assert undue hardship to justify a refusal to accommodate an employee's need to be absent from his or her scheduled duty hours if the employer can demonstrate that the accommodation would require "more than a *de minimis* cost".[4] The Commission will determine what constitutes "more than a *de minimis* cost" with due regard given to the

[2] See *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63, 74 (1977).

[3] On September 29, 1978, Congress enacted such a provision for the accommodation of Federal employees' religious practices. See Pub. L 95-390, 5 U S C. 5550a "Compensatory Time Off for Religious Observances."

[4] *Hardison, supra*, 432 U.S. at 84.

identifiable cost in relation to the size and operating cost of the employer, and the number of individuals who will in fact need a particular accommodation. In general, the Commission interprets this phrase as it was used in the *Hardison* decision to mean that costs similar to the regular payment of premium wages of substitutes, which was at issue in *Hardison*, would constitute undue hardship. However, the Commission will presume that the infrequent payment of premium wages for a substitute or the payment of premium wages while a more permanent accommodation is being sought are costs which an employer can be required to bear as a means of providing a reasonable accommodation. Further, the Commission will presume that generally, the payment of administrative costs necessary for providing the accommodation will not constitute more than a *de minimis* cost. Administrative costs, for example, include those costs involved in rearranging schedules and recording substitutions for payroll purposes.

(2) Seniority Rights. Undue hardship would also be shown where a variance from a bona fide seniority system is necessary in order to accommodate an employee's religious practices when doing so would deny another employee his or her job or shift preference guaranteed by that system. *Hardison, supra*, 432 U.S. at 80. Arrangements for voluntary substitutes and swaps (see paragraph (d)(1)(i) of this section) do not constitute an undue hardship to the extent the arrangements do not violate a bona fide seniority system. Nothing in the Statute or these Guidelines precludes an employer and a union from including arrangements for voluntary substitutes and swaps as part of a collective bargaining agreement.

§ 1605.3 Selection practices.

(a) Scheduling of Tests or Other Selection Procedures. When a test or other selection procedure is scheduled at a time when an employee or prospective employee cannot attend because of his or her religious practices, the user of the test should be aware that the principles enunciated in these guidelines apply and that it has an obligation to accommodate such employee or prospective employee unless undue hardship would result.

(b) Inquiries Which Determine An Applicant's Availability to Work During An Employer's Scheduled Working Hours.

(1) The duty to accommodate pertains to prospective employees as well as current employees. Consequently, an employer may not permit an applicant's need for a religious accommodation to affect in any way its decision whether to hire the applicant unless it can demonstrate that it cannot reasonably accommodate the applicant's religious practices without undue hardship.

(2) As a result of the oral and written testimony submitted at the Commission's Hearings on Religious Discrimination, discussions with representatives of organizations interested in the issue of religious discrimination, and the comments received from the public on these Guidelines as proposed, the Commission has concluded that the use of pre-selection inquiries which determine an applicant's availability has an exclusionary effect on the employment opportunities of persons with certain religious practices. The use of such inquiries will, therefore, be considered to violate Title VII unless the employer can show that it:

(i) Did not have an exclusionary effect on its employees or prospective employees needing an accommodation for the same religious practices; or

(ii) Was otherwise justified by business necessity.

Employers who believe they have a legitimate interest in knowing the availability of their applicants prior to selection must consider procedures which would serve this interest and which would have a lesser exclusionary effect on persons whose religious practices need accommodation. An example of such a procedure is for the employer to state the normal work hours for the job and, after making it clear to the applicant that he or she is not required to indicate the need for any absences for religious practices during the scheduled work hours, ask the applicant whether he or she is otherwise available to work those hours. Then, after a position is offered, but before the applicant is hired, the employer can inquire into the need for a religious accommodation and determine, according to the principles of these Guidelines, whether an accommodation is possible. This type of inquiry would provide an employer with information concerning the availability of most of its applicants, while deferring until after a position is offered the identification of the usually small number of applicants who require an accommodation.

(3) The Commission will infer that the need for an accommodation discriminatorily influenced a decision to reject an applicant when: (i) prior to an offer of employment the employer makes an inquiry into an applicant's availability without having a business necessity justification; and (ii) after the employer has determined the applicant's need for an accommodation, the employer rejects a qualified applicant. The burden is then on the employer to demonstrate that factors other than the need for an accommodation were the reason for rejecting the qualified applicant, or that a reasonable accommodation without undue hardship was not possible.

Appendix A to §§ 1605.2 and 1605.3—Background Information

In 1966, the Commission adopted guidelines on religious discrimination which stated that an employer had an obligation to accommodate the religious practices of its employees or prospective employees unless to do so would create a "serious inconvenience to the conduct of the business". 29 CFR 1605.1(a)(2), 31 FR 3070 (1966).

In 1967, the Commission revised these guidelines to state that an employer had an obligation to reasonably accommodate the religious practices of its employees or prospective employees, unless the employer could prove that to do so would create an "undue hardship". 29 CFR 1605.1(b)(c), 32 FR 10298.

In 1972, Congress amended Title VII to incorporate the obligation to accommodate expressed in the Commission's 1967 Guidelines by adding section 701(j).

In 1977, the United States Supreme Court issued its decision in the case of *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977). *Hardison* was brought under section 703(a)(1) because it involved facts occurring before the enactment of Section 701(j). The Court applied the Commission's 1967 Guidelines, but indicated that the result would be the same under Section 701(j). It stated that Trans World Airlines had made reasonable efforts to accommodate the religious needs of its employee, Hardison. The Court held that to require Trans World Airlines to make further attempts at accommodations—by unilaterally violating a seniority provision of the collective bargaining agreement, paying premium wages on a regular basis to another employee to replace Hardison, or creating a serious shortage of necessary employees in another department in order to replace Hardison—would create an undue hardship on the conduct of Trans World Airlines' business, and would therefore, exceed the duty to accommodate Hardison.

In 1978, the Commission conducted public hearings on religious discrimination in New York City, Milwaukee, and Los Angeles in order to respond to the concerns raised by *Hardison*. Approximately 150 witnesses testified or submitted written statements.[5] The witnesses included employers, employees, representatives of religious and labor organizations and representatives of Federal, State and local governments.

The Commission found from the hearings that:

[5] The transcript of the Commission's Hearings on Religious Discrimination can be examined by the public at: The Equal Employment Opportunity Commission, 2401 E Street NW., Washington, D.C. 20506.

(1) There is widespread confusion concerning the extent of accommodation under the *Hardison* decision.

(2) The religious practices of some individuals and some groups of individuals are not being accommodated.

(3) Some of those practices which are not being accommodated are:

—Observance of a Sabbath or religious holidays;

—Need for prayer break during working hours;

—Practice of following certain dietary requirements;

—Practice of not working during a mourning period for a deceased relative;

—Prohibition against medical examinations;

—Prohibition against membership in labor and other organizations; and

—Practices concerning dress and other personal grooming habits.

(4) Many of the employers who testified had developed alternative employment practices which accommodate the religious practices of employees and prospective employees and which meet the employer's business needs.

(5) Little evidence was submitted by employers which showed actual attempts to accommodate religious practices with resultant unfavorable consequences to the employer's business. Employers appeared to have substantial anticipatory concerns but no, or very little, actual experience with the problems they theorized would emerge by providing reasonable accommodation for religious practices.

Based on these findings, the Commission is revising its Guidelines to clarify the obligation imposed by Section 701(j) to accommodate the religious practices of employees and prospective employees.

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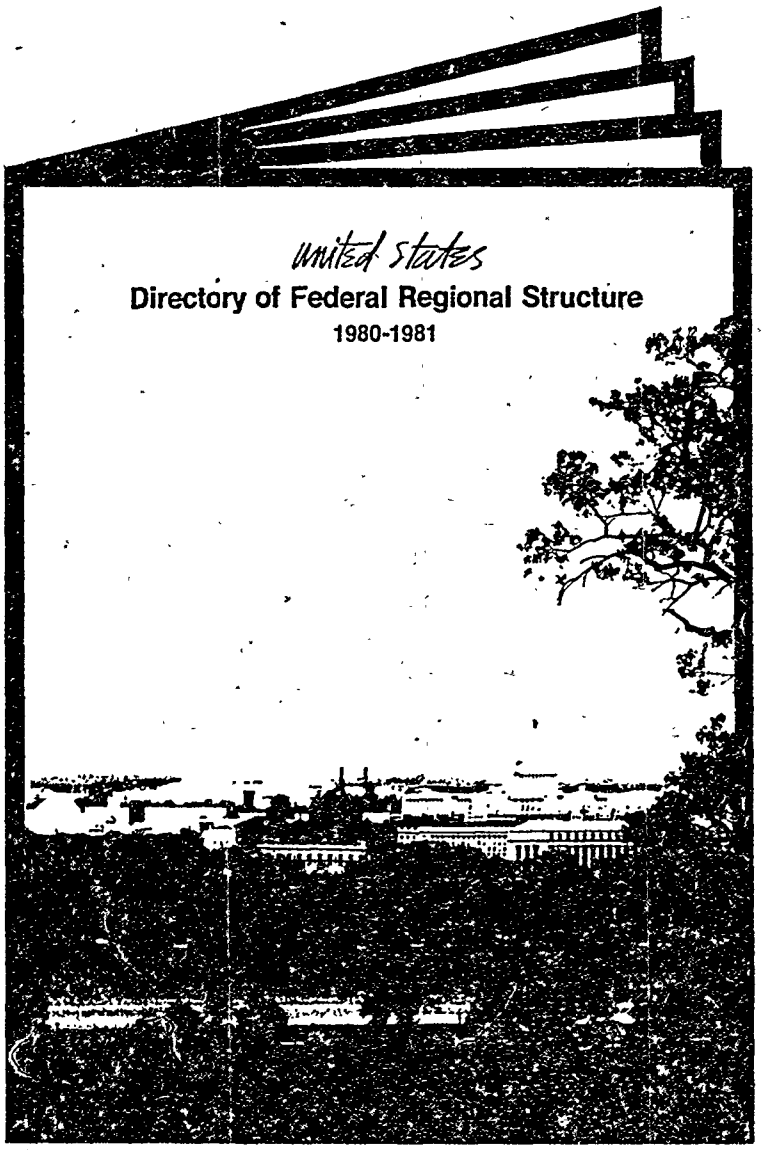

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