12-3-82
Vol. 47 No. 233
Pages 54419-54758

federal register

Friday
December 3, 1982

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Administrative Practice and Procedure
Internal Revenue Service
Merit Systems Protection Board
National Labor Relations Board

Air Pollution Control
Environmental Protection Agency

Coal Mining
Surface Mining Reclamation and Enforcement Office

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

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

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Administrative Practice and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rules.

SUMMARY: The Board finalizes the interim regulations which were published December 22, 1981 (45 FR 62045), to require the parties before it to serve pleadings, other than the initial petition for appeal or a subsequent petition for Board review, directly on each other instead of having the Board receive and serve the pleadings on the parties; and to eliminate the requirement that such pleadings be delivered by certified mail. In addition, the Board is reducing the number of copies of pleadings which the parties are required to submit.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Bruce Moyer, Office of the General Counsel, (202) 653-8910.

SUPPLEMENTARY INFORMATION: The changes related to service by parties and use of certified mail, issued as interim regulations on December 22, 1981, generated several comments from federal agencies, other organizations, and individuals. Generally, the responses expressed concern that reliance upon service of pleadings by the parties would not be as effective as service controlled by the Board. Likewise, the use of regular mail in lieu of certified mail generated concern regarding the reliability of regular mail service, and its possible effect upon determination of timely filings. However, based on several months of operation under the revised procedures, the Board has concluded that these changes have been generally cost effective, have not imposed unreasonable burdens upon the parties, and otherwise have presented no substantial problems of adverse general impact upon the timely and effective processing of appeals. Accordingly, the Board has decided to publish the interim changes as final regulations for immediate effect. Comments on the interim regulations also identified related sections of the regulations wherein references to certified mail required corresponding consistency. Consequently, 5 CFR 1201.22, 1201.55, and 1201.61 have been amended to this end.

The Board additionally has amended 5 CFR 1201.26(b)(2), to reduce the required number of copies of pleadings to be submitted to the Board by the parties. This change results from internal processing improvements at the Board and reduces requirements previously placed on the parties. Therefore, the Board has determined that good cause exists to effect this change immediately upon publication.

Regulatory Flexibility Act Statement

The Chairman, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of this rule, pursuant to section 603 or 604 of the Regulatory Flexibility Act, because of his determination that this rule would not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure.

PART 1201—[AMENDED]

Accordingly, the Merit Systems Protection Board amends 5 CFR 1201 as follows:

Section 1201.22(b) and (c) are revised.

§ 1201.22 Filing of petitions for appeal and response.

* * * * *

(b) *Time of Filing.* Petitions for appeal must be filed during the period beginning with the day after the effective date of the action being appealed and ending on the twentieth (20th) day after the effective date. Agency responses to petitions for appeal must be filed within 15 days after agency receipt of the appellant's petition. The date of filing shall be determined by the date of mailing indicated by the postmark date. If the filing is by personal delivery, it shall be considered filed on the date it is received in the regional office.

(c) *Method of Filing.* Filing must be made either by personal delivery during normal business hours to the appropriate Board regional office or by mail addressed to that office.

Section 1201.26 is amended by revising paragraphs (a) and (b).

§ 1201.26 Number of pleadings, service, and response.

(a) *Number.* One original and one copy of a petition for appeal or petition for review must be filed with the appropriate Board office. One original of all other subsequent pleadings must be filed.

(b) *Service.*—(1) *Service by the Board.* The Board will serve copies of a petition for appeal or petition for review upon the parties to the proceeding by mail. The Board will attach a service list indicating the names and addresses of the parties to the proceeding or their designated representatives.

(2) *Service by the parties.* The parties shall serve on each other one copy of all pleadings, as defined by § 1201.4(c), with the exception of petitions for appeal or review. Service shall be made by mailing or by delivering personally a copy of the pleading to each party on the service list previously provided by the Board. Each pleading must be accompanied by a certificate of service specifying how and when service was made. It shall be the duty of all parties to notify the Board and one another in writing of any changes in the names or addresses on the service list.

* * * * *

Section 1201.55(a) is revised.

§ 1201.55. Motions.

(a) *Form.* Motions shall be in writing except that oral motions may be made during the course of a hearing. All motions shall state the reasons in support thereof. Written motions shall be submitted to the presiding official or the Board, as appropriate, and served upon all other parties.

* * * * *

Section 1201.61 is revised.

§ 1201.61 Service of documents.

Any document submitted with regard to any pleading shall be served upon all parties to the proceeding.

Section 1201.122 is amended by revising paragraph (b).

§ 1201.122. Filing and service in Special Counsel actions.

* * * * *

(b) *Service.* Service may be by mail or by personal delivery. Service by mail is accomplished by mailing to all parties or their representatives at the last known address a copy of the complaint or request, together with exhibits or attachments, and a certificate of service. Personal delivery is accomplished by delivering the documents described above to the business office or home of the person to whom it is addressed and leaving it with that person, or with a responsible person at that address.

For the Board.

Dated: November 19, 1982.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 82-32814 Filed 12-2-82; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts, 55, 56, 59, and 70

Increase in Fees and Charges; and Miscellaneous Other Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The interim rule with request for comments published October 15, 1982 (47 FR 46067) which increased fees and charges for poultry, rabbit, and egg grading and egg products inspection is made final. These changes are necessary to cover increased costs associated with the programs. This document finalizes charges for the Federal voluntary egg products inspection; egg, poultry, and rabbit grading; and laboratory services and the overtime and appeal rates for Federal mandatory egg products inspection as revised in the interim final rule. It also finalizes several nonsubstantive miscellaneous amendments made for clarity or to correct obsolete or erroneous citations and references.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: D. M. Holbrook, (202) 447-3506.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291, and has been classified "nonmajor" as it does not meet the criteria contained therein for major regulatory actions. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because the fees and charges merely reflect, on a cost-per-unit-graded/inspected basis, a minimal increase in the costs currently borne by those entities utilizing the services, and because competitive effects are offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e., the cost to users increases in proportion to increased volume.

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing Federal voluntary egg products inspection; egg, poultry, and rabbit grading; and laboratory services. The Egg Products Inspection Act requires that the cost for overtime inspection and holiday inspection be borne by the user of the service. Because fees and charges for these services—as determined by the grader's or inspector's salary and fringe, cost of supervision, travel, and other overhead and administrative costs—have increased since the last adjustment, it was necessary to make the revised charges effective November 1, 1982, to cover the costs of services.

Since last year's nonresident program fee increase, which was based primarily on a shift in the grade level of graders performing service on a nonresident or lot basis to a higher level and the October 1981 pay increase, program costs have increased. Federal employees have received a 4.0-percent pay increase, and salaries of federally licensed State employees have increased on average about 7 percent. Also, leave liability has increased about 2 percent. Therefore, overall, the fee for nonresident service on an hourly basis was increased about 9 percent.

Costs have increased also for the resident shall egg and poultry grading programs. The hourly rate charged for graders under the resident grading programs does not cover costs of supervision and other overhead and administrative expenses. These costs are covered by an administrative service charge assessed on each case of shell eggs and each pound of poultry handled in plants using the service. Since these rates were increased last year, supervisory salaries have increased 4 percent; and supplies and other costs associated with overhead and administration have increased. But more importantly, appropriated funding previously used to offset a portion of the overhead costs is being eliminated in fiscal year 1983. This funding cut represents an 8-percent loss in revenue previously used to cover a portion of the overhead costs. To compensate for these cost increases, the administrative service charge per case of shell eggs and per pound of poultry and the minimum and maximum payment per billing period for each official plant were increased on an average about 20 percent. Similar cost increases have also occurred elsewhere in these programs, as is more fully detailed in the interim final rulemaking document.

Several nonsubstantive miscellaneous changes were made in various sections of 7 CFR Parts 55, 56, 59, and 70. These changes were made to correct obsolete and erroneous references and to clarify the regulations.

Because increased revenues were needed to cover costs of services, an interim final rule published October 15, 1982, with an effective date of November 1, 1982, was necessary. The interim rule invited comments for 30 days ending November 15, 1982. However, no comments were received during the comment period. And, since this document does not alter the regulations which have been in effect since November 1, 1982, there is no reason to postpone its effective date for 30 days. Thus, good cause is found to make this document effective upon publication.

Information Collection Requirements and Recordkeeping

Information collection requirements and recordkeeping provisions contained in 7 CFR Parts 56, 59, and 70 have been approved by OMB under the provisions of 44 U.S.C. Chapter 35. As a result, 7 CFR Part 56 has been assigned OMB No. 0581-0128; 7 CFR Part 59 has been assigned OMB Nos. 0581-0113 and 0581-0114; and 7 CFR Part 70 has been assigned OMB No. 0581-0127. Information collection requirements contained in 7 CFR Part 55 do not require approval because this regulation has less than 10 respondents.

List of Subjects

7 CFR Part 55

Egg products, Voluntary inspection service.

7 CFR Part 56

Shell eggs, Voluntary grading service.

7 CFR Part 59

Shell eggs, Egg products, Mandatory inspection service.

7 CFR Part 70

Poultry, Poultry products, Rabbit products, Voluntary grading service.

Accordingly, for the reasons and purposes stated above and in the interim final rule published October 15, 1982 (47 FR 46067), the amendments made to §§ 55.2, 55.150, 55.380, 55.510, 55.550, 55.560, and 55.820 of Part 55; §§ 56.1, 56.46, 56.47, 56.52, 56.54, 56.57, 56.65, 56.76, 56.212, and 56.228 of Part 56; §§ 59.5, 59.126, 59.128, 59.370, 59.920, 59.930, and 59.970 of Part 59; and §§ 70.1, 70.61, 70.71, 70.72, 70.73, 70.76, 70.77, 70.91, and 70.332 of Part 70; Title 7, Code of Federal Regulations, by the said interim rule are hereby made final, without any change.

(Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*); Egg Products Inspection Act (21 U.S.C. 1031–1056))

Done at Washington, D.C., on November 29, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-33028 Filed 12-2-82; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 388 and Lemon Reg. 387, Amdt. 1]

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 December 5–11, 1982, and increases the quantity of lemons that may be shipped during the period November 28–December 4, 1982. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective December 5, 1982, and the amendment is effective for the period November 28–December 4, 1982.

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

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

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural 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 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 6, 1982. The committee met again publicly on November 30, 1982, 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 continues very strong.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.688 is added as follows:

§ 910.688 Lemon regulation 388.

The quantity of lemons grown in California and Arizona which may be handled during the period December 5, 1982, through December 11, 1982, is established at 245,000 cartons.

2. Section 910.687 Lemon regulation 387 (47 FR 53693) is revised to read as follows:

§ 910.687 Lemon regulation 387.

The quantity of lemons grown in California and Arizona which may be handled during the period November 28, 1982, through December 4, 1982, is established at 250,000 cartons.

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

Dated: December 2, 1982.

Russell L. Hawes,

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

[FR. Doc. 33226 Filed 12-2-82; 11:52 am]

BILLING CODE 3410-02-M

7 CFR Parts 1126 and 1132

[Milk Order Nos. 126 and 132; Docket Nos. AO-231-A48 and AO-262-A32]

Milk in Texas and Texas Panhandle Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action adds to the Texas marketing area seven Texas counties that were a part of the Red River Valley Federal order marketing area. This action also removes one Oklahoma county from the Texas Panhandle marketing area. These marketing area changes, which are being made concurrently with corollary changes in four other orders that are being merged to form the "Southwest Plains" order, are based on industry proposals considered at a public hearing in May 1980 and are necessary to reflect current marketing conditions and to assure orderly marketing in the respective areas.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of

Agriculture, Washington, D.C. 20250, (202) 447-4824.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act, this document is exempt from such requirements since this proceeding was initiated prior to January 1, 1981.

Prior documents in this proceeding: Notice of Hearing—Issued April 25, 1980, published April 30, 1980 (45 FR 28736). Recommended Decision—issued on May 12, 1982; published May 19, 1982 (47 FR 21684). Extension of Time—issued on June 16, 1982; published June 21, 1982 (47 FR 26665). Final Decision—issued on October 4, 1982; published October 7, 1982 (47 FR 44268).

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid specified marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will end to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending each of the specified orders, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended; and

(3) The issuance of the order amending the orders is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale within the respective marketing areas.

List of Subjects in 7 CFR Parts 1126 and 1132

Milk marketing orders, Milk, Dairy products.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

PART 1126—MILK IN TEXAS MARKETING AREA

1. In § 1126.2, a new heading, Zone 1-A, and a listing of counties thereunder is added immediately following the counties listed under Zone 1 and prior to the heading Zone 2 to read as follows:

§ 1126.2 Texas marketing area.

* * * * *

Zone 1-A

Archer, Baylor, Clay, Hardeman, Montague, Wichita and Wilbarger.

* * * * *

2. In § 1126.52(a)(1), a new provision is added immediately following "Zone 1 . . . No Adjustment" to read as follows:

§ 1126.52 Plant location adjustments for handlers.

(a) * * *

(1) * * *

	Adjustment per hundredweight
* * * * *	
Zone 1-A	Minus 12 cents.

* * * * *

3. In § 1126.52 all of the provisions contained in paragraph (a)(2)(iii) are removed.

PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

Section 1132.2 is revised to read as follows:

§ 1132.2 Texas Panhandle marketing area.

"Texas Panhandle marketing area," hereinafter called the "marketing area," means all of the territory within the counties of Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, all in the State of Texas.

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

Effective date: January 1, 1983.

Signed at Washington, D.C. on November 22, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-33118 Filed 12-2-82; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1901, 1942, 1944, and 1948

Grant-in-Aid Information

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is removing from the Code of Federal Regulations (CFR) its regulations pertaining to grant-in-aid information. This regulation is

removed because effective October 1, 1982 Department of Treasury Circular 1082 (TC 1082) was cancelled and replaced by the Federal Assistance Award Data System (FAADS).

Removing this regulation will have no effect on the public. The intended effect of this action is to remove an unneeded regulation from the CFR.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Wallis B. McArthur, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, Room 6322-S, 14th and Independence Avenue, S.W., Washington, D.C. 20250, telephone (202) 382-9583.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 which implements Executive Order 12291 and has been determined to be exempt from those requirements. The reason for this decision is that the action involved is an internal agency management practice to remove an unneeded regulation from the CFR.

This Subpart outlined the procedures to comply with Section 201 of the Intergovernmental Cooperation Act of 1968 as set forth in the Department of Treasury Circular 1082 (TC 1082). Effective October 1, 1982 TC 1082 was rescinded and replaced by the Federal Assistance Award Data System (FAADS) in accordance with the Federal Register Notice dated April 23, 1982 (47 FR 17705). USDA agencies are no longer required to notify State Central Information Reception Agencies (SCIRA's) of Federal assistance awards. FAADS is an automated Government-wide system that provides grant information to State and local governments and the Congress. The purpose of FAADS is to provide a basis for the collection of computerized information on financial assistance actions made by Federal agencies. The Federal agency will provide a report using FAADS each fiscal quarter to a central data management facility for the Office of Management and Budget (OMB). The reporting information for FAADS should be available in the documentation on each Federal action in the award of financial assistance to recipients.

Charles W. Shuman, Administrator, has determined that this action will not have a significant economic impact on a substantial number of small entities because this is strictly an agency notification process and is provided from information already available.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since the purpose of the action is administrative in nature and publication for comment is unnecessary.

The FmHA programs and projects which are affected by this instruction are subject to State and local clearinghouse review in the manner delineated in FmHA Instruction 1901-H.

(List of Catalog of Federal Domestic Assistance (CFDA) Nos. includes: 10.418—Water and Waste Disposal Systems for Rural Communities; 10.422—Business and Industrial Loans; 10.423—Community Facilities Loans; 10.424—Industrial Development Grants; 10.419—Watershed Protection and Flood Prevention Loans; 10.414—Resource Conservation and Development Loans; 10.409—Irrigation, Drainage, and Other Soil and Water Conservation Loans; 10.410—Low to Moderate Income Housing Loans; 10.405—Farm Labor Housing Loans and Grants; 10.415—Rural Rental Housing Loans; 10.420—Rural Self-Help Housing Technical Assistance; and 10.411—Rural Housing Site Loans.)

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Lists of Subjects in 7 CFR Part 1901

Community development, Community facilities, Grant programs—Housing and community development, Intergovernmental relations, Loan programs—Housing and community development, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1901—PROGRAM RELATED INSTRUCTIONS

Subpart H—A-95 Review, Evaluation and Coordination of Projects

§ 1901.360 [Amended]

1. Section 1901.360 is amended by removing paragraph (b) and renumbering paragraphs (c), (d), and (e) to (b), (c), and (d), respectively.

PART 1901, EXHIBIT A—[AMENDED]

2. Exhibit A is amended by removing step 13 and the reference to step 13 in line 3 of the last paragraph of the exhibit.

Subpart J—Grant-in-Aid Information

§§ 1901.451-1901.500 [Removed and Reserved]

3. Sections 1901.451-1901.500 are removed and reserved.

Subpart O—Jointly Funded Grant Assistance to State and Local Governments and Nonprofit Organizations

4. Section 1901.710(c)(4) is revised to read as follows:

§ 1901.710 Application policies and procedures.

* * * * *

(c) *Application for approval*—

* * * * *

(4) *FmHA approval announcement.* After the FmHA funds are obligated, the FmHA State Office will follow FmHA Instruction 2015-C (available in the National Office and any FmHA State office) in announcing the grant approval to Congressional Offices.

* * * * *

PART 1942—ASSOCIATIONS

Subpart G—Industrial Development Grants

§ 1942.310 [Amended]

5. Section 1942.310 is amended by removing paragraph (e) and renumbering paragraphs (f), (g), (h), and (i) to (e), (f), (g), and (h), respectively.

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

§ 1942.372 [Removed and Reserved]

6. Section 1942.372 is removed and reserved.

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

§ 1944.174 [Amended]

7. Section 1944.174 is amended by removing paragraph (b), removing the designation (a) in front of the remaining text in the section, and removing the paragraph title, *"OGC."*

PART 1948—RURAL DEVELOPMENT

Subpart A—Area Development Assistance Planning Grants.

8. Section 1948.28 is revised to read as follows:

§ 1948.28 A-95 and other administrative requirements.

The policies and regulations contained in Chapter 4, Sections 4 and 5 of the USDA Administrative Regulations; Part 1901, Subpart H of this Chapter; and OMB Circular A-95 apply to grants made under this Part.

Subpart B—Section 601 Energy Impacted Area Development Assistance Program

9. Section 1948.66 is revised to read as follows:

§ 1948.66 A-95 and other administrative requirements.

The policies and regulations contained in Chapter 4, Sections 4 and 5 of the USDA Administrative Regulations; Part 1901, Subpart H of this Chapter; and OMB Circular A-95 apply to grants and other actions under this program.

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; sec. 10 Pub. L. 93-357, 88 Stat. 392 delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.70)

Dated: November 8, 1982.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 82-33035 Filed 12-2-82; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

Extensions of Credit by Federal Reserve Banks; Changes In Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of adjusting discount rates. The further half-point reduction in the discount rate, which is broadly consistent with the prevailing pattern of market rates, was taken against the background of continued progress toward greater price stability, indications of continued sluggishness in business activity, and relatively strong demands for liquidity.

DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3257).

SUPPLEMENTARY INFORMATION: Pursuant to the authority of 5 U.S.C. 553 (b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations required that these amendments must be adopted immediately.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Credit unions, Federal Reserve System, Foreign banks.

PART 201—[AMENDED]

Pursuant to section 10(b) and 14(d) of the Federal Reserve Act (12 U.S.C. 347b and 357) Part 201 is amended as set forth below:

1. Section 201.51 is revised to read as follows:

§ 201.51 Short term adjustment credit for depository institutions.

The rates for short term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	9	Nov. 22, 1982.
New York	9	Do.
Philadelphia	9	Do.
Cleveland	9	Nov. 26, 1982.
Richmond	9	Nov. 22, 1982.
Atlanta	9	Do.
Chicago	9	Do.
St. Louis	9	Do.
Minneapolis	9	Do.
Kansas City	9	Do.
Dallas	9	Nov. 23, 1982.
San Francisco	9	Nov. 22, 1982.

2. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit to depository institutions.

(a) The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	9	Nov. 22, 1982.
New York	9	Do.
Philadelphia	9	Do.
Cleveland	9	Nov. 26, 1982.
Richmond	9	Nov. 22, 1982.
Atlanta	9	Do.
Chicago	9	Do.
St. Louis	9	Do.
Minneapolis	9	Do.
Kansas City	9	Do.
Dallas	9	Nov. 23, 1982.
San Francisco	9	Nov. 22, 1982.

(b) The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	9	Nov. 22, 1982.
New York	9	Do.
Philadelphia	9	Do.
Cleveland	9	Nov. 26, 1982.
Richmond	9	Nov. 22, 1982.
Atlanta	9	Do.
Chicago	9	Do.
St. Louis	9	Do.
Minneapolis	9	Do.
Kansas City	9	Do.
Dallas	9	Nov. 23, 1982.
San Francisco	9	Nov. 22, 1982.

Note.—These rates apply for the first 60 days of borrowing. A 1 percent surcharge applies for borrowing during the next 90 days, and a 2 percent surcharge applies for borrowing thereafter.

By order of the Board of Governors of the Federal Reserve System, November 24, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-32929 Filed 12-2-82; 8:45 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 745

Conforming Amendments To Lending Regulations; Growth Equity Mortgages; Regulation of Due-on-Sale for Window Period Loans; Alternative Mortgage Transactions Study

AGENCY: National Credit Union Administration (NCUA)

ACTION: Final regulations.

SUMMARY: A number of provisions of the Garn-St Germain Depository Institutions Act of 1982 apply to loans made by credit unions and require action by NCUA. Title V amends the Federal Credit Union Act, revising the procedures for processing loan applications, removing certain restrictions on loans that Federal credit unions can grant, and confirming that Federal credit unions may make loans meeting secondary market requirements. It also requires NCUA to conform its

lending regulations. Title III preempts state prohibitions on the enforcement of due-on-sale clauses. It requires NCUA to act to permit Federal credit unions to enforce due-on-sale clauses in certain loans made before October 15, 1982. Title VIII provides state credit unions parity with Federal credit unions in making alternative mortgage loans. It requires NCUA to study its regulations and identify those that will and those that will not apply to state credit unions. In order to give state and Federal credit unions more flexibility to design their own loan programs as soon as possible, NCUA is simultaneously taking the necessary steps to implement the provisions of these Titles of the Garn-St Germain Act.

EFFECTIVE DATE: November 18, 1982.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, Deputy General Counsel, or John L. Culhane, Jr., Senior Attorney, Department of Legal Services, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456 or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: A number of provisions of the Garn-St Germain Depository Institutions Act of 1982 apply to loans made by credit unions. To implement these provisions, NCUA is taking the following actions.

Conforming Amendments to Lending Regulations

Among other things, Title V of the Garn-St Germain Act amends the Federal Credit Union Act provisions that apply to loans made by Federal credit unions. It revises the procedures for processing loan applications, making a credit committee optional and requiring a loan to an official to be approved by the board of directors only where the official's total indebtedness exceeds $10,000 plus pledged shares, rather than $5,000 plus pledged shares, as had been the case. It expands the authority of Federal credit unions to make loans: allowing first mortgage loans to be made for more than 30 years, to be made regardless of the sales price, and to be refinanced; allowing second mortgage loans to be made for 15 years, regardless of the purpose; and allowing loans on terms acceptable to a government agency that has made an advance commitment to purchase the loans. It also confirms the ability of Federal credit unions to comply with secondary market requirements, permitting certain limits on the prepayment of mortgage loans and permitting the insurance of custodial accounts. These statutory changes require NCUA to conform its lending regulations.

As a result, NCUA is making the following changes to its regulations. References to the procedures for processing loan applications in §§ 701.21-1 and 701.21-4 are being revised to include the possibility that loans may be approved by the board of directors. In § 701.21-4, references to the trigger for board of directors approval of a loan to an official are being revised from $5,000 plus pledged shares to $10,000 plus pledged shares. NCUA's regulations on mortgage loans, §§ 701.21-6, 701.21-6A, and 701.21-6B, are being revised to allow first mortgage loans to be financed or refinanced for up to 40 years and to be made regardless of the sales price. These regulations are also being revised to permit certain limitations on the prepayment of mortgage loans. And a new § 745.3(d) is being added to provide for the insurance of custodial accounts. For convenience, certain technical changes are also being made at this time.

Growth Equity Mortgages

A growth equity mortgage is a mortgage that provides for the accelerated repayment of the loan, either as a result of movements in an index or as the result of scheduled increases in payments of principal and interest. Mindful of the emphasis that the Garn-St Germain Act places on equity loans made by Federal credit unions, as many of the amendments of Title V are designed to facilitate equity loans, and on alternative mortgage loans made by Federal and state credit unions, and as Title VIII is designed to facilitate alternative mortgage loans by providing state credit unions parity with Federal credit unions, the NCUA Board believes that it is appropriate at this time to authorize growth equity mortgages for Federal credit unions.

Section 701.21-6(b)(2) of NCUA's regulations requires that a fixed rate long term first mortgage loan be amortized by substantially equal monthly installments sufficient to retire the loan at maturity, although other amortization schedules may be approved with the prior written consent of the Administration. In promulgating this regulation, NCUA was exercising its plenary and exclusive authority set forth in sections 107(5)(A)(i) and 107(5)(A)(ix) of the Federal Credit Union Act to regulate the real estate loans granted by Federal credit unions and the amortization of loans granted by Federal credit unions. This exercise of the Board's authority preempted state laws purporting to address the ability of a Federal credit union to set its own loan amortization schedules, either directly or indirectly. Pursuant to that authority, and in accordance with its regulation, the NCUA Board hereby provides written consent for all Federal credit unions to make growth equity first mortgage loans with initial maturities in excess of 12 years.

Regulation of Due-on-Sale Clauses for Window Period Loans

A Federal credit union's ability to exercise a due-on-sale clause is now governed by section 341 of Title III of the Garn-St Germain Act. Under section 341, a Federal credit union may generally exercise a due-on-sale clause if the loan was made after October 15, 1982, or if the loan was made in a state that permitted the exercise of due-on-sale clauses; in states that prohibited the exercise of due-on-sale, a Federal credit union may not generally exercise a due-on-sale clause in the case of a transfer that took place before October 15, 1982.

Special rules apply, however, in the case of loans made during a "window" period, the length of which will vary from state to state. A state has a window period only if the state either passed a statute prohibiting the exercise of a due-on-sale clause or a state court handed down a decision, applicable state wide, prohibiting the exercise of a due-on-sale clause. In that case, the window period begins on the date of enactment, or date of decision, and ends October 15, 1982.

If a loan is made or assumed during the window period, then a Federal credit union cannot enforce a due-on-sale clause except in the case of transfers that take place on or after October 15, 1985. However, NCUA can adopt regulations to handle window period loans differently, either by shortening or lengthening the time the prohibition on the enforcement of due-on-sale clauses will apply. The time may not, however, be shortened to a date earlier than the date of adoption of the regulations.

NCUA is therefore republishing its regulations governing the exercise of due-on-sale clauses in long term first mortgage loans in order to enable Federal credit unions to exercise due-on-sale clauses in the case of transfers that take place on or before November 18, 1982. NCUA originally chose to require the use of an instrument containing a due-on-sale clause because of its belief that the ability of a Federal credit union to exercise the rights afforded by a due-on-sale clause was essential to a Federal credit union's safe and sound participation in the long term residential mortgage market. Because Federal credit unions assessed the risks of entering into this market in reliance

upon NCUA's regulation, the NCUA Board believes that prompt action is necessary to protect the safety and soundness of those credit unions that chose to enter the long term residential mortgage market.

Alternative Mortgage Transactions Study

Title VIII of the Garn-St Germain Act provides state credit unions parity with Federal credit unions in making alternative mortgage loans. Section 807 of the Act requires NCUA to study its regulations to identify those regulations that will not apply to state credit unions.

For purposes of clarity, NCUA is making certain amendments to its regulations so that state credit unions may more easily locate those regulations under which Federal credit unions make alternative mortgage loans. Briefly, as amended, Federal credit unions make alternative mortgage loans under § 701.21-2 of NCUA's regulations (short term adjustable rate first mortgage loans, adjustable rate mobile home loans, adjustable rate second mortgage loans, et cetera), § 701.21-3 of NCUA's regulations (lines of credit), § 701.21-5 of NCUA's regulations (loans made pursuant to government insured or guaranteed loan programs or pursuant to an advance commitment by a government agency to purchase the loans), § 701.21-6 of NCUA's regulations (long term growth equity loans), and § 701.21-6B of NCUA's regulations (long term adjustable rate first mortgage loans).

A preliminary review of these regulations was conducted and various state credit union supervisors, trade associations and other interested parties were advised that it did not appear that any of the provisions of these regulations would be inappropriate for use by state credit unions. As none of these parties have objected to these conclusions, at this time the NCUA Board does not believe that there are any regulatory provisions that are inappropriate for use by state credit unions.

Procedures for Regulatory Development

The NCUA Board for good cause finds that notice and public comment on these regulations is unnecessary and contrary to the public interest. The conforming amendments to the lending regulations merely remove inconsistencies between the statutory and regulatory provisions governing lending by Federal credit unions. The due-on-sale regulations are necessary to preserve the safety and soundness of those Federal credit unions that entered into the long term residential mortgage market in reliance upon regulations promulgated after notice and public comment. The regulations adopted to facilitate alternative mortgage transactions by state credit unions merely clarify the authority currently afforded Federal credit unions. For the same reasons, and because the regulations remove restrictions, the final regulations are being made effective in less than 30 days.

The final regulations will not have a significant economic impact on a substantial number of small credit unions. The conforming amendments merely remove inconsistencies between the statutory and regulatory provisions governing lending and will therefore increase their flexibility. The due-on-sale regulations will not have a significant economic impact on a substantial number of small credit unions because only a few credit unions with less than $1 million in assets are making or have made long term residential mortgage loans. The regulations adopted to clarify the authority of Federal credit unions to make alternative mortgage loans will likewise not have a significant economic impact on a substantial number of small credit unions because only a few credit unions with less $1 million in assets will make alternative mortgage loans. Therefore, a Regulatory Flexibility Analysis is not required.

List of Subjects in 12 CFR Parts 701 and 745

Credit unions, Mortgages, Insurance.

By the National Credit Union Administration Board on the 18th of November 1982.

Rosemary Brady,

Secretary of the Board.

PART 701—[AMENDED]

Authority: 12 U.S.C. 1757, 1766(a), and 1789(a)(11).

Accordingly, 12 CFR Parts 701 and 745 are amended as set forth below.

1. 12 CFR 701.21-1(c) is revised to read as follows:

§ 701.21-1 Lending policies.

* * * * *

(c) Subject to limitations established by the board of directors, when a loan is approved the board of directors, the credit committee or the loan officer, whichever approved the loan, shall assure that a credit application is on file which supports the decision to extend credit.

2. 12 CFR 701.21-2(b) is revised to read as follows:

§ 701.21-2 Amortization and payment of loans to members.

* * * * *

(b) This rule is promulgated pursuant to the exclusive authority of the NCUA Board to regulate lending and loan amortization as set forth in sections 107(5), 107(5)(A)(ii) and 107(5)(A)(ix) of the Federal Credit Union Act. 12 U.S.C. 1757(5), (5)(A)(ii) and (5)(A)(ix). This exercise of the Board's authority preempts any state law purporting to address the subject of a Federal credit union's ability or right to make adjustable rate consumer loans, short term adjustable rate first mortgage loans, short term growth equity mortgage loans, adjustable rate mobile home loans, adjustable rate second mortgage loans, and other similar loans or to directly or indirectly restrict such ability or right.

§ 701.21-4 [Amended]

3. 12 CFR 701.21-4(b) is amended by adding the words "As provided in the bylaws, the board of directors," before the words "the credit committee or loan officer shall act upon all applications."

4. 12 CFR 701.21-4(c)(3) is amended by removing the word "$5,000" and by inserting in its place the word "$10,000."

5. 12 CFR 701.21-5 is added to read as follows:

§ 701.21-5 Insured, guaranteed and advance commitment loans.

(a) A loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee or commitment is provided.

6. 12 CFR 701.21-6 is revised to read as follows:

§ 701.21-6 Long term fixed rate first mortgage loans.

(a) For purposes of this section; (1) "One-to-four family dwelling" means a structure designed for residential use by not more than four families. The term includes a one-to-four family unit in a cooperative housing development. The term also includes a one-to-four family unit in a planned unit development or condominium project where certain portions of the security property are owned in common with others.

(2) "Principal residence" means a structure where the member will be domiciled or will reside permanently

within 6 months after initial disbursement of the loan, or within 18 months provided the structure is being newly constructed or extensively rehabilitated.

(3) "Value" means the lower of the appraised market value or the purchase price. In the case of a residence being rehabilitated, "Value" shall also include the cost of rehabilitation. The cost of rehabilitation shall be supported by a good faith estimate.

(4) "Appraisal" means an objective estimate of value based upon a physical examination and evaluation which shall disclose the market value of the security offered by use of the market sales approach which shall be supported by an analysis of comparable properties in the immediate area. The market value should also be supported by use of the cost and income appraisal methods if conditions warrant.

(5) "Appraiser" means a person who is experienced in the appraisal of one-to-four family dwellings and is actively engaged in such appraisal work and whose qualifications are demonstrated by membership in a national professional appraisal organization, or who is licensed to appraise in the state in which the residence is located or who is acceptable as an appraiser by an insuring or guaranteeing agency of the Federal or State government.

(6) "Market value" means the highest price which the residence will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

(7) "Security instrument" means either a Deed of Trust, Mortgage or Leasehold Mortgage which constitutes a first lien, or in the case of a loan on a one-to-four family dwelling in a cooperative housing development, a Security Agreement which constitutes a first security interest in stock or a membership certificate issued to a tenant stockholder or resident member of a cooperative housing organization and which provides for the assignment of the borrower's interest in the proprietary lease or right of tenancy in property issued by such organization. Only in those areas of the United States of America, its territories and possessions, or the Commonwealth of Puerto Rico where an interest in real estate is customarily evidenced by leasehold or ground estates will the term "Leasehold Mortgage" be included in this definition.

(8) "Escrow account" means either a special limited withdrawal share account or accounts payable account for the accumulation of funds to pay for not more than one year's taxes, assessments, insurance premiums, construction proceeds, or other charges that could affect the credit union's first lien or first security interest.

(9) "Title insurance" means insurance protecting the credit union against loss due to clouds or defects in title to the residence equaling the current principal balance of the loan and also protecting and benefiting subsequent purchasers of the loan.

(10) "Hazard insurance" means property insurance affording protection against loss or damage from fire and other hazards covered by the industry's standard extended coverage endorsement which provides for payment of an amount sufficient to pay the loan balance in the event of a covered loss, with a standard clause in favor of the credit union and subsequent purchasers of the loan.

(b) Within the limitations of written policies adopted by the board of directors, Federal credit unions may originate loans secured by first liens on residential real property or secured by first security interests in residential cooperatives, with maturities in excess of 12 years and not exceeding 40 years, provided: (1) Loans shall be made to finance or refinance a one-to-four family dwelling that is or will be the principal residence of the Federal credit union member.

(2) Loans shall be amortized by substantially equal monthly installments sufficient to retire the loan at maturity. Each monthly installment shall be applied first to taxes and insurance due and payable (when an escrow account is established), then to interest currently due and payable, with the remainder to prinicpal. Amortization shall commence no later than 61 days after disbursement of proceeds and shall not exceed 40 years from date of disbursement. With prior written consent of the Administration, loans may be amortized by other than substantially equal monthly installments.

(3) The aggregate dollar amount of such loans outstanding may not exceed 25 per centum of the Federal credit union's assets without prior written consent of the Administration. This limitation does not include loans with maturities not exceeding 12 years.

(4) The loan shall not exceed 90 per centum of value at the time of disbursement except that the loan amount may equal up to 95 per centum of value provided that private mortgage insurance is obtained for the amount of the loan in excess of 90 per centum of value.

(5) The loan application shall be the current revision of FHLMC Form 65/ FNMA Form 1003 or its equivalent.

(6) The security instruments and notes shall be executed on the current revision of the FNMA/FHLMC Uniform Instruments for the jurisdiction in which the property is located or their equivalent. No prepayment penalty shall be allowed, although a Federal credit union may require that any partial prepayments be made on the date monthly installments are due and be in the amount of that part of one or more monthly installments that would be applicable to principal.

(7) The loan shall be secured by a perfected first lien or first security interest in favor of the credit union supported by a properly executed and recorded security instrument. No loan shall be secured by a residence located outside the United States of America, its territories and possessions, or the Commonwealth of Puerto Rico.

(8) Where an interest in real estate is customarily evidenced by leasehold or ground rent estates, loans shall comply with the preceding provisions of this section in addition to the procedures customarily followed to perfect an interest in a leasehold or ground rent estate.

(9) A Federal credit union may require the member/borrower to maintain an escrow share account. If a member's loan is assumed by a nonmember, any required escrow account shall be maintained as interest bearing account payable. The rate of interest paid on such accounts shall be at least equal to the lowest yielding dividend rate paid on any share accounts offered by the credit union.

(10) Each loan file shall contain the following: (i) A loan application supported by an executed sales contract and any modifications bearing the signature of the applicant(s).

(ii) A written appraisal on the current revision of FHLMC Form 70/FNMA Form 1004; FHLMC 465; FNMA Form 1004–A or their equivalent, prepared and signed prior to approval of the loan application by an appraiser who shall provide a certification on the current revision of FHLMC Form 439 or its equivalent.

(iii) When applicable, a private insurance certificate.

(iv) A complete settlement statement (Form HUD–1) detailing all charges and fees and distribution of the loan proceeds.

(v) An opinion of title signed by an attorney licensed to practice in the jurisdiction in which the property is located or a title insurance policy affirming the quality and the position of the first lien or first security interest.

(vi) A current hazard insurance policy.

(vii) A flood insurance policy, if required.

(viii) A properly executed note and security instrument and a document indicating the date and place(s) of recording of such instruments.

(c) The following restrictions shall be applicable to all loans made under this section: (1) A Federal credit union shall not grant any loan on the prior condition, agreement, or understanding that the borrower contract with any specific person or organization for the following; (i) Insurance services (as an agent, broker, or underwriter);

(ii) Building materials or construction services;

(iii) Legal services rendered to the borrower; and

(iv) Services of a real estate agent or broker.

(2) Notwithstanding the preceding paragraph, a Federal credit union may refuse to grant any loan if it believes, on reasonable grounds, that the insurance services provided by the person or organization selected by the borrower will afford insufficient protection to the credit union.

(3) A Federal credit union shall not make any loan if, either directly or indirectly, any commission, fee or other compensation is to be paid to, or received by, any of its officials or employees in connection with the procuring or insuring of the loan.

(4) Early repayment of a loan involving points or finance charges shall require recomputation. A refund, or an adjustment of the final payment, must be made to ensure that the true rate of interest has not exceeded the maximum rate authorized by law at the time the loan was granted. This requirement also applies to loans the credit union has sold in whole or in part.

(d) Due-on-sale clauses: (1) Except as otherwise provided herein, the exercise of a due-on-sale clause by a Federal credit union is governed exclusively by section 341 of the Garn-St Germain Depository Institutions Act of 1982 and by any regulations issued by the Federal Home Loan Bank Board implementing section 341 of the Garn-St Germain Act.

(2)(i) In the case of a contract involving a loan made pursuant to this section which was made or assumed, including a transfer of the liened property subject to the loan, during the period beginning on the date a State adopted a constitutional provision or statute prohibiting the exercise of due-on-sale clauses, or the date on which the highest court of such state has rendered a decision (or if the highest court has not so decided the date on which the next highest court has rendered a decision resulting in a final judgment if such decision applies state-wide) prohibiting such exercise and ending on October 15, 1982, a Federal credit union may exercise a due-on-sale clause in the case of a transfer which occurs on or after November 18, 1982, unless exercise of the due-on-sale clause would be based on any of the following:

(A) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(B) The creation of a purchase money security interest for household appliances;

(C) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(D) The granting of a leasehold interest of 3 years or less not containing an option to purchase;

(E) A transfer to a relative resulting from the death of a borrower;

(F) A transfer where the spouse or children of the borrower become an owner of the property;

(G) A transfer resulting from a decree of a dissolution of marriage, legal separation agreements, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property;

(H) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property; or

(I) Any other transfer or disposition described in regulations prescribed by the Federal Home Loan Bank Board.

(ii) This section is being promulgated pursuant to the plenary and exclusive authority of the NCUA Board as set forth in Sections 107(5)(A)(i), 107(5)(A)(ix), and 107(13) of the Federal Credit Union Act to regulate, respectively, the real estate loans granted by Federal credit unions, the amortization of loans granted by Federal credit unions, and the sale of loans granted by Federal credit unions. This exercise of the Board's authority preempts state laws purporting to address the ability of a Federal credit union to exercise its rights under a due on sale clause to raise interest rates on these loans.

7. 12 CFR 701.21-6A is amended by revising paragraphs (b)(1), (b)(2)(i), (b)(2)(iii), and (b)(3) to read as follows:

§ 701.21-6A Business relationship with mortgage lender.

* * * * *

(b) * * *

(1) *General Loan Terms.* A loan will only be granted to finance or refinance the acquisition of a one-to-four family dwelling that is or will be the principal residence of the borrower. The maturity will not exceed 40 years. The loan will be secured by a first lien or first security interest on the dwelling.

(2) * * *

(i) *Interest Rate.* The interest rate charged on the loan will not exceed the maximum rate permitted a Federal credit union at the time the loan is granted.

(ii) * * *

(iii) *Prepayment.* The borrower will be able to repay the loan prior to maturity in whole or in part on any business day without penalty, although the mortgage lender may require that any partial prepayment be made on the date monthly installments are due and be in the amount of that part of one or more monthly installments which would be applicable to principal.

(3) *Insured, Guaranteed or Advance Commitment Loans.* A loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government, or any agency of either may be made under the additional terms and conditions specified in the law under which such insurance, guarantee or commitment is provided.

§ 701.21-6B [Amended]

8. 12 CFR 701.21-6B is amended by revising the title to read as follows:

§ 701.21-6B Long term adjustable rate first mortgage loans.

9. 12 CFR 701.21-6B(b)(1) is amended by removing the words "on residential real property" and inserting the words "or first security interests on the residence" and by removing the word "30" and by inserting in its place the word "40."

10. 12 CFR 701.21-6B(1)(ii) is amended by removing the words "Section 701.21-6(b)(4)" and by inserting in their place the words "Section 701.21-6(b)(3)."

11. 12 CFR 701.21-6B(1)(iii) is amended by removing the words "Section 701.21-6(b)(7)" and by inserting in their place the words "§ 701.21-6(b)(6)."

§ 701.21-7 [Amended]

12. 12 CFR 701.21-7(b)(3) is amended by removing the words "Part 701.21-6(b)(4) of this Chapter" and by inserting in their place the words "§ 701.21-6(b)(3)."

§ 701.21-8 [Amended]

13. 12 CFR 701.21-8(a)(3) is revised to read as follows:

(a) * * *

(3) "Real estate loan" means a loan granted on a one-to-four family dwelling that is or will be the principal residence of the borrower and which is secured by a first lien or first security interest on the dwelling.

* * * * *

14. 12 CFR 701.21-8(b)(iv) is amended by removing the words "section 701.21(6)(b)(4)" and by inserting in their place the words "§ 701.21-6(b)(3)."

PART 745—[AMENDED]

15. 12 CFR Part 745 is amended by adding a new § 745.3(d) to read as follows:

§ 745.3 Single ownership accounts.

* * * * *

(d) *Custodial Accounts.* Loan payments received by a Federal credit union prior to remittance to other parties to whom the loan was sold pursuant to section 107(13) of the Federal Credit Union Act and § 701.21-8 of NCUA's regulations shall be considered to be funds owned by the borrower and shall be added to any individual accounts of the borrower and insured up to $100,000 in the aggregate.

[FR Doc. 82-32937 Filed 12-2-82; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

Civil Procedures; Interim Regulations; Correction

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Interim final rule; correction.

SUMMARY: On December 18, 1981, NOAA published interim final rules providing consolidated civil penalty assessment, hearing, and appeal procedures for various statutes it administers. This document amends the interim final rules by correcting citations to the Northern Pacific Halibut Act, 16 U.S.C. 773-773j.

FOR FURTHER INFORMATION CONTACT: Patricia Kraniotis at (202) 254-8350.

SUPPLEMENTARY INFORMATION: In FR Doc. 81-34431, appearing at page 61644 in the issue of December 18, 1981, the citations of authority are corrected in the second and third columns by changing "Northern Pacific Halibut Act of 1937, 16 U.S.C. 772-772j" to read "Northern Pacific Halibut Act, 16 U.S.C. 773-773j"; and appearing at page 61645, 15 CFR 904.100(a)(1)(ix) is corrected by changing "Northern Pacific Halibut Act of 1937, 16 U.S.C. 772-772j" to read "Northern Pacific Halibut Act, 16 U.S.C. 773-773j."

Dated: November 24, 1982.

Francis J. Balint,

Director, Office of Information and Management Services.

[FR Doc. 82-32984 Filed 12-2-82; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74 and 81

[Docket No. 82N-0292]

FD&C Blue No. 1; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of October 29, 1982, for a regulation that permanently lists FD&C Blue No. 1 as a color additive for use in externally applied drugs and for general use in cosmetics excluding use in the area of the eye.

DATE: Effective date confirmed October 29, 1982.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204; 202-472-5690.

SUPPLEMENTARY INFORMATION: FDA published a final rule in the Federal Register of September 28, 1982 (47 FR 42563), that amended the color additive regulations by permanently listing FD&C Blue No. 1 for use in externally applied drugs under § 74.1101 (21 CFR 74.1101). The agency also amended in this section the identity and nomenclature to reference § 74.101 (a)(1) and (b) (21 CFR 74.101 (a)(1) and (b)) and the new § 74.2101(a) (21 CFR 74.2101(a)) and the specifications to reference § 74.101(b). The final rule also amended the color additive regulations by adding new § 74.2101 which lists FD&C Blue No. 1 for general use in cosmetics excluding use in the area of the eye and conformed the specifications to reference § 74.101(b). The final rule also amended § 81.1(a) (21 CFR 81.1(a)) by removing FD&C Blue No. 1 from the table and § 81.27(d) (21 CFR 81.27(d)) by removing FD&C Blue No. 1 from the table. FDA gave interested persons until October 28, 1982, to file objections. The agency did not receive any objections or requests for a hearing on any aspect of the final rule. Therefore, FDA concludes that the final rule published on September 28, 1982, for FD&C Blue No. 1 should be confirmed.

List of Subjects

21 CFR Part 74

Color additives, Color additives subject to certification, Cosmetics, Drugs.

21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376 (b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for hearing were filed in response to the September 28, 1982 final rule. Accordingly, the amendments promulgated thereby became effective on October 29, 1982.

Dated: November 29, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-32997 Filed 12-2-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 74, 81, and 82

[Docket No. 82N-0299]

FD&C Green No. 3; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the effective date and the date for submittal of objections for a document that permanently listed FD&C Green No. 3 for use in food, drugs, and cosmetics, except for use in the area of the eye.

DATES: The effective date for the rule published at 47 FR 52140 is December 21, 1982; objections by December 20, 1982.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In FR Doc. 82-31700 appearing at page 52140 in the issue for Friday, November 19, 1982, the following corrections are made:

1. On page 52140, in the first column under **"DATES"**, the words "Effective December 16, 1982; objections by December 15, 1982" are corrected to read "Effective December 21, 1982; objections by December 20, 1982".

2. On page 52144, in the third column, in the third line of the fifth paragraph, the words "December 15" are corrected to read "December 20" and in the second line of the sixth paragraph, the words "December 16" are corrected to read "December 21".

Dated: November 29, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-33013 Filed 12-2-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 175

[Docket No. 80F-0210]

Indirect Food Additives: Adhesive Coatings and Components; Vinylidene Chloride Copolymer Coatings for Nylon Film; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final regulation that provides for the safe use of methyl methacrylate and 2-sulfoethyl methacrylate as optional comonomers in vinylidene chloride copolymer coatings for nylon film used in articles intended for food contact. This document corrects typographical and minor editorial errors. None of these corrections alters the substance of the regulation.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In FR Doc. 80-36230, appearing at page 76997 in the issue of Friday, November 21, 1980, the following corrections are made on page 76998: In § 175.360 *Vinylidene chloride copolymer coatings for nylon film*, in paragraph (b): (1) In the first sentence "copolymerzing" is changed to "copolymerizing" and "2 weight percent" is changed to "6 weight percent"; (2) in the second sentence "vinlyidene" is changed to "vinylidene"; and (3) in the third sentence "copolymerzing" is changed to "copolymerizing" and the phrase "methacrylate and/or 2-sulfoethyl" is changed to "methyl methacrylate and/or 2-sulfoethyl".

Dated: November 29, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-33014 Filed 12-2-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-82-1052]

Recapture of Assistance Payments Under the Section 235 Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: Section 235 of the National Housing Act was amended in 1980 to require recapture of assistance payments made on behalf of lower income families under the Section 235 Program under certain circumstances. The Housing and Community Development Amendments of 1981 amended this recapture provision to eliminate the requirement that assistance payments be recaptured in the event of the homeowner's failure to make mortgage payments for a period of 90 days or more. This final rule implements the 1981 amendment.

EFFECTIVE DATE: After expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, but not until the effective date that HUD will publish in a future issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Richard B. Buchheit, Director, Single Family Servicing Division, Office of Single Family Housing, Room 9180, Department of Housing and Urban Development, Washington, D.C. 20410, Telephone (202-755-8680) (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 206(b) of the Housing and Community Development Act of 1980 amended Section 235 of the National Housing Act by adding a new paragraph (c)(2) to provide for the recapture of all or a portion of the assistance payments made on behalf of lower income families who have insured financing under Section 235(i). This change was implemented by an interim rule, published on May 27, 1981 (at 46 FR 28401), which added the present § 235.12 to 24 CFR Part 235.

Section 328(a) of the Housing and Community Development Amendments of 1981 amended section 235(c)(2) to remove the requirement for recapture of assistance payments in the event the mortgagor ceases to make payments on the insured mortgage for a period of 90 continuous days or more. That statutory change is being implemented by this final rule, by removing paragraph (a)(4) of § 235.12.

Since the removal of the paragraph (a)(4) provision is required by statute, the Secretary has found that notice and public procedure on this amendment is unnecessary and that good cause exists for effecting such removal by means of a final rule, without providing an opportunity for public comment thereon.

It should be noted that this final rule does not constitute a response to the comments received by HUD on the interim rule published on May 27, 1981. HUD is now preparing a final rule that will respond to those comments, and HUD expects to publish it in the near future. The change now being made in § 235.12 (removal of paragraph (a)(4)) merely implements the 1981 statutory amendment, and it is not intended to preclude any further changes in § 235.12 that might be made in response to the comments received on the May 27, 1981 interim rule.

Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3)) provides for a delay in effectiveness of this rule for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance and Urban Affairs.

The Secretary has requested the appropriate waivers by the Chairmen and Ranking Minority Members but, at the time of publication of this final rule, it is not known whether or when such waivers will be granted. Therefore, notice of the effective date of this final rule will be published in a future issue of the Federal Register.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the

Office of the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Since the rule affects only individual mortgagors under the Section 235 Program, there is no impact on any small entity.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on August 17, 1981 (46 FR 41708), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Section 235 Program is listed as program number 14.105, Interest Reduction—Homes for Lower Income Families, in the Catalog of Federal Domestic Assistance.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

Accordingly, 24 CFR Part 235 is amended by revising paragraph (a) of § 235.12 to read as follows:

§ 235.12 Recapture of assistance payments.

(a) With respect to any mortgage insured under this part pursuant to a firm commitment issued after May 27, 1981, the mortgagor shall repay to the Secretary any assistance received under this part in the amount provided in paragraph (b) of this section when the mortgagor:

(1) Disposes of the property to a homeowner not qualified to receive assistance payments, or

(2) Has rented the property for more than one year, or

(3) Requests a release of the Secretary's lien on the property.

* * * * *

(Secs. 211, 235, National Housing Act (12 U.S.C 1715b, 1715z); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d))

Dated: November 24, 1982.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 82-33107 Filed 12-2-82; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 890

[Docket No. R-82-1000]

Annual Contributions for Operating Subsidy; Performance Funding System

AGENCY: Office of Assistant Secretary For Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes two technical changes in the regulation governing the Performance Funding System for Public Housing Agencies (PHAs). First, it clarifies the section on HUD-initiated adjustment of the amount of operating subsidy, and second, it inserts a line of text which had been inadvertently omitted from the regulation.

EFFECTIVE DATE: After expiration of the first period of 30 calendar days of continuous session of Congress following publication, subject to waiver, but not until the effective date that HUD will publish in a future issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Joanne Farmer, Fiscal Management Division, Office of Public Housing, Room 4216, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 426-1872. (This is not a tool-free number).

SUPPLEMENTARY INFORMATION: This final rule makes two technical changes in 24 CFR Part 890. First, it corrects § 890.105(d)(3) by inserting eight words that had been inadvertently omitted from the second sentence.

Second, it revises § 890.110(e) to clarify HUD's original intent to permit HUD-initiated upward adjustments in the amount of operating subsidy where such adjustments are warranted. The previous language of this provision seemed to permit HUD to make only downward adjustments in the amount of operating subsidy for a PHA.

Since each of these changes is minor in nature and imposes no new burden on any PHA, the Secretary has found that notice and public procedure on this amendment are unnecessary and that good cause exists for publishing this amendment as a final rule, without an opportunity for public comment.

Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(0)(3)) provides for a delay in effectiveness of this rule for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairman and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance and Urban Affairs.

The Secretary has requested the appropriate waivers by the Chairmen and Ranking Minority Members but, at the time of publication of this final rule, it is not known whether or when such waivers will be granted. Therefore, notice of the effective date of this final rule will have to be published in a future issue of the **Federal Register.**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule does not constitute a "major rule" as the term is defined in Section 1(b) of the Executive Order 12291 on Federal Regulation, issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The change in § 890.110 will permit upward adjustments in subsidy amount, in addition to the downward adjustments currently permitted, but it is not expected that either the magnitude or frequency of such adjustments will be significant.

This rule is listed at 47 FR 48446 as item H-110-82 in the Department's Semiannual Agenda of Regulations published on October 28, 1982, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

(The Catalog of Federal Domestic Assistance program number and title is 14.146 Low-Income Housing-Assistance Program (Public Housing))

List of Subjects in 24 CFR Part 890

Grant programs: housing and community development, Low and moderate income housing, Public housing.

PART 890—[AMENDED]

Accordingly, 24 CFR Part 890 is amended as follows:

1. In § 890.105, the introductory language in paragraph (d)(3) is revised to read as follows:

§ 890.105 Computation of allowable expense level.

* * * * *

(d) * * *

(3) *Allowable Expense Level.* Computation for budget years subsequent to first budget year under PFS. For each budget year subsequent to the first budget year under PFS, the Allowable Expense Level will be equal to the Allowable Expense Level for the previous budget year, which includes the amount of the HUD-approved Increase of Base Year Expense Level (see § 890.110), increased (or decreased) by the following:

* * * * *

2. In § 890.110, paragraph (e) is revised to read as follows:

§ 890.110 Requests for adjustments.

* * * * *

(e) *HUD-initiated adjustment.* Notwithstanding any other provisions of this Subpart, HUD may at any time make an upward or downward adjustment in the amount of the PHA's operating subsidy as a result of data subsequently available to HUD which alters any of the components, data and projections upon which the approved operating subsidy was based. Such adjustments may be initiated by HUD. Normally, adjustments shall be made in total in the PHA fiscal year in which the needed adjustment is determined; however, if a downward adjustment would cause a severe financial hardship on the PHA, the HUD Field Office may establish a recovery schedule which represents the minimum number of years needed for repayment.

(Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)))

Dated: November 12, 1982.

Philip Abrams,

General Deputy Assistant Secretary-Deputy Federal Housing Commissioner.

[FR Doc. 82-33106 Filed 12-2-82; 8:45 am]

BILLING CODE 4210-27-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules; Amendment

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: These revisions to National Labor Relations Board (NLRB) procedural rules provided that: (1) An objecting party shall file with the regional director an original and five copies of its objections; and (2) the regional director will serve a copy of objections to an election on each of the other parties to the proceeding.

Under the Board's existing rules, within 5 days after the regional director or his agent furnishes a tally of ballots to the parties to a Board-conducted election, any party may file, with the regional director, objections to such election. Copies of the objections must "immediately be served on the other parties by the party filing them."

A number of cases have arisen on the issue of whether proper service of the objections, under the rules, was made. In an effort to address this problem, and to eliminate the circumstances giving rise to the issue of service in these cases, the procedural change provides that the regional office will, itself, serve the objections on the other parties. It is contemplated that, as a matter of courtesy, objecting parties will continue to serve objections as well.

To facilitate the regional director's making service, the rules have been additionally changed to provide that an objecting party shall file with the regional director an original and five, rather than three, copies of the objections.

EFFECTIVE DATE: December 15, 1982.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, D.C. 20570, Telephone: (202) 254-9430.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

PART 102—RULES AND REGULATIONS, SERIES 8, AS AMENDED

Accordingly, 29 CFR Part 102, § 102.69(a), is revised to read as follows:

§ 102.69 Election procedure; tally of ballots; objections; certification by regional director; report on challenged ballots; report on objections; exceptions; action of the Board; hearing.

(a) Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the regional director in whose region the proceeding is pending. All elections shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, either participant may, upon its prompt request to and approval thereof by the regional director, whose decision shall be final, have its name removed from the ballot: *Provided, however,* That in a proceeding involving an employer-filed petition or a petition for decertification the labor organization certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving timely notice in writing to all parties and the regional director, disclaiming any representation interest among the employees in the unit. Any party may be represented by observers of his own selection, subject to such limitations as the regional director may prescribe. Any party and Board agents may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election, the regional director shall cause to be furnished to the parties a tally of ballots. Within 5 days after the tally of ballots has been furnished, any party may file with the regional director an original and five copies of objections to the conduct of the election or to conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. The regional director will cause a copy of the objections to be served on

each of the other parties to the proceeding. Within 5 days after the filing of objections, or such additional time as the regional director may allow, the party filing objections shall furnish to the regional director the evidence available to it to support the objections.

* * * * *

Dated: Washington, D.C., November 29, 1982, by direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 82-32950 Filed 12-2-82; 8:45 am]

BILLING CODE 7545-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-004G]

Occupational Exposure To Lead; Administrative Stay of Compliance Plan

AGENCY: Occupational Safety and Health Administration (Labor).

ACTION: Administrative stay.

SUMMARY: OSHA is administratively staying paragraphs (e)(3)(ii) (B) and (E) of the lead standard (§ 1910.1025) for the primary and secondary lead smelting industries and the battery manufacturing industry. The outcome of OSHA's current reconsideration of the lead standard may render unnecessary some or all of the expenditures required by these provisions. A stay pending the reconsideration would prevent such wasteful expenditures without adversely affecting worker health.

DATE: Effective December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N-3641, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION: The lead standard (29 CFR 1910.1025) requires, among other things, that employers establish and implement a written compliance program to reduce employee exposures to or below the permissible exposure limit (or the interim level) by means of engineering and work practice controls in accordance with the implementation schedule found in paragraph (e)(1) of the standard (§ 1910.1025(e)(3)(i)).

For three industries, the primary and secondary smelting of lead and battery manufacturing, the written compliance plan was to have been completed and available to the Agency by June 29, 1982. The original standard required a much earlier startup date which was delayed by successive judicial stays pending appellate litigation. (*United Steelworkers of America* v. *Marshall*, 647 F. 2d 1189 (1980), *cert. denied*, 101 S. Ct. 3148 (1981).)

The purpose of the written plan is summarized in the November 14, 1978, preamble to the lead standard (43 FR 52952):

> This plan is required primarily to promote systematic and rational compliance by employers and to assist OSHA in its enforcement function by enabling compliance personnel to monitor employers' compliance activities. (p. 52991).

In order to comply with this requirement, an employer would need to conduct an industrial hygiene survey, including environmental sampling, to identify sources of lead exposure and then devise methods to reduce exposure to within permissible limits. Such a plan must include certain costly elements such as a description of the specific means that will be employed to achieve compliance with the permissible exposure limit, including engineering plans and studies and a detailed schedule for implementation of the program with documentation such as copies of purchase orders for equipment, construction contracts, etc.

Obviously, completion of these elements involves development of extensive information about specific means of implementing engineering controls. It also necessitates the expenditure of substantial monies to obtain the information through engineering studies, and the likely contractual obligation of even larger sums for construction and implementation of engineering controls under the provisions of paragraphs (e)(3)(ii) (B) and (E).

OSHA is currently undertaking a thorough reconsideration of the lead standard which will be directed, among other objectives, at improving the cost-effectiveness of the standard and at reevaluating the feasibility of the standard in some industries. If an outcome of this reconsideration is a modification in the mix of engineering controls and personal protective equipment required to meet the permissible exposure limit, or a conclusion that the 50 $\mu g/m^3$ level is not feasible for some industries through the use of engineering controls alone, such action would clearly result in major changes in the employers' compliance programs.

Several representatives of the primary and secondary smelting and battery manufacturing industries petitioned OSHA to issue an administrative stay of paragraphs (e)(3) and (r)(7) (B) and (C) pending the outcome of the reconsideration of the lead standard. Petitioners argued that without such relief they would be compelled to make substantial expenditures to undertake projects which OSHA's decision following reconsideration of the lead standard may render totally unnecessary. Petitioners argued that it is inefficient and wasteful to require employers to expend a significant amount of their limited resources in an attempt to comply with requirements which may never be applicable. Petitioners further pointed out that with respect to some other industries the Agency has already recognized the type of inequities and waste that, absent a stay, would occur. In the Revised Supplemental Statement published December 11, 1981 (46 FR 60758, at 60761) the Agency stated, "If prior to such a reconsideration affected employers are required to implement the policies being reexamined, the purposes of any resulting agency action may be frustrated."

Petitioners argued that the imposition of such a stay would not adversely affect the health of employees whose blood lead levels have recently been, and continue to be, reduced by a combination of control methods and hygiene practices which will remain in effect pending the reconsideration. As currently in force, the OSHA standard requires that the PEL of 50 $\mu g/m^3$ be achieved through some combination of engineering, work practice and respiratory protection controls.

In view of OSHA's reconsideration of the lead standard, which may affect the provisions of the standard with respect to the use of engineering controls, the agency agreed that to require the expenditure of substantial resources to establish a comprehensive compliance program under the existing standard would not be appropriate and should be deferred pending the outcome of the reconsideration. Therefore, on June 18, 1982, OSHA proposed to stay the requirements of 29 CFR 1910.1025(e)(3)(ii) (B) and (E), which would require costly engineering plans and studies as well as detailed compliance schedules with specific evidence that the schedule is being implemented (47 FR 26960). The proposed stay covered the primary and secondary lead smelting industries and

battery manufacturing. Interested parties were given until July 19, 1982 to file comments on the proposed stay. In order not to frustrate the very purposes of this rulemaking the effective date of the relevant sections was deferred until November 15, 1982 (47 FR 26557, June 18, 1982; 47 FR 40410, September 14, 1982).

In response to the proposed stay, OSHA has received comments from six industry commenters and one international union. The six include the five petitioners who had requested to stay plus Amax Lead Company of Missouri. All arguments that were made in their petitions were reasserted. One commenter revised an earlier cost estimate for engineering plan requirements in battery manufacturing from $33 million to $15 million (Ex. 541-1, 542-3). The Battery Council International (BCI) also stated that the battery manufacturing industry is "struggling" and that in the last two years 18 plants have closed or are on layoff affecting 2500 jobs (Ex. 542-9). Several industry commenters, however, challenged OSHA's preliminary conclusion that the stay should be limited to paragraphs 1910.1025 (e)(3)(ii) (B) and (E) and that the more general requirements for a compliance plan contained in subparagraphs (A), (C), (D), (F), (G) and (H) should continue in effect. The Agency stated at 47 FR 26561 that the general requirements would "encourage the development of general options and strategies for compliance," and would "assist both the industry and OSHA in realistically assessing methods for eventual compliance." OSHA further concluded that such a plan, without the detailed engineering studies, compliance schedules and evidence of implementation, required by subparagraphs (B) and (E), would not involve significant resource commitments.

All six of the relevant industry commenters shared the view that the stay should be expanded from just subparagraphs (B) and (E) to include (C). Subparagraph (C), provides that the compliance plan shall include:

> A report of the technology considered in meeting the permissible exposure limit.

Industry commenters offered several reasons to stay this provision. One commenter argued that it is illogical to require a report of the technology considered to meet the PEL when OSHA has recognized that there may not be a feasible means to meet the PEL (Ex. 542-6). Another argues that the provisions of subparagraph (C) duplicate those in subparagraph (B) and should be stayed for the same reasons that subparagraph (B) should be stayed (Ex. 542-4). ASARCO stated that subparagraph (C) presupposes the existence of technology to meet the PEL (Ex. 542-1) but that in fact no such technology exists. St. Joe argues that subparagraph (C) is oriented towards controls for the current standard and would be inappropriate if the standard were changed (Ex. 542-7). Finally, AMAX argues that subparagraph (C) should be stayed since it may prove impossible to satisfy. They further argue that preparation of such a report "would require a company to retain consultants and develop information which could be very time-consuming, complex and expensive * * *" (Ex. 542-2).

OSHA's view of the practical effect of subparagraph (C) remaining as an element of a written compliance plan is quite different from the views presented by these industry commenters. In order to participate meaningfully in the reconsideration of the lead standard, employers in these industries must have knowledge of certain facts concerning the circumstances of exposure in their respective workplaces. These circumstances are reflected in the elements of § 1910.1025(e)(3)(ii) that have not been stayed and are in effect now—subparagraphs (A), (C), (D), (F), (G), and (H). OSHA views the "report of technology considered" requirement of subparagraph (C) to be distinct from subparagraph (B), which requires a description of the "specific means" to be employed including substantiating engineering plans and studies. The information contained in subparagraphs (A), (D), (F) and (G) is readily ascertainable by the employer and is in all likelihood already in writing and in his possession. Upon reviewing this information subparagraph (C) requires the employer to assess what kind of technology could be implemented to reduce employee exposure to lead. Consideration of improving maintenance of existing controls, adding hoods, changing the air-flow rate on existing ventilation, building clean air pulpits or even a conclusion that the employer is not aware of additional technology that could be feasibly employed are examples of what could satisfy subparagraph (C). OSHA is staying the parts of the compliance plan which could require the expenditures of large sums for studies and proof of implementation. Complying with the written compliance plan provisions, as stayed, on the other hand, does not require letting of contracts to develop information or engineering studies. Nor does it require a positive finding of technology that can feasibly meet the current PEL. Rather, compliance can be achieved by an employer making a good faith effort to obtain and commit to paper the information requested and then, on the basis of this information and the employer's experience in the industry, making a general finding of what technology he would consider implementing. OSHA therefore rejects the requests by industry to include subparagraph (C) within the scope of the stay.

Some commenters suggested covering more industries. As discussed more fully in the Revised Supplemental Statement of Reasons, Amendment of Final Rule at 46 FR 60757 (December 11, 1981), the lead industries may be divided into three groups: (1) Those ten industries for which feasibility of the standard was upheld by the D.C. Circuit, or the "non-remand" industries; (2) those thirty-nine remand industries for which the earlier feasibility findings were reaffirmed by OSHA, or the "reaffirmed remand" industries; and (3) those nine industries for which the feasibility is being reconsidered by OSHA, or the "new remand" industries. All of the provisions of the lead standard are in effect for the non-remand industries, with the exception of the deferral of effective date for § 1910.1025(e)(3)(ii) (B) and (E) mentioned above and a provision in Table II—the respirator selection table (*see* 44 FR 5446). For the reaffirmed remand and the new remand industries, however, the stay of § 1910.1025(e)(1), issued by the D.C. Circuit on August 15, 1980 (647 F.2d at 1311), remains in effect. This is a key section of the standard which requires achievement of the PEL through the use of feasible engineering and work practice controls. Until the court lifts the stay on this provision OSHA will treat the order as tantamount to a stay of § 1910.1025(e)(3) as well, based on the logic that if the engineering requirements are stayed the written compliance plans must also be stayed. Furthermore, since the new remand industries are currently part of the reconsideration and OSHA has specifically requested the court to remand the record for further administrative proceedings (*see* Secretary of Labor's Motion to Remand, dated December 10, 1981 at pp. 1-2), no obligations for the new remand industries under § 1910.1025(e)(3) would occur if the court's stay were lifted pending the outcome of the reconsideration.

With respect to the non-remand industries, one commenter argues that "common sense dictates" that the proposed administrative stay cover all non-remand industries, not just primary and secondary smelting of lead and the

battery manufacturing industries. OSHA concludes, however, that the record does not support expanding the stay to these additional industries. These industries did not originally request a stay and did not submit any evidence supporting their need for a stay. Therefore, the administrative stay will cover only the petitioners, namely the primary and secondary smelting industries and the battery manufacturing industry.

The sole commenter objecting to the proposed stay was the United Steelworkers of America. The Steelworkers' primary legal challenge is that OSHA has no authority to issue an administrative stay since nowhere in §§ 6(b) and 8(g) of the Occupational Safety and Health Act, § 553 of the Administrative Procedure Act, or the procedural regulations of OSHA standard setting (29 CFR Part 1911) does there appear any specific reference to "administrative stays" *per se*. OSHA must reject this argument as without merit. Section 6(b) of the Act grants the power to "by rule promulgate, modify, or revoke any occupational safety or health standard" and section 8(g)(2) grants the power to "prescribe such rules and regulations as [the Agency] may deem necessary." The broad discretionary powers of rulemaking granted OSHA by this authority inherently include the lesser power of staying the specific application of a standard. Furthermore, section 6(e), which requires that the rationale for agency actions related to rulemaking be published in the **Federal Register**, specifically lists granting any "extension of time" as an agency action. Implicitly, therefore section 6(e) recognizes OSHA authority to extend the time, i.e. to stay the effective date, of its standards.

Finally, OSHA concludes that the factual assertions and arguments made by the Steelworkers are unfounded and without merit. These include the arguments that OSHA was being misled by industry, that industry had already conducted the costly studies to comply with the 200 $\mu g/m^3$ PEL and that, in essence the stay would halt all engineering controls in the affected industries. OSHA believes that the factual presentation by industry appears reasonable and that the Steelworkers have not presented adequate evidence to the contrary. As stated above, regardless of what studies were conducted to comply with the $\mu g/m^3$ PEL, the implementation of subparagraphs (B) and (E) for the lower PEL of 50 $\mu g/m^3$ would clearly involve the expenditure of substantial sums. The Steelworkers' argument that the stay would halt all engineering controls in affected industries is unclear and unaccompanied by supporting data.

In light of the above and based on the entire record OSHA finds that compliance with §§ 1910.1025(e)(3)(ii) (B) and (E) by the primary and secondary smelters of lead and the manufacturers of batteries would be a costly exercise that could later prove unnecessary as a result of OSHA's reconsideration of the lead standard. Accordingly, a stay of these provisions is hereby issued for these industries pending the outcome of the reconsideration. OSHA also believes that the development of more general compliance plans, which will necessitate an evaluation by employers of their current operations and available data and encourage the development of general options and strategies for compliance, is not premature, will assist both the industry and OSHA in realistically assessing methods for eventual compliance, and will not involve significant resource commitments. Additionally, it is noted that the stay does not affect the required PEL of 50 $\mu g/m^3$ currently being enforced by OSHA. Industry has been required for over three years to meet the PEL by a combination of engineering, work practice and respiratory protection controls. OSHA has much evidence that over this period worker blood leads have declined significantly and continue to decline. Therefore worker protection will not be adversely affected by this stay.

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, N.W., Washington, D.C. 20210. It is issued pursuant to sections 6(b) and 8(g) of the Occupational Safety and Health Act (84 Stat. 1593, 1599, 29 U.S.C. 655, 657), 5 U.S.C. 553, Secretary's Order No. 8-76 (41 FR 25059), and 29 CFR Part 1911.

Accordingly, § 1910.1025(e)(3)(ii) (B) and (E) are stayed for the primary and secondary smelting industries and the battery manufacturing industry effective December 3, 1982.

Signed at Washington, D.C. this 29th day of November 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 82-32948 Filed 12-2-82; 8:45 am]

BILLING CODE 4510-26-M

VETERANS ADMINISTRATION

38 CFR Part 3

Veterans Benefits; Disease Subject To Presumptive Service Connection

AGENCY: Veterans Administration.

ACTION: Final regulation amendment.

SUMMARY: We have amended the regulation on diseases subject to presumptive service connection in order to emphasize a long established VA (Veterans Administration) policy that service connection shall be granted for certain chronic, tropical, and prisoner of war related diseases when all prerequisites have been met. The reason for this change is that the current regulatory language could be perceived as allowing some discretion in granting service-connection. Since this would be a misinterpretion of the rules and contrary to policy, the language is being appropriately amended.

EFFECTIVE DATE: November 10, 1982.

FOR FURTHER INFORMATION CONTACT: Robert M. White (202) 389-3005.

SUPPLEMENTARY INFORMATION: Pub. L. 97-37 amended 38 U.S.C. 312(b) concerning presumptive service-connection for certain diseases related to the POW (prisoner of war) experience. Because this section clearly stated that it was subject to the provisions of 38 U.S.C. 313 concerning rebuttable presumptions, and because all other prerequisites were noted, the imperative "shall" was used in directing the grant of service-connection for the stated diseases. However, 38 CFR 3.309(c) used the more permissive "may" in directing the grant of service-connection because the rebuttable presumption provisions of 38 CFR 3.307 were not incorporated by reference. The Advisory Committee on Former Prisoners of War has expressed concern that the regulation may be misinterpreted as allowing some discretion in the granting of service-connection when all prerequisites have been met. For the same reason the word "may" was used in directing the grant of presumptive service-connection for certain chronic and tropical diseases under 38 CFR 3.309 (a) and (b), whereas 38 U.S.C. 312(a) used the imperative "shall." We are in agreement with the Advisory Committee's recommendation that a minor, nonsubstantive amendment to the regulatory language would remove the possibility of misinterpretation of these rules and more clearly emphasize VA policy and the intent of the law.

In order to implement this recommendation we have amended 38 CFR 3.309 (a), (b), and (c) to incorporate by reference the rebuttable presumption provisions of 38 CFR 3.307 and to more forcefully direct the granting of service-connection. As amended, 38 CFR 3.309 will contain all necessary prerequisites for granting presumptive service-connection for the stated diseases and will imperatively direct that grant when the specified prerequisites are satisfied.

Since this amendment makes no substantive change, but rather clarifies and emphasizes the VA's policy regarding presumptive service-connection for certain disabilities under stated conditions, it falls within the "general statements of policy" exception under 38 CFR 1.12, and prior publication for public notice and comment is not necessary. These changes merely restate current policy in a form more consonant with the provisions of law. For this reason these amendments are not subject to the Regulatory Flexibility Act, 5 U.S.C 601–612.

In accordance with Executive Order 12291, Federal Regulation, we have determined that these regulation changes, in themselves, are nonmajor for the following reasons:

(1) They will not have an effect on the economy of $100 million on more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program number is 64.109)

Approved: November 10, 1982.

By direction of the Administration.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—ADJUDICATION

The Veterans Administration is amending 38 CFR Part 3 as follows:

The introductory portion of § 3.309 paragraphs (a), (b) and (c) are revised as follows:

§ 3.309 Disease subject to presumptive service connection.

(a) *Chronic diseases.* The following diseases shall be granted service connection although not otherwise established as incurred in service if manifested to a compensable degree within the applicable time limits under § 3.307 following service in a period of war or following peacetime service on or after January 1, 1947, provided the rebuttable presumption provisions of § 3.307 are also satisfied.

* * * * *

(b) *Tropical diseases.* The following diseases shall be granted service connection as a result of tropical service, although not otherwise established as incurred in service if manifested to a compensable degree within the applicable time limits under § 3.307 or § 3.308 following service in a period of war or following peacetime service, provided the rebuttable presumption provisions of § 3.307 are also satisfied.

* * * * *

(c) *Diseases specific as to former prisoners of war.* If a veteran is: (1) A former prisoner of war and; (2) as such was interned or detained for not less than 30 days, the following diseases shall be service-connected if manifest to a degree of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of § 3.307 are also satisfied.

* * * * *

[FR Doc. 82-33036 Filed 12-2-82; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62015D TSH-FRL 2256-1]

Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule; correction.

SUMMARY: This Notice corrects an inadvertent error in 40 CFR 761.3(11) of the final rule on the use of polychlorinated biphenyls (PCBs) in electrical equipment, which was published in the **Federal Register** of August 25, 1982 (47 FR 37342). Section 761.3(11) of the final rule indicates that food or feed additives including food packaging materials are included in the definition of "human food and animal feed." EPA did not intend to include food packaging materials in this definition. Accordingly, the Agency issues this correction of the final rule.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 25, 1982 (47 FR 37342), EPA issued final amendments to the rule governing use of PCBs in electrical equipment. These amendments include use authorizations for PCBs in electrical equipment with certain conditions to reduce risk. Included among the conditions are the following provisions: (1) That PCB Transformers and Large PCB Capacitors are prohibited after October 1, 1985, and October 1, 1988, respectively, if they "pose an exposure risk to food or feed," and (2) that PCB Transformers that pose such an exposure risk are also subject to weekly inspection requirements. Section 761.3(11) of the rule contains the following explanation of the phrase "posing an exposure risk to food or feed":

> EPA considers human food or animal feed to include items regulated by the U.S. Department of Agriculture or the Food and Drug Administration as human food or animal feed; this includes additives.

Following publication of the final use rule, several trade associations for the food packaging material industry requested clarification of the term "additive." In particular, these trade associations requested that EPA clarify its previously stated intent that establishments which manufacture food packaging materials do not "pose an exposure risk to food or feed." These associations are concerned that the reference in § 761.3(11) to "additives" regulated by the U.S. Department of Agriculture or the Food and Drug Administration (FDA) might be interpreted to include "indirect additives" including food packaging materials. These associations contend that, in contrast to the manufacture of "direct additives," the manufacture of "indirect additives" (e.g., food packaging materials) does not pose an exposure risk to human food or animal feed.

The question was raised in comments on the proposed rule. EPA intended that the reference to "additives" in § 761.3(ll) of the final rule should be limited to "direct additives" (e.g., food preservatives) under regulations of the

Food and Drug Administration at 21 CFR Part 172. This intent is confirmed by statements in an Agency document entitled "Support Document for the Electrical Equipment Rule: Response to Comments," contained in the rulemaking record. In Unit IV.D. of that document, EPA responded that manufacturers of food packaging materials are not subject to the requirement for increased inspection frequency unless food or feed products are present in the facility and the PCBs discharged from the electrical equipment have a potential pathway to contaminate this food or feed.

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements, Environmental protection.

Dated: November 19, 1982.

Edwin L. Johnson,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 761—[AMENDED]

Therefore, 40 CFR 761.3(ll) is revised to read as follows:

§ 761.3 Definitions.

* * * * *

(ll) "Posing an exposure risk to food or feed" means being in any location where human food or animal feed products could be exposed to PCBs released from a PCB Item. A PCB Item poses an exposure risk to food or feed if PCBs released in any way from the PCB Item have a potential pathway to human food or animal feed. EPA considers human food or animal feed to include items regulated by the U.S. Department of Agriculture or the Food and Drug Administration as human food or animal feed; this includes direct additives. Food or feed is excluded from this definition if it is used or stored in private homes.

(Sec. 6(e) Toxic Substances Control Act (15 U.S.C. 2605))

[FR Doc. 82-33030 Filed 12-2-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 57 and 58

Grants for Educational Assistance to Individuals From Disadvantaged Backgrounds, Nursing Special Project Grants and Public Health Traineeships

AGENCY: Public Health Service, HHS.

ACTION: Amendments to final regulations.

SUMMARY: These amendments conform provisions in 42 CFR Part 57, Subpart S—Educational Assistance to Individuals From Disadvantaged Backgrounds; Subpart T—Nursing Special Project Grants and 42 CFR Part 58, Subpart C—Grants for Public Health Traineeships for Students in Schools of Public Health and in other Graduate Public Health Programs to the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35 and Pub. L. 94-241 which changed the status of the Northern Mariana Islands from a territory to a commonwealth.

EFFECTIVE DATE: These technical changes made to conform the regulations to legislative amendments were effective August 13, 1981, except for the definition of State in 42 CFR 57.1802 and 42 CFR 58.202 which was effective March 24, 1976. The addition to 42 CFR 57.1906(a) is effective December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Sarah J. Silsbee, Chief, Program Coordination Branch, Bureau of Health Professions, Health Resources and Services Administration, Center Building, Room 4-22, 3700 East-West Highway, Hyattsville, Maryland 20782, (301-436-7458).

SUPPLEMENTARY INFORMATION: These amendments change the following health professions regulations primarily to implement provisions of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35:

42 CFR Part 57

Subpart S—Educational Assistance to Individuals From Disadvantaged Backgrounds

This rule amends the regulations implementing educational assistance to individuals from disadvantaged backgrounds to:

(1) Revise the definition of "Health Professions Schools" to comply with the new accreditation definition in Pub. L. 97-35.

(2) Revise the definition of "School of Allied Health" to comply with the new statutory definition in Pub. L. 97-35.

(3) Add "the Commonwealth of" to the title of "the Northern Mariana Islands" to comply with Pub. L. 94-241, which changed the status of "the Northern Mariana Islands" from "a territory" to "a Commonwealth".

(4) Stipulate that not less than 80 percent of the funds appropriated in any fiscal year shall be obligated for grants to institutions of higher education and not more than 5 percent may be obligated for grants having the primary purpose of informing individuals about the existence and general nature of health careers, according to the amendment made by Pub. L. 97-35.

(5) Delete reference to former implementing legislation (Section 798 of the Public Health Service Act) since there is no longer authorization for this section.

Subpart T—Nursing Special Project Grants

In conformance with Pub. L. 97-35 this rule amends the regulations implementing grants for Nursing Special Projects to repeal authority for projects to facilitate mergers or other cooperative arrangements among hospitals and academic institutions, for new nurse training programs or research in nursing education, for curriculum improvement, and for short-term in-service training for aides and orderlies, except that an entity which received assistance in one of these areas for fiscal year 1981 can receive one additional grant or contract for phase-out.

In addition, an explanatory note has been added to § 57.1906 (a) to apprise applicants that the Secretary may announce special funding preferences from time-to-time through a notice published in the **Federal Register.**

42 CFR Part 58

Subpart C—Public Health Traineeships

This rule amends the regulations implementing grants for public health traineeships to: revise the definition of "school of public health" to reference the new statutory accreditation standards; add "the Commonwealth of" to the title of "Northern Mariana Islands" to comply with Pub. L. 94-241, which changed the status of "the Northern Mariana Islands" from "a territory" to "a Commonwealth"; remove the word "postbaccalaureate" from the regulations and replace it with "baccalaureate" to allow individuals who have received a baccalaureate degree to be eligible for these traineeships.

Regulatory Flexibility Act and Executive Order 12291

The Department of Health and Human Services has determined that these final rules will not significantly impact on small business and therefore do not require preparation of a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, Pub. L. 96-354.

The regulations govern a financial assistance program in which participation is voluntary and Federal support is provided to enable awardees to meet the regulatory project requirements. A regulatory impact analysis is not warranted because any costs will not approach the threshold criteria for major rules under E.O. 12291. That is, they will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in cost or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The Department is required to submit to the Office of Management and Budget for review and approval §§ 57.1805 and 57.1904 of 42 CFR 57 which refer to the application forms and instructions which will be used to implement these regulations. OMB approval is also required for the reporting and recordkeeping requirements in § 58.208 of 42 CFR 58. The affected sections of the regulations, and the application forms and instructions, have been approved by OMB. OMB approval numbers are 0935-0066 for the continuation application form and 0935-0065 for the competing form.

Justification for Omitting Notice of Proposed Rulemaking

These amendments conform these regulations to Public Laws 97-35 and 94-241, delete references to Section 798 of the Public Health Service Act for which there is no longer a congressional authorization, and make a minor nonsubstantive addition to § 57.1906 (a). The Secretary has therefore determined, according to 5 U.S.C. 553 and Departmental policy, that it would be unnecessary to follow proposed rulemaking procedures or to delay the effective date of these regulations.

List of Subjects

42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships.

42 CFR Part 58

Educational study programs, Grant programs—education, Grant programs—health, Health professions, Public health, Student aid.

Accordingly, Subparts S and T of 42 CFR Part 57, and Subpart C of 42 CFR Part 58 are amended and adopted as set forth below.

Dated: September 24, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: October 19, 1982.

Richard S. Schweiker,

Secretary.

Parts 57 and 58 of Title 42, Code of Federal Regulations, are amended as set forth below:

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

* * * * *

Subpart S—Educational Assistance to Individuals From Disadvantaged Backgrounds

1. The Authority is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 316); sec. 787 of the Public Health Service Act, 90 Stat. 2317, as amended by 95 Stat. 923 (42 U.S.C 295g-7).

2. Section 57.1801 is revised to read as follows:

§ 57.1801 To what grant program do these regulations apply?

These regulations apply to grants to eligible schools and entities under section 787 of the Public Health Service Act to assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools and schools of allied health.

3. Section 57.1802 is amended by revising the following definitions to read as follows:

§ 57.1802 Definitions.

* * * * *

"Health professions schools" means schools of medicine, dentistry, osteopathy, pharmacy, optometry, veterinary medicine, podiatry, or public health as they are defined and accredited in sections 701(4) and 701(5) of the Act.

* * * * *

"School of allied health" means a public or non-profit private junior college, college, or university which provides or is accredited to provide a degree program in an allied health discipline and which meets all the criteria in section 701(10) of the Act.

* * * * *

"State" means in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Somoa, or the Trust Territory of the Pacific Islands.

4. Section 57.1803(a) is revised to read as follows:

§ 57.1803 Who is eligible to apply for a grant?

(a) Health professions schools, schools of allied health, and public or non-profit private health or educational entities which are located in a State and provide health or educational programs as one of their major functions may apply for a grant under section 787 of the Act.

* * * * *

5. Section 57.1804 is amended by revising paragraph (a) and by removing the paragraph after paragraph (b)(2) to read as follows:

§ 57.1804 Who is eligible for educational assistance?

* * * * *

(a) Be a national of the United States or a permanent resident of the Trust Territory of the Pacific Islands or the Commonwealth of the Northern Mariana Islands, or a lawful permanent resident of the United States, Puerto Rico, the Virgin Islands, or Guam; and

* * * * *

6. Section 57.1806 is amended by revising the last paragraph to read as follows:

§ 57.1806 How will applications be evaluated?

* * * * *

Within the limits of funds available, the Secretary will award grants to approved applicants with projects that will best promote the purposes of section 787 of the Act. Not less than 80 percent of the funds appropriated in any fiscal year shall be obligated for grants to institutions of higher education and not more than five percent of these funds may be obligated for grants having the primary purpose of informing individuals about the existence and general nature of health careers.

Subpart T—Nursing Special Project Grants

7. The Authority is revised to read as follows:

Authority: Sec. 215, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 820, 89 Stat. 359, as amended by 95 Stat. 929 (42 U.S.C. 296k).

8. Section 57.1903(b) is revised as follows:

§ 57.1903 Eligibility.

* * * * *

(b) *Eligible Projects.*[1] Grants under this subpart may be made to eligible applicants to meet the costs of special projects to carry out one or more of the following purposes:

(1) To increase nursing education opportunities for individuals from disadvantaged backgrounds, as determined in accordance with the criteria prescribed in § 57.1905(b), by—

(i) Identifying, recruiting, and selecting such individuals,

(ii) Facilitating the entry of such individuals into schools of nursing,

(iii) Providing counseling or other services designed to assist such individuals to complete successfully their nursing education,

(iv) Providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education,

(v) Paying such stipends as the Secretary may determine for such individuals for any period of nursing education, and

(vi) Publicizing, especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools;

(2) To provide continuing education for nurses;

(3) To provide appropriate retraining opportunities for nurses who (after periods of professional inactivity) desire again actively to engage in the nursing profession;

(4) To help to increase the supply or improve the distribution by geographic area or by specialty group of adequately trained nursing personnel (including nursing personnel who are bilingual) needed to meet the health needs of the Nation, including the need to increase the availability of personal health services and the need to promote preventive health care; or

(5) To provide training and education to upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel.

[1] Phase-out of projects: an entity which received a grant or contract under Section 820(a) of the Public Health Service Act for the fiscal year ending September 30, 1981, for a project described in former paragraph (1), (2), or (8) of that section may receive an additional grant or contract under that section for such project.

9. In § 57.1905, paragraphs (f) and (g) are removed and paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 57.1905 Project requirements.

* * * * *

(b) If the project is designed to carry out the purpose of § 57.1903(b)(1), the grantee may consider an individual to be from a disadvantaged background if the individual:

(1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a school of nursing; or

(2) Comes from a family with an annual income below a level based on low-income thresholds by family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and multiplied by a factor to be determined by the Secretary for adaptation to this program. The Secretary periodically will publish in the **Federal Register** the income levels as adjusted.

(c) If the project is designed to carry out the purpose of § 57.1903(b)(2), the project shall provide a continuing education program which: (1) Is designed to have wide applicability for the nursing profession, and (2) has an enrollment not limited to nurses employed by a single institution.

(d) If the project is designed to carry out the purpose of § 57.1903(b)(3), the project shall provide a retraining program which: (1) Has a curriculum that includes classroom instruction and faculty-supervised clinical training, (2) is designed to have wide applicability for the nursing profession, and (3) has an enrollment not limited to nurses employed by a single institution.

(e) If the project is designed to carry out the purpose of § 57.1903(b)(5), the project shall provide a training program which: (1) Is designed to have wide applicability for the nursing field, and (2) has an enrollment not limited to nurses employed by a single institution.

10. Section 57.1906 is amended by adding at the end of paragraph (a) the following:

§ 57.1906 Evaluation and grant award.

(a) * * * The Secretary may announce special funding preferences should specific needs warrant such action. Preferences will be announced by publishing a notice in the **Federal Register.**

* * * * *

PART 58—GRANTS FOR TRAINING OF PUBLIC HEALTH AND ALLIED HEALTH PERSONNEL

* * * * *

Subpart C—Grants for Public Health Traineeships for Students in Schools of Public Health and in Other Graduate Public Health Programs

1. The authority is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 748 of the Public Health Service Act, 90 Stat. 2279, as amended by 91 Stat. 1505; as amended and redesignated sec. 792 of the Public Health Service Act by 95 Stat. 927 (42 U.S.C. 295h–1b).

2. Section 58.201 is revised as follows:

§ 58.201 To what grant program do these regulations apply?

These regulations apply to the award of grants to eligible educational entities under Section 792 of the Public Health Service Act (42 U.S.C. 295h–1b) to provide funds for traineeships for students enrolled in graduate or specialized training in public health.

3. Section 58.202 is amended by revising the following definitions:

§ 58.202 Definitions.

* * * * *

"School of Public Health" means a public or non-profit private school which provides training leading to a graduate degree in public health or equivalent degree and is accredited according to section 701(5) of the Public Health Service Act.

* * * * *

"State" means in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

* * * * *

§ 58.203 Who is eligible to apply for a grant? [Amended]

4. Section 58.203 is amended by removing "749" in the footnote and replacing it with "791A".

§ 58.204 How will applications be evaluated? [Amended]

5. Section 58.204 is amended by removing "748" in the last paragraph after paragraph (b)(4) and replacing it with "792".

§ 58.205 How is the amount of the award determined? [Amended]

6. Section 58.205(a)(1) is amended by removing "748" and replacing it with "792".

7. Section 58.208 (a)(1) and (b)(1) is revised as follows:

§ 58.208 What are the requirements for traineeships and the appointment of trainees?

(a) * * *

(1) Have previously received a baccalaureate degree, or have 3 years of work experience in health services, and

* * * * *

(b) * * *

(1) Have previously received a baccalaureate degree, or have 3 years of work experience in health services, and

* * * * *

8. Section 58.209(a) is revised as follows:

§ 58.209 Who is eligible for financial assistance as a trainee?

* * * * *

(a) The individual must be a national of the United States, a lawful permanent resident of the United States, Puerto Rico, the Virgin Islands, or Guam; or a permanent resident of the Trust Territory of the Pacific Islands or the Commonwealth of the Northern Mariana Islands.

[FR Doc. 82-33047 Filed 12-2-82; 8:45 am]

BILLING CODE 4160-15-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Gilroy, California, Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Gilroy, California. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Gilroy, California, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, telephone (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. 060340 Panel 0002C, published on October 6, 1980, in 45 FR 66117, indicates that Lot 23 through 37, Miller Meadows, Tract No. 7078, Gilroy, California, recorded as Record No. 7328252 in Book 498 of Maps, Pages 11 and 12, in the Office of the Recorder, Santa Clara County, California, are located within the Special Flood Hazard Area.

Map No. 060340 Panel 0002C is hereby corrected to reflect that the existing structures located above-mentioned property are not within the Special Flood Hazard Area identified on October 6, 1981. These structures are in Zone B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued November 17, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-33019 Filed 12-2-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-6349]

Letter of Map Amendment for Siskiyou County, California Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule, map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Siskiyou County, California. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Siskiyou County, California, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner

from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, telephone (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. 060362 Panel 0150B, published on July 2, 1982, in 47 FR 28936, indicates that Lot 676, Klamath River Country Estates, Siskiyou County, California, as recorded in Volume 862, Page 402, in the Office of the Recorder, Siskiyou County, California, is located within the Special Flood Hazard Area.

Map No. 060362 Panel 0150B is hereby corrected to reflect that the existing structure located on the above-mentioned property is not within the Special Flood Hazard Area identified on May 17, 1982. This structure is in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 18, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-33020 Filed 12-2-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for Dade County, Florida Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Dade County, Florida. It has been determined by the Associate Director, State and Local Programs and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Dade County, Florida, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, phone (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number 125098, Panel 0375 D published on October 6, 1980 in 45 FR 66058 indicates the 236 SW. 4th Street, Homestead, Dade County, Florida, also known as the north 18.07 feet of Lots 7 and 8 of W. D. Horne's Subdivision, according to the plat thereof recorded in Plat Book 1 at Page 122 of the Public Records of Dade County, Florida is located within the Special Flood Hazard Area.

Map Number 125098, Panel 0375 D is hereby corrected to reflect that the existing structure on the above-mentioned property is not within the Special Flood Hazard Area identified on November 14, 1980. The structure is located in Zone B. However, the property would still be inundated by a flood having a one-percent chance of occurrence in any given year.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 17, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-33024 Filed 12-2-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Vero Beach, Florida Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Vero Beach, Florida. It has been determined by the Associate Director, State and Local Programs and Support

after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Vero Beach, Florida, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, phone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number 120124 A, Panel 04 published on October 6, 1980 in 45 FR 66061 indicates that the property comprised of the southerly 15 feet of Lot 16, and Lots 17 and 18, Block 24, Royal Park Subdivision in the City of Vero Beach, Florida, according to the plat thereof filed in Plat Book 1, Page 36, of the Public Records of Indian River County, is located within the Special Flood Hazard Area.

Map Number 120124 A, Panel 04 is hereby corrected to reflect that the existing structure on the above-mentioned property is not within the Special Flood Hazard Area identified on September 30, 1977. The existing structure is in Zone B. However, the property would still be inundated by a flood having a one-percent chance of occurrence in any given year.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 17, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-33025 Filed 12-2-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Rochester, Minnesota Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule, map correction.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the City of Rochester, Minnesota. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Rochester, Minnesota, that certain structures are not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject structures are not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for those structures as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, phone (800) 638-6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 275246, Panel No. 0007B, published on October 6, 1980, in 45 FR 66083, indicates that the existing residential structures located on Lots Nos. 3 and 4, Block 1 and Lots Nos. 5 and 6, Block 4, Homestead Trails First Replat, City of Rochester, Olmsted County, Minnesota, as recorded in Book Z of Plats, Page 17, in the Office of the Recorder of Olmsted County, Minnesota, are located within the Special Flood Hazard Area.

Map No. 275246, Panel No. 0007B, is hereby corrected to reflect that the existing residential structures located on the above-mentioned property are not within the Special Flood Hazard Area identified on February 4, 1981. The residential structures located on Lots Nos. 3 and 4, Block 1 and Lot No. 6, Block 4, are in Zone B. The residential structure located on Lot No. 5, Block 4, is in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 17, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-33018 Filed 12-2-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-6048]

Letter of Map Amendment for the Borough of Harrington Park, New Jersey Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the Borough of Harrington Park, New Jersey. It has been determined by the Associate Director, State and Local Programs and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Borough of Harrington Park, New Jersey that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, phone (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number 340040, Panel 0001 B published on May 12, 1981 in 46 FR 26307 indicates that Lots 1 through 14 of Block 112, Lots 1 through 10 of Block 113, Lots 1 through 9 of Block 114, and Lots 1 through 12 Block 115 as shown on a map entitled "Final Subdivision Plat, Harrington Mews, Borough of Harrington Park, Bergen County, New Jersey," filed in the Bergen County Clerk's Office, June 26, 1979 as Map No. 7756, are located within the Special Flood Hazard Area.

Map Number 340040, Panel 0001 B is hereby corrected to reflect that the above-mentioned lots are not within the Special Flood Hazard Area identified on April 15, 1981. The existing structures on Lot 8 of Block 112, Lots 1 and 3 of Block 113, and Lot 2 of Block 115 are located in Zone C. The remaining lots are also located in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 18, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-33023 Filed 12-2-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Houston, Texas; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Houston, Texas. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Houston, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Food Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, telephone (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. 480296 Panel 0120C, published on October 6, 1980, in 45 FR 66098, indicates that a 4.271 acre tract of land out of the John Austin Two-League

Grant, Abstract No. 1, Houston, Texas, recorded as Film Code Numbers 115-19-0060 through 115-19-0065, and Film Code Numbers 126-07-0545 through 126-07-0549, in the Office of the Clerk, Harris County, Texas, is located within the Special Flood Hazard Area.

Map No. 480296 Panel 0120C is hereby corrected to reflect that the above-mentioned property is not within the Special Flood Hazard Area identified on September 21, 1982. This property is in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 9, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-33021 Filed 12-2-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-6398]

Letter of Map Amendment for Benton County, Wash., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Benton County, Washington. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Benton County, Washington, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, telephone (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 530237 Panels 0455B and 0465B, published on September 8, 1982, in 47 FR 39500, indicates that Government Lots 3, 4, and 7, Section 29; Government Lot 2, Section 30; Government Lots 1 and 6, Section 31; and the North 300.0 feet of the Northwest Quarter of the Northwest Quarter of Section 32, Township 10 North, Range 28 East, W.M., and the North 300 feet of Government Lot 3, Section 32, Township 10 North, Range 28 East, W.M., Town of West Richland and Benton County, Washington, recorded as Instrument No. 650097 in Volume 277, Page 1387, in the Office of the Recorder, Benton County, Washington, are located within the Special Flood Hazard Area.

Map No. H & I 530237 Panel 0465B is hereby corrected to reflect that the existing structure located at the corner of North 46th and Ranch Road on the above-mentioned property is not within the Special Flood Hazard Area identified on July 19, 1982. This structure is in Zone B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: November 18, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-33022 Filed 12-2-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-61; RM-3980, RM-3987, RM-4085]

FM Broadcast Stations in Loudon and Madisonville, Tennessee; and Robbinsville, North Carolina;[1] Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 240A to Robbinsville, North Carolina, in response to a proposal filed by Graham County Broadcasting Company. The assignment could provide Robbinsville with its first local aural broadcast service. It also denies the conflicting proposals of Benny Stafford to assign FM Channel 240A to Loudon, Tennessee, and of Sloan Broadcasting Company to assign the channel to Madisonville, Tennessee, which could have provided a second local aural service to either community.

DATE: Effective: January 28, 1983.

[1] This community has been added to the caption.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: November 16, 1982.

Released: November 29, 1982.

By the Chief, Policy and Rules Division:

1. Before the Commission is a *Notice of Proposed Rule Making*, 47 FR 6900, published February 17, 1982, proposing the assignment of FM Channel 240A to Loudon, Tennessee (RM-3980), in response to a petition filed by Benny Stafford ("Stafford"), or to Madisonville, Tennessee (RM-3987), in response to a petition filed by Sloan Broadcasting Corporation ("SBC"). Comments in support of the Loudon assignment were filed by Stafford and SBC. A counterproposal [2] was filed by Graham County Broadcasting Company ("GCB") seeking the assignment of FM Channel 240A to Robbinsville, North Carolina (RM-4085) as that community's first local aural service. Comments opposing the Robbinsville proposal were filed by Stafford, which elicited a response by GCB.

2. These petitions were filed prior to the Commission's adoption of the *Second Report and Order* in BC Docket No. 80-130 regarding *Revisions of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982), which eliminated many of our previous policy considerations and established new simplified priorities based on the relative importance of the service to be provided from the perspective of Section 307(b) of the Communications Act of 1934, as amended. In order to make such a 307(b) determination we shall evaluate the proposals under the new priorities and comparative factors set forth in the *Second Report, supra*, in addition to the traditional comparative criteria that has been developed through case law.

3. The *Notice* proposed assigning Channel 240A to either Loudon or Madisonville, Tennessee, although the initial determination was to propose the channel for Loudon since it is the larger of the two communities and, unlike Madisonville, had no local service at that time.[3] No other Class A channel is available to either community on a drop-in basis.

4. The *Notice* specified that Stafford's proposal for Loudon was made in reliance on the Commission's *Order* in Docket No. 21211 modifying the license of Station WDEH at Sweetwater, Tennessee, from Channel 237A to Channel 257A. Accordingly, the Loudon proposal could be made in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules. If, however, the assignment was ultimately made to Madisonville, a site restriction of 9.1 kilometers (5.7 miles) northeast of the community would be required to avoid short-spacing to Station WDOD (Channel 243) in Chattanooga, Tennessee.

5. In response to the *Notice*, Stafford filed comments in which he incorporated by reference the information contained in the *Notice* and reaffirmed his intention to apply for the channel, if assigned.

6. SBC, the Madisonville proponent, filed comments indicating that since its community presently has local daytime service, the public interest would be more effectively served by assigning Channel 240A to Loudon, Tennessee. Further, it indicated that if Channel 240A were assigned to Loudon, it would file an application for the facility. In view of SBC's interest in the Loudon proposal, further reference to its initial proposal will be eliminated since no other interest for Madisonville was expressed.

7. The counterproposal filed by GCB proposed assigning Channel 240A to Robbinsville, North Carolina, as a first local aural service to its community, as well as to Graham County. GCB depicts Robbinsville as a rural area that is ideally situated for access to major cities in several southern states. It indicates that commercial facilities in Robbinsville offer a variety and quality of goods and services which are adequate to meet the needs of the area. Further, it declares that the availability of industrial property at reasonable prices, combined with a stable workforce serve to enhance Graham County's attractiveness to new industry. It asserts that other than print media provided by three sources outside of the community, the citizens of Robbinsville have no daily information service. However, it notes that a local cable system has been established in the community. GCB remarks that an application is pending for a new AM service in Loudon [which has since been granted], and that Loudon County has other broadcast services available to it. Channel 240A could be assigned to Robbinsville without a site restriction.

8. Loudon (population 3,940),[4] the seat of Loudon County, (population 28,554), is located approximately 48 kilometers (30 miles) southwest of Knoxville, Tennessee. It presently is served by one daytime-only AM station (see footnote 3). Robbinsville (population 1,370), the seat of Graham County (population 7,217), is located in the southwestern extreme of North Carolina, approximately 256 kilometers (160 miles) west of Charlotte, North Carolina. It has no local aural service. The distance between Loudon and Robbinsville is approximately 41 miles. The required spacing is 65 miles. Therefore, the proposals are mutually exclusive. No other Class A channel is available for assignment to either of the two communities.

9. In response to the counterproposal, Stafford claims that GCB has not indicated whether Robbinsville is incorporated, nor has it shown therein that the various components that comprise a community have merged in Robbinsville or that those components exist clearly to serve the interests of its residents. Further, it disputes GCB's population figure for Robbinsville (1,910), charging that it is ovestated by approximately 50 percent. Likewise, Stafford disputes GCB's allegation regarding the status of a pending AM application for Loudon and its assertion of other broadcast service available thereto. Stafford asserts that for several reasons, it is premature to assume at this juncture that the application for a new daytime-only AM station in Loudon will result in the actual institution of service. Moreover, Stafford claims that while Lenoir City, Tennessee (also located in Loudon County) has three broadcast stations which provide service to Loudon County, such service is not the same as a local station for Loudon. In conclusion, Stafford asserts that Loudon is an identifiable community whose population is approximately three times greater than that of Robbinsville, North Carolina, and that as a growing community, it deserves the scarce assignment.

10. In a supplement to the counterproposal, GCB advises that its consulting engineer erred in arriving at the population figure given for Robbinsville and that indeed, the correct figure according to the 1980 U.S. Census, is 1,370. Further, it corrects its reference to the then pending AM application for Loudon as an unlimited operation,

[2] Public Notice of the counterproposal was given April 6, 1982, Report No. 1345.

[3] Subsequent to issuance of the *Notice*, an application, filed by Tellico Broadcasting Company, Inc. (File No. 820216 BC) for a new daytime-only AM station to operate in Loudon, was granted by the Commission.

[4] Population figures are derived from the preliminary 1980 U.S. Census Reports.

stating it relied on apparently inaccurate information. Also, GCB supplied additional information to establish that Robbinsville is an identifiable community. It concludes that in justification of the need for broadcast service in Robbinsville, it relies upon the Commission's priorities as set forth in the *Further Notice of Proposed Rule Making* in FR Docket No. 14185, 27 7797–98 (August 7, 1962), and restated in *Anamosa and Iowa City, Iowa,* 46 F.C.C. 2d 520, 524 (1974).

11. The first requirement in our comparative analysis is to determine that Robbinsville is a community for assignment purposes. We believe GCB has satisfied this requirement. GCB states that Robbinsville is incorporated and listed in the 1980 U.S. Census. Incorporation itself would be sufficient for assignment standards. However, petitioner also notes that Robbinsville has its own integrated school system, post office, Chamber of Commerce, and various other civic and social organizations. Thus, we have no difficulty in concluding that Robbinsville is a community.

12. The underlying issue presented here is which of the two communities is more deserving of the assignment of Channel 240A. On a comparative basis, the traditional criteria of providing a first local broadcast service provides a clear choice. As indicated earlier, an AM license was recently granted to provide local service to Loudon. The type of service that station will provide is not paramount to our determination herein. The fact that it has a local service, *albeit* a limited operation, is sufficient to satisfy the priorities under either the old criteria, pursuant to the *Anamosa and Iowa City, Iowa,* concepts or the new policies listed in BC Docket No. 80–130, *supra.*

13. Aside form the fact that Loudon has local aural service, we also note that it receives FM service from six area Tennessee stations which provide a signal strength of 60 dBu or greater, as follows: WLIL (FM), Lenoir City; WDEH(FM), Sweetwater; WEZK(FM), WIMZ–FM, and WIVK–FM, Knoxville; and WOKI–FM, Oak Ridge. Robbinsville, on the other hand, receives only two such services from the following area Tennessee stations: WUOT(FM), Knoxville; and WMYU(FM), Sevierville. Thus, we do not find a greater need for additional service at Loudon, and hence, Robbinsville must be preferred.

14. Accordingly, pursuant to the authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules, it is ordered, That effective January 28, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to Robbinsville, North Carolina, as follows:

City	Channel No.
Robbinsville, N.C.	240A

15. It is further ordered, that the petitions of Benny Stafford (RM–3980) to assign FM Channel 240A to Loudon, Tennessee, and Sloan Broadcasting Corporation (RM–3987) for assignment of Channel 240A to Madisonville, Tennessee, are denied.

16. It is further ordered, that this proceeding is terminated.

17. For further information concerning the above, contact Nancy V. Joyner, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82–33082 Filed 12–2–82; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 73 and 74

Oversight of the Radio and TV Broadcast Rules

ACENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast station regulations in Parts 73 and 74 of the rules of the FCC. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

DATE: Effective November 26, 1982.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Broadcast Bureau, (202) 632–5414.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Radio broadcasting.

47 CFR Part 74

Television broadcasting.

Order

Adopted: November 23, 1982.

Released: November 26, 1982.

1. In this *Order,* the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) Very often the alphabetical index will direct a rule seeker to a regulation more quickly if a colloquial or trade-jargon term for the rule is used in the index in addition to its proper title. The term radio "quiet zone" is an example. Descriptive terminology and FCC requirements pertaining to the "quiet zone" are found in § 73.1030, Notifications concerning interference to Radio Astronomy, Research and Receiving Installations. Because of the recognizability and subject matter identification it affords engineers, the term "quiet zone" will be added to the alphabetical index. (See appendix item 1.)

(b) In § 73.202. Table of Assignments, the rule erroneously cross-references § 73.507 as the rule section giving the location of certain noncommercial educational assignments for various communities in southwest U.S.A. This information is actually stated in § 73.504, Channel Assignments under the USA-Mexico FM Broadcast Agreement. The incorrect section cross-reference is corrected herein. (See appendix item 2.)

(c) Standards used to determine the existence of objectionable interference for certain noncommercial educational FM stations are given in § 73.509(c) directing the rule user to "paragraph (a) 1–3 * * *" [of § 73.509]. This is incorrect; the direction should be to paragraph (d) and paragraphs (d)(1), (2) and (3) of § 73.509. Correction is made herein. (See appendix item 3.)

(d) Several effective dates, now past, are removed from Parts 73 and 74.

In § 73.561, Operating schedule; time sharing, the effective dates in paragraphs (a) and (b). (See appendix item 4.)

In § 74.463, Modulation requirements, the date, in paragraph (a) of August 31, 1977. (See appendix item 12.)

(e) Section 73.676, Remote control operation, was amended effective February 22, 1982 (47 FR 3789), by completely removing paragraph (f) and the subparagraphs thereto. In so doing, subparagraph (a)(8) should also have been eliminated, being a cross-reference to paragraph (f). It is deleted herein. Subparagraph (a)(8) also makes cross reference to § 73.676(g). Eliminating (a)(8) would delete this cross reference also, but since (g) remains in the rule, deletion of the cross reference will in no

way affect its authority or status. In removing paragraph (f) and its subparagraphs from § 73.676, the Order in which it was accomplished failed to state that (f) would be marked as deleted. In order to avoid potential confusion on the part of rule users, the paragraph is marked "(f) [Deleted]" herein. (See appendix item 5.)

(f) Continuing its practice of reducing the administrative work load of radio and TV licensees and the FCC staff wherever possible, the Commission herein eliminates certain authorization requests during modification of station facilities. (Section 73.1615 Operation during modification of facilities.)

Licensees holding construction permits for modification of their facilities may, in the process of making the changes, discontinue operation or operate with temporary facilities as circumstances dictate. If the station facilities are nondirectional, the licensee can start temporary operation and continue for up to 30 days upon notification to the FCC, Washington, D.C. AM, FM or TV broadcasters with directional antennas must *request* and *obtain* authorization from FCC, Washington *prior* to using temporary operation to maintain service during the modifications. After reviewing these procedures, we find that use of FM and TV directional antennas have such minimal problem-causing potential that the rules could be relaxed to allow directional FM and TV licensees, to be governed by the same rule as nondirectional station licensees, and begin temporary operation for up to 30 days after giving notification to FCC, Washington, D.C. Request for and obtaining authorization will continue to be required of AM directional licensees in such temporary operation situations. A sizable amount of licensee and staff administrative detail, staff processing an correspondence is eliminated with this change. (See appendix item 6.)

(g) With the adoption of the Report and Order in BC Docket 80–130, the Commission established policy pertaining to FM assignment procedures. That policy is added to the Listing of FCC Policies via this Order. It is designated § 73.4104, FM assignment policies and procedures. (See appendix item 7.)

(h) Commission policy was adopted in the Second Report and Order in BC Docket No. 21136 on April 23, 1981. It was added to the listing of FCC Policies in Part 73 in the Rules Oversight Order adopted August 24, 1982, as § 73.4163, Noncommercial nature of educational broadcast stations. In a Commission Order adopted July 15, 1982 (effective September 3, 1982), the Commission modified the Second Report and Order in Docket 21136 to conform its rules to recently enacted legislation. The citation for this modification of the policy is added to § 73.4163 herein, completing the data pertaining to this subject. (See appendix item 8.)

(i) Section 74.401 contains definitions pertaining to Remote Pickup Broadcast Stations. The definition title "Remote pickup mobile relay unit" is incorrect. It should read "Remote pickup mobile repeater unit." The same misnomer, *i.e.*, "mobile relay unit" is corrected to read "mobile repeater unit" in § 74.431(c). (See appendix items 9 and 10.)

(j) With the adoption of the Simplified Renewal Application for AM, FM and TV stations, applicants are presumed to have requested renewal of their currently authorized auxiliary stations (e.g., STL's, intercity relays, remote pickups).

The rules on equipment changes in Part 74 in Subparts D (Remote pickup stations), Subpart E (Aural STL's and relay stations) and F (TV auxiliary broadcast stations), define changes requiring FCC authorization and those requiring only notification by the licensee to the FCC. Those changes requiring notification only are lesser changes which licensees may make at their own discretion. Significant changes are stated in detail in the pertinent rules and application for authorization must be made on FCC Form 313.

On changes requiring notification only, the licensee, pursuant to § 74.551 and § 74.651, must also set forth those changes in the "next application for renewal of license." Since the renewal applicant is presumed to be requesting auxiliary station renewal with the filing of the "short form" renewal application, no such "application" exists as described in the current rule.

Therefore, § 74.551 and § 74.651 will be modified to show that the change descriptions will accompany the notification to the FCC. (See appendix items 13 and 14.)

The remote pickup station rule, pertaining to equipment changes (Section 74.452) does not require prompt notification of changes the licensee may effect at its discretion. However, the rule does require that "equipment changes shall be set forth in the next application for renewal . . ." This will be modified to require such changes to be set forth promptly via notification to the FCC in Washington, D.C. at the time they are made. (See appendix item 11.)

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Broadcast Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. Therefore, it is ordered, That pursuant to Sections 4(i), 303(r) and 5(d)(1) of the Communications Act of 1934, as amended, and §§ 0.71 and 0.281 of the Commission's Rules, Parts 73 and 74 of Volume III of the FCC Rules and Regulations are amended as set forth in the attached appendix, effective November 26, 1982.

6. For further information on this *Order*, contact Steve Crane, Broadcast Bureau (202) 632–5414.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Laurence E. Harris,

Chief, Broadcast Bureau.

Appendix

PART 73—[AMENDED]

1. The following subject titles are added to the alphabetical index of Part 73 of the rules as follows:

In "Q" add, as the only listed subject:	
Quiet zone	73.1030
In "Z" add, as the first listed subject:	
Zone, Quiet	73.1030

2. Section 73.202(a) is revised to read as follows:

§ 73.202 Table of assignments.

(a) *General.* The following Table of Assignments contains the channels (other than noncommercial educational channels) assigned to the listed communities in the United States, its territories and possessions. Channels designated with an "A" are for Class A FM stations. All other listed channels are for Class B stations in Zones I and I–A and for Class C stations in Zone II. Channels designated with an asterisk are assigned for use by noncommercial educational broadcast stations only. There are specific noncommercial educational FM assignments (Channels 201–220) for various communities in

Arizona, California, New Mexico, and Texas. These are set forth in § 73.504.

* * * * *

3. Section 73.509(c) is revised to read as follows:

§ 73.509 Protection from interference.

* * * * *

(c) No application for FM Channel 200 will be accepted if the requested facility would cause interference within the 1 mV/m contour of any co-channel Class D (secondary) station on Channel 200 or any adjacent-channel station on Channels 201, 202 and 203. The standards set forth in paragraph (d) (1), (2) and (3) below shall be used to determine the existence of objectionable interference.

* * * * *

4. Section 73.561 is amended by revising paragraphs (a) and (b) to read as follows:

§ 73.561 Operating schedule; time sharing.

(a) All noncommercial educational FM stations will be licensed for unlimited time operation except those stations operating under a time sharing arrangement. All noncommercial educational FM stations are required to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday or to observe the minimum operating requirements during those days designated on the official school calendar as vacation or recess periods.

(b) All stations, including those meeting the requirements of paragraph (a) above, but which do not operate 12 hours per day each day of the year, will be required to share use of the frequency upon the grant of an appropriate application proposing such share time arrangement. Such applications shall set forth the intent to share time and shall be filed in the same manner as are applications for new stations. They may be filed at any time, but in cases where the parties are unable to agree on time sharing, action on the application will be taken only in connection with the renewal of application for the existing station. In order to be considered for this purpose, such an application to share time must be filed no later than the deadline for filing applications in conflict with the renewal application of the existing licensee.

* * * * *

§ 73.676 [Amended]

5. In § 73.676, the text of paragraph (a)(8) is removed and reserved and paragraph (f) is removed and reserved.

6. Section 73.1615 is amended by revising the introductory text of paragraphs (a) and (b) to read as follows:

§ 73.1615 Operation during modification of facilities.

* * * * *

(a) Licensees holding a construction permit for modification of directional or nondirectional FM and TV or nondirectional AM station facilities may, without specific FCC authority, for a period not exceeding 30 days:

* * * * *

(b) Licensees holding a construction permit for modification of directional AM station facilities must request and obtain authority from the FCC, Washington, D.C. prior to using any new installation authorized by the permit, or using temporary facilities, if such use is deemed necessary to maintain continued program service.

* * * * *

7. New § 73.4104 is added to the Policy listings in Subpart H, Part 73, to read as follows:

§ 73.4104 FM assignment policies and procedures.

See Report and Order, BC Docket 80-130, FCC 82-240, adopted May 20, 1982. 90 FCC 2d, 88; 47 FR 26625, June 21, 1982.

8. Section 73.4163 is amended by adding new paragraph (b) and by designating the present text as paragraph (a) as follows:

§ 73.4163 Noncommercial nature of educational broadcast stations.

(a) See Second Report and Order, BC Docket 21136, FCC 81-204, adopted April 23, 1981. 86 FCC 2d 141; 46 FR 27944, May 22, 1981.

(b) See Order, BC Docket 21136, FCC 82-237, adopted July 15, 1982. 90 FCC 2d 114; 47 FR 36171, August 19, 1982.

PART 74—[AMENDED]

§ 74.401 [Amended]

9. In § 74.401, Definitions, the definition title Remote pickup mobile relay unit is revised to read Remote pickup mobile repeater unit.

10. Section 74.431 is amended by revising (c) to read as follows:

§ 74.431 Special rules applicable to remote pickup broadcast stations.

* * * * *

(c) When a remote pickup mobile station is used as a vehicular repeater at the scene of an event to be broadcast and the operator-reporter wishes to leave the position of the mobile station in order to conduct interviews, obtain a better vantage point to view the scene or otherwise more effectively cover the event, the mobile station may be operated as an unattended remote pickup mobile repeater unit, subject to the following conditions:

* * * * *

11. Section 74.452 is amended by revising (c) to read as follows:

§ 74.452 Equipment changes.

* * * * *

(c) The FCC in Washington, D.C. shall be promptly notified of any equipment changes made pursuant to paragraph (b) of this section.

* * * * *

12. Section 74.463 is amended by revising (a) to read as follows:

§ 74.463 Modulation requirements.

(a) Each new remote pickup broadcast station authorized to operate with a power output in excess of 3 watts shall be equipped with a device which will automatically prevent modulation in excess of the limits set forth in this subpart.

* * * * *

13. Section 74.551 is amended by revising (b) to read as follows:

§ 74.551 Equipment changes.

* * * * *

(b) Other equipment changes not specifically referred to in this Section may be made at the discretion of the licensee, provided that the FCC in Washington, D.C. is promptly notified in writing upon the completion of such changes, and that the changes are described in the notification. Where such changes include the installation of multiplex equipment to provide additional aural channels, the purpose for which these added channels will be used shall be stated.

14. Section 74.651 is amended by revising (b) and (c) to read as follows:

§ 74.651 Equipment changes.

* * * * *

(b) Other equipment changes not specifically referred to in paragraph (a) above may be made at the discretion of the licensee provided that the FCC in Washington, D.C. is notified in writing upon the completion of such changes, and that the changes are described in the notification.

(c) Multiplexing equipment may be installed on any licensed TV broadcast STL, intercity relay or translator relay station without further authority of the FCC provided that the FCC in Washington, D.C. is promptly notified in

writing of such addition and of the use which will be made of the additional aural circuits.

[FR Doc. 82-33012 Filed 12-2-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 87

[PR Docket No. 82-319; FCC 82-510]

Amendment To Eliminate Unnecessary Reporting, Record Keeping and Record Retention Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document eliminates certain reporting and record keeping requirements in the Aviation Services. This action results from the FCC's program to reduce paperwork requirements. The amendments are intended to eliminate unnecessary regulations.

EFFECTIVE DATE: December 29, 1982.

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

FOR FURTHER INFORMATION CONTACT: Robert H. McNamara, Private Radio Bureau (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 87

Aeronautical stations, General aviation, Radio.

Report and Order

(Proceeding Terminated)

Adopted: November 18, 1982.

Released: November 29, 1982.

1. In this Report and Order we are eliminating reporting, record keeping and record retention requirements in the Aviation Services (Part 87 of the Commission's rules) which impose unnecessary burdens on the aviation community.[1]

Background

2. In the Notice of Proposed Rule Making (NPRM) in this docket [2] the Commission proposed to delete §§ 87.21, 87.101, 87.111(b), 87.293(b) in part, and § 87.467 (f) through (j). These rule sections are briefly discussed in the paragraphs below.

3. Section 87.21 requires that applications be submitted on the prescribed form. Since other rule sections specify the form to be used when seeking a particular class of station, this rule was considered unnecessary.

4. Section 87.101 requires all stations licensed in the aeronautical public service [3] to keep a file of record communications and, additionally, all ground stations to keep a record of radiotelephone contacts. Because this rule appeared to be unnecessary, obsolete in part and redundant in part, it was proposed to be deleted.

5. Section 87.111(B) requires that at specified times a signed entry be made in the station's records indicating frequency measurements are within required tolerances or that an automatic frequency monitor was in service. Although measurement will still be required when transmitters are originally installed and when adjustments are made, these historical records are seldom if ever utilized for any regulatory purpose and, therefore, were proposed to be deleted from Part 87.

6. Section 87.293 of the rules indicates the frequencies available for domestic VHF aeronautical enroute communications.[4] Paragraph (b) permits networks of intercomnnected enroute stations to employ offset carrier techniques. Paragraph (b) also requires that the Commission be notified by letter of the precise offset from the authorized frequency. Since the interconnected stations in these enroute networks are licensed to a single entity, and the offset parameters are described in the rules, the subject reporting requirement has been felt to be an unnecessary burden on licensees.

7. Section 87.467 of the rules describes the conditions for the cooperative use of operational stations [5] by eligible licensees. Paragraphs (f) through (j) of § 87.467 specify notification and reporting requirements for licensees sharing their facilities under this section. This rule affects a small and specialized part of the communications community. Further, no problems have been noted regarding these sharing arrangements, and no use has been made of required reports. Accordingly, the notification requirements contained in paragraphs (f) through (j) of § 87.647 were proposed to be deleted from the rules.

8. Aeronautical Radio, Inc. (ARINC), a communications intermediary for the air transport industry and the principal licensee of ground stations in the aeronautical enroute service, filed the only comments in this proceeding. ARINC agrees that the specified rule sections are unnecessary and supports their elimination.

Conclusion

9. We conclude that the amendments proposed in the NPRM are in the public interest. The subject rule sections do in fact impose an unnecessary paperwork burden on the aviation community. Therefore, we are amending §§ 87.21, 87.101, 87.111(b), 87.293(b), and 87.467(f), (g), (h) and (i) as proposed.

10. The rule amendments adopted in this proceeding, while expected to benefit the aviation public by eliminating unnecessary reporting and record keeping requirements will not result in a significant economic impact on any person or entity. Therefore, the Commission has determined that Section s 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) do not apply to this rule making proceeding, because the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

11. Regarding questions on matters covered in this document contact Robert H. McNamara, (202) 6332-7175.

12. Accordingly, it is ordered, That under the authority contained in Sections 4(i) and 303(R) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), the Commission's rules are amended as set forth in the attached Appendix, effective December 29, 1982.

13. It is further ordered, That this proceeding is terminated.

(Secs 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 87—[AMENDED]

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 87.21 [Removed]

1. Part 87 is amended by removing § 87.21.

[1] In the General Docket No. 82-182, opened April 15, 1982, we are also considering elimination of station log requirements in the Aviation Services.

[2] Notice of Proposed Rule Making, PR Docket No. 82-319, released June 22, 1982, FCC 82-260, 47 FR 28113.

[3] Frequencies available for assignment to "aircraft stations" in the aeronautical public service are the medium and high frequencies available for public correspondence in the maritime services. The aeronautical public service should not be confused with the service to airborne stations provided in the Public Mobile Radio Services (Part 22) for communications with land mobile stations which are interconnected to the nationwide telephone system.

[4] The aeronautical enroute service provides air-ground communications for the operational control (flight management) of aircraft by the operating companies (such as airlines).

[5] Operational stations in the Aviation Services are used for links or control circuits.

§ 87.101 [Removed]

2. Part 87 is amended by removing § 87.101.

3. In § 87.111 paragraph (b) is removed and paragraph (c) is revised to read as follows:

§ 87.111 Frequency measurements.

* * * * *

(c) The determination required by paragraph (a) of this section may, at the option of the licensee, be made by any qualified engineering measurement service.

§ 87.293 [Amended]

4. In § 87.293 paragraph (b) is amended by removing the last sentence.

§ 87.467 [Amended]

5. In § 87.467 paragraphs (f), (g), (h), and (i) are removed.

[FR Doc. 82-33089 Filed 12-2-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 82-183; FCC 82-488]

Amendment To Eliminate the Need for a Separate Authorization To Operate Speed Detection Devices in the Public Safety Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted rules which will permit local governmental entities licensed in the Public Safety Radio Services to operate radiolocation (RADAR) transmitters without a specific radiolocation license if they already are licensed for a base/mobile system. This amendment of the rules incorporates into the base/mobile authorization the right to operate speed detection devices. The reason for this action is to reduce the amount of clerical work required both by local governments and by the Commission's license processing staff. It will have little effect on the Commission's ability to oversee the regulation of the spectrum.

DATES: Amendment effective January 3, 1983.

The new reporting requirement mentioned herein becomes effective February 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur C. King, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443, Room 5120.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private Land Mobile Radio Services, Administrative practice and procedure, Public safety radio services.

Report and Order

Adopted: November 4, 1982.

Released: November 19, 1982.

By the Commission: Commissioner Rivera absent.

Introduction

1. On April 1, 1982, the Commission adopted a Notice of Proposed Rule Making (NPRM) in this proceeding proposing to amend the Commission's Rules and Regulations to eliminate the requirement that Police licensees of land mobile radio stations authorized in the Police and Local Government Radio Services obtain separate licenses for the operation of speed detection (i.e. radar) stations. The Notice was released on April 9, 1982, and published in the **Federal Register** at 47 FR 16661 on April 19, 1982. Timely comments were filed by: Albany, N.Y., City of (Albany), Arizona Department of Public Safety (Arizona), California Public Safety Radio Association (CPRA), The Central Committee on Telecommunications of the American Petroleum Institute (API), County of Orange, Cal. (Orange County), County of Riverside, Cal. (Riverside County).

Discussion

2. In the NPRM, as the rationale for proposing that the separate radiolocation license requirement be dropped, the Commission said:

> The proposal, if finally adopted, would eliminate the need for police entities to file applications for new radar authorizations, and there would be no need to modify or renew existing licenses on these stations. It would, thus, reduce the paper work burdens now placed on these licensees. While these applications now number only a couple of hundred a month, their elimination would help the Commission to reduce its backlog, and staff resources could be used for other processing functions.

3. The Commission also recognized in the NPRM that the advantages would not be unqualified, saying:

> We would no longer have the information now contained in our license files and we will not know how heavily or lightly these frequency bands are used. On the other hand, discrete frequencies are not always assigned to licensees and detailed license records are not needed for frequency assignment purposes * * *

4. The comments received on the proposal, particularly those received from entities likely to benefit from the proposal, were very enthusiastic. The only additional comment made on this point was that it should not be confined to police entities. There was a feeling that the benefits were clear and that they should extend to all local governmental entities operating in the Public Safety Radio Services, with the three services specifically mentioned being Police, Local Government and Highway Maintenance.

5. The API Central Committee, in its comments, while supporting the Commission's deregulatory efforts, said;

> * * * intelligent management of the spectrum dictates that some record be maintained of the degree to which radio frequencies are used. The Commission should adopt a procedure by which Police and Local Government Radio Service licensees will be required to register, as opposed to license, their radar units.This action would significantly reduce the regulatory burden on these licensees, while assuring that the Commission has an accurate record of the number of users operating in these frequency bands as well as their general location. This option would allow the Commission to accurately monitor use of these frequencies for determining interference, and to measure the possibilities of use by other services.

6. Upon careful consideration of this point we agree that a record of the number of units in use would be desirable and would be beneficial to our regulation of this spectrum. On the other hand, we seek to avoid unnecessarily burdening licensees with paper work, if this is not essential to our regulatory responsibilities. After weighing this matter, we conclude that there should be a procedure which allows us to know the usage of the spectrum so that we can appropriately regulate it. We think this can be accomplished with minimal licensee burden if licensees provide us, at the time of the renewal of their land mobile authorization(s), with the number of speed detection units they are currently operating on each frequency. This would only be once every five years in the ordinary case and would be a negligible addition to the renewal process.

7. We have also considered extending this approach to other private land mobile radio services. However, in view of the lack of a public record at this time on this approach, we have decided to confine our decision to local governmental entities in the Public Safety Radio Services.

8. In consideration of the foregoing, it is our determination to amend the rules as set forth in the attached Appendix. Local governmental entities authorized in the Public Safety Radio Service may operate speed detection devices as part to their base/mobile communications system. This will eliminate a separate licensing requirement for these devices.

9. Final Regulatory Flexibility Analysis.

Need for and Objectives of the Final Rule

To eliminate an unnecessary rule requirement, to reduce to the maximum extent possible the paper work burdens on small local governmental entities, and to free Commission staff resources for other tasks.

Summary of Issues Raised by the Public Comments

There were no comments opposing the adoption of rules to permit operation without specific licensing of radar units as part of the licensee's authority to operate a public safety land mobile system. There were also no comments addressing the matters discussed in the initial regulatory flexibility analysis.

Alternatives to the Rule

There were no significant alternatives to the rules adopted other than continuing to require specific licensing of radar units.

10. Because our decision to require licensees, at the time of renewal, to advise us of the number of speed detection devices they operate was not contained in our Notice of Proposed Rule Making, we must, pursuant to the requirements of the Paperwork Reduction Act, refer this decision to the Office of Management and Budget for its consideration. This new reporting requirement, therefore, will not become effective until February 1, 1983. All other aspects of our decision will become effective 30 days after this decision is published in the **Federal Register.**

11. Accordingly, it is hereby ordered, That, pursuant to Section 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 90 of the Commission's Rules is amended, effective January 3, 1983, as set forth in the attached Appendix. It is further ordered that this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 90—[AMENDED]

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 90.17(e)(4) of the rules is added to read as follows:

§ 90.17 Local government radio service.

* * * * *

(e) * * *

(4) A licensee of a radio station in this service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without specific authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to § 90.203(b) (4) and (5) is used and all other rule requirements are satisfied.

2. Section 90.19(g)(6) of the rules is added to read as follows:

§ 90.19 Police radio service.

* * * * *

(g) * * *

(6) A licensee of a radio station in this service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without specific authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to § 90.203(b)(4) and (5) is used and all other rule requirements are satisfied.

3. Section 90.21(e)(4) of the rules is added to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(3) * * *

(4) A licensee of a radio station in this service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without specific authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to § 90.203(b) (4) & (5) is used and all other rule requirements are satisfied.

4. Section 90.23(e)(3) is added to read as follows:

§ 90.23 Highway Maintenance Radio Service.

* * * * *

(e) * * *

(3) A licensee of a radio station in this service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without specific authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to § 90.203(b) (4) & (5) is used and all other rule requirements are satisfied.

5. Section 90.25(e)(3) of the rules is added to read as follows:

§ 90.25 Forestry-Conservation Radio Service.

* * * * *

(e) * * *

(3) A licensee of a radio station in this service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without specific authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to § 90.203(b) (4) & (5) is used and all other rule requirements are satisfied.

6. Section 90.129 is amended by the addition of a new paragraph (n) as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

* * * * *

(n) All applications for renewal of base/mobile station licenses by licensees who also operate radiolocation transmitters must be accompanied by a statement detailing the number of such units in service on each radiolocation frequency at the time the renewal application is filed.

[FR Doc. 82-33011 Filed 12-2-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 21108-225]

Tanner Crab Off Alaska

Correction

In FR Doc. 82-31207, beginning on page 51400, on Monday, November 15, 1982, in the second column, in the second line, "at p.m." should read "at 8:45 a.m", and in the third column, in the 17th line, "to 8:45" should have read "to 8:45 a.m".

BILLING CODE: 1505-01-M

Proposed Rules

Federal Register
Vol. 47, No. 233
Friday, December 3, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 802-3036]

Plaskolite, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Columbus, Ohio manufacturer and seller of interior mounted plastic storm windows, among other things, to cease misrepresenting the performance capabilities of storm windows; the amount of savings that will result from installation of storm windows on a house already equipped with prime and storm windows; and the purpose, content or conclusions of tests or surveys used by the company to substantiate energy-related claims. The order would further bar the firm from using the words "up to" or similar terms in energy-related claims, unless the maximum level of performance can be achieved by a significant number of consumers under normal circumstances, and the class of persons who can achieve this level of performance is disclosed. Additionally, the company would be required to retain documentation for energy-related claims for a period of three years.

FOR FURTHER INFORMATION CONTACT: FTC/PA, Marilyn J. Holmes, Washington, D.C. 20580; (202) 724-0727.

DATE: Comments must be received on or before February 3, 1983.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. and 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Energy conservation, Plastic storm windows, Trade practices.

In the matter of Plaskolite, Inc., a corporation; File No. 802-3036; agreement containing consent order to cease and desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Plaskolite, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Plaskolite, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Plaskolite, Inc. is a corporation organized, existing and doing business under and by virture of the laws of the State of Ohio, with its principal office and place of business located at 1770 Joyce Avenue, Columbus, Ohio 43216.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more

compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

"Energy-related claim" means any general or specific, oral or written representation that, directly or by implication, describes or refers to energy savings, efficiency or conservation, fuel savings, fuel cost savings, air infiltration, window or door sealing capabilities, conduction of heat, or heat gain or loss.

A "competent and reliable test" means any scientific, engineering, or other analytical report or study prepared by one or more persons with skill and expert knowledge in the field to which the material pertains and based on testing, evaluation, and analytical procedures that ensure accurate and reliable results.

"Storm window" means any transparent window covering, whether placed outside or inside an ordinary window, made of any material which is used to prevent or reduce air infiltration or exfiltration.

Part I

It is ordered that respondent Plaskolite, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any storm window in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Misrepresenting in any manner, directly or by implication, the performance capabilities of any storm window or the ability of any storm window to reduce air infiltration, heat loss through the window, or heating costs.

(2) Misrepresenting in any manner, directly or by implication, the amount of savings that will result from installation of any storm window on a house that already has prime and storm windows.

(3) Making any energy-related claim unless, at the time that the claim is made, respondent possesses and relies upon a competent and reliable test or other objective material which substantiates the claim.

(4) Misrepresenting in any manner, directly or by implication, the purpose, content, or conclusion of any test or study upon which respondent relies as substantiation for any energy-related claim, or making any statement or representation which is inconsistent with the results or conclusions of any such test or study.

(5) Making any energy-related claim which uses the phrase "up to" or words of similar import, unless, (a) the maximum level of performance claimed can be achieved by an appreciable number of consumers under circumstances normally and expectably encountered by consumers, and (b) the class of persons who can achieve the maximum level of performance claimed is disclosed.

Part II

It is further ordered that respondent maintain all documentation in support of and upon which respondent relies in making any energy-related claim and any other documentation that contradicts, qualifies, or otherwise calls into question any energy-related claim included in advertising or sales promotional material disseminated by respondent or by any officer, representative, agent, employee, subsidiary, or division of respondent, concerning the performance, efficiency or quality of any storm window. Such documentation shall be retained by respondent for a period of three years from the date such advertising or sales promotional materials were last disseminated, and may be inspected by the Commission staff upon reasonable notice.

Part III

It is further ordered that, for a period of three years from the date of service of this Order, respondent forthwith deliver a copy of this Order to all present and future employees, personnel, or agents and representatives of respondent engaged in the creation, design, or dissemination of any advertisement promoting respondent's storm windows.

Part IV

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

Part V

It is further ordered that respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Plaskolite, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint in this matter alleges that Plaskolite made certain deceptive or unfair advertising claims in connection with its sale of "In-Sider" interior mounted plastic storm windows. The complaint asserts that Plaskolite made the following types of claims for these storm windows:

(a) That In-Sider cut heat loss through windows by a specific percentage, or by "up to" a specific percentage—generally 88% for homes without exterior storm windows and 26% for homes that already have exterior storm windows;

(b) That tests in various cities show that In-Sider reduce fuel bills in typical homes by specific amounts, such as $252.20 in Boston; and

(c) That the In-Sider is substantially more effective than outside storm windows.

The complaint alleges that these representations are deceptive or unfair for two reasons. First, the claims are inaccurate. For example, the complaint asserts that the In-Sider will not cut heat loss by 88% through many windows, and that few, if any, consumers will save 88% under normal circumstances. Second, according to the complaint, the claims are deceptive or unfair because Plaskolite did not possess and rely on a reasonable basis for making the claims. Specifically, the complaint alleges that Plaskolite's test procedures and calculations which were used as a basis for these claims were not designed or conducted in a way that would properly assess the product performance claimed in its advertisements. The resulting savings estimates therefore exaggerated the performance of the storm windows.

The complaint does not allege that all procedures to estimate storm window savings are invalid or infeasible. A variety of approaches are available to overcome the deficiencies of the

procedures used here and provide accurate and reasonable results.

In addition to provisions designed to aid the Commission in determining whether Plaskolite will comply with this proposed consent order, the proposed order has three major sets of provisions. First, the proposed order prohibits Plaskolite from misrepresenting the energy-related capabilities of storm windows. More specifically, the company is prohibited from misrepresenting the performance capabilities of storm windows, the amount of savings that will result from use of storm windows on a house that already has prime and storm windows, and the results or conclusions of any test used by Plaskolite to substantiate its energy-related claims. The Commission believes that these provisions will benefit consumers by prohibiting Plaskolite from misrepresenting important energy-related characteristics of its products and will aid in ensuring that consumers will not be deceived about the advantages of these products in conserving energy or reducing heating costs.

Second, the proposed order prohibits Plaskolite from making any energy-related claim for its storm windows unless the claim is substantiated by a competent and reliable test or other objective material. This provison should ensure that energy-related claims that the company makes for its storm windows are appropriately based upon tests or other objective material. It is intended to minimize the possibility of any future deceptive energy savings claims for these products. The Commission is sensitive to the concern that substantiation requirements not inhibit innovation or eliminate useful and accurate product information from advertising. Accordingly, the order provision here is intended to allow the company flexibility in developing a basis for future savings claims, while ensuring that consumers benefit from receiving reliable information.

The third major provision of the proposed order deals with claims using the words "up to" or similiar phrases. This provision prohibits Plaskolite from making such claims in an energy-related advertisement unless both the maximum level of performance can be achieved by an appreciable number of consumers under normal circumstances and the class of persons who can achieve this level is disclosed. The first requirement is important so that the "up to" amount is not an aberration; such a claim could deceive consumers when only few, if any, customers could achieve the claimed amount. The requirement of disclosing the applicable class of consumers is also necessary in this case because claims for one class of consumers might not be pertinent to another class of consumers. For example, the performance of storm windows with respect to consumers in one area of the country might have little relevance to consumers in another part of the country. With this information, consumers can determine if the "up to" claim is relevant to them. The Commission does not mean to imply that such a disclosure requirement is always necessary for "up to" claims no matter what the product and no matter what the context and content of the claim, but such a disclosure is appropriate in this case.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 82-33032 Filed 12-2-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182, 184, and 186

[Docket No. 81N-0382]

Magnesium Gluconate, Potassium Gluconate, Sodium Gluconate, Zinc Gluconate, and Gluconic Acid, Proposed GRAS Status as Direct and Indirect Human Food Ingredients

Correction

In FR Doc. 82-29730 beginning on page 49028 in the issue for Friday, October 29, 1982, on page 49031, first column, § 184.1757(a), the word "flucose" should read "glucose".

BILLING CODE 1505-01-M

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21 CFR Parts 182 and 184

[Docket No. 79N-0140]

GRAS Status of Rennet; Tentative Final Rule

AGENCY: Food and Drug Administration.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is tentatively affirming that rennet is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated under the comprehensive safety review conducted by the agency. FDA is publishing this document as a tentative final rule because the agency is not including in the regulation the levels of use that appeared in the proposal. The agency is offering an opportunity to comment on these changes.

DATE: Comments on the revisions made to the regulation and issued as part of this tentative final rule by February 1, 1983.

ADDRESS: Written comments may be sent to the Dockets Management Branch (HF-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockvile, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 23, 1979 (44 FR 61053), FDA published a proposal to affirm that rennet is GRAS for use as a direct human food ingredient. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on rennet and the report of the Select Committee on GRAS Substances (the Select Committee) have been made available for public review in the Dockets Management Branch (address above). Copies of these documents have also been made available for public purchase from the National Technical Information Service as announced in the proposal.

In addition to proposing to affirm the GRAS status of rennet, FDA gave public notice that it was unaware of any prior-sanctioned food ingredient uses for this substance, other than for the proposed conditions of use. Persons asserting additional or extended uses, in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of the prior-sanctioned use could be determined. That notice was also an opportunity to have prior-sanctioned uses of rennet approved by issuance of an appropriate final rule under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior

sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for rennet were submitted in response to the proposal. Therefore, in accordance with that proposal, any right to assert a prior sanction for use of rennet under conditions different from those set forth in this tentative final rule has been waived.

Four comments were received in response to the proposal on rennet. Two comments were from producers and users of rennet, and two comments were from trade associations. A summary of the issues raised in the comments and the agency's response to them follows:

1. All four comments objected to the proposed levels for rennet in foods and claimed that the proposed levels are far below those currently used. The comments indicated that the proposal's statement of use levels failed to consider the relative activity of the various grades of rennet used. Also, one comment requested that the final rule not be issued until the results of the 1978 Enzyme Manufacturers/Users Survey could be evaluated because the 1978 survey would show that the proposed levels are not consistent with those in use. Finally, the comments requested that rennet be affirmed as GRAS for use in food in accordance with current good manufacturing practice (CGMP) without use levels.

During the GRAS review, FDA has recognized that there are substances that should be affirmed as GRAS in accordance with CGMP, and for which it is not necessary to include levels of use in the GRAS affirmation regulations. For the following reasons, FDA concludes that rennet is such a substance: (1) The use of rennet in food is self-limiting because it is used to obtain a predetermined effect, i.e., to coagulate proteins or to achieve a desired texture and body in a food product. Overuse or underuse will produce such problems as poor coagulation or poor texture. (2) A meaningful set of percentage-by-weight use levels cannot be developed because of the varying activity levels of rennet preparations. (3) The information obtained from the 1971 and 1977 National Academy of Sciences/National Research Council (NAS/NRC) surveys does not provide an adequate basis to express rennet use levels in terms of measurable activity. (4) Both the Federation of American Societies for Experimental Biology (FASEB) and the agency agree that a large margin of safety exists for this ingredient, and that a reasonably foreseeable increase in the level of consumption of rennet will not adversely affect human health. (5) From the number and variety of comments received on the proposal, the agency has determined that the levels of use listed in the proposal and enumerated in the comments may not reflect current industry practice.

Therefore, the agency has decided to affirm tentatively the GRAS status of rennet when it is used under CGMP conditions of use in accordance with § 184.1(b)(1) (21 CFR 184.1(b)(1)), without specifying levels of use. Because FDA has made this decision, there is no reason to withhold action on rennet pending receipt of the Enzyme Manufacturers/Users Survey. To make clear that the tentative affirmation of the GRAS status of rennet is based on the evaluation of limited uses, however, the regulation sets forth the technical effects and food categories that FDA evaluated.

In the judgment of FDA, its decision not to include levels of use does not represent a major departure from the proposed regulation. The levels of use included in the proposal were never intended to be specific limitaitons. However, to afford interested persons the opportunity to comment on the agency's decision, FDA is issuing this tentative final rule under § 10.40(f)(6) (21 CFR 10.40(f)(6)). FDA will review any comments relevant to the removal of the current good manufacturing practice levels of use that it receives within the 60-day comment period and will issue in the **Federal Register** either an announcement that this tentative final rule has become final or an announcement of modification to this regulation made on the basis of the new comments.

In the **Federal Register** of September 7, 1982 (47 FR 39199), FDA proposed to adopt a general policy restricting the circumstances in which it will specifically describe conditions of use in regulations affirming substances as GRAS under 21 CFR 184.1(b) (1) or 186.(b) (1). The agency proposed to amend its regulations to indicate clearly that it will specify one or more of the CGMP conditions of use in regulations for substances affirmed as GRAS with no limitations other than CGMP only when the agency determines that it is appropriate to do so.

2. One comment stated that the proposed rule also did not cover all food categories, i.e., cheese substitutes, in which rennet is currently used.

FDA disagrees with the comment. The agency acknowledges that there has been some confusion about the proper food category in which to place cheese substitutes. However, analogs or substitutes are included in the same food category as the traditional food product. Only in two cases are analog categories separately listed in § 170.3(n) (21 CFR 170.3(n)): milk and cream analogs (dairy product analogs) (21 CFR 170.3(n) (10)) and meat, fish, or poultry substitutes (plant protein products) (21 CFR 170.3(n) (33)). Thus, cheese substitutes are included in the category "cheeses" (21 CFR 170.3(n) (5)), which the agency has included in both the proposed and tentative final regulations for rennet. No information that rennet is used in any other food category was presented to the agency.

3. One comment noted that the proposal ignores the distinction that should be drawn between the commercial preparations called "rennet" and the active component called "rennin".

The agency does not agree that the distinction between "rennet" and "rennin" was inadequately drawn in the proposal. However, a further explanation of the difference between these two terms may be appropriate. The active ingredient in rennet is the enzyme rennin. Rennet is the product containing the enzyme. In the manufacture of rennet, manufacturers often add diluents to the preparation to adjust for rennin activity and to improve the ease and accuracy of measuring and mixing the material for food use. As a result, the amount of rennet used is based on rennin activity and may vary between manufacturers. Furthermore, to assure standardized conditions with respect to activity and grades, the agency requires that the activity of the rennin in the commercial rennet product meet the specifications listed in the Food Chemicals Codex, 3d Ed. (1981). Thus, the agency concludes that no change in the regulation is necessary in response to the comment.

4. Another comment, on behalf of a trade association, indicated that the manufacturing process for rennet described in the proposal is outdated and seldom utilized by rennet manufacturers. The comment requested that the proposal be modified to reflect other processes, such as use of pH adjustment, so that the extraction process used could be one of several methods and not necessarily limited to the use of sodium chloride solutions.

The agency agrees that the request for greater latitude in the manufacture of rennet is justified. The agency, therefore, is modifying the proposal in this tentative final rule to describe generally the process by which rennet is made. FDA will permit the use of any manufacturing process that is consistent with this general description.

5. Three comments claimed that "rennet" is a generic term that refers to

a group of enzymes from various sources, animal and microbial. The comments cited the definitions in the Food Chemicals Codex, which list specifications for animal-derived rennet and microbial rennet. Because the rennet discussed in the proposal was derived from animals, the comments requested that FDA distinguish between animal-derived rennet and microbial rennet.

The agency has evaluated these comments and finds that the distinction that the comments suggest is justified to avoid confusion. Therefore, FDA is modifying the regulation in this tentative final rule to show that the rennet covered is animal derived. In addition, the agency notes that it has approved the use of microbial rennet in food in § 173.150 (21 CFR 173.150).

6. Another comment questioned FDA's approach in regulating enzymes. The comment stated that the enzymes used in cheesemaking should be affirmed as GRAS as a class of ingredients rather than as individual enzymes.

The agency does not agree with this comment. The agency believes that it is more pratical to review the safety of a specific enzyme for all its food-use applications than to try to review all enzymes used in a specific food or food process, such as cheesemaking. The agency believes that any approach other than the one it has chosen would create unnecessary duplication of effort.

The format of the regulation included in this tentative final rule is different from that in the proposal and in previous GRAS affirmation regulations. FDA has modified paragraph (c) of § 184.1685 to make clear the agency's determination that rennet may be used in food with no limitations other than current good manufacturing practice, including the technical effects and food categories listed. This change has no substantive effect but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect this tentative final rule would have on small entities including small businesses. Because the tentative final rule imposes no new restrictions on the use of this ingredient, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this tentative final rule, and the agency has determined that the final rule, if promulgated from this tentative final rule, will not be a major rule as defined by the Order.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 would be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.1685 [Removed]

1. In Part 182 by removing § 182.1685 *Rennet.*

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. In Part 184 by adding new § 184.1685, to read as follows:

§ 184.1685 Rennet (animal-derived).

(a) Rennet and bovine rennet are commercial extracts containing the active enzyme rennin (CAS Reg. No. 90001–98–3). Rennet is the aqueous extract prepared from cleaned, frozen, salted, or dried fourth stomachs (abomasa) of calves, kids, or lambs. Bovine rennet is the product from adults of the animals listed above. Both products are called rennet and are clear amber to dark brown liquid preparations or white to tan powders.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 107–108, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter; as a processing aid as defined in § 170.3(o)(24) of this chapter; and as a stabilizer and thickener as defined in § 170.3(o)(28) of this chapter.

(2) The ingredient is used in the following foods at levels not to exceed current good manufacturing practice: Cheeses as defined in § 170.3(n)(5) of this chapter; frozen dairy desserts and mixes as defined in § 170.3(n)(20) of this chapter; gelatins, puddings, and fillings as defined in § 170.3(n)(31) of this chapter.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Interested persons may, on or before February 1, 1983, submit to the Dockets Management Branch (address above) written comments regarding this tentative final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 10, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-32727 Filed 12-2-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 184

[Docket No. 82N-0314]

Peptones; Proposed Affirmation of GRAS Status as Direct Human Food Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that peptones are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATE: Written comments by February 1, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA-

305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John H. Dawson, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the **Federal Register** of July 26, 1973 (38 FR 20040)) initiating this review, under which the safety of peptones has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency proposes to affirm the GRAS status of peptones.

Peptones are formed by the partial hydrolysis of casein, animal tissue, soy protein isolate, gelatin, or defatted animal fatty tissue by means of the enzymes trypsin, pepsin, pancreatin, or papain; acid solutions; or heat. Peptones are water soluble, are not coagulable by heat, and do not precipitate in saturated ammonium sulfate solutions. The upper molecular weight limit for the polypeptides contained in peptones is limited to a few thousands daltons.

Peptones are similar to protein hydrolysates in that they both consist of mixtures of polypeptides, oligopeptides, and amino acids. The degree of hydrolysis used during the formation of protein hydrolysates is more complete, however, so that peptones contain a smaller proportion of free amino acids and low molecular weight oligopeptides and polypeptides than protein hydrolysates. The degree of hydrolysis of proteins in the preparation of peptones can be measured by the ratio of the free amino acid nitrogen to the total amino acid nitrogen content of the final peptone product. Peptones prepared by different hydrolytic methods may result in considerable variation in this ratio. The amino acid nitrogen to total nitrogen ratio is known to range from 0.01 to 0.49 for peptones prepared by enzymatic hydrolysis. The amino acid nitrogen to total nitrogen ratio for commercial protein hydrolysates prepared by acid hydrolysis typically ranges from 0.76 to 0.95.

In several advisory opinion letters issued in the early 1960's, FDA stated that the following forms and uses of peptones were GRAS: (1) Peptones prepared by digesting acidified beef tissue with pepsin for use in food; (2) peptones prepared from defatted fatty tissues obtained from the steam rendering of lard to improve the quality of the foam in beer; and (3) peptones prepared by the hydrolysis of food-grade gelatin with papain for use in beer.

In 1971, the National Academy of Sciences/National Research Council (NAS/NRC) surveyed a representative cross-section of food manufacturers to determine the specific foods in which peptones were used and the levels of usage. NAS/NRC combined this manufacturing information with information on consumer consumption of foods to obtain an estimate of consumer exposure to peptones. From the NAS/NRC survey, FDA estimates that in 1970 73,000 pounds (33,000 kilograms) of peptones were used as processing aids in alcoholic beverages (presumably as foam stabilizers in beer). In 1980, the A. E. Staley Manufacturing Co. reported that peptones were also used as whipping, aerating, and foaming agents in foods such as cakes, confections, frozen desserts, and nonalcoholic beverages. The Staley report estimated that the per capita daily intake of peptones in 1980 was less than 5 milligrams.

Peptones have been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered: 1. Chemical toxicity, 2. occupational hazards, 3. metabolism, 4. reaction products, 5. degradation products, 6. carcinogenicity, teratogenicity, or mutagenicity, 7. dose response, 8. reproductive effects, 9. histology, 10. embryology, 11. behavioral effects, 12. detection, and 13. processing. A total of 279 abstracts was reviewed, and 27 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

Information from the scientific literature review and other sources has been summarized in a report to FDA by the Select Committee on GRAS Substances (the Select Committee), which is composed of qualified scientists chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB). The members of the Select Committee have evaluated all the available safety information on peptones.[1] In the Select Committee's opinion:

The term "peptone" was the original designation given by protein chemists to partial hydrolytic decomposition products of proteins that are water soluble, non-coagulable by heat, and not precipitated in solutions saturated with ammonium sulfate. The definition and differentiation from protein products of other degrees of hydrolysis imply that peptones were considered to be a mixture of soluble peptides of varying chain lengths that contained minimal amounts of free amino acids. Another group of products identified as "protein hydrolyzates," also approved as GRAS food ingredients, was considered by the Select Committee in a previous report. Data supplied by manufacturers of peptones and protein hydrolyzates indicate that products marketed as peptones generally have a lower degree of hydrolysis than those marketed as protein hydrolyzates, although there is some overlap in the ranges encompassed by the two sets of products.

Peptones are prepared from casein, animal tissue, soy protein isolate, concentrate or meal, gelatin or defatted fatty tissue (mostly collagen) by hydrolysis catalyzed by trypsin, pepsin, pancreatin, papain, acid or heat. Most products identified as peptones are sold for use as nutrients in microbiological culture media, and the only food use reported for peptones in the 1970 NRC survey of the food processing industry was as a foam stabilizer in beer. Per capita daily usage in this application was 0.27 mg. However, other enzymatic protein hydrolyzates that would be included in the above definition of a peptone are used as food ingredients. These uses include that of whipping, aerating, or foaming agents in cakes, candies, confections, toppings, frozen desserts, and non-alcoholic beverages. Extent of current usage of peptones in food is estimated to be less that 5 mg/capita daily.

There is ample evidence that a distribution of oligopeptides and amino acids similar to that found in peptones may be formed in the gastrointestinal tract during the normal digestive process following the ingestion of protein. It is now know that oligopeptides, particularly di- and tripeptides, are directly absorbed into the intestinal mucosal cell and, in some instances, a small amount of peptide may enter the portal blood directly. As an example, peptides containing hydroxyproline are present in plasma and in urine following the ingestion of gelatin. Reports that pepsin-resistant peptides derived from food proteins may have opioid activity as indicated by *in vitro* techniques were not considered significant in the absence of *in vivo* evidence. The Select Committee has no evidence of toxic symptoms in healthy individuals associated with any peptide produced from food proteins. In patients with celiac disease, symptoms are produced by the ingestion of wheat gluten or peptic digests of gluten. However, no peptic products appear to be produced commercially from wheat gluten.

[1] "Evaluation of the Health Aspects of Peptones as Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, pp. 7-13, 1981. In the past, the agency presented verbatim the Select Committee's discussion of the biological data it reviewed. However, because the Select Committee's report is available at the Dockets Management Branch and from the National Technical Information Service, and because it represents a significant savings to the agency in publication costs, FDA has decided to discontinue presenting the discussion in the preamble to proposals that affirm GRAS status in accordance with current good manufacturing practice.

Because natural acid and enzymatic hydrolytic products of digestion are "peptones" and because commercial peptones prepared by mammalian digestive enzymes, papain, or heat should react similarly toxicologically, it is likely that they would not be associated with toxicity if food grade protein sources and good manufacturing practices were used in their preparation.[1]

The Select committee concludes that no evidence in the available information on peptones demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when they are used at levels that are now current or that might reasonably be expected in the future.[2]

FDA has undertaken its own evaluation of available information on peptones and concurs with the conclusion of the Select Committee. The agency concludes that no change in the current GRAS status of these ingredients is justified. Therefore, the agency proposes that peptones be affirmed as GRAS.

Because no food-grade specifications exist for peptones at the present time, the agency will work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for these ingredients. If acceptable specifications are developed, the agency will incorporate them into this regulation at a later date. Until any such specifications are developed, FDA has determined that the public health will be adequately protected if commercial peptones comply with the description in the proposed regulation and are of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

Additionally, the agency is proposing not to include in the GRAS affirmation regulation the levels of use reported for peptones in the NAS/NRC 1971 survey for these ingredients. Both FASEB and the agency have concluded that a large margin of safety exists for the use of peptones, and that a reasonably foreseeable increase in the level of consumption of these ingredients will not adversely affect human health. Therefore, the agency is proposing to affirm the GRAS status of peptones when they are used under current good manufacturing practice conditions of use in accordance with § 184.1(b)(1) (21 CFR 184.1(b)(1)). To make clear, however, that the affirmation of the GRAS status of peptones is based on the evaluation of limited uses, the proposed regulation sets forth the technical effects and food categories that FDA evaluated.

In the **Federal Register** of September 7, 1982 (47 FR 39199), FDA proposed to adopt a general policy restricting the circumstances in which it will specifically describe conditions of use in regulations affirming substances as GRAS under 21 CFR 184.1(b)(1) or 186.1(b)(1). The agency proposed to amend its regulations to indicate clearly that it will specify one or more of the current good manufacturing practice conditions of use in regulations for substances affirmed as GRAS with no limitations other than current good manufacturing practice only when the agency determines that it is appropriate to do so.

Copies of the scientific literature review on peptones and the report of the Select Committee are available for review at the Dockets Management Branch (address above) and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

Title	Order number	Price code	Price [1]
Peptones (scientific literature review).	PB 284-882/AS	A04	$9.00
Peptones (Select Committee report).	PB 82 155466	A03	7.50

[1] Price subject to change.

This proposed action does not affect the current use of peptones in pet food or animal feed.

The format of this proposed regulation is different from that in previous GRAS affirmation regulations. FDA has modified paragraph (c) of § 184.1553 to make clear the agency's determination that GRAS affirmation is based upon current good manufacturing practice conditions of use, including both the technical effects and food categories listed. This change has no substantive effect but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (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.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substance covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal, and the agency has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 184 be amended by adding new § 184.1553, to read as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALY RECOGNIZED AS SAFE

§ 184.1553 Peptones.

(a) Peptones (CAS Reg. No. 977027-88-5) are a variable mixture of polypeptides, oligopeptides, and amino acids that are produced by partial hydrolysis of casein, animal tissue, soy protein isolate, gelatin or defatted fatty tissue. Peptones are hydrolysates from these proteins using enzymes (trypsin, pepsin, pancreatin, or papain), safe and suitable acids, or heat.

(b) FDA is developing food-grade specifications for peptones in cooperation with the National Academy of Sciences. In the interim, these ingredients must be of a purity suitable for their intended use.

(c) In accordance with § 184.1(b)(1), these ingredients are used in food with no limitation other than current good manufacturing practice. The affirmation of these ingredients as generally recognized as safe (GRAS) as direct human food ingredients is based upon the following current good manufacturing practice conditions of use:

(1) These ingredients are used as processing aids as defined in § 170.3(o)(24) of this chapter and as surface-active agents as defined in § 170.3(o)(29) of this chapter.

(2) These ingredients are used in the following foods at levels not to exceed current good manufacturing practice: baked goods and baking mixes as defined in § 170.3(n)(1) of this chapter; alcoholic beverages as defined in § 170.3(n)(2) of this chapter;

[1] *Ibid.*, p. 14.
[2] *Ibid.*, p. 15.

nonalcoholic beverages as defined in § 170.3(n)(3) of this chapter; confections and frostings as defined in § 170.3(n)(9) of this chapter; dairy product analogs as defined in § 170.3(n)(10) of this chapter; frozen dairy desserts and mixes as defined in § 170.3(n)(20) of this chapter; and soft candy as defined in § 170.3(n)(38) of this chapter.

The agency is unaware of any prior sanction for the use of these ingredients in foods under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The action proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342), and the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on it later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate final rule under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

Interested persons may, on or before February 1, 1983 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 15, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-32726 Filed 12-2-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

[LR-25-81]

Windfall Profit Tax Issues, Statement of Procedural Rules; Amendment to the Statement of Procedural Rules To Provide for a Consolidated Appeals Conference

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed amendment to the Statement of Procedural Rules.

SUMMARY: The Crude Oil Windfall Profit Tax Act of 1980 imposes an excise tax on domestically produced taxable crude oil, and the producer of the oil is liable for the windfall profit tax. Under the present procedural rules, if an IRS examiner proposes an adjustment with respect to the tax on production of crude oil from a property or lease, each producer having interest in the property or lease could request a separate Appeals conference to contest the examiners findings. This document contains proposed amendments to the Statement of Procedural Rules (26 CFR Part 601) which would provide for a consolidated Appeals conference with respect to certain windfall profit tax issues.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 3, 1983. A public hearing on these proposed amendments will be held on January 18, 1983. See the notice of hearing published elsewhere in this issue of the **Federal Register.** The amendments are proposed to become effective on the date that the amendments adopted are published in the **Federal Register.**

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-25-81], Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTRACT: Donald W. Stevenson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3297, not a toll-free number).

SUPPLENTARY INFORMATION:

Background

This document contains proposed amendments to the Statement of Procedural Rules (26 CFR Part 601) which will allow the Internal Revenue Service to provide a single consolidated Appeals conference to resolve administratively certain windfall profit tax issues arising in connection with the examination of an oil and gas property or lease. The proposed amendments are to be issued under the authority contained in 5 U.S.C. 301 and 552.

The Crude Oil Windfall Profit Tax Act of 1980 imposes an excise tax on domestically produced taxable crude oil. The producer of the oil is liable for the windfall profit tax. Under the present procedural rules if an examiner proposes an adjustment with respect to the tax on production of crude oil from a property or lease, each producer having an interest in the property or lease could request a separate Appeals conference to contest the examiner's findings. The Internal Revenue Service does not have the resources to provide the number of separate conferences that might be requested, especially in cases where hundreds of producers own interests in the same property or lease.

The proposed amendments to the Statement of Procedural Rules would allow the Service to provide a single consolidated Appeals conference to address all "oil items" arising in connection with a property or lease whenever the Service determines that a consolidated procedure is necessary for effective administration of the windfall profit tax law. All producers having an interest in the property or lease would be permitted to participate in this conference. The determination by the Appeals office would be the final administrative determination with respect to "oil items" arising in connection with the property or lease under examination. Generally, "oil items" are items taken into account in computing the windfall profit tax which can be more readily determined at the property, rather than producer, level.

Each producer would be notified of the producer's share of any adjustment proposed by the examiner that may affect the producer's tax liability by way of a 30-day letter. This letter would explain the reason(s) for the adjustment(s), state whether the operator has agreed or disagreed with the findings of the examiner, invite the producers to submit written comments or additional information which may not have been considered by the examiner, and identify the location where the Appeals conference will be held if one is requested. No producer would be permitted to attend the conference unless the producer files a written request to attend the Appeals conference.

The proposed amendments to the Statement of Procedural Rules would not affect the producer's administrative appeals rights with respect to "producer items," that is, items more readily determined at the producer level such as exemptions and independent producer status. The producer would still be entitled to a separate Appeals conference to resolve issues related to these items.

Regulatory Flexibility Act

Although this document solicits public comments, it is not a notice of proposed rulemaking and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these

proposed amendments to the Statement of Procedural Rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments; Public Hearing

Before these proposed amendments are adopted, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held on January 18, 1983.

For further information regarding the public hearing, see the notice of hearing that appears elsewhere in this issue of the **Federal Register.**

Drafting Information

The principal author of these proposed amendments to the Statement of Procedural Rules is Donald W. Stevenson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Oil items, Producer items, Taxes.

Proposed Amendments to the Statement of Procedural Rules

PART 601—[AMENDED]

The proposed amendments to the Statement of Procedural Rules (26 CFR Part 601) are as follows:

Paragraph 1. Section 601.105 is amended by adding the following new paragraph (l):

§ 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

* * * * *

(l) *Special procedures for crude oil windfall profit tax cases.* For special procedures relating to crude oil windfall profit tax cases, see § 601.405.

Par. 2. Section 601.106 is amended by adding the following new paragraph (i):

§ 601.106 Appeals functions.

* * * * *

(i) *Special procedures for crude oil windfall profit tax cases.* For special procedures relating to crude oil windfall profit tax cases, see § 601.405.

Par. 3. There is inserted immediately after § 601.404 the following new § 601.405:

§ 601.405 Windfall profit tax.

(a) *General*—(1) *Applicability.* The administrative procedures set forth in this section shall apply only with respect to oil items arising under the crude oil windfall profit tax imposed by section 4986 and only when the Internal Revenue Service determines that these procedures are necessary to administer the windfall profit tax effectively.

(2) *Definitions*—(i) *Oil item.* The term "oil item" means an item necessarily taken into account in making the following determinations with respect to the crude oil removed from a property or lease during a taxable period:

(A) The tier or tiers of the crude oil;

(B) The quantity of crude oil in each tier;

(C) The adjusted base price and removal price;

(D) The severance tax and Trans-Alaska Pipeline System adjustments;

(E) The applicability of the exemptions provided in sections 4994 (c) and (e) with respect to front-end tertiary oil (excluding the determination of independent producer status) and exempt Alaskan oil;

(F) The determination of when removal from the premises occurs and what constitutes the property; and

(G) The percentage interest of each producer in the oil prior to its removal from the premises.

(ii) *Producer item.* The term "producer item" means an item taken into account in determining the producer's liability for the crude oil windfall profit tax other than an oil item.

(3) *Description of tax.* The crude oil windfall profit tax is a temporary exise tax imposed on domestically produced taxable crude oil removed from the premises during a taxable period.

(4) *Applicable regulations.* Information concerning the scope of the tax, the forms used, the requirements for withholding and depositing the tax, and the functioning of the Service with respect thereto is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the district director of internal revenue.

(b) *Examination procedures—(1) General.* Examination of a producer's windfall profit tax liability (or claim for credit or refund of overpayments of windfall profit tax based on an oil item) will generally begin with the examination of the books and records of the operator of the property or the lease in which the producer has an interest. Thus, the examination of a producer's liability or claim for credit or refund based on an oil item will generally be kept open until the examination and all other administrative proceedings relating to the oil items arising in connection with that property or lease are completed.

(2) *Examination of the property or lease.* The Examination Division of the district office in the internal revenue district in which the property or lease is located will generally conduct the examination. The operator shall furnish the examining agent with a schedule of producers owning an interest in the property or lease showing their names, taxpayer identification numbers, mailing addresses, and ownership percentages. If the operator later discovers at any time that the information furnished to the examiner is incomplete or incorrect, the operator shall furnish such revised or additional information as may be necessary. At the conclusion of the examination of the books and records of the operator, the examiner will prepare a complete examination report fully explaining all proposed adjustments, if any.

(3) *Thirty-day letter*—(i) *Distribution of 30-day letter.* A copy of the examination report under cover of a transmittal letter (30-day letter) will be sent to the operator and all persons identified as having interests in the property or lease and with respect to whom adjustments are to be proposed. Any person (as defined in section 7701(a)(1)) who receives a 30-day letter with respect to oil of which another person is the producer and who is not authorized or empowered to act on behalf of or represent that other person shall, within 5 days of the receipt of the 30-day letter, furnish to that other person a copy of the 30-day letter, including the proposed adjustments and such other information (for example, ownership percentage) as that other person may need in order to understand the applicaiton of the 30-day letter. Any person forwarding a 30-day letter shall notify the Internal Revenue service of the name, taxpayer identification number, mailing address, type of interest owned, and ownership percentage of the person to whom the letter is forwarded. This information shall be furnished to the Internal Revenue Service at the return address shown on the 30-day letter.

(ii) *Content of 30-day letter.* The 30-day letter shall—

(A) Set out the producer's share of the proposed aggregate adjustment and the reasons for the adjustments. For purposes of this paragraph, the producer's share of the proposed aggregate adjustment will be determined in accordance with the producer's

percentage interest in the production from the property or lease.

(B) State whether the operator has agreed or disagreed with the findings of the examiner.

(C) Invite producers to submit written comments or additional information which may not have been considered by the examiner.

(D) State that administrative review of the proposed adjustments will be granted only to the extent provided in the letter.

(E) Identify the general location where the Appeals conference will be held, if any producer requests one, and explain that all producers requesting an Appeals conference will be given later notice of the specific location and time of the conference.

(F) Explain that no producer will be permitted to participate in the Appeals conference unless the producer, within the time generally allowed for filing a written protest, submits a written request to attend the Appeals conference. In addition, a producer requesting a conference must, within 30 days after the mailing of the 30-day letter, file a written protest setting forth the facts, law, and arguments upon which the taxpayer relies if the producer's share of the proposed aggregate adjustment exceeds $2,500.00. No written protest is required if the producer's share is $2,500.00 or less.

(G) Inform producers that they will receive a later notice of the final administrative determination with respect to oil items.

(c) *Appeals procedures.* If a timely protest, a request for conference or written comments are received, they will be forwarded along with the examiner's findings and the schedule of property or lease owners to the appropriate Appeals office. No action will be taken with respect to producers who do not respond to the 30-day letter until the Appeals office completes its consideration of the case. Only one Appeals conference will be held to determine all oil item adjustments arising in connection with the property or lease unless the Internal Revenue Service determines that more than one Appeals conference is necessary. This conference will be scheduled by the appropriate Appeals office as soon as possible after the end of the 30-day period. Except in extraordinary circumstances, such as fraud discovered after the Appeals office has made its determination, the determination of the Appeals office will be the final administrative determination with respect to all oil items arising from the property or lease during the taxable year regardless of whether all oil items were contested at the conference.

(d) *Austin Service Center procedures.* Upon receipt of the findings of the examiner (in cases where no Appeals conference was requested or written comments submitted) or the determination of the Appeals office, the Austin Service Center will compute the potential additional tax liability with respect to that property or lease for each producer and inform the producer of the potential additional tax and of any offer of settlement that Appeals has found satisfactory. The Austin Service Center also will explain that no further administrative review will be granted with respect to any oil item arising in connection with the property or lease under exmination. The producers will be asked to—

(1) Sign a waiver of restrictions on the assessment and collection of any deficiency with respect to the property or lease in question and pay any additional tax due at that time, or

(2) Inform the Austin Service Center of any producer items that the producer wishes to place in issue.

Examination of producer items will be conducted in accordance with procedures provided in § 601.105. The producer may seek administrative review of the examiner's findings with respect to a producer item in accordance with procedures provided in § 601.106.

(e) *Cross reference.* For procedures regarding technical advice during examination and Appeals, see §§ 601.105(b)(5) and 601.106(f)(9).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 82-33094 Filed 12-2-82; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 601

[LR-25-81]

Windfall Profit Tax Issues; Amendment to the Statement of Procedural Rules to Provide for a Consolidated Appeals Conference; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed amendments to the Statement of Procedural Rules.

SUMMARY: This document provides notice of a public hearing on proposed amendments to the Statement of Procedural Rules which would provide for a consolidated Appeals conference with respect to certain windfall profit tax issues.

DATES: The public hearing will be held on January 18, 1983, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by January 4, 1983.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-25-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing will be proposed amendments to the Statement of Procedural Rules. The proposed amendments appear in the Proposed Rules section of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed amendments and also desire to present oral comments at the hearing on the proposed amendments should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by January 3, 1983. Each speaker will be limited to 10 minutes for oral presentation exclusive of time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

George H. Jelly,

Acting Director, Legislation and Regulations Division.

[FR Doc. 82-33093 Filed 12-2-82; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 221

Proposed Onshore Oil and Gas Order No. 1; Revision of NTL-6—Notice of Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases; Approval of Operations

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This document proposes to revise NTL-6 and redesignate it as Onshore Oil and Gas Order No. 1. This Onshore Oil and Gas Order would supplement requirements relating to approval for oil and gas well operations found in 30 CFR Part 221. The revision also lessens the regulatory burden now imposed on industry and the Federal Government by NTL-6 through the elimination of unnecessary and counterproductive requirements. The intended effect is to minimize costs and delays in the processing of applications for permit to drill without adversely affecting the ability of the Federal Government to protect the environment.

DATE: Comments on this proposed rulemaking must be received by February 1, 1983.

ADDRESS: Comments should be submitted to Chief, Onshore Fluid Minerals Division, Minerals Management Service, Mail Stop 652, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Gerald R. Daniels (703) 860-7535, (FTS) 928-7535, or Stephen H. Spector (703) 860-7960, (FTS) 928-7960.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are Gerald R. Daniels and Stephen H. Spector, both of the Onshore Fluid Minerals Division, Minerals Management Service, Reston, Virginia.

The current NTL-6 (Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases; Approval of Operations) was published on pages 18116-18120 of the April 30, 1976 **Federal Register.**

A Notice of Intent to revise NTL-6 was published on page 16426 of the April 16, 1982 **Federal Register** and invited comments. The intent of the revision is to more clearly describe requirements for filing an application for permit to drill, including the content of a complete application, and to eliminate unnecessary, burdensome, and counterproductive portions of the current NTL-6. The overall objectives are to minimize costs and application processing delays for both Government and industry while ensuring that the objectives of the Natonal Environmental Policy Act of 1969 and other applicable laws and regulations are met.

NTL-6 is also being converted to Onshore Oil and Gas Order No. 1 because it supplements 30 CFR Part 221 and is applicable to all lessees of oil and gas on Federal and Indian lands.

In response to the Note of Intent to revise NTL-6, 32 letters of comment were received, 25 of which were submitted by oil companies. The remaining seven letters were submitted by one law firm, two oil and gas industry associations, two environmental interest groups, and two Federal Agencies.

One industry association submitted a complete analysis of the current NTL-6 and a recommended revision thereof. This association submitted a very similar proposal earlier this year to the Department and the Minerals Management Service (MMS). Another industry association wrote a letter in support of the other's proposal. Nineteen of the oil companies providing comments also advocated adoption of the association's proposal as did the one law firm. Five other oil companies made certain streamlining proposals similar to many of those proposed by the association. One oil company submitted a copy of the previous comments it had made in response to the proposed revision of the onshore oil and gas operating regulations, 30 CFR 221, published in the **Federal Register** (46 FR 56564) on November 17, 1981.

A more detailed analysis of the comments is set forth below according to the following categories:

A. Conduct of onsite imspections.
B. Content of surface use programs.
C. Involvement of the Federal surface management agency (SMA).
D. Timing of the Application for Permit to Drill (APD) process.
E. Filing requirements.
F. National Environmental Policy Act of 1969 (NEPA) responsibilities and requirements.
G. Recommended revision of NTL-6 submitted by an industry association.

A. Conduct of Onsite Inspections

Three comments suggested that onsite inspections and the Preliminary Environmental Review (PER) process be limited to locations for exploratory or wildcat wells. The PER process has been revised extensively in the proposed revision of NTL-6. As a method of streamlining the APD process, MSS has also agreed with the Bureau of Land Management and Forest Service to minimize or eliminate predrill inspections for in-fill wells in developed fields where a previous environmental assessment has already been completed.

One comment suggested that it be mandatory for all onsite inspections to be held prior to filing the APD. In the proposed process, the timing of the onsite inspection, relative to the filing of APD, would be optional with the lessee/operator depending upon whether the lessee/operator chooses to first file a "Notice of Staking" (NOS).

An environmental group expressed opposition to conducting onsite inspections prior to receipt of an APD because the full scale of a project would not be understood until the application was in hand which, in turn, would necessitate a second inspection. Onsite inspections are conducted by MMS staff who are trained and knowledgeable in oil and gas operations and techniques including environmental impact mitigation. The MMS believes that in the vast majority of cases an onsite inspection, held after receipt of an NOS and after the proposed location and access roads are staked, will enable all parties to adequately address surface environmental and rehabilitation concerns. The NOS would contain certain information relevant to such concerns (see Attachment A of the proposed revision of NTL-6). Normally, onsite inspection participants include representatives of the lessee/operator and SMA, in addition to MMS.

One comment requested that the policy of not delaying onsite inspections during periods of snow cover be retained. Such policy will continue.

Two comments suggested that participants at onsite inspections be limited to persons with a direct interest in the proposed well and wellsite. Appropriate onsite inspection participants are described in the proposal.

One comment suggested setting time limits on conducting onsite inspections as a method of streamlining the process. Although the number of possible onsite inspection participants and possible scheduling problems can cause delays, it is the intent of MSS to act within realistic time limits concerning onsite inspections. Due to their importance within the APO process, onsite inspections will receive top priority and will be scheduled and conducted in most instances within 15 days of MMS's receipt of a predrill document.

B. Content of Surface Use Programs

One Federal agency recommended requiring applicants to include, as part of the APD, a contingency plan to prevent water pollution in the event of

accidents during operations, particularly for wells drilled within the boundaries of Federal lands surrounding Federal reservoirs. Contingency plans are required for certain specific actions, such as well locations proposed near bodies of water or near areas of concentrated populations. MMS does not require contingency plans for every APD, and would inform the operator no later than during the onsite inspection if such a plan is required.

The same Federal agency also recommended including a cultural resources report on the proposed roads and drill pad area as part of the surface use program. The existing NTL-6 does not address the cultural resources report per se; however, the proposed revision addresses cultural resources and requires such a report to be submitted no later than at the time an otherwise complete APD is submitted, unless existing information indicated that a report is not necessary.

Two comments requested that the requirements for indicating operational facilities and equipment on the proposed wellsite layout plat be reduced or eliminated. Such requirements are not reduced significantly in the proposal because such information is necessary to properly evaluate the feasibility of a proposed drilling operation in accordance with MMS's responsibilities. All areas of surface disturbance, such as roads, turnouts, and well pad, would be shown. Equipment layouts would be shown to determine whether such facilities are to be located either on or off the well pad.

Two comments requested that the scale of the map showing existing roads to proposed wellsites be reduced from that required by the existing NTL-6. The proposed revision includes allowances for optional map scales to be used to show existing access roads.

Two comments requested the requirements to describe "other information" in the surface use program be reduced or eliminated. The proposal substantially reduces the amount and detail of such information.

One comment requested exempting APD's for wildcat or exploratory wells from the requirement to list geologic formation markers. Such requirement in the existing NTL-6 asks only for estimated marker tops and this requirement is retained.

One comment stated that the guidelines in the existing NTL-6 for preparation of surface use programs are lengthy and excessive. The attempt is made in the proposed revision to make the guidelines easier to understand and to minimize information requirements. Certain items of the surface use program are also being reduced in length or otherwise simplified in the proposal.

One comment suggested that private surface owner agreements with Federal lessees be made a part of the surface use program. The proposed revision of NTL-6 specifies that operators must reach agreement with private surface owners as to surface protection and rehabilitation and/or damages in lieu thereof. However, MMS will not require that operators disclose the details of their agreements with surface owners.

Three comments suggested the requirement to provide the location of existing wells in the area of a proposed drillsite be reduced or eliminated. That requirement is reduced, but not eliminated, in the proposal.

C. Involvement of the Federal Surface Management Agency

A Federal agency suggested that the SMA should approve the preliminary map or plan (Preliminary Environmental Review) and that the review period for such plan be extended from 15 to 30 days. The preliminary review process has been revised extensively in the proposed revision of NTL-6. Neither proposal was accepted. Approval to survey and stake proposed well locations on Federal lands would no longer to required since only superficial surface disturbance results. All approval actions are by MMS and a 30-day waiting period for permission to survey and stake would be contrary to our intent to simplify and expedite APD processing.

Another Federal agency suggested that the revision should contain a procedure for obtaining the consent of the SMA for all oil and gas operations, whereas three oil companies suggested that MMS approve APD's without going through the SMA for co-approval and that proposed oil and gas actions receive single-agency review and approval. MMS is the only agency authorized by regulation to approve oil and gas operations on onshore Federal and Indian oil and gas leases, and it cannot delegate that authority. However, by statute, cooperative arrangements, and lease stipulations the appropriate SMA furnishes recommendations relating to the protection of surface resources and reclamation in response to each APD filed with MMS. MMS will continue to consider and accept the reasonable recommendations it receives from the involved SMA, during or immediately following, the onsite predrill inspections.

One comment recommended that the revision contain provisions for an MMS District Supervisor to approve APD's if the SMA fails to respond within certain time limits. It has been MMS's policy not to approve APD's until the SMA provides its recommendations for the protection of surface resources and rehabilitation or its written concurrence to the APD, as proposed. However, in order to expedite APD processing, MMS will schedule and conduct onsite inspections within 15 days of receipt of an NOS, or a complete APD if an NOS is not filed. The appropriate SMA is expected to participate in these inspections. The revised procedures specify that the surface use stipulations will be developed during the onsite inspection and provided to the operator either at the location, or within 5 working days of the date of the inspection.

One Federal agency recommended that the lessee/operator submit surface use plans to any agency holding a withdrawal on the land even if the surface is managed by another agency. In contrast, an oil company suggested that APD's not contain any surface restoration plans because SMA's issue requirements for rehabilitation and restoration, thus resulting in a duplication of effort. SMA's do not issue requirements to lessees for oil and gas actions on the leased lands. MMS will provide a copy of the surface use program to the appropriate SMA who, in turn, is expected to consult with any holding agency concerning possible conflicts with the purposes of a withdrawal. The SMA then provides MMS with recommended restoration and rehabilitation procedures.

One comment suggested that SMA's should not provide archeological clearance for proposed well locations because independent cultural resource inventories, now required by MMS, provide a more proper basis for such clearances. Archeological clearances are based on consultations with the involved State Historic Preservation Officer, in consideration of the results of the cultural resource inventory. Such consultations are, in most cases, done by the SMA as a service to MMS. The proposed revision of NTL-6 would require the lessee or operator to contact the appropriate SMA to determine whether a cultural resources report is necessary, and to keep MMS apprised as to those contracts.

Two comments recommended that NTL-6 be revised so that the cultural resource survey report is not filed with APD's for wells in developed fields or other areas that have been surveyed for such resources previously. The proposal contains a special section on cultural resources which would require the lessee or operator to contact the SMA to

determine whether a cultural resource report is required. In some instances, existing inventories of cultural resources by the SMA and/or operators will be sufficient to negate the need for a further survey when an APD is filed.

One comment suggested that MMS should decide if surface use programs are adequate instead of the SMA. SMA's do not make decisions on the adequacy of surface use programs in APD's. SMA's make recommendations regarding suface use, restoration, and rehabilitation; however, the MMS District Supervisor decides if the surface use program, or any other facet of the APD, is adequate. Both the existing NTL-6 and the proposed revision are consistent with these roles.

D. Timing of the Application for Permit To Drill (APD) Process

A Federal agency recommended that the minimum approval time for APD's filed for wells proposed for National Recreational Areas should be 90 days. The intent of MMS is to complete the processing of all APD's as soon as all appropriate reviews are completed with the objective of completing that process in 30 days or less in most instances.

One comment recommended that oil and gas operators be allowed to stake wellsites without having to obtain approval. The proposal contains a provision that Federal lands may be surveyed and staked without MMS or SMA approval if the action would not require any significant surface disturbances.

One comment requested that the draft contain a provision to allow approval of APD's in less than 30 days instead of a minimum of 30 days. MMS has not and will not set minimum time limits for processing APD's. APD's are fully processed as soon as all appropriate reviews are completed. The MMS anticipates that it will be able to complete the process within 30 days of its initiation for approximately 90 prcent of the filings. However, there is nothing in the existing or proposed procedures to prevent any particular application from being processed in less than 30 days.

One comment requested that MMS review of APD's be speeded up so that applicants could know the status of their APD's as soon as possible. The proposal provides that the MMS District Office would advise applicants orally, within 7 working days of receipt of the application, as to the completeness of their APD's. If oral contact is not achieved, written notification would be sent within that same period of time.

One comment requested that the permit approval process, inspections, reviews, etc., continue even if the APD is incomplete. APD processing receives top priority in MMS offices and will proceed to the extent possible unless the application is so incomplete that even cursory review is not practical. However, APD's must be technically and administratively complete prior to approval and processing may be delayed depending upon the importance of any material which is not submitted in a timely fashion.

One comment requested clarification as to whether or not the existing 30-day goal for APD approval includes the review period to determine completeness. The review period is included and MMS will continue to process applications up to the point where any missing piece of information or any uncorrected deficiency renders further processing impractical or impossible.

E. Filing Requirements

Two comments suggested that Federal oil and gas regulations, including authorities for NTL-6, should not apply to leases where the surface is privately owned and that APD's should not be filed with MMS on such lands. Where the Federal Government has retained ownership of the mineral estate under privately owned lands, the Federal Government, not the surface owner, issues oil and gas and other mineral leases for such lands. Consequently, the Federal Government has the primary responsibility to manage exploration, development, and production of leasable minerals wherever they occur on such lands. MMS is the Federal agency authorized by regulation to supervise and approve operations on all lands included in Federal and Indian mineral leases issued by the Federal Government.

One comment recommended that Section V of NTL-6 be reworded to provide that routine lease maintenance actions be approved by one-time or yearly lease maintenance plans. Section V of NTL-6 has been revised extensively in the proposal to provide that a number of routine lease and well maintenance actions will not require prior approval.

Two comments suggested that NTL-6 be revised to lessen filing requirements for successive development wells on the same lease and that the same or redundant information be eliminated for all but the first APD. The proposed revision allows for drilling plans to be submitted for several wells which are proposed to be drilled to the same zone within a field or area of geological and environmental similarity. However, Form 9-331C would still be required for each well.

One comment stated that too many copies are required of each APD creating a burden on applicants due to the excessive requirements of NTL-6. NTL-6 and the proposed revision require a minimum of three copies of each APD. Additional copies are required depending upon the location of the leased land. For example, copies are provided to certain State agencies and Indian Tribes. Therefore, the exact number will be determined by the particular MMS District Supervisor.

One comment suggested that proprietary information be filed separately from the APD or that provisions be included in NTL-6 to protect property rights associated with proprietary data. MMS deletes proprietary data from copies of APD's which are released to the public or to other agencies unless such agencies are authorized to require the data in the performance of their duties and responsibilities. Applicants may request that any part of the APD be held proprietary and, if MMS concurs, that information will be safeguarded from disclosure.

One comment requested that NTL-6 clarify the provision that an application is not required to stake a wellsite. The proposal provides that an NOS may be filed as the initial action in the APD process. That notice will be accepted for record purposes by MMS but does not require approval for staking Federal lands. However, lessees/operators would be required to contact private surface owners, Indian Tribes and Indian allottees prior to entry upon their lands for staking.

One comment requested that applicants not be required to submit summaries of surface use programs prior to onsite inspections. The proposal contains no such provision.

One comment requested that Public Information copies of APD's not be required. The draft does not require a "public information" copy to be filed by the applicant. The MMS District Office's copy of the APD is available for public review and inspection upon request.

F. National Environmental Policy Act of 1969 (NEPA) Responsibilities and Requirements

A Federal agency recommended that NTL-6 contain a description of MMS responsibilities for determining environmental effects consistent with NEPA, and provided a paragraph for inclusion in the revision for this purpose. MMS environmental responsibilities are described in Section IV of the existing

NTL-6. The proposed revision contains an updated summary of MMS's NEPA responsibilities which is very similar to the language recommended, except that the recommendation to specify that the SMA's surface protection and rehabilitation requirements shall be made a part of any approved drilling permit or other operation was not adopted. The reasons why such a requirement is not included are set forth in Section C, above, of this analysis.

One environmental group requested that adequate time be made available in the APD process for MMS to comply with NEPA. MMS's NEPA procedures are presented in a special section of the proposal. MMS intends to comply with all pertinent laws, including NEPA, before taking final action on any drilling or other application.

The environmental group also stated that MMS should have published a preliminary draft revision of NTL-6 in the **Federal Register** for public review and that failure to do so has made it difficult to offer useful comments. This is apparently a reference to a working draft that was informally circulated last spring, primarily to MMS field offices. As such, it was merely a compendium of views that had been expressed to that date and was not considered to be an official draft for public review and comment. The proposed revision of NTL-6, as published here in the **Federal Register**, provides an appropriate period for public review and comment on the formal proposal. Those public comments will be considered during the preparation of the final revision.

The same environmental group also recommended that NTL-6 contain a procedure for notifying the public when APD's are received as part of the NEPA decisionmaking process. Interested parties may inquire as to the location and status of a proposed wellsite on any Federal lease. The MMS District Offices are open to the public and all such information is available there.

This environmental group expressed further concern that some environmentally damaging activities may be permitted by MMS prior to completion of the proper environmental documents. The proposal states that no earthwork or surface disturbance other than actual staking of the proposed location, access roads and other surface use areas, will be authorized without prior approval of the complete APD. MMS will not take final action until all pertinent laws are complied with, including NEPA.

Finally, the environmental group recommended that NTL-6 should give no special consideration to APD's filed by lessees faced with imminent lease expiration and that wording specify that applicants risk denial of their APD's which are not filed in a sufficiently timely manner to allow MMS to fulfill its obligations under NEPA. The proposal states that imminent lease expiration is grounds for high priority treatment of APD's. However, no special consideration would be given simply because a late filing is made. If it is not possible for MMS to take action prior to lease expiration, the lessee/operator will be informed. The proposal also would require that if an NOS is filed, then within 45 days of the onsite inspection, the operator must prepare and submit a complete APD, or the operator may have to repeat the entire process.

G. Recommended Revision of NTL-6 Submitted by an Industry Association

A review of that proposal showed that the general aims are reduction in the regulatory burden for oil and gas lessees and operators by shortening the time required to process APD's, eliminating vague wording that makes NTL-6 difficult to understand, and reducing procedural loopholes and discretionary requirements which can cause delay and frustration.

The following discussion is a comparative analysis of the major procedural provisions of that proposal and MMS's proposed revision of NTL-6:

1. *Association Proposal.* Operators will stake a well at its proposed location. Operators will notify the MMS and SMA with an NOS, either before or after staking has occurred.

Proposed MMS Revision. This recommendation is adopted as one of two options which the operator may follow. The second option is that the operator may initiate the process by submitting an APD rather than an NOS. As indicated above, the operator would be responsible for contacting private surface owners, Indian Tribes, and Indian allottees prior to entry upon their land for staking.

2. *Association Proposal.* Within 15 days of receipt of the NOS, MMS will contact the operator and conduct an onsite inspection, if it is required. Surface use stipulations will be signed onsite and provided in writing to the operator either during the inspection or within 5 working days from the date of inspection.

Proposed MMS Revision. This recommendation is adopted in principle. Actual signing of the stipulations during the inspection is not specified in the proposed revision since it does not appear necessary as long as all parties know what language was developed. MMS reserves the right to impose additional conditions as a result of the review of the complete application; however, such additions would be the exception rather than the rule. A representative of MMS will inspect every proposed location, if staffing permits, whether or not a joint inspection (with the SMA) is scheduled. In special circumstances, after receipt of an NOS, MMS may require the filing of an APD prior to the scheduling of the onsite inspection. However, this would apply to only a small percentage of NOS filings.

3. *Association Proposal.* The onsite inspection will include all appropriate personnel from the SMA, MMS, and the operating company so that all concerns, stipulations, and decisions regarding final well location can be agreed to at the time of the onsite inspection.

Proposed MMS Revision. MMS has no fundamental problems with this recommendation since it is the objective of MMS to reach agreement on all concerns, stipulations and decisions regarding final well location during the onsite inspection. However, the SMA would not participate in an inspection where they and MMS have agreed that there is no reason to do so. For example, joint MMS/SMA inspections may not be required for proposed in-fill wells in developed fields if an earlier MMS environmental assessment has been completed for the field or field area which is relevant to the proposed location and access road. Predrill inspections would include representatives of the MMS District Office, the operator and, as appropriate, the SMA, dirt and drilling contractors, surveyor and operator's archeologist. When private surface is involved, the operator may invite the surface owner. The presence of an archeologist will not be necessary in every instance since a cultural resources survey and report will not be required for all locations and, if required, could be accomplished at any time before final action on an APD.

4. *Association Proposal.* The APD will be filed after all stipulations are known and will incorporate all concerns discussed at the onsite.

Proposed MMS Revision. MMS also intends to provide lessees/operators with the option of submitting a complete APD without first submitting an NOS. It is MMS's intent that all stipulations agreed to during the onsite inspection be incorporated by the operator into the complete application if it is submitted after the filing of an NOS, or be incorporated by MMS as conditions of approval, if an NOS is not filed.

5. *Association Proposal.* Within 10 days of receipt of a complete

application, MMS must provide written notification to the applicant of approval, denial, or reasons for delay. "Reasons for delay" will be accompanied by a schedule outlining a timetable for final action.

Proposed MMS Revision. The proposed revision substitutes the pertinent provisions of the revised regulations, 30 CFR 221, in this regard. Therefore, the proposed revision specifies that within 30 days of the initiation of the APD process, by the submittal of an NOS or APD, MMS will approve with or without modification, disapprove the application, or advise the operator, either in writing or orally (with subsequent written confirmation), of the reasons why final action will be delayed along with the date such final action is expected. Consistent with these regulations, it is anticipated that MMS will be able to process approximately 90 percent of applications to completion within 30 days of receipt of the initial document (NOS or APD) from the operator. It must be realized that a consecutive 30-day processing time frame will be dependent on whether the operator files a technically and administratively complete APD immediately after the onsite inspection is conducted in those cases where an NOS is filed initially.

In addition to the foregoing, the industry association also provided a proposed complete revision of NTL-6, including the various drilling and surface use informational requirements of an APD. MMS has incorporated a number of the recommended changes, either in whole or in part. MMS did not adopt those recommendations for reducing the amount of information to be submitted where that information is critical to the proper evaluation of the overall feasibility of a proposed operation. Those parties desiring to make a detailed comparison of the association's proposal and MMS's proposed revision of NTL-6 may examine copies of both proposals in most MMS field offices.

Executive Order 12291

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291 because its net effect is estimated to be a 5 percent cost reduction in the approval of operations process.

Regulatory Flexibility Act

The Department has also determined that the rulemaking will not have a significant economic impact on a substantial number of small entities, and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act because its net effect is estimated to be a 5 percent cost reduction in the approval of operations process.

National Environmental Policy Act of 1969

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environment Policy Act of 1969 (43 U.S.C. 4332(2)(C)) is required.

Paperwork Reduction Act of 1980

The optional Notice of Staking Form will be submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 et seq. The collection of the information on the optional form will not be required until it has been approved by the OMB. The remaining information collection requirements were approved by OMB in conjunction with the governing regulations of 30 CFR Part 221 (47 F.R. 47758).

List of Subjects in 30 CFR Part 221

Government contracts, Oil and gas exploration, Public lands, mineral resources, Reporting requirements.

PART 221—[AMENDED]

Under the authority of the Act of February 25, 1920 (30 U.S.C. 189), it is proposed to amend Part 221, Chapter II, Title 30 of the Code of Federal Regulations in § 221.14 by adding the following entry to the table in paragraph (b):

§ 221.14 Onshore oil and gas orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	Federal Register reference	Supersedes
1.	Approval of Operations		47 FR ——	NTL-6

Dated: November 6, 1982.

James G. Watt,

Secretary.

Appendix—Text of Oil and Gas Order

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

Onshore Oil and Gas Order No. 1 referred to in § 221.14(b) Table is proposed to read as follows:

Contents

Onshore Order

Introduction

I. Accountability
II. Special Situations
III. Drilling Operations
A. Surveying and Staking
B. Material To Be Filed
1. Notice of Staking
2. Application for Permit To Drill
C. Conferences and Inspections
D. Processing Time Frames
E. Cultural Resources Clearance
F. Threatened and Endangered Species Clearance and Other Critical Environmental Concerns
G. Components of a Complete Application for Permit To Drill
IV. Subsequent Operations
A. Production Facilities
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C. Emergency Repairs
D. Environmental Review
V. Well-Abandonment
VI. Water Well Conversion
VII. Privately Owned Surface
VIII. Reports and Activities Required After Well Completion

Onshore Oil and Gas Order

Federal and Indian Oil and Gas Leases

Order No. 1

Effective ——————

Approval of Operations

Introduction

This Order is established pursuant to the authority prescribed in 30 CFR 221. Approval of all exploratory and development wells drilled for oil and gas, and all required approvals of subsequent well operations and other lease operations, shall be obtained in accordance with 30 CFR 221.23, 221.27, 221.28, 221.29 or 221.30, as appropriate.

All wells approved for drilling under the provisions of this Order shall have been included in a drilling plan as required under 30 CFR 221.23(d). A drilling plan may be submitted for a single well or for several wells which are proposed to be drilled to the same zone within a field or area of geological and environmental similarity. However, Form 9-331C (Application for Permit to Drill, Deepen, or Plug Back) must be approved for *each* well and a complete application shall include all information required under 30 CFR 221.23 (d) and (e). A technically and administratively complete application includes, in addition to Form 9-331C, a drilling plan, evidence of bond coverage, a designation of operator when appropriate, and such other information as may be required by applicable Order or Notice to evaluate the proposal. Refer

to Section III.G. for more detailed guidance on complete applications.

Subsequent well operations and other lease operations shall have been included in a plan submitted on Form 9-331 (Sundry Notices and Reports On Wells) and approved under the provisions of this Order pursuant to 30 CFR 221.27 or 221.28, respectively.

A report on subsequent well operations shall be filed on Form 9-331 as prescribed in 30 CFR 221.27.

A notice of intention to abandon a well and a subsequent report of abandonment shall also be filed on Form 9-331 consistent with 30 CFR 221.29.

The operator shall comply with the following requirements. All applications for approval under the provisions of this Order shall be submitted to the appropriate District Supervisor of the Minerals Management Service (MMS).

I. *Accountability.* Lessees and operators have the responsibility to see that their exploration, development, production, and construction operations are conducted in a manner which (1) conforms with the lease terms, lease stipulations, and special requirements of the lease; (2) results in diligent development and efficient resource recovery; (3) protects the lease from drainage; (4) affords adequate safeguards for the environment; (5) results in the proper rehabilitation of disturbed lands; (6) conforms with available technology and practice; (7) abides by requirements essential to assure that underground sources of fresh water will not be endangered by any fluid injection operation; and (8) otherwise assures the protection of the public health and safety. Lessees and operators will be held fully accountable for their contractors' and subcontractors' compliance with the requirements of the approved permit and/or plan. Drilling and associated operations must not be conducted without prior approval of the District Supervisor.

II. *Special Situations.* Lessees and operators, as well as their contractors and subcontractors, must not commence any operation or construction activity on a lease, other than surveying and staking well locations on Federal and Indian lands, without the prior approval of the appropriate official of MMS except for certain subsequent operations (see Section IV of this Order). The terms and conditions of an approved permit and drilling plan, or other plan, may not be altered unless MMS has approved an amended or supplemental permit and/or plan covering any such modifications.

For proposed operations on a committed State or fee tract in a federally supervised unit, the unit operator or designated operator must furnish a copy of the approved State permit to the District Supervisor to be accepted for record purposes. Further, if Federal or Indian lands are crossed by the access road in connection with drilling the proposed well, the unit operator or designated operator must submit a surface use plan to the District Supervisor and obtain approval prior to commencing operations.

iii. *Drilling Operations.*

A. *Surveying and Staking.* Surveying and staking may be done without advance approval from the District Supervisor or the Federal Surface Management Agency (SMA) and prior to the conduct of any required cultural resources survey or study.

Staking will include the well location, two 200-foot directional reference stakes, the exterior dimensions of the drill pad, reserve pit and other areas of surface disturbance, cuts and fills, and centerline flagging of new roads with road stakes being visible from one to the next. Cut and fill staking applies only to the well site and reserve pit.

B. *Material to be Filed.* 1. *Notice of Staking.* Prior to filing a complete Application for Permit to Drill (APD), the lessee or operator may file, at its option, a Notice of Staking (Attachment A) with both the District Supervisor and appropriate office of the involved SMA (and the appropriate borough in Alaska when a subsistence stipulation is part of the lease). Where the surface is privately owned or held in trust for Indian benefit, the operator is responsible for contacting the private surface owner, Indian Tribe or Indian allottee(s) prior to entry upon the land for the purpose of staking.

The information contained in the Notice of Staking (NOS) will aid in identifying the need for associated rights-of-way and special use permits. Should all required information not be included, the NOS will be returned to the operator for modification. No surface disturbance, other than the actual staking of the location, access roads and other surface use areas, is authorized prior to approval of the complete APD.

2. *Application for Permit to Drill.* Regardless of whether an NOS is filed, the lesee or operator must file an APD. The application must be administratively and technically complete prior to approval. The District Supervisor will advise the lessee or operator orally within 7 working days of receipt of the application as to whether or not the application is complete. If it is not possible to make such oral contact, Attachment B, Checklist For Applicant Notification, will be mailed to the applicant for this purpose within the 7-day period. The notification will advise the lessee or operator of any defects that need correcting and of any additional information required. If the deficiencies are not corrected and/or the additional information is not submitted within 45 days of the date of the oral or written notice, the application will be returned to the applicant.

Upon initiation of the APD process, the District Supervisor will consult with interested parties, including the appropriate SMA, except where both Agencies mutually agree that such consultation is not needed, and will take one of the following actions within 30 days: (1) Approve the application as submitted or with appropriate modifications or stipulations; (2) return the application and advise the operator of the reasons for disapproval; or (3) advise the operator, either in writing or orally with subsequent written confirmation, of the reasons why final action will be delayed along with the date such final action is expected.

In cases when an NOS *is* filed, the MMS will strive to process the subsequent related APD within 10 days of its receipt. However, in either situation, the process of reviewing the APD and advising the lessee or operator as to whether it is technically and administratively complete will be considered a part of the overall APD processing time, i.e., 30 days in case of the APD option and 10 days if the NOS process is utilized. Operators are cautioned that with respect to any particular well, the option selected initially, of either filing both an NOS and a subsequent APD or just an APD, must be followed through to conclusion from the outset.

The processing of applications will be given a high priority and individual applications will be processed according to the date the application is received by the District Office. A higher priority, such as an imminent lease expiration date, will be duly considered, but no special consideration will be given simply because a late filing is made. If it is not possible for MMS actions to be taken prior to lease expiration, the lessee or operator will be advised both orally and in writing prior to the lease expiration date. Said advice will detail the reasons for delay so that the lessee or operator may take such appeal or other recourse to preserve the lease as is allowed by law and/or regulation.

The appropriate MMS office telephone number and address will be furnished the lessee or operator with the approved APD.

C. *Conferences and Inspections.* Within 15 days of receipt of an NOS, or a complete APD if an NOS is not filed, an onsite predrill inspection will be scheduled and conducted by the MMS District Office. In special circumstances, the District Supervisor may require the filing of a complete APD prior to the scheduling of an onsite predrill inspection. In attendance will be representatives of the MMS District Office, the operator, and other interested parties such as the involved SMA, the appropriate Alaska Borough (when a subsistence stipulation is part of the lease), and the operator's principal dirt and drilling contractors. When applicable, the operator's surveyor and archeologist should also participate in the inspection. If the SMA is not able to participate at the desired time, the inspection may be rescheduled provided it can be conducted within the 15-day period. When private surface is involved, the operator may invite the surface owner. Joint inspections (i.e., those involving the SMA) normally will not be held for proposed in-fill well locations in developed fields if an environmental assessment already has been completed by MMS for the field or that area of the field. However, if staffing permits, a representative of MMS will inspect those proposed locations where a joint predrill inspection is not held. At the time of onsite inspection, staking of the location must have occurred as specified in part A of this section.

The surface use and reclamation stiuplations will be developed during the onsite inspection and provided to the operator either at the location or within 5 working days from the date of the onsite inspection, barring unusual circumstances. These requirements are to be incorporated into the complete application when filed if the proponent is following the NOS option. Otherwise, these requirements will be incorporated as conditions of the APD approval if an NOS is not filed. However, this does not exclude the possibility of additional conditions being imposed as a result of the review of the complete application.

D. *Processing Time Frames.* The following table summarizes the major time frames involved in processing most APD's:

APD OPTION

Action Items	Days
Onsite inspection	Within 15 days after receipt of the APD.
Requirements to be imposed when APD approved.	Developed onsite or within 5 working days thereafter.
Complete processing of APD.	Within 30 days of its receipt, provided that it is technically and administratively complete at the end of the 30-day period (includes the above 15-day and 5-day periods).

NOS OPTION

Action Items	Days
Onsite inspection	Within 15 days after receipt of the NOS.
Requirements for inclusion in APD.	Furnished onsite or within 5 working days thereafter.
Complete processing of APD.	Within 10 days of its receipt provided that it is technically and administratively complete at the end of the 10-day period.

The above time frames, together, comprise the total period during which MMS anticipates that it will be able to process approximately 90 percent of all APD's. However, the 30 days may not run consecutively even when APD's are filed immediately after onsite inspections. For example, any time used by lessees or operators to correct deficiencies or to prepare and submit information originally omitted from the application, which causes delays in processing beyond MMS's control, will not be considered part of the 30-day period. However, MMS will continue to process applications up to the point where any missing piece of information or an uncorrected deficiency renders further processing impractical or impossible. Processing delays of this nature are expected to occur in less than 5 percent of the cases. In addition, delays in conducting onsite inspections within 15 days of receiving an NOS (or an APD if an NOS is not filed), or delays in providing all stipulations to the operator within 5 working days of an onsite inspection, may occur in less than 5 percent of the cases in areas where certain environmental or jurisdictional concerns exist. Such areas include, but are not limited to:

1. Certain tribally or individually owned Indian trust or restricted lands.
2. Lands withdrawn for federal reservoirs and Federal lands surrounding such reservoirs.
3. Lands in formally designated wilderness areas, lands formally proposed for such designation, lands within Bureau of Land Management Wilderness Study areas, or lands within Forest Service Further Planning Areas.
4. National Recreation Areas.
5. Certain Federal lands in Alaska.
6. Lands under jurisdiction of the Department of Defense.

The 30-day time frame for completion of the APD process will be exceeded in most instances where it is necessary to prepare an environmental assessment.

Lessees and operators are also cautioned that if the above process begins less than 30 days prior to the desired date of commencement of drilling operations, the process may not be completed within the time desired.

E. *Cultural Resources Clearance.* Because early consultation with the SMA and State Historic Preservation Officer (SHPO) are required of MMS (36 CFR 800.4(a)(1)), the lessee or operator should contact the SMA at least 15 days prior to the submission of an NOS or APD to determine whether a cultural resources report is required. Lessees and operators should, however, keep the District Supervisor apprised of their contacts with the SMA on a timely basis. If a cultural resources report is required, lessees and operators are encouraged to have the inventory and report completed prior to submission of any other material to the District Supervisor. Any such required report must be submitted to the District Supervisor no later than the time at which an otherwise complete application is submitted.

F. *Threatened and Endangered Species Clearance and Other Critical Environmental Concerns.* The SMA will identify any threatened and endangered species and/or critical habitat problems and other environmental concerns, e.g., wilderness areas and wilderness study areas, and wild and scenic rivers, to minimize the possiblity of drill site relocation. Should the SMA be unable to carry out this responsibility, MMS will do so. MMS will identify any known or potential geological hazards. If any of these concerns exist, information in that regard will be conveyed to the operator by MMS no later than when the surface use and reclamation stipulations are provided; however, the operator can ensure earlier identification of potential conflict in these areas of concern by contacting the SMA prior to the submittal of an NOS or APD. The District Supervisor should be apprised timely of any such contacts.

G. *Components of a Complete Application for Permit to Drill.*

1. *Complete Application.* If an NOS is filed, the operator must prepare and submit a complete APD within 45 days of the onsite inspection pursuant to the requirements of this subsection. Failure to timely submit an APD within this time frame may result in the operator having to repeat the entire process. The complete APD is to be submittted in triplicate to MMS, plus any additional copies required by the District Supervisor. A complete application

consists of the following: (a) Form 9-331C, (b) a drilling plan (or reference thereto) containing information required by section G.4., below, (c) evidence of bond coverage as required by Department of the Interior regulations, (d) designation of operator, where necessary, and (e) such other information as may be required by applicable Orders and Notices, including a cultural resources report (if necessary and not already filed). The District Supervisor may require additional information in unusual circumstances.

2. *Designation of Operator.* The lessee may authorize the actual conduct of operation in its behalf by designating another party as operator in a manner and form acceptable to the District Supervisor. Lessees shall notify the District Supervisor in writing when a designation of operator has been cancelled. A designated operator cannot designate a different party as operator.

3. *Form 9-331C (Application for Permit to Drill, Deepen, or Plug Back).* This Form must be completed in full and submitted in triplicate to the appropriate District Supervisor together with all necessary information referred to under Section G.1., above. The following points (a) through (f) are specific as to appropriate information requirements of the Form and should be stated thereon, or as an attachment thereto, for each well:

(a) A certified plat must be attached, depicting the location, as determined by a registered surveyor, in feet and direction from the nearest section lines of an established public land survey or, in areas where there are no public land surveys, by such other method as is acceptable to the District Supervisor.

(b) The elevation given must be that above sea level of the unprepared ground.

(c) The type of drilling tools and associated equipment to be utilized must be stated.

(d) The proposed casing program must include the size, grade, weight, and setting depth of each string, and whether it is new or used.

(e) The amount and type of cement, including additives to be used in setting each casing string must be described. If stage cementing techniques are to be employed, the setting depth of the stage collars, and amount of cement to be used in each stage, must be given.

(f) The anticipated duration of the total operation must be given in addition to the approximate starting date.

A copy of the approved Form 9-331C and the pertinent drilling plan, along with any conditions of approval, shall be available to authorized Federal personnel at the drillsite whenever active construction, drilling, or completion operations are underway.

4. *Drilling Plan.* A drilling plan in sufficient detail to permit a complete appraisal of the environmental effects associated with the proposed project must be prepared and either submitted with each copy of Form 9-331C, or referenced thereon if it is already on file with MMS or is being submitted for more than one well. The plan shall be developed in conformity with the provisions of the lease, including attached stipulations, and the guidelines provided by this Order. Each drilling plan shall contain a description of the drilling program and surface use program. MMS may send a copy of appropriate parts of the plan to other interested Federal, State, and local agencies. In that event, all information identified as proprietary will first be deleted.

The drilling program shall include a description of the pressure control system and circulation mediums, the testing, logging and coring program, pertinent geologic data, and information on expected problems and hazards. The drilling program may be modified, prior to approval of the APD, as circumstances may warrant, with the approval of the District Supervisor.

The surface use program shall contain a description of the road and drill pad location and construction methods for containment and disposal of waste material, and other pertinent data as the District Supervisor may require. The surface use program shall provide for safe operations, adequate protection of surface resources and other environmental components, and shall include adequate measures for rehabilitation of disturbed lands no longer needed for either drilling or subsequent production operations. In developing the surface use program, the lessee or operator will make use of such information as is available from the SMA concerning the surface resources, environmental considerations, and local rehabilitation procedures. The surface use program will be reviewed for adequacy by MMS and, if required, by the SMA. If the plan is considered inadequate, MMS will, in consultation with the SMA, as appropriate, require modifications or amendment of the plan or otherwise set forth such stipulations or conditions of approval as are necessary for the protection of surface resources and the environment, and for the rehabilitation of the areas to be disturbed when no longer needed for operational purposes.

(a) *Guidelines for Preparing Drilling Program.* The following information must be included as part of the drilling plan but should be made specific to each well if the plan covers more than one well:

(1) Estimated tops of important geologic markers.

(2) Estimated depths at which the top and the bottom of anticipated water, oil, gas, or other mineral bearing formations are expected to be encountered and the lessee's or operator's plans for protecting such resources.

(3) Lessee's or operator's minimum specifications for pressure control equipment which is to be used, a schematic diagram thereof showing sizes, pressure ratings (or API series), and the testing procedures and testing frequency.

(4) Any supplementary information describing more completely the drilling equipment and casing program as set forth on Form 9-331C.

(5) Type and characteristics of the proposed circulating medium or mediums to be employed in drilling and the quantities and types of mud and weighting material to be maintained.

(6) Testing, logging, and coring programs to be followed with provision made for required flexibility.

(7) The expected bottom hole pressure and any anticipated abnormal pressures or temperatures expected to be encountered or potential hazards such as hydrogen sulfide, *along with contingency plans for mitigating such identified hazards.*

(8) Any other facets of the proposed operation which the lessee or operator wishes to point out for MMS's consideration of the application.

(b) *Guidelines for Preparing Surface Use Program.* In preparing this program, lessee or operator shall submit maps, plats, and narrative decriptions which adhere closely to the following (maps and plats should be of a scale no smaller than 1:24,000 unless otherwise stated below):

(1) *Existing Roads.* A legible map (USGS topographic, county road map, Alaska Borough map, or such other map), labeled and showing the access route to the location, shall be used for locating the proposed well site in relation to a town (village) or other locatable point such as a highway or county road which handles the majority of the through-traffic to the general area. The proposed route to the location, including appropriate distances from the point where the access route exits established roads, shall be shown. All access roads shall be appropriately labeled. Any plans for improvement and/or a statement that existing roads

will be maintained in the same or better condition must be provided.

Information required by items (2), (3), (4), (5), (6), and (8) of this subsection may also be shown on this map if appropriately labeled, or on a plat or separate map.

(2) *Access Roads To Be Constructed and Reconstructed.* Information in this regard is to be submitted on a map or plat and shall appropriately identify all permanent and temporary access roads that are to be constructed, or reconstructed in connection with the drilling and production of the proposed well. Width, maximum grade, major cuts and fills, turnouts, drainage design, location and size of culverts and/or bridges, fence cuts and/or cattleguards, and type and source of surfacing material, if any, shall be stated for all construction. In addition, where permafrost exists, the methods for protection from thawing must be indicated. Modification of proposed road design may be required during the onsite inspection. Information should also be furnished to indicate where existing facilities may be altered or modified. Such facilities include gates, cattleguards, culverts and bridges which, if installed or replaced, must be designed to adequately carry anticipated loads.

(3) *Location of Existing Wells.* This information should be submitted on a map or plat and include all wells (water, injection or disposal, producing and drilling) within a one-mile radius of the proposed location.

(4) *Location of Existing and/or Proposed Facilities if Well Is Productive.*

(a) *On well pad*—Include a map or plat showing, to the extent known or anticipated, the location of all production facilities and lines to be installed if the well is successfully completed for production.

(b) *Off well pad*—Include a map or plat showing, to the extent known or anticipated, the existing or new production faciliteis to be utilized and the lines to be installed if the well is successfully completed for production. If new construction, the dimensions of the facility layout are to be shown.

If the information required under (a) or (b) above is not known to the extent of facilitating its accurate presentation and the well subsequently is completed for production, an amended surface use program must be filed prior to the construction of any new production facilities or the reconstruction of any existing production facilities to serve the well.

A plan for rehabilitation of all disturbed areas on or off the well pad, as appropriate, which are no longer needed for operations and maintenance is also to be included. Plans for additional development of the leasehold should be considered in the siting of new facilities.

(5) *Location and Type of Water Supply (Rivers, Creeks, Springs, Lakes, Ponds, and Wells).* This information may be shown by quarter-quarter section on a map or plat, or may be a written description. The source and transportation method for all water to be used in drilling the proposed well must be noted if the source is located on Federal or Indian lands or if water is to be used from a Federal or Indian project. If the water is obtained from other than Federal or Indian lands, only the location need be identified. Any access roads crossing Federal or Indian lands that are needed to haul the water will be described in items G.4.(b) (1) and (2), as appropriate. MMS approval of the surface use program does not relieve the lessee or operator from obtaining any other authorizations which may be required for the use of such water. If a water supply well is to be drilled on the lease, it must be so stated under this item, and the District Supervisor may require the filing of a separate APD.

(6) *Source of Construction Materials.* This information may be shown by quarter-quarter section on a map or plat, or may be a written description. If the proposed source is located on Federal or Indian lands, the character and use of all construction materials such as sand, gravel, stone, and soil material is to be stated. If the materials are to be obtained from other than Federal or Indian lands, only the source need be identified.

(7) *Methods for Handling Waste Disposal.* A written description should be given of the methods and locations proposed for safe containment and disposal of each type of waste material (cuttings, garbage, salts, chemicals, sewage, etc.) which results from the drilling of the proposed well. Likewise, the narrative should include plans for the eventual disposal of drilling fluids and any produced oil or water recovered during testing operations. Underground injection of any fluids must not endanger fresh water sources.

(8) *Ancillary Facilities.* The plans, or subsequent amendments to such plans, shall identify all ancillary facilities such as camps and airstrips as to their location, land area required, and the methods and standards to be employed in their construction. Such facilities shall be shown on a map or plat. The approximate center of proposed camps and the center line of airstrips shall be staked on the ground.

(9) *Well Site Layout.* A plat of suitable scale (not less than 1 inch=50 feet) showing the proposed drill pad and its location with respect to topographic features is required. Cross section diagrams of the drill pad showing any cuts and fills and the relation to topography are also required. The plat must also include the proposed location of the reserve and burn pits, access roads onto the pad, turnaround areas, parking areas, living facilities, soil material stockpiles, and the orientation of the rig with respect to the pad and other facilities. Plans, if any, to line the reserve pit are to be detailed.

(10) *Plans for Restoration of the Surface.* State the program for surface restoration upon completion of the operation, such as determination of the reshaped topography, drainage system, segregation of spoils materials, surface manipulations, waste disposal, revegetation methods, soil treatments, plus other practices necessary to rehabilitate all disturbed areas, including any access roads or portions of well pads no longer needed. An estimate of the timetable for commencement and completion of rehabilitation operations, dependent upon weather conditions and other local uses of the area, must be provided.

(11) *Other Information.* The surface ownership (Federal, Indian, State, or private) at the well location, and for all roads which are to be constructed or upgraded, shall be indicated. All construction practices necessary to accommodate potential geologic hazards shall be discussed under the appropriate items of this program.

(12) *Lessee's or Operator's Representative and Certification.* Include the name, address, and phone number of the lessee's or operator's field representative.

I hereby certify that I, or persons under my direct supervision, have inspected the proposed drill site and access route; that I am familiar with the conditions which presently exist; that the statements made in this plan are, to the best of my knowledge, true and correct; and that the work associated with operations proposed herein will be performed by

_____

_____

and its contractors and subcontractors in conformity with this plan and the terms and conditions under which it is approved.

Date: _____

Name and title: _____

5. *Environmental Review Requirements.* When an inspection is conducted, it will be made by representatives of the District

Supervisor and the operator, and other interested parties such as the involved SMA, the appropriate Alaska Borough (when a subsistence stipulation is part of the lease), and the operator's principal (construction and drilling) contractors. When applicable, the operator's surveyor, and archeologist should also participate in the inspection. The purpose of this inspection will be to ensure that the staked location, access roads and other areas proposed for surface disturbance are geologically feasible and environmentally acceptable, giving appropriate consideration to Federal and State regulations. Accordingly, lessees and operators are encouraged to designate their future drilling sites so that several locations may be inspected at one time.

(a) *Federal Responsibilities.* When an inspection is made, the information obtained will be utilized by MMS in appraising the environmental effects associated with the proposed action and in preparing pertinent portions of any required environmental document. As the authorizing agency, MMS has the lead responsiblity for completing the environmental analysis process and establishing the terms and conditions under which the proposed action may be approved. The conduct of the environmental review usually will result in the preparation of either a record of a "categorical exclusion review" (CER) or an environmental assessment (EA), consistent with pertinent regulations and procedures. This review will identify methods for mitigating the potential adverse environmental effects associated with the proposed operation and will be the basis of the approving official's determination as to whether approval of the proposed activity would constitute a major Federal action significantly affecting the quality of the human environment as defined by Section 102(2)(C) of the National Environmental Policy Act of 1969, thereby necessitating the preparation of an environmental impact statement (EIS). Is that case, final action on the APD will not be taken until the EIS and Record of Decision are completed.

(b) *Other Considerations.* Lessees and operators are encouraged to file their NOS and/or complete APD well in advance of the time when they wish to commence operations, and to consult with the involved SMA as early as possible to identify potential areas of concern (see Sections III.E. and F.).

IV. *Subsequent Operations.* Before conducting further well operations that will involve change in the original plan, a detailed written statement of the work must be filed on Form 9–331 or 98–331C, as appropriate, with the District Supervisor and approval obtained before the work is started. Subsequent operations include redrilling, deepening, performing casing repairs, plugging-back, altering casing, performing nonroutine fracturing jobs, recompleting in a different interval, performing water shut-off, and converting to injection or disposal. No prior approval is required for subsequent well operation such as well cleanout work, routine well maintenance, or bottom hole pressure surveys. Routine well work such as pump, rods, tubing and surface production equipment repairs, routine fracturing or acidizing operations, or recompletion in the same interval also will not require prior approval if the operations conform to the standard of prudient operating practice. However, a subsequent report on these types of operations must be filed on form 9–331.

A. *Production Facilities.* Operators must submit Form 9–331 regarding additional information as required in item 4) of the surfact program.

B. *Other Operations.* Lessees and operators are also required to submit, for the approval of the District Supervisor, a proposed plan of operations on Form 9–331 prior to undertaking any subsequent new construction, reconstruction, or alteration of existing facilities, including roads, firewalls, flow lines, or other production facilities on any lease when additional surface disturbance other than on "cut" areas of the well pad will result (see 30 CFR 221.27). A copy of Form 9–331 showing work done and "as-built" conditions, including schematics for any new production, storage, and measurement equipment must be submitted within 30 days after the construction is completed.

C. *Emergency Repairs.* Emergency repairs may be conducted without prior approval provided that the District Supervisor is notified promptly. Sufficient information must be submitted to permit a proper evaluation of any resultant surface disturbing activities as well as any planned accommodations necessary to mitigate potential adverse environmental effects.

D. *Environmental Review.* Environmental review procedures discussed in Section III. F.5. of this order will also apply to such subsequent operations which involve additional surface disturbance.

V. *Well Abandonment.* No well abandonment operations may be commenced without the prior approval of the District Supervisor. In the case of newly drilled dry holes or failures and in emergency situations, oral approval may be obtained from the District Supervisor subject to prompt confirmation by written application. For old wells not having an approved abandonment plan, a sketch showing the disturbed area and roads to be abandoned along with rehabilitation measures must be submitted with a Form 9–331. On Federal surface, the appropriate SMA may request additional rehabilitation measures at abondonment, which are normally made a part of MMS's approval of abandonment. Upon completion of the abandonment and rehabilitation operations, the lessee or operator shall notify the District Supervisor when the location is ready for inspection, via an additional Form 9–331. Final abandonment will not be approved until the surface rehabilitation work required by the approved drilling permit or abandonment notice has been completed to the satisfaction of the SMA.

VI. *Water Well Conversion.* The complete abandonment of a well which has encountered usable fresh water will not be approved if the SMA or surface owner wants to acquire the well. If, at abandonment, the SMA or surface owner elects to assume further responsibility for the well, the SMA or surface owner, as appropriate, will reimburse the lessee or operator for the cost of any recoverable casing or well head equipment which is to be left in or on the hole solely because it is to be completed as a water well. The lessee or operator will abandon the well to the base of the deepest fresh water zone of interest as required by the District Supervisor and will complete the surface cleanup and rehabilitation as required by the approved drilling permit or abandonment notice immediately upon completion of the conversion operations.

VII. *Privately-Owned Surface.* Where the surface is privately owned or is held in trust for Indian benefit, the operator is responsible for reaching an agreement with the surface owner as to surface protection and rehabilitation and/or damages in lieu thereof.

VIII. *Reports and Activities Required After Well Completion.* Within 30 days after well completion, the lessee or operator shall furnish two copies of Form 9–330 (Well Completion or Recompletion Report and Log) to the District Supervisor. In addition, a schematic diagram of all facilities installed on the leasehold, showing their "as-built" condition, shall be submitted to the District Supervisor within 30 days of installation of the equipment. For each new well completed for production and for each existing well recompleted

for production in a new interval, the lessee or operator must notify the District Supervisor when it is placed in a producing status. Such notification may be provided orally if confirmed in writing and must be received by the District Supervisor no later than the fifth business day next following the date on which the well is placed on production.

Date: _____

_____ _____,

Associate Director for Onshore Minerals Operations.

Approved:
Date: _____

_____ _____,

Director, Minerals Management Service.

Attachment A

NOTICE OF STAKING

(Not to be used in place of Application for Permit to Drill Form 9-33-C)

1. Oil Well ☐ Gas Well ☐

Other (Specify)

2. Name of Operator: _____

3. Name of Specific Contact Person: _____

4. Address of Operator or Agent _____

5. Surface Location of Well

Attach:

(a) Sketch showing road entry onto pad, pad dimensions and reserve pit.

(b) Topographical or other acceptable map showing location, access road, and lease boundaries.

6. Lease Number_____

7. If Indian, Allottee or Tribe Name _____

8. Unit Agreement Name _____

9. Farm or Lease Name _____

10. Well No. _____

11. Field or Wildcat Name_____

12. Sec., T., R., M., or Blk and Survey or Area

13. County, Parish _____

14. State_____

15. Formation Objective(s) _____

16. Estimated Well Depth _____

17. Additional Information _____

18. Signed _____

Title _____ Date _____

Note.—Upon receipt of this Notice, the Minerals Management Service (MMS) will schedule the date of the onsite (pre-drill) inspection and notify you accordingly. The location must be staked and access road must be flagged prior to the onsite.

Operators must consider the following prior to the onsite:

(a) H_2S Potential.

(b) Cultural Resources (Archeology).

(c) Federal Right of Way or Special Use Permit.

Instructions

General

This form is to provide notice to the Minerals Management Service (MMS) that staking has been (or will be) completed for well locations on Federal or Indian leases and serves as a request to schedule an onsite inspection. The original and one copy of this form, together with a map and sketch, should be submitted to the appropriate MMS office.

Any item not completed may be justification for not promptly scheduling the onsite inspection.

Specific Considerations

Items included herein should be reviewed and evaluated thoroughly prior to the onsite. These items affect placement of location, road, and facilities. Failure to be prepared with complete, accurate information at the onsite may necessitate later re-evaluation of the site and an additional onsite inspection.

a. H_2S Potential: Prevailing winds, escape routes, and placement of living quarters must be considered.

b. Cultural Resources: Archaeological surveys, if required, should be done prior to, during, or immediately following the onsite. Changes in location due to subsequent archaeological findings may require an additional onsite. Contact SMA for detailed site specific requirements.

c. Federal Right-of-Way or Special Use Permit: Access roads outside the leasehold boundary which cross Federal lands will require a right-of-way grant or special use permit and should be discussed with the surface management agency or Minerals Management Service at the time of filing the Notice of Staking.

Supplemental Checklist

Following items, if applicable, should be submitted with or prior to the Application For Permit to Drill (APD) to ensure timely approval of the application. Contact MMS regarding specific requirements relating to each item.

a. Bonding.

b. Designation of Operator.

c. Report of Cultural Resources/Archaeology.

d. H_2S Contingency Plan.

e. Status of Plan of Development and Designation of Agent for wells in Federal units.

f. Federal Right-of-Way (BLM) or Special Use Permit (Forest Service).

Timetable

The onsite inspection will be scheduled and conducted by MMS within 15 days after receipt of this form. Surface protection and rehabilitation requirements will be made known to the operator by MMS during the onsite or no later than 5 working days from the date of inspection, barring unusual circumstances. These requirements are to be incorporated into the complete APD. However, this does not exclude the possibility of additional conditions of approval being imposed.

Attachment B

Date: _____

CHECKLIST FOR APPLICANT NOTIFICATION

Receipt and Acceptability of Application for Permit to Drill (APD)

Lease No. _____ Well No. _____

Lessee _____

Operator _____

Date APD Received _____

1. —APD complete as submitted.
2. —APD is deficient in the following area(s) *and* (see items 3, 4, or 5 below):
   - —Designation of Operator
   - —Designation of Agent under _____ unit agreement
   - —Bonding
   - —Cultural Resources Report (depends on Federal Surface Management Agency's Requirements)
   - —Form 9-331C
   - —Surface Use and Operations Plan (individual APD)
   - —Common Surface-Use Plan-Yearly Plan of Development (unitized area or developed field)
   - —Other

(Refer to attachment(s) for any specifics)

3. —APD is retained; to be processed upon receipt of further information as noted above.
4. —APD is being processed; final action pending receipt of further information as noted above.
5. —APD is returned for the following reasons:

Note.—A returned APD herewith may be resubmitted when convenient at which time it will be reviewed again for technical and administrative completeness.

A retained but deficient APD must be brought to a technically and administratively acceptable level of completion within 45 days of the date of this notice or the application will be returned unapproved.

[FR Doc. 82-32845 Filed 12-2-82; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Permanent State Regulatory Program of Oklahoma

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by Oklahoma to satisfy one of the conditions imposed by the Secretary of the Interior on the approval of the Oklahoma State Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment consists of a set of Rules of Practice and Procedure promulgated under the State's emergency rulemaking procedures and is intended to satisfy the specific condition found at 30 CFR 936.11(b).

This notice sets forth the times and locations that the Oklahoma program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATES: Written comments relating to Oklahoma's proposed modification of its program not received on or before 4:00 p.m. on January 3, 1983, will not necessarily be considered in the Secretary's decision on whether the proposed program amendment satisfies the condition.

If requested, a public hearing will be held on December 27, 1982, beginning at 10:00 a.m. at the location shown below under "**ADDRESSES.**"

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Robert L. Markey, Director, Oklahoma Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103.

If a public hearing is held, its location will be at: OSM Oklahoma Field Office, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Oklahoma Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Oklahoma program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103.

Oklahoma Department of Mines, 4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Tulsa, Oklahoma, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business three working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Information pertinent to the general background of the Oklahoma State Program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Oklahoma program can be found at 46 FR 4910 (January 19, 1981), 47 FR 14152 (April 2, 1982), and 47 FR 37080 (August 25, 1982).

III. Discussion of Proposed Amendment

On November 9, 1982, OSM received a revised set of Rules of Practice and Procedure from the Oklahoma Department of Mines. See OK-436. The Department of Mines explained in its transmittal letter that these rules were promulgated under Oklahoma's emergency rulemaking procedures, and that they will undergo a formal rulemaking process (including legislative review) in early 1983.

The Rules of Practice and Procedure are intended to meet the requirements of one of the Secretary's conditions of approval (30 CFR 936.11(b)). That condition requires Oklahoma to amend its Rules of Practice for hearings to make the public participation aspects of those rules no less effective than the public participation aspects of SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4.

An earlier version of Oklahoma's Rules of Practice and Procedure (OK-415) was the subject of a previous rulemaking. See 47 FR 37080 (August 25, 1982). In the Secretary's notice, the Secretary indicated that the earlier version of Oklahoma's Rules of Practice and Procedure did not meet all the Federal requirements. The Secretary's notice also stated that OSM would provide Oklahoma with a detailed list of concerns that need to be addressed before the condition at 30 CFR 936.11(b) could be removed. On August 24, 1982, OSM transmitted such a list to Oklahoma. See OK-423.

In that same notice, the Secretary extended the deadline to May 15, 1983, for Oklahoma to meet all of its conditions, including 30 CFR 936.11(b).

Having now received a set of revised Oklahoma Rules of Practice and Procedure, the Secretary hereby requests comments on the adequacy of these rules (OK-436). No other provisions of the Oklahoma program are being addressed in this rulemaking.

Procedural Matters

Paperwork Reduction Act. There are no information collection requirements in 30 CFR 936.11(b) requiring approval by the Office of Management and Budget under 44 U.S.C. 3507.

National Environmental Policy Act. The Secretary has determined that pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no Environmental Impact Statement need be prepared on this rulemaking.

Executive Order 12291. On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an

exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

Regulatory Flexibility Act. Pursuant to the Regulatory Flexibility Act, Pub. L. 96-354, I have certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 29, 1982.

J. Steven Griles,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 82-33098 Filed 12-2-82; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 942

Public Comment and Opportunity for Public Hearing on Modified Portions of the Tennessee Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule: Notice of receipt of permanent program modifications; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of proposed amendments to the Tennessee permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments submitted by Tennessee for the Secretary's approval include modifications intended to satisfy two of the Secretary's conditions of approval of the Tennessee permanent program.

DATE: Written comments must be received on or before 4:00 p.m. on January 11, 1983, to be considered in the Secretary's decision to approve or disapprove the proposed amendments.

A public hearing on the proposed modifications has been scheduled for 7:00 p.m. on January 6, 1983, at the address listed below under "**ADDRESSES.**" Any person interested in making an oral or written presentation at the hearing should contact Mr. James Curry at the address below by December 20, 1982. If no person has contacted Mr. Curry by this date to express an interest to participate in this hearing, the hearing will be cancelled. A notice announcing any cancellation will be published in the **Federal Register.** If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearings will be held at the TVA Office Complex, Plaza West Towers, Room C-36, 400 West Summit Hill Drive, Knoxville, Tennessee.

Written comments should be mailed or hand-delivered to Mr. James Curry, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, SW., Suite 400, Knoxville, Tennessee 37902.

Copies of the proposed modifications to the Tennessee program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Headquarters Office, the OSM Tennessee Field Office and the Office of the State Regulatory Authority, all listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 "L" Street NW., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Field Office, 530 Gay Street SW., Suite 400, Knoxville, Tennessee 37902, Telephone: (615) 523-9532

Tennessee Department of Conservation, Division of Surface Mining and Reclamation, 305 W. Springdale Avenue, Knoxville, Tennessee 37917.

FOR FURTHER INFORMATION CONTACT: Mr. James Curry, Field Office Director, Office of Surface Mining, 530 Gay Street, SW., Knoxville, Tennessee 37902.

SUPPLEMENTARY INFORMATION: The Tennessee program was conditionally approved by the Secretary on August 10, 1982 (47 FR 34724-34754). The approval was conditioned on the State's correction of 11 minor deficiencies in its program.

Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the conditions of approval of the Tennessee program can be found in the August 10, 1982 **Federal Register** (47 FR 34724-34754).

Submission of Revisions

On November 1 and 10, 1982, Tennessee submitted amendments to its approved permanent program to satisfy conditions "i" and "j" of the Secretary's approval of Tennessee's permanent program. Set forth below is a general description of the provisions submitted by the State and of the conditions they are intended to satisfy.

Condition "i" specifies that "termination of the approval found in § 942.10 will be initiated on October 31, 1982, unless Tennessee submits to the Secretary by that date, additional documentation for Chapters VII (1), (4), (5), (6), (7), (8), (9), (15), and (16) of the Tennessee program concerning procedures and forms for permitting, inspection, and enforcement, which is complete and adequate to describe the State's intended methods of implementing the program."

In satisfaction of this condition, Tennessee submitted amendments to the following sections of the approved Tennessee program:

Chapter VII, Section 731.14(g)(1), Exploration and Mining Permits
Chapter VII, Section 731.14(g)(4), Inspection and Monitoring
Chapter VII, Section 731.14(g)(5), Enforcement of Administrative, Civil and Criminal Sanctions
Chapter VII, Section 731.14(g)(6), Administering and Enforcing Permanent Program Standards
Chapter VII, Section 731.14(g)(7), Assessing and Collecting Civil Penalties
Chapter VII, Section 731.14(g)(8), Public Notices and Hearings
Chapter VII, Section 731.14(g)(9), Coordination with Other Agencies RE: Permits
Chapter VII, Section 731.14(g)(15), Administrative and Judicial Review
Chapter VII, Section 731.14(g)(16), The Small Operator Assistance Program (S.O.A.P)

Condition "j" of the Secretary's approval specifies that "termination of the approval in § 942.10 will be initiated on October 31, 1982, unless Tennessee submits to the Secretary by that date, additional information for Chapters V, VI, X, XI, and XII of the Tennessee program concerning staffing and funding, which includes sufficient documentation to show that the State will have qualified personnel and funding adequate to implement all aspects of the State program."

In satisfaction of this condition, Tennessee submitted amendments to the following sections of the approved Tennessee program:

Chapter V, Section 731.14(e), Structural Organizations—Staffing Functions
Chapter VI, Section 731.14(f), Supporting Agreements Between Agencies

Chapter X, Section 731.14(j), Description of Staffing Adequacy
Chapter XI, Section 731.14(k), Projected Use of Other Professional and Technical Personnel
Chapter XII, Section 731.14(l), Budget Information

OSM is seeking comment on whether the amendments submitted by Tennessee on November 1 and 10, 1982, satisfy conditions "i" and "j". The amendments are contained in full text in the Tennessee administrative record under number TN-572 and are available for public review at the addresses listed above under **"ADDRESSES."** If the material submitted by the State is approved, the conditions specified in 30 CFR 942.11(i) and (j) will be removed.

Additional Determinations

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Compliance with the Regulatory Flexibility Act.* The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

3. *Compliance with Executive Order No. 12291.* With respect to State actions to approve, or conditionally approve State regulatory programs or amendments, OSM has been granted a categorical exemption from the requirement to prepare a Regulatory Impact Analysis pursuant to Executive Order No. 12291, by a letter from the Office of Management and Budget dated August 28, 1981.

List of Subjects in 30 CFR Part 942

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 29, 1982.

J. Steven Griles,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 82-33099 Filed 12-2-82; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

Disclosure of Records: Fees for Specific Services

AGENCY: Office of the Secretary, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury proposes to amend its regulation on the disclosure of information pursuant to the Freedom of Information Act. A revision in the fee schedule for specific services is proposed by increasing the amounts charged for duplication, search, and unpriced printed materials. The increase in fees is necessary to maintain a balance with increased costs.

DATE: Comments must be received by January 3, 1983.

ADDRESSES: Comments should be addressed to: Phyllis De Piazza, Departmental Disclosure Officer, Department of the Treasury, Room 5423, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Phyllis De Piazza, Departmental Disclosure Officer, telephone 202-566-2789.

SUPPLEMENTARY INFORMATION: The Department of the Treasry proposes revisions in the fee schedule by increasing the amounts charged for duplication, search, and unpriced materials. The existing schedule has been in effect since 1975 and the proposed fees are an attempt to more closely reflect the actual costs of processing requests for information: Specifically, a search fee of $10.00 an hour will be charged. Also, charges for computer searches will reflect the actual direct cost of the search, instead of the present $5.00 per hour. If computer programming is necessary to conduct the search there will be an additional fee representing the actual costs for each quarter hour per person for programmer/analyst time. The fee for computer printouts will also be acutal costs. Additionally, duplication charges will be increased to $.15 per copy for each page. Other duplication costs not specifically identified will be chargeable at actual cost to the Department. A fee will not be charged where individual billings would be for $3.00 or less. Whenever estimated costs exceed $100.00 the requester may be required to enter into a contract for the payment of actual costs determined in the schedule above. Unpriced printed materials available at the location where requested and not requiring duplication will be provided at the rate of $1.00 for each twenty-five pages or fraction thereof.

List of Subjects in 31 CFR Part 1

Freedom of information, Privacy.

PART 1—[AMENDED]

For reasons set out in the preamble, Part I of Subtitle A, Title 31 of the Code of Federal Regulations is amended as shown.

1. By amending 31 CFR 1.6(e) by changing "$50" to read "$100" in the introductory text.

2. By revising 31 CFR 1.6(g) (1), (2), (3), and (4) to read as follows:

§ 1.6 Fees for services.

* * * * *

(g) * * *

(1) Copying records. (i) $.15 per copy of each page, up to 8½" x 14", made by photocopy or similar process, except that no charge will be imposed for copying 20 pages or less when less than one hour is used in locating the records requested.

(ii) Photographs, films, and other materials—actual cost of reproduction.

(iii) Records may be released to a private contractor for copying and the requester will be charged the actual cost of duplication charged by the private contractor.

(2) Unpriced printed materials which are available at the location where requested and which do not require duplication in order that copies may be furnished will be provided at the rate of $1.00 for each twenty-five pages or fraction thereof. These printed materials are made available at the convenience and election of the Department and normally consist of materials surplus to Departmental needs or produced to avoid the necessity of repetitive photocopying of frequently requested records.

(3) Search Services. (i) Searches other than for computerized records—$10.00 for each hour or fraction thereof for time spent by each clerical, professional, and supervisor in finding the records and information with the scope of the request, and for transportation of personnel and records necessary to the search at actual cost.

(ii) Searches for computerized records—Actual direct cost of the search. If programming is necessary to conduct the search, there will be an additional fee of actual costs for each quarter hour per person for programmer/analyst time. The fee for computer printouts will be actual costs.

(4) Other costs. When other duplication costs not specifically identified above are requested and provided, their direct cost to the Department shall be charged. Other services and materials requested which are not covered by this part are

chargeable at actual cost to the Department.

Dated: November 15, 1982.

Cora P. Beebe,

Assistant Secretary (Administration).

[FR Doc. 82-33046 Filed 12-2-82; 8:45 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-S-FRC 2223-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing to approve Indiana's malfunction regulation, 325 IAC 1.1-5, as a revision to the Indiana State Implementation Plan (SIP). EPA proposed to disapprove Indiana's previous malfunction regulation, APC-11, on March 27, 1980 (45 FR 20431). Indiana responded to EPA's proposal by revising the regulation and resubmitting it as 325 IAC 1.1-5 on January 21, 1981. EPA today is withdrawing its previous proposed rulemaking on APC-11 and instead is proposing to approve the amended regulation, 325 IAC 1.1-5, because it meets the requirements of the Clean Air Act (Act).

DATE: Comments on EPA's proposed approval are due on February 1, 1983.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Robert Miller at (312) 886-6031 before visiting the Region V office).

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604;

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

FOR FURTHER INFORMATION CONTACT: Robert Miller (312) 886-6031.

SUPPLEMENTARY INFORMATION: On July 26, 1979, Indiana submitted its malfunction reguation, APC-11. EPA proposed to disapprove the regulation on March 27, 1980, (45 FR 20431) for two reasons. First, it allowed a malfunction exemption for 73 megawatt heat input or greater electric utility steam generating units from S02 emission limits for up to 3 days per month. In addition it appeared to not require that all periods of excess emissions due to malfunctions be considered violations if four conditions were met. The four-condition exemption appeared to be a contravention of EPA's malfunction policy (42 FR 21372, April 27, 1977; 42 FR 58171, November 8, 1977; *Workshop on Requirements for Nonattainment Area Plans* (Revised Edition, April 1978). p. 229; and Memorandum concerning "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation to Regional Administrators I-X, dated September 28, 1982).

On June 25, 1980, Indiana responded to EPA's March 27, 1980, proposal by commiting itself to delete the fossil-fuel fired steam generator exemption. Indiana recodified APC-11 as 325 IAC 1.1-5. The State then revsed the regulation by deleting the steam generator exemption and promulgated it for State purposes on January 7, 1981. On January 21, 1981, Indiana submitted revised 325 IAC 1.1-5 to EPA. Indiana clarified its intent, as discussed below, concerning the malfunction exemption within 325 IAC 1.1-5 on July 2, 1982. EPA today is withdrawing its proposed rulemaking on APC-11, because that regulation has been superceded by an amended regulation, and instead is proposing action on revised 325 IAC 1.1-5

Revised 325 IAC 1.1-5 applies to sources which have the potential to emit the following amounts of pollutants before controls: total suspended particulate (TSP)—25 pounds/hour or more; sulfur dioxide (SO_2) and volatile organic compound (VOC)—100 pounds/hour or more; and all other pollutants—2,000 pounds/hour or more.

The regulation requires a source:

(1) To develop a preventive maintenance plan and to prepare and maintain a malfunction emission reduction program,

(2) To correct a malfunction as expeditiously as practicable and to minimize the impact of the excess emissions,

(3) To keep records of all malfunctions which cause the source's emission limits to be violated, and

(4) To notify Indiana immediately of such malfunctions which last for more than 1 hour.

EPA reviewed revised 325 IAC 1.1-5 and requested Indiana to clarify two points. Indiana responded in a July 2, 1982 letter as follows:

(1) Sections 2 and 4 require information to be submitted to the State if a malfunction occurs. EPA asked the State whether it is considered to be a violation of the regulation if a source provides incomplete or inaccurate information. Indiana responded that incomplete or erroneous malfunction reports would be treated as a violation of the regulation.

(2) Sections 4(a)(3) and 5(a) refer to sources where malfunctions occur more than 5% of the normal operational time for any one control device or combustion or process equipment within the most recent 12-month period. EPA asked the State whether these provisions automatically exempt sources which malfunction less than 5% of the time or are only a guideline to be used in conjunction with the other criteria listed in section 4(a) in determining a violation. The State responded that the 5% figure is only a guideline to be used in determining appropriate action.

Based on EPA's malfunction policy and the clarifications supplied by the State, EPA today is proposing to approve revised 325 IAC 1.1-5. EPA's malfunction policy prohibits any regulatory provision which automatically exempts a source from complying with its applicable emission limitation. The intent of the prohibition is to assure an evaluation on a case-by-case basis of the circumstances surrounding any excess emissions which are the result of an alleged malfunction problem. It evolved because of the potentially significant impact of emissions caused by malfunctions on the attainment and maintenance of the NAAQS. EPA is proposing to approve the four criteria exemption within Indiana's regulation because the criteria listed, including the "5% guideline", do not operate to automatically exempt a source, but instead require discretionary judgment on the part of the enforcing party to determine if enforcement action is appropriate. EPA believes that these provisions actually provide for the "enforcement discretion" required by EPA's malfunction policy in determining an appropriate enforcement action. Therefore, the regulation is compatible with EPA's malfunction policy and is approvable.

As was given in Indiana's July 2, 1982 letter, EPA will treat any incomplete or erroneous information provided by a source as a violation of this regulation. Additionally, it will use the 5% criterion as a guideline only, in conjunction with the other criteria given in the regulation. Any malfunction which causes the applicable emission limits to be exceeded will be treated as a violation of the SIP, but the four criteria will be used in determining an appropriate enforcement response. Finally, EPA is not bound by any exemption granted by

the State, but may take an independent enforcement action against a source regardless of any action taken by the State.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that the following rule will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Secs. 110 and 301 of the Clean Air Act, as amended)

Dated: September 23, 1982.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82-33031 Filed 12-2-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 403

[W-5-FRL 2254-8]

Michigan's Application To Administer the National Pollutant Discharge Elimination System (NPDES) Pretreatment Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of application.

SUMMARY: In a letter dated October 28, 1982, Dr. Howard A. Tanner, Director of the Michigan Department of Natural Resources, and Mr. Robert H. Courchaine, Executive Secretary, Michigan Water Resources Commission, requested approval of the State of Michigan Pretreatment Program, and submitted a signed statement from the Michigan Attorney General that the State of Michigan has the necessary authority together with a signed revision to the NPDES Memorandum of Agreement, along with a description of how the State proposes to operate the program. The U.S. EPA Regional Counsel has reviewed the Attorney General Statement and has determined that the State of Michigan has legal authority to implement an NPDES Pretreatment Program. This notice provides for a comment period of Michigan's request. Under U.S. EPA regulations the Administrator shall approve or disapprove this request after taking into consideration all comments received.

DATE: To be considered comments must be received on or before January 2, 1983. Interested persons may also request a public hearing on the State's request. If there is a significant public interest expressed in the comments, U.S. EPA will schedule such a hearing. In the event U.S. EPA determines to hold a public hearing prior notice of the date, time and location of such a hearing will be given. All requests for a public hearing must be submitted on or before the expiration of the comment period.

ADDRESSES: Comments should be addressed to: U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Attention: Robert R. Robichaud, Permits Section (5WQP).

FOR FURTHER INFORMATION CONTACT: Ms. Lorraine C. Kosik, NPDES Permits Section (5WQP), U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2098.

SUPPLEMENTARY INFORMATION: On June 26, 1978, the United States Environmental Protection Agency (U.S. EPA) promulgated the general Pretreatment Regulations (40 CFR Part 403). Amendments to the General Pretreatment Regulations were promulgated on January 28, 1981. These regulations, mandated by the Clean Water Act of 1977 (Pub. L. 95-217), govern the control of industrial wastes introduced into Publicly Owned Treatment Works (POTWs), commonly referred to as municipal sewage treatment plants. The objectives of the regulations are to: (1) Prevent introduction of pollutants into POTWs which will interfere with plant operations and/or disposal or use of municipal sludges; (2) prevent introduction of pollutants into POTWs which will pass through treatment works in unacceptable amounts to receiving waters; and, (3) improve the feasibility of recycling and reclaiming municipal and industrial wastewaters and sludges.

One of the keystones of the industrial waste control programs, as set forth in the general Pretreatment Regulations, is the establishment of Pretreatment Programs as a supplement to the existing State National Pollutant Discharge Elimination System (NPDES) permit program. In order to be approved, a request for State Pretreatment Program approval must demonstrate that the State has legal authority, procedures, available funding, and qualified personnel to implement a State Pretreatment Program specified in § 403.10 of the Regulations. The State of Michigan received NPDES permit authority on October 17, 1973. Generally, local Pretreatment Programs will be the primary vehicle for administering, applying and enforcing Federal Pretreatment Standards for Industrial Users of POTWs. States will be required to apply and enforce Pretreatment Standards directly against industries that discharge to POTWs where local programs are not required or have not been developed.

The Administrator's decision to approve or disapprove the proposed pretreatment program will be based on a determination of whether the proposed program meets the requirements of the Clean Water Act and 40 CFR Part 403 and on the comments received.

The Michigan submission may be reviewed by the public at the State of Michigan, Department of Natural Resources, Stevens T. Mason Building, P.O. Box 30028, Lansing, Michigan, 48909 and at the U.S. EPA office in Chicago at the address appearing at the beginning of this Notice. Copies of the submittal may also be obtained (at a cost of 20 cents a page) from these offices.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 403.

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, and Water pollution control.

Dated: November 22, 1982.

Valdas V. Adamkus,

Regional Administrator, Region V.

[FR Doc. 82-32800 Filed 12-2-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5800]

National Flood Insurance Program; Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Welch, McDowell County, West Virginia.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the **Federal Register** at 45 FR 25843 on April 16, 1980, and hence supersedes those previously published rules.

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

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Welch City Hall, located in the Old Bank Building, Welch, West Virginia.

Send comments to: Honorable Robert D. Lewis, Mayor of Welch, Box 456, City Hall, Welch, West Virginia 24801.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287-0230.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Welch, McDowell County, West Virginia, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

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

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Tug Fork River	Downstream corporate limits	*1,286
	Confluence of Browns Creek	*1,295
	Downstream of Private Drive to McDowell Street.	*1,302
	Downstream of U.S. Routes 52 and 16.	*1,313
	Upstream corporate limits	*1,319
Browns Creek	At confluence with Tug Fork River.	*1,295
	Confluence of Tributary A	*1,310
	Upstream of Central Avenue Extended.	*1,332
	Downstream of Grandview Street.	*1,354
	Approximately 1,400 feet downstream of Oakhurst Drive.	*1,380
	Upstream of Oakhurst Drive	*1,407
	At confluence of Puncheoncamp Branch.	*1,433
	Downstream of Private Road to Stewart Street.	1,458
	Approximately 800 feet upstream of Private Road to stewart Street.	1,480
	Upstream corporate limits	1,510
Elkhorn Creek	Upstream of McDowell Street	*1,302
	Upstream of Brooks Street	*1,305
	At Maple Avenue	*1,309
	Upstream corporate limits	*1,321
Puncheoncamp Branch.	Downstream corporate limits	*1,433
	Upstream of Stewart Street	*1,436
	Approximately 100 feet downstream of Private Drive to Edmore Hollow Road.	*1,442
	Upstream corporate limits	*1,460

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR-17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E. O. 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: November 12, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-33009 Filed 12-2-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6431]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 47 FR 47882 on October 28, 1982. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Plainfield, Union County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Plainfield, Union County, New Jersey, previously published at 47 FR 47882 on October 28, 1982, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968. (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future

local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The following location descriptions have been determined to read as follows. The remainder of the Notice of Proposed Base Flood Elevations remains unchanged.

Source of flooding	Location	Elevation in Feet National Geodetic Vertical Datum
Green Brook.....	Ponding area along Leland Avenue and north along South Avenue.	*120
Cedar Brook.....	Ponding area along Randolph Road.	*80

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127; 44 FR 19367; and delegation of authority to the Associate Director)

Issued: November 22, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc.82-33010 Filed 12-2-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 80-286]

Separations Manual; Establishment of Joint Board; Order Requesting Further Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order requesting further comments.

SUMMARY: The FCC hereby gives notice that the Joint Board adopts and releases *Order Requesting Further Comments in CC Docket No. 80-286,* Amendment of Part 67 of the Federal Communications Commission's Rules. The Proposed Rule in this proceeding was published on June 19, 1980 at 45 FR 41459. The purpose of this Order is to address the remaining issues for resolution in this proceeding related to jurisdictional separations, including cost allocation of traffic sensitive (TS) and non-traffic sensitive (NTS) exchange plant, coordination of separations changes with access charges, administration of separations, measurement of usage, modification of the customer premises equipment (CPE) phase-out, and miscellaneous revisions the *Separations Manual.* On February 24, 1982, the Joint Board's recommended order concerning an original CPE phase-out plan and a "freeze" on the allocator of NTS plant, i.e., the subscriber plant factor, was essentially adopted by the Commission and was published March 3, 1982, at 47 FR 9170.

DATES: Comments are due by December 15, 1982 and replies by January 15, 1983.

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

FOR FURTHER INFORMATION CONTACT: James McConnaughey or Claudia Pabo, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, Telephone Number (202) 632-9342.

Federal Communications Commission.

William J. Tricarico,

Secretary.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Part 67 of the Commission's rules and establishment of a Joint Board; order requesting further comments (CC Docket No. 80-286).

Adopted: November 10, 1982.

Released: November 15, 1982.

By the Federal-State Joint Board

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Note.—Appendices A through C are filed as part of the original document.

I. Introduction

A. Background

1. The Federal-State Joint Board hereby requests a final round of comments concerning the issues remaining for resolution in this proceeding. These issues include: (1) The procedures for allocation of non-traffic sensitive (NTS) and traffic sensitive (TS) local exchange plant between the interstate and intrastate jurisdictions; (2) other jurisdictional separations issues; as well as (3) legal and procedural matters. At the outset this *Order* summarizes the developments in this proceeding to date and reviews actions in other related areas. In order to focus comments concerning adoption of a new method for allocating NTS exchange plant, we have described a number of options for dealing with this issue. They include two usage based allocation plans, a pure gross assignment plan, and two hybrid allocation plans.[1] This *Order* also analyzes the need for coordination between the access charge plan to be developed in CC Docket No. 78–72, *MTS-WATS Market Structure Inquiry*, and proposed changes in the method of allocating NTS exchange plant, and analyzes a number of subsidiary separations issues. In addition, this *Order* analyzes the legal implications of the various NTS allocation options along with certain procedural issues. Interested parties are asked to address the merits of the options and recommendations concerning these matters set out in the *Order*. Alternative proposals or additional options are also welcome, although they must be described in sufficient detail to allow critical analysis by the Joint Board and other interested persons.

2. This proceeding was instituted by the Commission on June 11, 1980, to amend the *Jurisdictional Separations Manual* incorporated by reference in Part 67 of the Commission's Rules. CC Docket No. 80–286, *Amendment of Part 67 of the Commission's Rules*, 78 FCC 2d 837 (1980). The Commission stated that the primary purpose of this proceeding was to reexamine the rules for the allocation of local exchange plant investment between the interstate and intrastate jurisdictions in light of: (1) The comments in the *MTS-WATS Market Structure* proceeding concerning access charges; (2) a Petition for Rulemaking concerning the treatment of Foreign Exchange (FX) and Common Control Switching Arrangements (CCSA) filed by the National Telecommunications and Information Administration (NTIA) on November 30, 1979; and (3) the Commission's *Final Decision* in the *Second Computer Inquiry* deregulating customer premises equipment (CPE). A Federal-State Joint Board composed of four state and three federal Commissioners was established pursuant to Section 410(c) of the Communications Act to develop recommended changes in the *Separations Manual* for review by the Commission. The Commission also stated that it might, in the future, refer questions concerning the allocation of interexchange plant to this Joint Board or a subsequent Joint Board.

3. The Joint Board adopted an *Order Requesting Comments* on June 10, 1981. FCC 81–264, released June 12, 1981. In Appendix A, the Joint Board listed 36 questions which it had tentatively decided to address in this proceeding and asked interested persons to submit preliminary views concerning these issues, to suggest additional questions for consideration, and to address certain procedural questions. The Joint Board also asked for comments concerning a staff proposal, set out in Appendix B, designed to phase CPE out of the separations process gradually over a five-year period. More than 70 parties filed comments or replies in response to this *Order*. AT&T and GTE also filed comprehensive proposals for technical changes in the *Separations Manual*. After considering the parties' filings, the Joint Board issued a *Recommended Decision and Order* proposing that CPE be phased out of the separations process over a five-year period. FCC 81–566, released December 14, 1981. The Joint Board's recommendation provided for the capping of CPE plant accounts for separations purposes as of December 31, 1982.[2] Expenses associated with CPE were capped at average 1982 levels. The amounts in these accounts would then be reduced one-sixtieth each month for separations purposes over a five-year period.[3] At the same time, the Joint Board adopted a *Recommended Interim Order* proposing that the Commission freeze the subscriber plant factor (SPF)[4] at the average 1981 annual percentage level, effective January 1, 1982, to preserve the status quo pending Commission prescription of a new method for allocating NTS local exchange plant. FCC 81–565, released December 14, 1981.

4. The Commission issued a *Further Notice of Proposed Rulemaking* on December 21, 1981, requesting comments on the Joint Board's proposals. FCC 81–580, released December 21, 1981. On February 24, 1982, the Commission adopted these recommendations with a number of minor technical modifications. 89 FCC 2d 1 (1982). On the same day, the Joint Board recommended amendment of the CPE plan designed to allow individual states to advance the date for capping the CPE accounts on a company by company basis. This proposal was intended to facilitate programs for the sale of CPE prior to January 1, 1983.[5] 89 FCC 2d 607 (1982). After allowing an opportunity for comment on this proposal, 89 FCC 2d 604 (1982), the Commission adopted the Joint Board recommendation with minor modifications on May 24, 1982.[6] 90 FCC 2d 52 (1982). The Chief, Common Carrier Bureau, acting pursuant to delegated authority, also issued data requests in this proceeding on May 6, 1981, January 5, 1982, and August 4, 1982.[7]

[1] *See* paras. 49–94 *infra*. for a discussion of these NTS allocation plans.

[2] January 1, 1983 is the date established by the Commission for deregulation of new CPE under the *Second Computer Inquiry*.

[3] Companies which do not have a monthly separations study period were allowed to choose another interval consistent with their study period for phasing CPE out of separations over a five-year period.

[4] NTS local exchange plant is allocated between the interstate and intrastate jurisdictions on the basis of SPF which is currently equal to approximately 3.3 times relative interstate use (SLU).

[5] Without this amendment, the sale of a company's embedded CPE prior to January 1, 1983 would reduce the CPE base amount and lower the company's interestate NTS allocations during the entire phase out period. Sales after January 1, 1983 would not affect the company's interstate NTS allocations during the phase out period.

[6] The North American Telephone Association filed a Petition on March 29, 1982 seeking reconsideration of the Commission's plan for phasing CPE out of the separations process. It alleged that this action contravened basic ratemaking principles and the purpose of the separations process. The Commission recently denied this Petition. FCC 82–492, released November 8, 1982. NATA and a number of other parties have also appealed the Commission's actions concerning CPE and SPF. MCI Telecommunications Corp. v. Federal Communications Commission, No. 82–1237 (D.C. Cir.); North American Telephone Association v. Federal Communications Commission, No. 82–2007 (D.C. Cir.).

[7] Letters to Alfred Winchell Wittaker, American Telephone and Telegraph Company (AT&T), James R. Hobson, GTE Service Corporation (GTE), and Thomas J. O'Reilly, United States Independent Telephone Association (USITA), from Joseph A. Marino, Acting Chief, Common Carrier Bureau, dated May 6, 1981; Order, CC 1338, released January 5, 1982; Order, CC 5636, released August 4, 1982.

5. The main issue remaining for resolution in this proceeding concerns the allocation of non-traffic sensitive (NTS) local exchange plant between the interstate and intrastate jurisdictions. Several issues involving the allocation of traffic sensitive (TS) plant also need to be resolved along with a number of miscellaneous issues concerning, *inter alia*, traffic measurement, technical revision of the *Separations Manual*, and administration of the separations process. There are also a limited number of legal and procedural questions that need to be considered.

6. As discussed below in more detail, the method of allocating NTS local exchange plant prescribed in this proceeding should be compatible with the access charge plan adopted in the *MTS and WATS Market Structure Inquiry (Access Charge Proceeding)*, CC Docket No. 78-72 Phase I.[8] It is important that the basic jurisdictional separations plan for NTS local exchange plant is compatible with the access charge plan adopted by the Commission. Initial analysis indicates that certain of the jurisdictional separations options would not work well with particular access charge options. Other combinations appear to be quite compatible. There are also a number of other issues that should be resolved in a manner that is consistent with decisions reached in the *Access Charge Proceeding*. For example, the treatment of open end FX-CCSA access services [9] should be the same for the purposes of separations and access charges. The *Separations Manual* must also be changed to reflect ENFIA type service provided to the other common carriers.[10] In addition, the Commission's plan for phasing CPE out of separations must be re-examined in light of the ruling terminating the AT&T-Department of Justice antitrust suit. *Modification of Final Judgment, United States v. Western Electric Co., Inc. and American Telephone and Telegraph Co.*, No. 82-0192, filed August 24, 1982.

B. Allocation of Exchange Plant

7. We now turn to a discussion of the issues and options involved in the allocation of NTS local exchange subscriber access plant. NTS local exchange plant includes CPE, inside wiring, the line from the subscriber's premises to the central office, and certain central office equipment. This plant is allocated between the interstate and intrastate jurisdictions on the basis of the subscriber plant factor (SPF) under the existing Ozark Plan.[11]

8. The continued growth of SPF and the resulting shift of NTS local exchange costs to the interstate jurisdiction has become a matter of concern to many companies in the telecommunications industry. At the time of the Ozark Plan's adoption, it was believed that the deterrent effect of usage sensitive interstate toll rates required an interstate allocation in excess of that based on relative use. However, despite any possible deterrent efect, interstate relative usage has risen significantly since 1970. Due to the multiplicative effect of SPF, this change in relative use has increased the level of NTS costs allocated to the interstate jurisdiction well beyond that which existed when the Ozark Plan was adopted. At that time the Bell System interstate SPF was 16.71 percent. In 1980 the Bell System average SPF was 26.09 percent. Since adoption of the Ozark Plan, the NTS local exchange costs allocated to the interstate jurisdiction have also increased substantially as a percentage of interstate MTS/WATS revenues. In 1972, interstate NTS costs represented 28 percent of AT&T's interstate MTS/WATS revenues. By 1978, this figure had increased to 34 percent, and AT&T has estimated that it would reach 41 percent by 1983 absent revisions in separations procedures. In addition, the theoretical basis for making SPF a multiple of SLU appears questionable. Assuming that the difference between SPF and SLU is designed to compensate for the deterrent effect of the usage sensitive toll rate structure, it makes no sense for SPF to be a multiple of SLU resulting in greater increases in the level of compensation for the toll deterrent effect as interstate relative usage increases.

9. Although a number of parties, primarily states and small telephone companies, argued that the present level of interstate NTS cost allocations produced by SPF is not excessive, other parties recommended new procedures for allocating NTS costs between the jurisdictions. A number of these proposals are summarized below. In its original comments, AT&T advocated NTS allocations based on a modified SLU.[12] AT&T recommended that NTS allocations be phased down to this level over a five year period. It also stated that it was not opposed to some form of protection for telephone companies in high cost areas. GTE recommended that SPF be frozen for five years and then gradually reduced to SLU.[13] USITA recommended a similar approach combined with some form of protection for telephone companies serving high cost areas. The Rural Electrification Administration (REA) also recommended that NTS allocations be based on relative use with an adjustment for telephone companies serving areas with low subscriber density. The United Telephone System (United) recommended that local exchange NTS costs be allocated between the interstate and intrastate jurisdictions on the basis of Total Call Minutes (TCM). TCM equals interstate minutes of use (MOUs) divided by the sum of interstate minutes of use, intrastate toll minutes of use, and exchange minutes of use divided by two. The MOU figure includes both originating and terminating minutes of use for a given study area. United also recommended a transition period. This proposal for allocating NTS costs produces a level of interstate allocations that falls between those resulting from SPF and SLU. The Central Telephone Company (Centel) also supported an NTS allocation approach based on relative use.

10. The Independent Alliance, composed of the Roseville Telephone Company, Northern States Power Company and Anchorage Telephone Utility, recommended NTS allocations based on the Calling Capability Factor (CCF). This plan allocates costs based on the relative number of users accessing each basic service with an adjustment designed to recognize the number of other subscribers who can be reached within the local exchange area. The Wyoming Telephone Company *et al.*[14] advocated use of the Access Cost

[8] The Commission recently issued a *Fourth Supplemental Notice* in the *Access Charge Proceeding* requesting comments on four basic access charge plans. 90 FCC 2d 135 (1982). The first basic option, referred to as Pure I, allocates the cost of access among interstate services on the basis of minutes of use. The second basic option, known as Pure II, involves direct assignment of access costs to the subscriber. Modified versions of each of these basic approaches, referred to a Mixed I and Mixed II, were also described. In addition, the Commission requested comments on the degree of aggregation to be used in calculating access charges and described a number of options in this regard.

[9] *See* paras. 117 and 118, *infra*, for a description of these services.

[10] ENFIA sevice involves the provision of local origination and termination services for use by the OCCs in their competitive interstate MTS/WATS like services. MCI, SPCC and USTS are the OCC signatories to the ENFIA agreement.

[11] Separations Procedures, Docket No. 18866, 26 FCC 2d 247 (1970).

[12] Under AT&T's proposal, relative interstate use would include private line minutes, FX-CCSA minutes and ENFIA minutes as well as MTS/WATS usage. Usage would also be calculated on the basis of seven (calendar) day traffic studies rather than the present five (business) day studies.

[13] GTE recommended that open-end FX/CCSA/ONAL usage be included in calculating SLU.

[14] This group was composed of the Wyoming Telephone Company, Unitel of Nebraska, Nevada Telephone-Telegraph Company, Citizens Utilities Company and Telephone Utilities, Inc.

Factor (ACF) Plan which allocates local NTS costs based on relative use with a high cost factor (HCF) designed to increase the interstate NTS allocations of companies with low subscriber density and small exchange size to compensate those companies for the high costs that they were believed to experience. A number of small and medium size independent telephone companies supported the CCF and ACF proposals. The Kansas Corporation Commission proposed that local exhange NTS costs be divided equally between the interstate and intrastate jurisdictions. It also suggested use of an HCF in conjunction with its plan. They Other Common Carriers (OCCs) challenged the legitimacy of high interstate NTS allocations designed to support local exchange service. They advocated cost based separations procedures, although they did not specify a particular allocation formula. The OCCs took the position that if a subsidy is mandated by the Commission, it should be administered outside the separations process. The Rochester Telephone Company opposed allocation of NTS plant between the jurisdictions and recommended adoption of local exhange access charges as a subsitiute for NTS allocations to the interstate jurisdiction. The National Telecommunications and Information Administration (NTIA) recommended that NTS costs be assigned on the basis of cost causation. It took the position that NTS subscriber plant costs should eventually be recovered through a separate charge for subscriber access service.[15]

11. A number of interested parties modified or refined their positions in presentations made at the staff-industry meetings in Arlington, Texas and St. Paul, Minnesota, and at the regional hearings. On February 2, 1982, members of the Federal-State Joint Board staff met with representatives of the telecommunications industry, including telephone companies, their trade associations and the OCCs in Arlington, Texas.[16] The presentations made by the industry representatives focused on alternative methods of allocating NTS exchange costs between the jurisdictions, and the relationship between access charges and jurisdictional separations. The participants included: (1) Wyoming Telephone Company, *et al.;* (2) USITA; (3) Rural Telephone Coalition (RTC), which is composed of the National REA Telephone Association, the National Telephone Cooperative Association, and the Organization for the Protection and Advancement of Small Telephone Companies; (4) AT&T; (5) Texas Statewide Telephone Cooperative Association, Inc. (TSTCI); (6)XIT Rural Telephone Cooperative; (7) Haviland Telephone company; (8) Centel; (9) United; (10) Independent Alliance; (11) MCI Telecommunications Corporation (MCI); (12) Southern Pacific Communications Company SPCC); (13) Satellite Business Systems (SBS); and (14) United States Transmission Systems (USTS).

12. The telephone industry coalition, composed of Wyoming, *et al.,* USITA, RTC and AT&T, agreed that the overall level of NTS costs allocations has to be reduced, and recommended a generic formula designed to decrease overall interstate allocations while protecting telephone companies with low subscriber density and small exchange size which were alleged to experience higher costs than companies in other areas. The generic formula, also referred to as the Access Cost Factor (ACF) Plan, included a usage factor, a high cost factor and a transition factor.[17] This formula was designed to provide a basic framework for decision making and allowed substitution of different options for each of the basic elements. For example, SLU, TCM or CCF could all be substituted for the usage factor. The telephone industry coalition also stated that they were conducting a cost study of 525 Bell and independent telephone companies. The generic formula with an additive high cost factor was adopted by the Joint Board as a basic framework for decision making at its meeting on February 24, 1982.

13. AT&T concurred in the telephone industry presentation. It recommended unweighted interstate SLU, including FX/CCSA minutes of use, and seven (calendar) day traffic studies as the usage factor in the generic formula. AT&T also proposed a rural additive which changed with a company's interstate SLU. As SLU increased, the rural additive would decrease. It also proposed a transiton period of less than five years, and recommended cost studies to develop the rural additive. AT&T also emphasized the need for resolution of the *Access Charge Proceeding.* USITA endorsed the basic thrust of the industry presentation. In addition, it emphasized the importance of resolving subsidiary issues such as the treatment of FX/CCSA usage, and called for uniform studies of the impact of the various proposals.

14. The Wyoming Telephone Company *et al.,* advocated the ACF Plan. Under this proposal, local exchange NTS costs would be allocated on the basis of SLU multiplied by factors for low subscriber density and small exchange size.[18] Based on a preliminary analysis of 150 telephone study areas (97 independent companies and 53 Bell System Companies (BOCs)), they concluded that average NTS costs per loop increase as exchange size and density decrease. Wyoming *et al.* noted that the impact of other factors such as average age of plant and climate had not been analyzed and recommended that further studies be conducted. The RTC also advocated a separations approach which recognized the special problems faced by rural telephone companies. It endorsed the Wyoming Plan as a good starting point, but emphasized that the key test for judging any NTS allocation scheme was whether it would ensure quality telephone service at rural rates in rural areas. The Independent Alliance stated that a rural additive would do little to benefit the companies it represented and recommended the CCF Plan as the best mechanism for allocating NTS costs.

15. TSTCI, the XIT Rural Telephone Cooperative, and the Haviland Telephone Company supported continuation of the existing method of NTS allocation, warning that substantial changes in the level of NTS allocations could threaten universal service. TSTCI was encouraged by the basic approach of the telephone industry presentation, but reserved final judgment. It also presented estimates of the local rate impact of removing CPE from separations and allocating NTS costs on the basis of SLU. This analysis showed local rate increases of 97 percent to 374 percent for the companies studied. TSTCI also estimated local rate increases totalling 300 to 600 percent when other regulatory changes such as the expensing of inside wiring and accelerated depreciation were taken into account.

16. Centel also endorsed the industry coalition proposal as a good framework

[15] For a more complete summary of the comments filed in response to the Joint Board's June 1981 Order see Appendix B.

[16] A report on the Arlington, Texas meeting, dated February 24, 1982, prepared by the federal members of the Joint Board staff has been placed in the docket in this proceeding.

[17] This formula can be expressed as $ACF=[UF^{*}(HCF)\times T]+[SPF(1-T)]$ where ACF equals the access cost factor, UF equals the usage factor, the asterisk indicates addition, multiplication or some other arithmetic operation, HCF equals the high cost factor, T equals the transition period, and SPF equals the subscriber plant factor.

[18] This formula can be expressed as $ACF=SLU\times(1+LDF+SEF)$ where SLU equals subscriber line usage, LDF equals a low density factor which increases as density decreases, and SEF equals a small exchange factor which increases as exchange size decreases.

for new NTS allocation procedures. It recommended NUSLU as the usage factor in the generic formula, although it also mentioned NUTCM as another possible usage factor.[19] Centel also took the position that the high cost factor and the transition time should be dependent on the local rate impact of the basic usage factor selected. It also emphasized the need for statistical studies concerning the local rate impact of various proposals based on uniform criteria. United presented data estimating the impact on its operations of using SPF, TCM and SLU as the basis for allocating NTS costs. It also presented a study of the relationship between cost and density, concluding that there is no relationship between these factors within the United System. Instead, United found that the relative age and cost of plant as well as the volume and average length of haul for toll traffic had a more significant effect on cost than density. United recommended TCM as the usage factor in the generic formula. It stated that the rural additive should be developed after adoption of the usage factor.

17. The OCCs including MCI, SPCC, SBS and USTS also made presentations. MCI, SPCC and SBS emphasized the questionable legality of SPF. They also argued that any subsidies should be identified and dealt with outside the separations process. MCI took the position that the present separations procedures misallocate costs and urged separations procedures designed to promote economic efficiency. SBS stated that it favored NTIA's proposal for allocating NTS costs and recommended and additive rather than a multiplicative high cost factor. USTS also stressed the disparity between the interconnection provided to the OCCs and that received by AT & T. MCI, SPCC, USTS and SBS also recommended direct assignment of costs whenever possible.

18. The Joint Board also held a series of 11 regional hearings throughout the country in the spring of 1982 to ensure a full opportunity for participation in this proceeding by state regulatory bodies, small independent telephone companies, and consumer representatives.[20] Over 150 organizations and individuals, representing a wide range of views, made oral presentations at the regional hearings. Representatives of the OCCs also particiapted in most of the hearings. A large number of independent telephone companies participated. State regulatory commission and attorney generals' offices also made presentations. Residential subscriber groups and large business users were represented at the hearings as well.

19. The BOC representatives emphasized the need for rapid movement to SLU based NTS allocations, although they stated that measures should be taken to protect local telephone companies in high cost areas. The BOCs argued that failure to reduce interstate NTS allocations would result in bypass of the local exhange by interstate services. They stated that the rate impact of SLU based NTS allocations would be quite modest in their service areas—an increase of apporoximately $1.25 per month in each year of a five year transition period. The OCCs opposed allocation of NTS plant on a usage sensitive basis, arguing that such an allocation method was economically inefficient. They too, the position that the individual subscriber should pay the NTS cost of access to the telephone network directly. They reiterated their position that if subsidies are found to be necessary, they should be dealt with outside the separations process and carefully targeted. The OCCs also stated that they were preparing a more detailed study of this option for presentation to the Joint Board.

20. Over 100 independent telephone companies participated in the regional hearings. They included small companies in sparsely settled areas, with as few as several hunderd subscribers in a number of cases, medium sized and larger independents, companies affiliated with the non-Bell Systems, and Rochester Telephone Company with approximately 340,000 subscribers. There were considerable differences among the independent telephone companies interms of subscriber density, investment per subscriber and existing local rate levels. A substantial number of these were small companies and cooperatives with less than 5,000 subscribers. In most cases these companies had low subscriber densities, although a few of them had densities of as much as 10 subscribers per square mile.

21. These small telephone companies expressed great concern about reductions in NTS allocations to the interstate jurisdiction. Many of them stated that they would be forced to raise their local exchange rates by 75 to 200 percent as result of the removal of CPE from separations and the use of SLU to allocate NTS plant. They also cited other regulatory changes such as increased depreciation rates, and the expensing of station connections as putting additional upward pressure on local rates. These companies pointed out that their subscribers have access to a very limited number of other subscribers without incurring toll charges and therefore have to make a large number of toll calls. The small telephone companies located in rural areas said that they did not believe that their subscribers would benefit from interstate rate reductions due to lower interstate NTS allocations. On the contrary, many of them expressed great concern about the possible deaveraging of MTS rates. Very few of these companies expressed concern about bypass of the local exchange.

22. Most of the small telphone companies serving areas with low subscriber density, favored the Wyoming Plan which is designed to protect subscribers in high cost areas. A number of larger independent telephone companies, as well as small companies with relatively high subscriber density favored the CCF approach proposed by the Independent Alliance. The Rochester Telephone Company advocated direct assignment of NTS costs to the subscriber. Centel and United reiterated the points which they had made at the Arlington, Texas meeting.

23. A substantial number of state regulatory agencies also participated in the regional hearings. Almost all of them expressed concern about reductions in interstate NTS allocations and the resulting need for increases in local rates. Many of the state representatives expressed the opinion that there is no need to change the present separations procedures, arguing that the present growth experienced by interstate services demonstrates that SPF is not excessive. The Kansas Commission presented a proposal for allocating NTS costs on the basis of alternative cost avoidance. This approach requires calculation of the stand-alone cost of providing local exchange service, as well as the stand-alone cost of local distribution for interstate service. Local exchange NTS costs are then allocated in proportion to the cost of providing these services over separate facilities. Kansas said that their consultants were preparing a detailed study of this approach which would be completed late this year or early next year. A number of other states endorsed the Kansas proposal, and several additional states said that they were studying it.

24. A consultant for a group of western states (Idaho, Montana, Nebraska, New Mexico, Oklahoma, South Dakota and Wyoming) also

[19] The terms NUSLU and NUTCM appear to refer to SLU and TCM adjusted to include FX/CCSA and ENFIA usage.

[20] A report on the regional hearings prepared by the federal members of the Joint Board Staff, dated July 16, 1982, has been placed in the Docket file in this proceeding.

proposed a cost alloation methodology designed to distribute telephone company revenue requirements between services on the basis of an accounting system tied to cost causation. The states which sponsored this study had not reviewed all of its details before it was presented at the regional hearing. Accrding to the counsultant, past telephone ratemaking techniques and separations procedures have resulted in overcharging local exchange subscribers.

25. Consumer representatives also participated in the regional hearings. Representatives of residential subscribers and small business users expressed great concern about possible rate increases. The Ad Hoc Telecommunications Users Committee, which includes large business users, expressed a different point of view, advocating direct assignment of NTS costs.

26. A second meeting with industry representatives took place in St. Paul, Minnesota on June 22, 1982. The Kansas Corporation Commission also made a presentation at this meeting. The telephone industry task force composed of Wyoming *et al.*, USITA, RTC and AT&T presented a more detailed NTS cost allocation plan at this meeting. The industry task force stated that it had analyzed data from over 500 telephone company study areas and concluded that high cost areas are characterized by low subscriber density and small exchange size. It recognized that other factors may influence cost levels, but found that density and exchange size had the most significant and direct effect on costs. It also stated that the data which it had compiled showed that the companies in high cost areas needed to allocate additional NTS costs to the interstate jurisdiction in order to avoid undue local rate increases. Thus, the allocation formula proposed by the industry task force was designed to allow additional interstate NTS cost allocations for high cost companies while reducing the overall interstate allocation of NTS costs. The generic formula was the same as that presented at the Arlington, Texas meeting except that the high cost factor was shown as an additive.[21]

27. The industry task force recommended use of the current interstate SLU, modified to include FX/CCSA open-end use and seven (calendar) day traffic studies, as the usage factor. They recommended an additive based on the relationship between exchange size and annual NTS revenue requirements per loop as the high cost factor combined with a limit on the reduction in interstate NTS cost allocations for individual companies. Exchange size was used in calculating the HCF because this data is readily available and correlates very closely with density. The HCF which they proposed would only apply to study areas with an average of less than 8,000 subscriber loops per exchange, and is designed as a permanent part of the allocation formula. Since some study areas would experience large reductions in their interstate NTS cost allocations even with application of the basic density based HCF, a limitation on the reduction in interstate NTS allocations was also included in the plan. If the reduction in NTS interstate cost allocations exceeded the industry average, the HCF would be adjusted to limit the reduction to the industry average. (The reduction limit, like the density related portion of the HCF, applies only to study areas with an average of less than 8,000 subscriber loops per exchange.) The industry task force recommended that these changes be phased in over a six-year period beginning January 1, 1983. The industry estimated that use of a modified SLU would result in an allocation of $2230 million in NTS costs to the interstate jurisdiction. The high cost factor was estimated to result in an additional interstate NTS cost allocation of $507 million for a total interstate NTS cost allocation under the ACF Plan of $2737 million. The net reduction in interstate NTS cost allocations would be $4015 million and the reduction for each year of a six-year transition period would equal $669 million.

28. AT&T, USITA and RTC also made individual presentations at the St. Paul meeting. AT&T emphasized its support for the industry proposal as an equitable mechanism for reducing NTS costs and recommended adoption of the plan by the Joint Board. It suggested that the industry group prepare a final data analysis and draft changes in the language of the *Separations Manual* designed to implement the industry. AT&T also emphasized the need for resolution of the access charge question and noted that additional changes might be required in separations procedures as a result of the decision concerning this issue. USITA raised questions concerning the desirability of restricting the HCF additive and reduction limitation to study areas with an average of less than 8,000 subscriber loops per exchange. It noted that there are 23 independent telephone company and 34 Bell System study areas with an average exchange size larger than this. It expressed concern that some of these companies could experience unduly large local rate increases under the existing industry plan, and proposed a waiver procedure allowing companies with study areas having an average of more than 8,000 subscriber loops per exchange to request regulatory approval for application of the HCF. USITA also stated that an industry wide cost study of the industry proposal designed to determine the impact on individual states and companies was necessary before the Joint Board would be in a position to recommend this plan to the Commission.

29. RTC also made a presentation at the industry meeting. It concluded that the industry plan may not be sufficient to prevent local rate increases which would impair universal service, and focused on a proposed modification of the industry plan's HCF to provide additional protection. Based on an analysis of the data collected by the industry task force, RTC concluded that the impact per loop of replacing SPF with SLU increased as average exchange size decreased. It stated that limiting the annual impact for these areas to the industry average might not be adequate to preserve universal service especially in areas which presently have high local service rates. It proposed modification of the HCF to provide greater protection for small exchanges.

30. A consultant for the Kansas Corporation Commission (KCC) also made a presentation concerning the Kansas *et al.*[22] proposal for allocating NTS local exchange costs in proportion to the stand-alone cost of providing local exchange service and toll service origination and termination. The Kansas representative emphasized that use of local exchange plant for toll services imposes additional technical and equipment costs on the local exchange and advocated that these costs be recovered from the cost causative services.

31. The next section focuses on the range of options for allocating NTS local exchange plant. To assist interested parties in focusing their comments we have described five basic allocation plans. Two of these plans would allocate NTS local exchange plant on the basis of relative use. The telephone industry plan is based on SLU modified to include open-end FX/CCSA usage as the basic allocation factor with an

[21] *See* note 17 *supra*.

[22] This group includes the KCC, Montana PSC, Wisconsin PSC, Nevada PSC, Missouri PSC, Florida PSC, Minnesota PSC, Arkansas PSC, and Kentucky PSC.

adjustment for high cost areas. The second plan, which was proposed by a state member of the Joint Board staff, is based on the TCM allocation factor originally recommended by the United Telephone Company with an adjustment to reflect off-peak usage. At the opposite end of the spectrum is the gross assignment approach which would allocate a fixed percentage of NTS local exchange plant to each jurisdiction. The NTIA proposal that all NTS local exchange costs be allocated to the intrastate jurisdiction is an example of a gross assignment approach, as is the plan initially advocated by the Kansas Corporation Commission which involved an equal division of NTS local exchange plant between the interstate and intrastate jurisdictions. Two hybrid plants incorporating aspects of both the usage and gross assignment approaches are also described. One of these plans involves the allocation of NTS local exchange plant on the basis of frozen SPF weighted by service category. The second hybrid plan involves allocating 25 percent of NTS local exchange plant to interstate toll with adjustments for areas with high interstate relative usage or high costs.

II. Allocation of Non-Traffic Sensitive Exchange Plant Costs

A. Discussion

32. The most important and one of the most complex issues confronting this Joint Board concerns the selection of a methodology for apportioning non-traffic sensitive (NTS) exchange plant costs to the intrastate and interstate jurisdictions.[23] [24] NTS plant costs represent a significant portion of the overall jurisdictional cost total, both absolutely and relatively. In 1981, total NTS exchange plant in service for the Bell System and Independents (combined) was approximately $88 billion, a figure which equaled over 51 percent of the total plant in service (Account 100.1) for that year. Unlike its traffic sensitive counterpart, for which a basic cost allocation principle (*viz.*, usage) has been identified and generally accepted during this proceeding (*see infra.*), NTS exchange plant costs cannot be assigned between the interstate and intrastate jurisdictions in a way that is solidly grounded in theoretical economics. The existing allocator, SPF, is a usage based approach which suffers from an inherent arbitrariness and which has been apportioning NTS costs to the interstate jurisdiction at an ever-increasing rate.[25] In short, we are faced with replacing an arbitrary jurisdictional assignment methodology with another allocation approach which can also find little support in economic theory.[26]

33. The fundamental task before this Joint Board is to recommend a method of NTS cost assignment that is most consistent with the Communications Act and the public interest.[27] We have already adopted in this proceeding a framework for developing the new NTS allocator. On February 24, 1982 at a Joint Board meeting in Washington, D.C., we approved the "generic formula" as the appropriate mehanism for determining the successor to SPF. The formula consists of the following elements: [28]

$$ACF = [UF + (HCF) \times T] + [SPF(1-T)].$$

where

ACF = Access Cost Factor
UF = Usage Factor
HCF = High Cost Factor
T = Transition Time Factor
SPF = Subscriber Plant Factor

34. The "generic formula" is designed to accommodate three fundamental parameters: a usage, or basic allocation, factor; and two adjustment factors, *i.e.*, one to compensate for designated high cost areas and one to permit a transition period of appropriate duration in order to minimize dislocations caused by moving away from the existing SPF basis. Numerous proposals have been advanced during the course of this proceeding, (*see* paras. 9–30 *supra.*), each with its own particular mix of advantages and disadvantages. A discussion of the basic approaches that underlie each of the elements of the generic formula is presented below.

35. Before the pros and cons of the various plans can be properly weighed, however, the criteria for evaluating these approaches must be established. The staff of the Joint Board has proposed specific objectives and standards for evaluation against which consistency with the Communications Act and public interest standards might be determined. The objectives include:

I. Choose a generic formula which best meets the following:

A. Establish an appropriate level of non-traffic sensitive (NTS) exchange plant costs assigned to the interstate jurisdiction consistent with today's market conditions and technological developments and prevent undue future growth in this assignment.

B. Prevent significant shifts to the intrastate jurisdiction of NTS costs that cannot be reasonably absorbed by local ratepayers in an orderly manner.

C. Recognize the special needs of high cost areas.

D. Assign costs in a way that is consistent with efficient utilization of the network and minimizes the threat of uneconomic "bypass" of local exchanges.

E. Design a methodology that is compatible with intrastate (*i.e.*, state toll v. exchange) cost separations.

F. Recognize the federal principle of promoting interstate service competition.

II. Develop a principal basis for selecting values for factors in the generic formula. Conduct necessary studies to determine these values.

III. Assess the impact of the values determined.

IV. Resolve the outstanding issues in this proceeding related to NTS cost allocations in accordance with the schedule established by the Joint Board.

V. Select a plan which can be easily implemented and audited.

The standards for evaluation developed by the staff include:

(1) The stability and predictability of

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[23] Traditionally the subdividion of costs within the intrastate operations has been substantially based on the methods and procedures contained in the *Separations Manual*. Thus, any changes contemplated during this proceeding should be examined for their anticipated effects on exchange and state toll, as well as interstate toll.

[24] The *Manual* makes the following distinctions, concerning the NTS and TS portions of the local dial office:

* * * The Cost of non-traffic sensitive equipment comprises the cost of those items of equipment used jointly for both exchange and toll services, the quantities of which are determined as a function of the number of subscriber lines terminated and which in no way are a function of the busy hour or total volumes of attempts, calls, or messages offered to or switched by the office, together with a share of the cost of common equipment items, such as aisle lighting, ladders and ladder racks and framing, test equipment, power plants, etc., determined in the manner described in Par. 24.131. The cost of traffic sensitive equipment comprises the cost of all other local dial switching equipment, including its share of the cost of common equipment items. (Par. 24.82)

As indicated below, we anticipate that another Federal-State Joint Board will be convened in the near future and will examine, *inter alia*, the existing classification scheme for TS and NTS plant.

[25] In 1970 17 percent of NTS investment was assigned to interstate. By 1980, 25 percent of a substantially larger NTS plant total was being apportioned to that jurisdiction.

[26] Specifically, we envision that the new NTS allocator would replace SPF on January 1, 1984. However, the successor method would be initiated on this date only after the new usage measurements which we propose in this *Order* (*e.g.*, conversion to calendar day traffic studies) are incorporated and a new traffic study is completed. During the interim, *i.e.*, prior to January 1, 1984, we believe that a frozen SPF should continue to be used to allocate NTS plant.

[27] We are also cognizant of the need to coordinate our actions in Docket 80–286 with those taken in the Commission's *Access Charge Proceeding* (Docket 78–72). Although numerous combinations of principles are possible for separations and for access charges, we believe certain combinations are preferable to others in this instance (*see infra.*).

[28] In a number of documents in this proceeding, this formula has been stated as follows:

$$ACF = [UF + (HCF) \times T] + [SPF(1-T)].$$

However, we believe that the revised formulation set out in the text above is more technically accurate in reflecting the intent that the transition factor apply to both the usage factor and the high cost factor.

the interstate share of NTS exchange plant costs;

(2) The limited impact of these cost apportionments on intrastate revenue requirements;

(3) The feasibility of using a high cost factor (HCF) with a given plan;

(4) Whether efficient utilization of the network is promoted and uneconomic bypass is discouraged;

(5) What broad principle, if any, underlies a given plan;

(6) Consistency with the proposed access charge plans such that changes in interstate cost allocations match changes in interstate revenues;

(7) The ease of administration;

(8) Data availability;

(9) Auditability;

(10) Suitability of the new *Manual* for state toll/exchange cost apportionments; and

(11) Whether the plan is consistent with interstate service competition.

36. Given the nature of the NTS cost allocation process, the need to determine the applicable criteria for evaluating the various proposals in both incontrovertible and critical. We request that parties specifically comment on the validity and completeness of these objectives and standards relative to the statutory requirements imposed by the Communications Act, public interest considerations, or other relevant standards.

B. Menu of Options

37. As discussed above, any methodology for allocating NTS exchange plant costs among the jurisdictions is inherently arbitrary from an economic perspective. This is due to the fact that both interstate and intrastate services use local exchange facilities. Nonetheless, we are convinced that consideration of the relevant criteria for judging the allocation proposals submitted in this proceeding will ideally permit this Joint Board to select the socially optimal NTS allocator.

38. The range of possible methodologies for jurisdictional assignment of NTS exchange plant costs [29] is broad and diverse. Using our generic formula as the framework for selecting the most appropriate allocator, we perceive a spectrum of alternative methods for the high cost factor, the transition (time) factor, and particularly the basic allocation factor. We turn first to the primary element of the formula.

1. *Basic Allocation Factor.*

39. Although the types of potential apportionment schemes are staggering in number, the analysis becomes manageable if we adopt three broad categories of allocators: usage based; gross assignment (*i.e.*, nonusage based); and a hybrid of the first two. We discuss each of these categories in a general sense and present representative proposals which have been advanced during the course of this proceeding.

a. *Usage Based Approaches.*

40. Several proposals have been submitted during CC Docket No. 80-286 that are premised on the theory that NTS facilities should be allocated in a way that corresponds to their usage (*see e.g.*, paras. 9, 13, 16, and 19 *supra*). Despite the arbitrary nature of the process, NTS cost assignment based on unweighted usage possesses certain advantages that make it an attractive methodology relative to SPF or a nonusage approach. First, a usage based assignment method such as SLU affords the local jurisdictions the flexibility to allocate costs according to prevailing usage patterns. In a state with virtually no intrastate toll usage, for example, gross assignment of a share of NTS costs could limit the state's ability to charge for intrastate toll access on anything but a mandatory lump sum basis. Likewise, if virtually all calls are interstate toll in nature, assignment of the bulk of the costs to the local jurisdiction could be argued to be undesirable. Moreover, this too would tend to limit the local jurisdiction's ability to recover the local NTS assignment on any basis other than a flat-fee assessment.

41. Second, an unweighted usage approach would permit a closer alignment of regulatory authority with NTS plant and cost assignment. The effect of permanent shifts in the assignment of NTS costs (as opposed to temporary, business cycle-induced shifts) has been to transfer jurisdictional responsibility for NTS plant. On the federal level, for example, the interstate rate base currently consists of the interstate investment in facilities plus some fraction of the investment that has been made on the local (intrastate) level. Since the Ozark agreement the fraction of non-traffic sensitive plant investment has been determined by SPF. SPF's steady growth over the last decade has had the effect of making significant transfers of both NTS costs and plant to the federal jurisdiction, shifting amounts at a much faster rate than that dictated by a SLU-based assignment method.

42. An argument for adopting a usage based method of allocating NTS costs would be that jurisdictional responsibility for reviewing facilities ought to be divided at least roughly along the lines of relative use (intrastate vs. interstate service). If 90 percent of the traffic is intrastate, it is argued, then it is reasonable that the intrastate regulators should have a greater involvement in deciding how prices should be set or in controlling intraservice subsidies than if only 10% of the usage were intrastate. Relative use might, therefore, help ensure that the interests of local and intrastate users are protected by the appropriate regulatory authorities.[30]

43. Third, a SLU-based approach would require essentially no additional information or data relative to the existing SPF methodology. Hence, fundamental changes in the current separations cost analyses would appear to be unnecessary.[31]

44. Fourth, the use of SLU would ameliorate certain of the undesirable effects of SPF. It is generally recognized that the SPF factor results in toll rates that exceed their economic costs (at least on a marginal basis). Use of SLU would substantially reduce the interstate allocation and, consequently, allow interstate rates that more closely approximate the efficient price. Fifth, although SLU would tend to increase with increases in relative interstate usage, it would rise by a smaller amount than has been the case with SPF. Thus, although the goal of stability in the interstate share of these NTS costs would not be fully achieved under SLU, the SLU result would be superior to the current result. SLU may fare somewhat better against our predictability standard as well, since SPF includes both SLU and a composite station ratio (CSR) factor to account for length of haul differences. This advantages would disappear, of course, if the CSR is frozen.

45. Although SLU has a number of advantages when compared to SPF, it retains, in a reduced form, virtually all of SPF's failings. As numerous parties have pointed out, non-traffic sensitive (NTS) plant costs do not vary with usage. Any usage factor, whether based on proportionate use or not, is essentially an arbitrary means of allocating such plant. From the standpoint of broad principle, SLU has

[29] Technically, NTS plant costs as they relate to services are neither joint nor common in the truest sense. A joint cost, by definition, occurs when products or services can be economically produced only in fixed proportions. Since one communications service generally uses plant capacity that could otherwise be used to provide a different service, the costs associated with this plant are common instead of joint. On the other hand, a local loop, whether idle or not, is supplying subscribers equal (24 hours a day) access to local and toll service. Viewed in this way, the NTS costs more resemble joint costs than common costs. The term "shared costs" may actually be a more meaningful descriptor in this case.

[30] Nonusage based assignments, of course, would likely not track relative usage, and the method apparently does not feature any other rationale which would help assure alignment of jurisdictions and cost assignment.

[31] Although the SLU basis of cost allocation would also little affect the existing administration of separations and toll settlements, we would propose a new approach to administering and implementing the process which would ensure a greater openness and accountability (*see infra.*).

no more basis than does any other allocator.

46. Also, SLU tends to support access charges that charge customers (or carriers) for NTS costs on a usage basis. If NTS costs are added to interstate usage charges, usage rates will exceed usage costs and telephone subscribers will tend to make too little use of the network (although, again, this problem will be somewhat reduced when compared to the present usage system under SPF). Use of SLU would make the implementation of a nonusage based (*e.g.*, lump sum) access charge difficult for at least two reasons. First, the lump sum charge required would vary with actual usage. It seems reasonable to expect those who cause allocation of costs to the interstate jurisdiction to pay for these costs. If the costs are charged to the interexchange carriers through a "carrier's carrier" access charge, these carriers would tend to charge consumers for NTS contributions on a usage basis. Likewise, it is reasonable to expect each exchange to pay more to the interstate jurisdiction if it expects to recoup more from some interstate revenue pool. Suppose, on the contrary, that the access charge is aggregated on a broad (nationwide or statewide) basis and charges to consumers in a lump sum for interstate access. Each subscriber pays the same interstate access charge, but high SLU exchanges allocate disproportionate amounts of NTS plant to the interstate jurisdiction, lowering overall revenue requirements that must be recovered by local or intrastate toll rates, and raising revenue requirements in lower SLU areas. There is apparently neither logic nor equity in a system in which an increase in interstate usage results in a reduction in local rates but no increase in interstate payments. Therefore, there would be pressure to charge for access on a usage basis if SLU is selected as the usage factor.

47. Because SLU generally involves a substantially smaller assignment of costs to the interstate jurisdiction than does SPF, use of SLU could well have a substantial effect on intrastate rates. This disadvantage of the SLU approach may be negated if a suitable high cost factor were used to prevent undue rate increases in the high cost areas, since the increase in local rates should be ameliorated, in the aggregate, by decreases in interstate rates. SLU is generally consistent with the use of a high cost factor. Nevertheless, because of transitional changes and because some parties would be adversely affected by the move to SLU, the use of SLU as an allocator may require a longer transition period than might be required for some other approaches.

48. Finally, SLU and SPF are apparently similar in their suitability for the allocation of costs between state toll and exchange operations. The existing procedures for intrastate NTS cost apportionments have used SPF as an allocator for the past several years, and SLU as a major component of SPF is also a familiar part of the procedures. Both SLU and SPF likewise may be adjudged broadly comparable against our standards of ease of administration, data availability, and auditability because the two factors are well established elements in the separations and settlements process. The two would also accommodate a high cost factor adjustment.

49. An example of such a usage based plan is the proposal submitted by a telephone industry task force.[32] Part of a comprehensive proposal,[33] the industry plan includes a variant on SLU, called NUSLU, which differs from SLU in two principal ways. First, the current interstate SLU would be modified to include interstate FX and CCSA open-end usage. Existing procedures assign these services to the intrastate jurisdiction. Second, the interstate SLU would be revised to reflect the effect of calendar day (*vis-a-vis* business day) usage studies. The plan also would use the generic formula to apportion between jurisdictions the cost of NTS local dial equipment, subscriber lines, drop wire, inside wire and terminal equipment in Accounts 231 and 234 other than customer premises equipment (as CPE is defined in the Glossary of the *Separations Manual Addendum* adopted by the Commission on February 24, 1982). The task force estimates that its basic allocation factor (*i.e.*, NUSLU) combined with an ameliorating high cost factor would cause approximately a 60 percent decrease in interstate NTS exchange cost assignments for the year 1980.[34] [35]

50. Based on our preliminary analysis, we believe that the task force's basic allocation factor proposal has the advantage of ready availability of data, ease of administration, and other benefits inherent in preserving the existing (SLU-based) procedures.

51. NUSLU is also attractive in that it is generally less distortive than SPF and can accommodate HCF. However, the plan may be inadequate in that it seemingly promotes relatively unstable and difficult-to-predict interstate cost shares, economic inefficiency (*see* paras. 58 and 74 *infra*), and poor auditability in practice. the factor also appears to be deficient in limiting intrastate rate impacts and minimizing uneconomic bypass, but may be accepatable in these areas when combined with a suitable HFC. Finally, the proposal would appear to be most compatible with a usage based access charge. (*See* paras. 177–178 *infra*.)

52. A second example of a usage based method is the modified TCM (Total Call Minutes) plan developed by the Joint Board staff. The basic allocation factor for local subscriber plant is the TCM factor, which would apportion an amount of NTS plant to interstate greater than SLU but less than SPF.[36] This method would differ from United's TCM plan and other plans in general by including a demand factor, *i.e.*, an off-peak discount. The interstate allocation factor would be reduced by 30 percent for evening minutes of use and 60 percent for night, weekend and holiday minutes of use. The evening discount would apply to minutes of use during the hours 5 PM to 11 PM Monday through Friday. The night discount would apply 11 PM to 8 AM daily and all day Saturday, Sunday and holidays. It would be the factor that is discounted, not the interstate minutes of use. During the proposed five-year transition, TCM (with evening and night discounts) would be computed each month. The difference between forzen SPF and TCM, as computed each month, would be reduced by one-sixtieth per month and added to TCM to determine the allocation factor. After 60 months the additive to TCM would be zero. Assuming deregulation of CPE but not commencing January 1, 1983 would be to reduce by about 50 percent the NTS costs currently assigned to the interstate jurisdiction.

53. FX, CCSA, off-net access lines and other private lines terminating directly

[32] The group consists of Wyoming, *et al.* companies, USITA, Rural Telephone Coalition (RTC), and AT&T.

[33] For a discussion of the high cost factor (HCF) and transition factor (T) aspects of the plan see paras. 97–103 and 113 *infra*.

[34] Without the partially offsetting effect of the (permanent) HCF, the reduction in the interstate allocation would be almost two-thirds.

[35] Not all members of the task force concur with the "core" proposal. RTC recommends that both open-end and closed-end costs of FX and CCSA services should be assigned to interstate. RTC and USITA also do not accept *in toto* the plan's HCF features. It should be noted that certain members of the industry do not subscribe to the core plan in general (*e.g.*, the Independent Alliance). This plan is represented here not because it is an approach that is endorsed by all segments of the telephone industry. Rather, it is included as a major proposal which is illustrative of a usage based methodology.

[36] Technically, TCM is computed by modifying the SLU formula to count only *one-half* the exchange holding time minutes of use in a given study area.

in the local public switched telephone network (PSTN) would have the modified TCM allocations of NTS applied immediately for the open end of the line. The TCM minutes of use would include interstate minutes of use over these facilities. The closed end of the line would be assigned directly. ENFIA element 3 cost assignment would remain constant until the TCM plus the SPF minus TCM factor equaled the ENFIA factor. Thereafter the cost assignment to ENFIA element 3 would be the same as the factor applied to message toll. Minutes of use on private lines indirectly connected or connectable to the PSTN, such as PBX tie lines, would not be counted in calculating TCM. Costs would be assigned directly subject to further study to determine if bypass traffic is a problem. Interstate circuits, such as point-to-point data circuits, which do not directly or indirectly access the local PSTN, would have no allocated NTS costs assigned to them. Local plant costs associated with such circuits would be directly assigned.

54. Two concepts underlie the modified TCM plan. First, the local exchange network is viewed as an interactive entity in which the general accessability of subscribers is of mutual benefit to every user of the system. Second, local subscriber plant is not regarded as strictly non-traffic sensitive plant. For example, multi-port users must increase the number of access lines as traffic increases. Also, inadequate local subscriber plant results in circuit blackage during times of high traffic volumes. Because of the impact profit-seeking long-distance carriers have on the traffic sensitive aspects of "NTS plant," it is argued, such carriers should bear a portion of the cost of such plant. Consonant with this interactive and integrated nature of the local exchange network, TCM is perceived to be a more appropriate NTS allocator than, for example, SLU in that it measures the use of local exchange as a whole. In this view, toll traffic is not limited to particular subscriber lines but, more broadly, reflects the aggregate accessibility of the entire exchange. Since allocated local subscriber plant costs are presently included in long-distance rates, and long distance rates include demand charges, it is argued that it would be appropriate for the cost allocation to include a demand factor or off-peak discount. Furthermore, as such off-peak cost assignments are the network on both the defined traffic sensitive portions of the network as well as on the traffic sensitive concentrator lines and trunk groups of the NTS plant.

55. We believe the modified TCM plan has both advantages and disadvantages when viewed against our standards of evaluation. As with the NUSLU proposal, this approach could be rather easily incorporated into the existing separations and settlements process because TCM data may be derived readily from SLU data. Administration would be similar to that under the current procedures. Further, a broad principle of some appeal has been advanced, and the plan itself would apparently be applicable to an intrastate cost apportionment process. Like most plans, modified TCM could accommodate an HCF adjustment. However, the proposal may result in interstate NTS exchange plant cost allocations that would be rather difficult to predict and would not assure a desired stability in such jurisdictional shares. Although the off-peak discount feature may well promote an efficient utilizatin of the network, it is not clear that the method would be more efficient than a nonusage based approach (*see* paras. 58 and 74 *infra*). Finally, this plan would not necessarily avert or minimize the threat of uneconomic bypass (but since this may be true of all NTS allocation methods, given the difficulties inherent in forecasting and the various possible associated access charges, it may not be proper to view this as a disadvantage as such.

56. We seek detailed and meaningful comments of the points raised in this section. If a party has already addressed a particular issue (*e.g.*, proper apportionment of open-end FX and CCSA) in a previous filing, a brief summary of those assertions should be presented and specific cities to the earlier comments should be provided. We would also encourage concise responses to any new arguments raised.

b. *Gross Assignment Approaches.*

57. At the other end of the allocation continuum is gross assignment, a cost apportionment methodology which eschews usage in favor of a flat percentage basis. In the extreme, gross assignment could allocate all NTS costs to either the intrastate or interstate jurisdictions. The assignment could be varied from company to company. The primary characteristic of the pure gross assignment is its fixity; *i.e.*, once set, the allocation will not change as usage patterns change. This feature is both the fundamental strength of the proposal, but may also be the source of certain problems an noted below.

58. Thus, an advantage of the gross assignment methodology is its inherent ability to reduce the likelihood of wide swings in apportionment, creating a potential for greater stability and predictability. Because the allocation factor is fixed, no entity would have any incentive to alter behavior solely to gain a more favorable allocation. This is not the case with an approach based on SPF, SLU, or TCM, where manipulations of usage patterns could be used to change cost allocations. Pure gross assignment will also allow efficient pricing of access if the Commission decides that this is the desirable route. It would be a less desirable choice if the Commission were to continue per minute pricing of MTS in order to compensate local companies for NTS plant assigned to the interstate jurisdiction.

59. Because gross assignment would fix cost shares [37] between jurisdictions, the goal of relative stability in the interstate share of costs would be achieved. Gross assignment by its nature is unique in this respect. Likewise, because the gross assignment share may be set anywhere from 0% to 100%, it is not difficult to determine a gross assignment share that would have little effect on intrastate rates, easing the transition from the current system to the gross assignment based system. A gross assignment of, for example 25%, approximating current nationwide SPF, would not result in any significant changes in interstate assignment of costs yet could be used to allow substantial changes in the way that interstate services are priced. In this way, existing concerns regarding the rapid growth rate of SPF should be eliminated.

60. Another advantage of this flat percentage approach is its simple administration. Once the assignment is set, no further calculations would be necessary to implement it.[38] Few data needs and lower costs would result from the changeover to this system. The task of auditing the cost studies and results would also be greatly simplified. In addition, gross assignment would be more suited to a flat fee access charge *vis-a-vis* a per minute charge basis. If combined with gross assignment, the latter may well lead to undesirable dynamic changes as reductions in calling would require higher per call access charges, further reducing calling volume and requiring even higher per call access charges (*see* discussion below). Finally, the method may be

[37] A gross assignment approach could also be based on a fixed dollar allocation, assuming this approach was rationally justifiable and legally sound. For example, the current dollar allocation could be frozen.

[38] Measurement of usage would still be required for the purpose of allocating traffic sensitive plant.

combined with a high cost factor to mitigate potential dislocations created by a changeover from the SPF basis.

61. The methodology also has certain drawbacks. Perhaps the most significant one is the method's potential impact on local rates.[39] There would be no guarantee that large rate increases would be avoided; indeed, higher rates may occur in some areas and lower rates in others. Under gross assignment, equity considerations are lacking as no usage element is used to "adjust" the fixed allocations. This results in reduced jurisdictional flexibility to allocate costs. Further, synchronization of jurisdictional responsibility and plant cost allocations might be frustrated under this approach. Without such a weighting for usage, distortions could occur. For example, NTS costs might be automatically apportioned to state toll even though the state commission has virtually eliminated such calling.

62. If gross assignment is also used in the intrastate toll/local allocation, problems might emerge if states extend local calling areas while continuing to recover these costs on a usage basis. This would result in higher per call assignment of NTS plant to intrastate toll. Clearly, choosing to use gross assignment between local and intrastate toll costs has a similar result to using pure gross assignment on the intrastate/interstate breakdown. This type of alloction would make continued use of usage based pricing to recover NTS costs difficult. A flat-fee access charge for intrastate toll, even if no intrastate toll exists, would be possible.

63. The NTIA plan is an example of a pure gross assignment approach. Specifically, NTIA would apportion 100% of NTS exchange plant investment to the local ratepayer, on the grounds that "NTS costs are caused by the provision of subscriber access service, *i.e.*, by the existence of the NTS plant rather than by the amount of traffic that flows through it." NTIA Comments, filed August 17, 1981, footnote 3.[40] NTIA concludes that transferring all costs to the local jurisdiction would increase total consumer surplus by more than $1.5 billion (*i.e.*, a $9.5 billion increase in the welfare of toll ratepayers, and an $8 billion decrease in the welfare of local ratepayers).

64. We are cognizant of several apparent advantages and disadvantages inherent in the NTIA plan. The proposal would permit a pricing plan that would promote economic efficiency, and assure a relatively stable interstate share of costs. It would also feature easier auditing and a less involved administrative process. A shortcoming of this approach is that it could have significant adverse impact on intrastate rates for some ratepayers. It could also be argued that the failure of the NTIA approach to recognize toll usage is undesirable.

65. We have also identified two apparent problems with the NTIA consumer surplus analysis. First, although the documents filed with the Joint Board by NTIA do not reveal all the details of the analysis, it does appear to have overlooked some costs that would necessarily result from a complete shift of NTS costs to the local jurisdiction. The analysis is based on some comparisions of estimated price elasticities for local and toll service demand. Because the demand for local service is less elastic than the demand for toll service, a shift of costs from toll to local jurisdictions will cause a reduction in the quantity of local service demanded that will be smaller than the concomitant increase in toll demand. A net increase in total demand should be expected, all of it flowing through central offices in which much of the plant investment is traffic sensitive. The analysis should be extended to include the cost of any increased investment required within the central offices and the toll services. (Even Ramsey pricing requires that all variable costs attributable to a particular product or service be recovered by that product or service.) The increase in these traffic sensitive facility requirements could result in either an increase or a decrease in the price of interstate service depending on whether the service is subject to economies or diseconomies of scale. If subject to diseconomies of scale, the toll cost might rise, partially dampening the effect of reducing the toll assignment of NTS investment. Second, even if we accept the NTIA numbers, it should be noted that the proposed assignment plan would, in practice, affect different groups of people in different ways. Most subscribers typically make both local and toll calls, and these subscribers make such calls in various mixes or proportions. Thus, some users would benefit overall from reduced interstate toll rates while others might not make enough interstate calls to offset the charge that they must pay for local access to the network.

66. As with the case of the usage based factor, we seek concise and meaningful comments from interested parties concerning the issues raised in this section. Specifically, we request a description of additional advantages and disadvantages of the gross assignment method (*e.g.*, the plans advanced by NTIA, Rochester Telephone Corporation, and the Kansas Commission), as well as any other insights that would assist this Joint Board in addressing the pending questions in this proceeding.

c. *Hybrid Approaches.*

67. From the above discussion, it is evident that both of the major types of NTS assignment methodologies exhibit their own particular mix of advantages and disadvantages. For example, a pure usage based approach permits inclusion of equity considerations and affords more flexibility in allocations relative to a nonusage basis, but would likely be less efficient and less predictable. On the other hand, a gross assignment methodology would more effectively promote efficiency in a campanion access charge as well as provide stable and relatively predictable allocation shares, but would allow less flexibility and fewer elements of equity. The selection of the preferred allocator is clearly a function of the specific objectives and criteria used, as well as their relative weighting (*see* discussion *supra*). These considerations, in turn, must reflect the statutory requirements that apply to the separations process and the jurisdictions involved. We actively encourage input from interested parties that would identify and weigh factors at each of these stages of evaluation.

68. A logical extension of the usage and nonusage approaches would be a method which combines features of each. This "hybrid" would ideally include the best attributes of each approach while eschewing any of their disadvantages, *i.e.*, an eclectic approach. In the real world this mix is probably unattainable, especially in the realm of a complex process such as separations. Given this constraint, the pivotal issue here concerns whether or not the hybrid is superior or inferior or even comparable to the usage and gross assignment proposals in terms of achieving the desired goals. To determine this, of course, we would need to examine a specific hybrid method.

69. Two proposed hybrid plans have been developed by the Joint Board staff. One of the plans, previously submitted by the federal staff, is the buffered gross assignment, or BGA, proposal which combines gross assignment of costs with an adjustment for usage designed to

[39] This impact could be ameliorated by utilizing larger high cost factor amounts.

[40] Rochester Telephone Corporation also recommends allocation of all NTS plant to exchange operations. Another example of pure gross assignment is Kansas Corporation Commission's original plan that would allocate 50% to local service and 50% to toll.

mitigate or "buffer" the impact of the changeover from SPF. The other plan employs actual use as the primary means of separating NTS costs, but would insulate the allocation factor from usage changes caused by changing rate structures applicable to the various services employing NTS facilities. Both plans are described below for the purpose of generating comments on the merits of each.

70. The BGA factor under the staff's tentative plan would be characterized by: (1) gross assignment of 50 percent of NTS exchange costs to toll and local exchange operations; (2) a subsequent subdivision of the toll percentage into 25 percent interstate and 25 percent state toll shares; [41] and (3) an adjustment to the interstate gross assignment to compensate for a company interstate SLU which differs from the national average.

71. Mathematically, the BGA usage factor would be a linear function of SLU, with the parameters (slope and intercept) of the function being adjusted to make the nationwide average allocation to interstate equal to a predetermined level, which has been proposed as 25 percent. Within this general framework there is a wide range of possibilities. For example, at one extreme the slope could be set at zero, which would result in a pure gross assignment. Or at the other extreme the line could be forced through the origin, which would result in something very close to SPF. The staff has tentatively recommended a slope of one, which would yield a usage factor that would have substantially less variation with usage than is presently the case with SPF.

72. Since there are many other possible choices as to the level of interstate allocation and the choice of the slope and/or intercept in the BGA formula, we seek comments on the appropriateness of the tenative choices that have been made.

73. In this formulation, there are two ways of dealing with increases in the SLU factors over time. One is to adjust the intercept downward to leave the average allocation the same. The other is to ignore the changes and base the allocation on frozen SLU levels. The latter approach has the advantage of requiring less data collection (eliminating the recurring need for new traffic studies) and eliminating the need to recompute the intercept each year. Under this approach, new usage measurements would be incorporated into the SLU factors *before* they are frozen. These changes would include, *inter alia*, use of calendar day measurement studies and assignment of interstate open-end FX–CCSA costs to interstate operations.

74. We believe that the BGA approach has a number of attractive features. First, the relative stability of the interstate share of costs would be assured, correcting in the long run a problem that is being temporarily mitigated by the interim SPF "freeze" instituted by the Commission. 89 FCC 2d 1 (1982). It overcomes the possible incentives for inefficiency inherent in other proposals, *e.g.*, companies' proposals to redefine toll free areas under a calling capability factor (CCF) plan or institute measured use local calling under a SLU approach, for the purpose of increasing the level of interstate cost allocations.

75. Second, the basic concept of adjusting the aggregate cost allocation to cushion the new method's impact seems appealing. Without an associated moderating factor, the impact of a pure gross assignment of 25 percent on individual telephone companies could cause particular hardships on those with SPFs significantly in excess of this percentage. Thus, we would agree that an adjustment factor of some type would appear to be necessary to alleviate these perceived effects. The proffered buffer may be such a factor. The basic rationale which underlies this adjustment is the desire to achieve a "compression," or narrowing, of the range of company SLUs. There are certain telephone companies which may not qualify for an HCF adjustment yet need application of a moderating factor to prevent significant dislocations during the initial stages of the new NTS allocator. For example, a company that has a high SPF but does not qualify for an HCF may experience a disruptive local rate impact during the transition period unless an appropriate buffer is used.

76. We are aware that a recognition of relative usage may well be reasonable even if the aggregate apportionment of costs between jurisdictions is assigned on a nonusage basis. There are several arguments that can be made in support of a usage based adjustment.

77. First, there may be an element of equity in allocating even NTS costs on a usage basis. For example, it would seem incongruous to assign all NTS costs to the local exchange when, in fact, a sizable segment of the users in a given service area has been making interstate calls. Moreover, if a state decides to eliminate intrastate toll, it would be absurd to continue an allocation of costs to the intrastate toll operations. Even if some intrastate toll calling remained, application of a nationwide factor to different states might result in a substantially different per call allocation. Hence, a usage based adjustment may be used to avoid illogical apportionments which may arise under a pure gross assignment scheme.

78. Second, retaining usage in the NTS separations process may be beneficial in aligning jurisdictional responsibility for NTS plant with cost assignment. The use of either SPF or some form of gross allocation would seem to be deficient in this regard as no relationship would necessarily exist between regulatory responsibility for facilities review and cost apportionment under these schemes. Intuitively more appealing is a usage basis whereby the relative volume of traffic would provide at least some rationale for determining the proper regulatory aegis. Thus, a 50% allocation of costs to local operations in a given service area where local calls account for 90% of the total calls could be adjusted to permit a more "reasonable" degree of local regulatory authority.

79. Third, as the basis for current NTS separations allocations, usage data has been regularly collected and the infrastructure for gathering the data is well established. Therefore, implementation of an adjustment mechanism which relies on such data would be relatively more straightforward than with certain other methodologies.

80. We believe there are also a number of questions which are raised by this proposal and should be addressed. It is not, of course, necessary to base such a proposal on a 25% gross allocation. There is a certain appeal to its method of derivation, which may introduce an element of equity (*i.e.*, halving NTS costs between local and toll, then halving the toll assignment between state and interstate). The percentage is also not far removed from the current frozen 1981 average SPF level (26.09). Parties addressing this plan should specifically comment on the optimal percentage assignment to the interstate jurisdiction. We also ask that parties discuss the apportionment level needed to minimize the occurrence of uneconomic bypass.

81. Second, concerning the usage adjustment, it is not clear that SLU should be the basic unit of comparison. We would ask parties to discuss the pros and cons of using other usage

[41] These computations are designed to provide a rationale for the tentative recommendation of a 25% NTS cost allocation to the interstate operations. The actual cost apportionment between state toll and exchange would, of course, be determined by the respective state commissions.

methods, *e.g.*, TCM or CCF. Also, we seek comments as to whether actual (*i.e.*, historical) or prospective usage methods are more appropriate for our purposes.

82. Third, the choice of only two primary cost categories (*i.e.*, exchange and toll) is arbitrary. By selecting three categories (*e.g.*, interstate toll, state toll, and exchange) the interstate allocation would be 33 percent instead of 25 percent. Parties are asked to comment on the optimal number of categories.

83. Finally, we are uncertain as to the linkage of a BGA NTS cost allocation method with the various possible access charge arrangements. Parties are asked to submit their views on this subject, especially as to specific compatibility and the appropriate level of pooling. *See* paras. 179–181 *infra*.

84. The second hybrid plan developed by the Joint Board staff employs actual use of the starting point in determining the separation of NTS costs. The underlying principle of the proposed plan is relative unrestricted use. That is, the NTS costs associated with jointly used NTS facilities are separated among the jurisdictions in proportion to the actual use that *would* have been made of the NTS facilities if the current usage related restrictions were removed. With usage restrictions removed, the resultant use of the NTS facilities would be a pure measure of the customer service preference and may serve as a sound basis for the allocation of the NTS costs to the various services which use NTS facilities.

85. The predominant, if not only, restrictions on usage of NTS facilities are the rate structures applied by regulators to the various services which use NTS facilities. As a general rule, the higher the rate (especially the usage sensitive portion of the rate), the lower the usage. If the restrictive effects of the rate structures were removed or equalized among the services, it is argued, the resultant relative use would be a good proxy for the relative use which would result if *all* usage restrictions were removed.[42]

86. The relationship between usage and price is a function of each service's price elasticity, a factor that is difficult to measure. For the prupose of the allocation formula proposed herein, the restrictive effects of the price structures are directly estimated for each class of service based upon empirical evidence. The restrictive factors are stated relative to flat rate service. That is, the weighting factor for each service is intended to convert the actual usage of that service to the level of usage that would occur if that service were provided under a flat rate structure.

87. Under the proposed allocation formula each service using NTS facilities would be classified into one of four rate categories and its usage weighted by the weighting factor associated with that rate category. The four categories and their proposed associated weightings are listed below:

Category	Weighting
1. Flat Rate	1.0
2. Measured Rate Exchange	1.2
3. Intrastate Toll	4.5 × (Intra CSR Ratio)
4. Interstate Toll	4.5 × (Inter CSR Ratio)

88. The Measured Rate Exchange weighting of 1.2 is based upon an observed usage restriction of approximately 15–20% when flat rate exchange service has been converted to measured rate service. Conversion of existing toll routes to EAS normally results in traffic stimulation of 5–10 times. A basic toll weighting of 4.5 is a conservative estimate of the increase in toll traffic that would result if usage charges were eliminated. The 4.5 basic weighting is further adjusted by the Composite Station Rate (CSR) ratio to account for price differences between interstate and intrastate toll. The resulting toll weighting factors would result in a nationwide interstate allocation of NTS costs at approximately the current level.

89. The formula for the allocation of NTS costs would replace the Subscriber Plant Factor used currently. The new allocation factor (NUSPF) would be calculated as follows:

NUSPF = Weighted Interstate Use/Total Weighted Use.

90. The new SPF would be calculated for each study area based upon 1981 traffic volumes. The resulting factor would remain fixed until revised through the Joint Board process.

91. The fixity of the interstate allocation factor is predicated upon the presumption that *pure* relative use[43] changes slowly with time. The changes in *actual* relative use are due to a combination of changes in pure relative use and the restrictive factors applicable to each service. If actual use was updated continuously in the allocation formula, then the weighting factors would have to be updated continuously as well, perhaps with little net effect upon the level of the interstate allocation of costs.

92. The basic NUSPF plan possesses several advantages. The fixing of the interstate allocation factor at its 1981 level would essentially achieve the objective of stability. Furthermore, a fixed factor would allow the orderly analysis of the effects of the introduction of new services and rate changes for existing services. As conditions change, the allocation formula and base period could be updated as necessary. An HCF in general would be feasible for this plan. In terms of administrative ease and auditability, the approach may be superior to the existing basis, depending on the frequency of the former's updating process. The plan also appears to be inherently compatible with intrastate cost apportionment.

93. There are apparently some less attractive facets of NUSPF as well. The weights used seem arbitrarily chosen, *i.e.*, no compelling statistical justification for any given weightings exist. The prospects for securing such supporting data in the future are not particularly encouraging. A second area of concern is that there is no support for the assertion that pure relative usage changes only at a slow pace over time. A third concern relates to the method's linkage with an access charge for interexchange carriers. Specifically, because the weights would be fixed, there may be a general disincentive for changing local rate structures. Since establishment of an access charge will likely require a change in these rate structures, countervailing pressures may well arise, causing unproductive delays and distortions.

94. We seek comment as to the appropriateness of the underlying basis of this plan—namely, the employment of relative unrestricted usage in the separations of NTS costs. Additionally, we request input from interested parties addressing the validity of usage weighing factors for each category of service using NTS facilities.

2. *High Cost Factor.*

95. A second element of the generic formula is the high cost factor (HCF). We are aware of two basic approaches that can be followed in implementing an HCF. One is to base it on one or more surrogate variables that are related to cost. The other is to base it directly on costs.

96. The surrogate variable approach involves statistically estimating a regression equation which relates average cost as a function of one or more variables. The regression estimate

[42] In addition to rate structure, other restrictive conditions exist, such as busy hour blocking. The usage restrictive effects of these other considerations are, however, minor and can be assumed to affect all services equally, thereby having minimal effect upon relative use.

[43] By "pure relative use" we mean the relative use which would result if all services utilizing subscriber plant were priced in a similar manner.

is used to determine the HCF. There may or may not be further adjustments in the HCF to allow for factors not included in the regression. These adjustments would be based on actual costs.

97. If the regression approach is used, there are various possible choices as to which surrogate variable(s) to use in the regression equation. The high cost factor, as originally proposed by Wyoming Telephone *et. al.*, Comments, filed August 17, 1981, was designed to compensate companies with low density and/or small exchange size for their hypothesized higher-than-average NTS costs. In practice, however, density and exchange size are highly correlated. Specifically, rural companies have low densities and small exchange sizes while urban companies have high densities and large exchange sizes. Thus the separate impacts of the two variables are hard to distinguish and the industry task force consequently only used one of them in determining the HCF. They have chosen exchange size since the feel that reliable data are more readily available for that variable. The proposal does not specifically require the use of frozen exchange sizes as of a given date or current exchange size data.

98. The report, "Allocation of Non-Traffic Sensitive Exchange Plant Costs: The Federal Staff 'Working' Plan", dated July 26, 1982 pp. 22–32 discusses several problems with the regressions used in the industry task force plan. These include the quality of the data used, the estimation method, the choice of the surrogate variable, and the functional form. The most important limitation on the reliability of the data is that estimates of the revenue requirements were used rather than actual values. The main problem with the estimation method was that it was based on subsample means rather than individual observations. The choice of exchange size as the surrogate variable was questioned because density is more highly correlated with average revenue requirements. Also, two other variables were found to significantly influence average revenue requirements—the proportion of plant which was undepreciated, taken as an indicator of age of plant, and a dummy variable indicating whether the firm has an REA loan. Finally, although a nonlinear relationship seems clearly approprate, a logarithmic functional form was found to be better than the simi-log form used in the industry task force plan.

99. Another problem with the regression used in the industry plan is that when individual observations are used, their function explains only 11% of the variations in average revenue requirements. Thus, those companies whose costs are high due to factors other than those included in the regression will be disadvantaged if there is no recognition of the fact that there are other sources of cost variation. This problem is recognized in the industry plan by the introduction of the reduction limit and HCF adjustments for individual companies that would otherwise exceed the reduction limit. This, however, only applies to companies with an average exchange size of under 8,000 lines. Larger companies with high costs are still disadvantaged, as USITA pointed out in their comments on the industry plan. USITA Camments presented at June 22, 1982 Joint Board staff meeting in St. Paul, Minnesota. For the companies for which the reduction limit applies, the original HCF becomes meaningless because all costs beyond the reduction limit are passed along. As an indication of the significance of the reduction limit, 198 of the 463 study areas with exchange sizes under 8,000 lines are at the reduction limit. Of the remaining 44 study areas to which the reduction limit is not applied, 24 have reductions greater than that limit. Thus, for nearly half of the companies in the sample, the deviation of costs from that which is explained by and adjusted by the regressions is unacceptably large. This being the case, it might be more appropriate to abandon the regression analyses and base the HCF directly on cost rather than on some surrogate variable used to explain cost.

100. The rational behind using a regression based on a surrogate variable is that it requires identification of the cause(s) of the high costs and allows compensation only when those causes are considered legitimate (*i.e.*, are not the result of bad managerial decisions). If a regression approach is used, it appears that density is a key factor that should be used in the analysis, Since it is the most significant of the variables studied and since it is difficult to manipulate by managerial discretion. Whether additional variables should also be included will require further analysis based on the responses to our data requests.

101. In general, the more variables that are used, the more complicated the computation of the HCF becomes and the more additional data will be needed to compute the HCF. If a further adjustment is introduced which is based directly on high cost, care must be taken that there would not be too many cases in which this adjustment causes the regression results to be overridden, Otherwise the regression becomes meaningless.

102. If the regression approach is pursued, we believe that it should probably be done somewhat differently from what the industry is proposing. Specifically, exchange size is not the most significant variable to affect costs from among those that have been investigated here, and to some extent might be subject to managerial discretion. Namely, a company might attempt to shrink the size of local calling areas and increase (or delay the reduction in) the number of exchanges in order to qualify for a small exchange adjustment. The problem could be eliminated by using frozen exchange size numbers as of, for example, January 1, 1982.

103. If a single surrogate variable were to be used, density may be more appropriate. However, an HCF based just on density would still have many of the problems associated with the industry plan. There would still be many companies whose cost levels are not adequately explained by their density. To the extent that these cost variations are not subject to managerial control, those companies would thus be disadvantaged if no allowance is made for the existence of other sources of cost variation. This would require adjustments based directly on cost and/or a search for additional variables to explain the cost variations with modifications in the HCF formulas to incorporate adjustments for several factors affecting cost rather than just one. This approach will yield acceptable results only if objective factors can be found which will result in a significant improvement in the proportion of the variation in average revenue requirements which is explained by the regression. We request that parties submit comments on the usefulness and feasibility of the regression approach in both general and specific terms.

104. If part or all of the HCF is based directly on cost,[44] we perceive that it can be formulated in two ways. One is to compensate all companies whose costs are above average (or significantly above average), regardless of what their current frozen SPF is. The other is to tie the compensation to the amount of the difference between the interstate frozen SPF allocation and the interstate allocation based on the new usage

[44] There are different cost bases which may be potentially used for determining the HCF, *e.g.*, NTS *vis-a-vis* total costs. We request that parties comment on the desirability and feasibility of the various possible cost bases which may be used for this purpose.

factor. We seek comments from intersted parties as to the efficacy of these approaches and request any meaningful alternatives.

105. A member of the Joint Board staff has developed an example of a high cost factor formula based directly on NTS costs. Under this approach, a high cost factor would be calculated for each study area based upon the ratio of that area's base intrastate NTS cost per exchange access line to the nationwide average base intrastate cost per exchange access line. The base intrastate NTS costs would be measured using the Usage Factor (UF) [45] before addition of the high cost factor. The high cost factors would be predicated upon a preselected base year and be updated periodically.

106. In all study areas where base intrastate costs per line are below 1.2 times the national average no high cost additive would apply. Fifty percent of all base intrastate costs above 1.2 times the national average would be allocated to interstate through the addition of a lHigh Cost Factor (HCF) to the basic Usage Factor (UF).

107. The formula for the High Cost is detailed below:

F	HCF
0–1.2	0
above 1.2	.5(F–1.2) (1–UF)/F

where F = ratio of study area base intrastate cost per access line to nationwide average base intrastate cost per access line.

108. In addition to comments as to the efficacy of an HCF based directly on costs, we seek comment on the merits of this formula. Specifically, the comments should address the effectiveness of the formula's parameters in meeting the objective of mitigating the impact of high costs upon basic service rates and the promotion of operating efficiency among the exchange carriers.

109. A high cost factor based purely on cost would be easier to administer. It would not require collecting any data beyond what is already requried for cost allocation purposes. It also would not require the kind of data anlaysis that is necessary for the regression approach. The main disadvantage of the cost based approach is that it fails to provide the firms with a sufficient incentive to hold down costs since the excess costs would be compensated in part by the HCF. One way of dealing with this problem is to allow only a portion of the costs to be used in computing the HCF. A variant of this would be to include all of some categories of relatively fixed costs (such as capital costs) but only a portion of other more discretionary costs. Some cost categories (such as executive salaries) might be excluded entirely. Another possibility, which is incorporated in the industry proposal, is to freeze the HCF on the basis of current costs. The problem with such a freeze, however, is that it does not allow for changes in costs due to changed circumstances over time. The costs may be abnormally high or low in the year used for the HCF computation. However, since these companies could be getting an increase in their interstate allocation from the new usage factor the result could be plummeting local rates for these telcos. Also, it does not allow for the reduction in revenue requirements that results from the depreciation of plant over time. We specifically seek inputs from interested parties regarding the merits of these approaches.

110. Basing part or all of the HCF directly on cost requires a procedure for determining the compensation. The industry plan of using a reduction limit results in a larger HCF for those companies which have a high SPF. This has the effect of perpetuating some of the current disparities in interstate allocations, and thus some of the corresponding differences in local rates. On the other hand, it directly deals with the goal of preventing unduly rapid local rate increases. If the compensation instead were to be based purely on cost, with no reference to SPF, then there would be a greater movement towards making local revenue requirements more uniform nationwide. That is, there would be relief granted to those companies with low SPFs which currently have only a small proportion of costs allocated to interstate and thus tend to have high local rates. However, since these companies could be getting an increase in their interstate allocation from a new usage factor based on gross assignment, the result could be substantially decreased local rates for these telcos.

111. A final problem that needs to be answered in connection with the HCF is the source of the funding. If the HCF is simply added on to the usage factor, the overall allocation to interstate would be higher than is desired, assuming that the basic factor is designed to produce the "proper" aggregate level of jurisdictional assignments. Thus, there will be a need to reduce the allocation somewhere to compensate for the increases that result from the HCF. The most neutral way to do this is to have an across-the-board reduction in the basic factor, and then use the resulting money that is thus generated to pay for the HCF. Specific comments, and/or alternative suggestions from parties relating to the funding of any HCF are requested.

3. *Transition Factor*

112. Another element within the generic formula is the transition factor T. The mechanism is specifically designed to provide a final adjustment for telephone companies which would assure a smooth and orderly phase-in of the new methodology chosen to allocate NTS exchange plant costs. Unlike the high cost factor, which will be selectively applied, the transition adjustment will automatically affect all telcos. We believe that the process of selecting a specific value for T should recognize the factor's interrelationship with UF and HCF values.

113. It seems evident to this Joint Board that the transition factor is an appropriate means of effecting a changeover from the present frozen SPF interstate allocation to the new access cost factor. In its core plan, the industry task force recommended that T should equal six years. The rationale for the selection is that it ostensibly provides a reasonable ceiling ($3.26) on the annual decrease in monthly interstate cost allocation per loop which would be expected to occur under the task force's SLU/HCF plan. Since proposed changes in the usage factor appear to be substantial for many companies, we agree that a transition period of several years may be appropriate. However, since the details of the UF and HCF are not sufficiently worked out to enable us to gauge the impact of any comprehensive plan, it is premature to attempt to determine with any precision the most appropriate duration of the transition period. Two factors that will need to be considered are the size of the high cost factor and the impact of changes in the interstate usage factor on the state usage factor. In many cases a reduction in the allocation to interstate toll will cause an increase in the allocation to state toll, since the combined SPFs for the two are currently at the maximum allowable level. Under present circumstances a cap on toll allocations only serves to reduce the assignment of NTS costs to intrastate service, resulting in an inappropriately low allocation to state toll.

114. In order to smooth the transition period, we tentatively believe that limits should be placed on the change in interstate allocation (whether it is an increase or decrease) which could result

[45] The Usage Factor is the primary allocation factor in the generic formula for the Access Cost Factor (*see* paras. 33–34).

in any given year. While the development of a number will require a more complete analysis of the data, either some limit in the 5% to 20% range or a ceiling in terms of dollars might be appropriate. The intent would be to ease the reduction for companies suffering sharp drops in interstate assignment by temporarily delaying a portion of the increased assignment for other companies.

115. We ask that parties provide comments to any or all of the points raised in this section relating to the transition factor.

III. Jurisdictional Separations and the Access Charge

116. A major concern in this proceeding is the need to coordinate changes in the *Separations Manual* with potential access charge arrangements and access-related matters in general. The significance of the issues is currently underscored by the pendency of the Commission's CC Docket No. 78-72 Phase I, the *MTS/WATS Market Structure Inquiry,*[46] and the requirements of the *Modification of Final Judgment* in *United States v. American Telephone and Telegraph Co.,* Civil action NO. 82-0192 (D.C. D.C., filed August 24, 1982). Specifically, in this Section we address the treatment of FX and CCSA "open-end" access, private line and WATS services, "leaky PBXs," and ENFIA services as well as possible modifications to present categories and subcategories of Central Office Equipment. We also examine the basic compatibility of usage based and non-usage based separations costs allocators and various access charge plans.

A. Treatment of FX and CCSA "Open-End" Access

117. Foreign Exchange (FX) is a partially switched private line service offering which enables a customer to place calls to telephones in a distant or "foreign" exchange without paying MTS charges. Persons in the "foreign" exchange area can also place calls to the FX subscriber without paying MTS charges or using operator assistance to make a collect call. The FX subscriber receives two bills, usually from two different carriers. The bill for the "private line" covers service from the subscriber's telephone to the termination of his "line" at the central office switch in the foreign exchange. The subscriber also receives a bill for use of local exchange facilities in the "foreign exchange" or "open end" from the local carrier providing that service.

118. A Common Control Switching Arrangement (CCSA) is a leased private telecommunications system linked by dedicated lines through large switches located on a local telephone company's premises instead of PBX switches located on the customer's premises. While the dedicated lines are for the CCSA customer's exclusive use, he shares the switches with other private line service customers. A CCSA subscriber can also obtain the Off Network Access Lines Service (ONALS), an offering that provides much the same service as FX open-end access. The CCSA/ONALS subscriber also receives one bill for its "private line" and another for origination and termination services at each "open end." In the past both FX and CCSA/ONALS subscribers have been charged for origination and termination services at the "open end" at business local exchange (B-1) rates. *But see Pacific Telephone & Telegraph,* 88 FCC 2d 934 (1981).

119. In *New York Telephone Co.,* 76 FCC 2d 349, *recon. denied,* 81 FCC 2d 128, *aff'd sub nam. New York Telephone Co. v. FCC,* 631 F.2d 1059 (2d Cir. 1980), the Commission concluded that local exchange service used at the "open end" by interstate FX and CCSA/ONALS subscribers is part of an end-to-end interstate service subject to its jurisdiction. Thus, charges for such open end access ordinarily would be tariffed interstate and related costs would be included in the interstate revenue requirements. In this case, however, the carriers have always treated revenues and associated expenses and investment as intrastate. Nothing in the *Separations Manual* requires treatment to the contrary. In the past, the FCC has refrained from asserting its jurisdiction over local rates charged for FX/CCSA exchange access unless a carrier charged interstate FX/CCSA users a rate different from that charged local business customers for local services. *See Pacific Telephone and Telegraph,* 88 FCC 2d at 941-42. In the *Second Supplemental Notice* in CC Docket 78-72, however, the Commission stated that it would only allow this "anomalous situation" to continue until it could be resolved by revisions to the *Separations Manual.* If either the "Pure I" option proposed in that notice or the "Mixed I" option described in the *Fourth Supplemental Notice* were adopted as the interim access charge plan, failure to make such *Manual* revisions would require that adjustments be made to the access charge for FX and CCSA open-end services to avoid service subscribers' paying twice for their use of exchange facilities.

120. In its order establishing this Joint Board to recommend amendments to the *Separations Manual* facilitating access charge prescription, the FCC stated that language should be included in the *Manual* that expressly describes revenues, investments and expenses associated with interstate FX and CCSA/ONALS usage as interstate. As a first step toward developing this language, the Joint Board in its *Order* issued June 12, 1981 sought comments on the revisions which should be incorporated in the *Manual* in order to allocate to the interstate jurisdiction those revenues, investments and expenses attributable to open-end access service for interstate FX and CCSA and similar services. AT&T had already proposed to resolve the issue in its June 2, 1981 filing by revising definitions in the glossary of the *Manual* to indicate that these services would be treated as message services for jurisdictional purposes.

121. Those parties addressing the treatment of open-end FX and CCSA-like services in their comments and replies to the June 12 *Order* agreed that the costs and revenues attributable to these services should be allocated to the interstate jurisdiction. They also generally supported the AT&T proposal for achieving that reallocation. Such a change would shift related revenue requirements from the intrastate to the interstate jurisdiction; AT&T has estimated that if its revisions were adopted, the resulting shift in annual revenue requirements would be $144 million for the Bell System companies based on 1979 data.

122. The AT&T proposal is appealing in its simplicity. It appears, however, to have weaknesses which substantially undermine this strength. First, it is unclear that the revised definition of "message service" proposed by AT&T would, on its face, result in interstate FX and CCSA "open end" access services being treated as interstate message services for purposes of cost allocation. Treating these services as interstate message services would, in any case, lead to an economically irrational allocation between the jurisdictions of costs associated with traffic sensitive central office equipment. These costs are now allocated between exchange and toll message service on the basis of their relative dial-equipment-minutes

[46] *Notice of Inquiry and Proposed Rulemaking,* 67 FCC 2d 757 (1978); *Supplemental Notice of Inquiry and proposed Rulemaking,* 73 FCC 2d 222 (1979); *Second Supplemental Notice of Inquiry and Proposed Rulemaking (Second Supplemental Notice)* (77 FCC 2d 224 (1980); *Third Supplemental Notice of Inquiry and Proposed Rulemaking,* 81 FCC 2d 177 (1980); *Fourth Supplemental Notice of Inquiry and Proposed Rulemaking (Fourth Supplemental Notice),* 90 FCC 2d 135 (1982).

(DEMs).[47] The DEMs associated with toll message services, however, are weighted by toll weighting factors (TWFs) which reflect the relatively greater average cost of the toll message service's use of local dial switching equipment. AT&T recognizes that FX and CCSA "open end" use of traffic sensitive central office equipment is indistinguishable from exchange service use of that equipment. It agrees that TWFs should not be applied to the DEMs attributable to these interstate services. If FX and CCSA "open end" access is treated as message toll service, however, TWFs will automatically be applied to their DEMs. Finally there is a danger that in a transition period during which as new factor for allocating non-traffic sensitive exchange plant costs gradually replaces the subscriber plant factor, treating interstate FX and CCSA/ONALS open end services like interstate MTS could lead to rate churning and dislocation for FX and CCSA/ONALS customers.

123. The Joint Board would recommend as an alternative proposal that changes in specific sections of Parts 2, 3 and 4 of the *Manual* be made to achieve the following results:

(1) For allocating costs of traffic sensitive central office equipment, interstate FX and CCSA/ONALS open-end DEMs, *unweighted* by TWFs, would be added to interstate toll message service DEMs, *appropriately weighted*, to determine the share of these costs that the interstate jurisdiction will bear;

(2) Expenses attributable to interstate FX and CCSA/ONALS open-end access would be assigned to the interstate jurisdiction; and

(3) Revenues attributable to interstate FX and CCSA/ONALS open end access will be assigned to the interstate jurisdiction.

124. If a usage sensitive allocation factor is adopted for allocating non-traffic sensitive exchange plant, we would also recommend additional changes to Part 2 of the *Manual* to treat the costs associated with use of such plant by FX and CCSA/ONALS open-end service. First, we propose distinguishing between non-traffic sensitive (NTS) subscriber plant [48] costs and NTS Central Office Equipment (COE) costs attributed to these services. We note that when an FX user originates a call, the only subscriber plant on the open end that is used is that of the called party; similarly when an FX user receives a call from the foreign exchange, the only subscriber plant used on the open end is that of the caller.[49] For this reason we believe that in allocating costs of subscriber plant used on the open end of FX and CCSA/ONALS services, each minute of use should not be counted twice (as it is for exchange service). In allocating the cost of non-traffic sensitive (NTS) central office equipment, however, we believe that each FX and CCSA open-end minute of use should be counted twice to reflect the fact that both the origination and the termination of each FX and CCSA/ONALS call requires use of the foreign exchange's NTS central office equipment. Moreover, because termination of FX lines at the switch in the foreign exchange is more costly than is termination of local subscriber lines, we conclude that some weighting factor should be applied to FX and CCSA/ONALS open-end minutes of use for the purpose of allocating the cost of NTS COE attributable to FX and CCSA open-end access service. We seek comments discussing how this weighting factor should be determined. Finally we would recommend revising the *Manual* to assure that these NTS costs related to FX and CCSA/ONALS open-end access will be allocated between the jurisdictions based on the cost allocation factor which will ultimately replace the subscriber plant factor.

125. Proposed changes to the *Manual* which the Joint Board believes would achieve these results appear in the Appendix. This alternative seems to avoid the pitfalls of the AT&T proposal but lacks the latter's simplicity. This proposal would cause a smaller increase in the interstate revenue requirement than the AT&T proposal. We cannot estimate, however, how much smaller the increase would be until that new factor for allocating non-traffic sensitive exchange plant is selected.

126. We seek comments analyzing the proposed revisions to determine whether they, in fact, achieve the objectives listed above. We also seek comments which, in addition to analyzing the strengths and weaknesses of both AT&T proposal and our alternative proposal, suggest ways to improve them and to overcome or at least to minimize the flaws we perceive them to have in their present form.

B. Treatment of Private Line and WATS Services

127. A private line service (PLS) is one in which the customer leases a circuit not interconnected with the public switched network for his exclusive use. Subscribers use private line services to transmit voice, data and audio and video programming. The *Separations Manual* assigns the costs associated with these dedicated facilities directly to the appropriate jurisdiction. There has been a growing concern, however, that the different formulae for allocating exchange plant costs assigned to MTS and to private line services between the jurisdictions may have led in the past to discrimination between interstate MTS and interstate private line services. In the *Second Supplemental Notice* in CC Docket No. 78-72, the FCC concluded that the only way to eliminate such discrimination was to develop "new allocation procedures in which formulae would be applied uniformly for all services to those plant elements which are used in basically the same way by all services and applied selectively to specific services for those plant elements which are used differently for different services." 77 FCC 2d at 231. As a first step toward developing such new allocation procedures, in its June 1981 order, the Joint Board posed the following questions relating to the allocation of exchange plant dedicated to private line services:

Should any investment in non-traffic sensitive exchange plant that is directly assigned under the present Manual be allocated in some manner other than direct assignment?

If so, what formula should be used to assign or allocate such investment that falls within each of the following categories:

(a) Program transmission equipment and facilities; [and

(b) Other dedicated facilities].

128. All parties addressing the issue in their comments and replies favor the continued direct assignment to the appropriate jurisdiction of dedicated facilities for exchange private line services and for program transmission facilities and equipment.[50] In their

[47] Par. 24.83 of the *Separations Manual* defines "dial equipment minutes of use" to be: the minutes of holding time of the originating and terminating local dial switching equipment.

The *Manual* Glossary, in turn, defines "holding time" to be: The time in which an item of telephone plant is in actual use either by a customer or an operator.

[48] Costs associated with subscriber plant used on the closed end of these services are already directly assigned to the appropriate jurisdiction.

[49] By NTS subscriber plant we mean all NTS exchange plant other than that found in the central office. Subscriber plant would include subscriber lines, customer premises equipment and inside wiring.

[50] We believe that the proposed revisions to §§ 24.0311-.0314 of the *Manual* apearing in the Appendix achieve the result intended by the television networks' proposal. *See* Comments of American Broadcasting Companies, Inc. (ABC), CBS Inc. (CBS), and National Broadcasting Company, Inc. (NBC).

comments responding to our June 12 Order, the telephone companies (except GTE), their trade associations and some public utility commissions, favored including all interexchange private line service minutes of use in the computation of total interstate subscriber line minutes of use (SLU) used to allocate costs of NTS local exchange plant.[51] The principal argument they advance to support this option is that it will eliminate the discriminatory rates charged to MTS and WATS uers which arise from their shouldering a disproportionately large share of NTS subscriber plant costs. They also assert that MTS and WATS, to which subscriber plant costs are now allocated on the basis of a frozen subscriber plant factor (SPF), cannot compete with the functionally equivalent private line service. They claim that the "artificial competitive advantage" enjoyed by PLS (as well as FX and CCSA open-end access and OCC-ENFIA services) creates an artificial demand for such MTS-WATS alternatives against which MTS and WATS are hard-pressed to compete. This option, first posed by AT&T in its June 2, 1981 filing, would also increase the interstate revenue requirement. By substantially increasing the number of minutes counted in determining total interstate SLU, this would offset the impact of the revenue loss accompanying the deregulation of customer premises equipment to some extent, although the effect would differ from company to company.

129. Led by AT&T, most telphone companies have asserted that continuing to apply SPF to MTS and WATS while applying some reduced allocation factor to PLS and other competitive services only perpetuates an artificial demand for the latter categories of service. For this reason they claim that the same factor should be used from the outset to allocate subscriber plant costs to all competitive interstate services. Assuming that factor is initially SPF, AT&T estimates that adoption of its proposal would shift over one billion dollars of the Bell System's annual revenue requirement to the interstate jurisdiction. While agreeing that PLS should in the long term be treated like MTS and WATS, USITA is concerned about the impact of price distortions and false market entry signals upon PLS in the short term. For this reason it would apply pure SLU to PLS (as well as FX and CCSA open-end services) from the outset. Assuming that a usage sensitive factor other than SLU is chosen to allocate NTS plant costs for interstate MTS and WATS, the USITA approach, with SLU replaced by that factor, would avoid the short-term drawbacks of the AT&T proposal and would ultimately result in comparable allocations for competitive services. For this reason, the Joint Board would recommend USITA's modified approach if, but only if, a usage sensitive factor is chosen to allocate NTS plant costs to interstate MTS. It, like the AT&T proposal, would still provide a solution to the discrimination problem which was economically irrational. Either AT&T's modified proposal or USITA's modified proposal would result in the separations process paralleling the Pure I option for access rates.

130. GTE, NTIA, users of private line services, and the OCCs assert that the separations process should continue to assign directly to the appropriate jurisdiction not only those facilities already so assigned but also those dedicated facilities used to provide WATS access. Supporters of this option note that economic principles of cost causation require costs to be directly assigned whenever possible. They observe, moreover, that using a usage sensitive factor to allocate costs of non-traffic sensitive plant which can be directly assigned is economically unsound. Asserting that services like point-to-point interstate PLS, closed-end FX and CCSA, and WATS impose no costs upon and gain no benefits from the local public switched network, these parties claim that it is unreasonable to burden these services with an allocation of NTS local network plant based on usage. They express concern that spreading among the other interexchange services the pricing distortions now burdening MTS and WATS services will harm competition in both interstate and local communications services by encouraging, through strong artificial economic incentives, inefficient alternative systems which bypass the local network with its concomitant charges. The GTE proposal would be most in harmony with either the Pure or Mixed II options for an access charge plan.

131. We have already explained why we would recommend that if the Commission adopts a usage sensitive allocation factor, the costs of private line service should no longer be directly assigned. *See* para. 129. supra. If the Commission were to decide that direct assignment of these costs should continue, however, we would find the rationale for direct assignment of these costs should continue, however, we would find the rationale for direct assignment of WATS access lines to be convincing. We do, however, find a basic difference between WATS access and Private Line services that requires closer scrutiny of the application of direct assignment to dedicated WATS access facilities. Private Line services have been treated differently from services using the switched message network primarily because Private Line services do not directly access the public switched network. WATS, on the other hand, does employ the switched network.

132. Currently, the NTS costs associated with services accessing the switched message network are separated on an aggregated basis. That is, the aggregate NTS costs are separated in proportion to the aggregate usage of the NTS facilities. The WATS separations proposal before us, in essence, would disaggregate WATS access from other forms of network access for separations purposes.

133. With respect to WATS, we view the fundamental issue to include not only the question of direct assignment, but, also the propriety of special separations treatment of a selected service category. In effect, the WATS separations proposal would remove high toll usage facilities from the aggregate of all NTS costs and usage, resulting in an overall reduction of the assignment of costs to toll (predominantly interstate toll). However, the same approach could be applied to high local usage facilities with the opposite effect upon the overall separation of NTS costs. Thus, the issue of separate treatment of WATS access facilities raises the issue of whether the remaining NTS facilities should also be disaggregated for separations purposes.

134. We are deferring a recommendation concerning the treatment of WATS access facilities until we make our recommendation, concerning the method for the jurisdictional separation of NTS subscriber plant cost. We seek further

[51] The subsequently presented industry proposal for allocating NTS costs and a later independent presentation by AT&T suggest a change in the industry's position on the appropriate treatment of private line services. In the "Telephone Industry Presentation to Joint Board Staff" made on June 22, 1982, the industry recommended the use of a generic formula with a usage sensitive component to allocate the costs of NTS exchange plant. The usage factor it proposed was the current Subscriber Line Usage (SLU) Factor, modified to include interstate FX and CCSA open end usage and the effect of representative (*i.e.*, calendar day) traffic studies. From this recommendation it appears that the industry may no longer favor according uniform treatment to MTS and all interexchange private line services. In its presentation, AT&T has explicitly altered its earlier position and has expressed support for the continued direct assignment of facilities dedicated to interexchange private line services.

comment on this matter specifically addressing the propriety of the separate treatment of WATS access facilities while maintaining the aggregate separations approach for other NTS facilities.

135. The *Second Supplemental Notice* in CC Docket No. 78-72 described the ability of some private line services to access local exhange facilities indirectly through a PBX for the purpose of originating or completing long distance calls. The resulting use of exchange facilities is indistinguishable from that made by a local call and consequently associated costs are treated as exchange costs rather than interstate costs. The *Separations Manual* does not currently recognize the "leaky PBX" problem. 77 FCC 2d at 241.

136. The June 1981 Joint Board order asked parties to this proceeding:

What provisions, if any, should be adopted to avoid or to adjust for the miscounting of usage when a call from an interstate private line is switched through a PBX to a line that is used for local exchange?

Appendix, Part III, Question 2. Even those parties who generally support the continued direct assignment of NTS plant costs to interstate private line services believe that some allocation of costs in addition to those directly assigned costs is appropriate for those services achieving access to local facilities through a "leaky PBX." Their solution would be to allocate on a relative usage basis only the costs of those private line access arrangements which are jointly used. AT&T responds that any valid measurement technique to capture only such traffic would be prohibitively expensive and would require the physical presence of telephone company employees on the property of others to conduct measurements of property and facilities belonging to others. According to AT&T, the latter requirement makes this solution not only costly but also extremely impractical. SBS suggests that the information needed to implement this option can be readily obtained through the use of an automatic identification of outbound dialing device (AIOD).

137. AT&T and others who have supported analogous treatment for private line services and MTS in the separations process assert that the use of indirect access to exchange facilities by interstate private line users is additional justification for such treatment. Whether the "leaky PBX" problem warrants treating all private line services like MTS when allocating NTS exchange plant costs, however, turns on one's assessment of how widespread and frequent such occurrences are. The *Second Supplemental Notice* in Docket No. 78-72 expressed the belief that the use of indirect access by private line subscribers is extensive and is an additional justification for including private line services when allocating elements of an access charge reflecting NTS plant costs. 77 FCC 2d at 241. SBS believes such use to be *de minimis*. The Ad Hoc Telecommunications Users Committee correctly notes the lack of evidence at this point in the proceeding concerning how frequently indirect access to the exchange network occurs.

138. We conclude that before we can recommend that costs should be allocated to some or all private line services because of private lines service off-net access to exchange facilities, some effort should be made to quantify the magnitude of the problem and to determine whether it is even feasible to try to measure such use. One way to resolve these questions may be to use AIODs to monitor usage of PBXs provided to customers by the telephone company in one or more representative exchanges (*i.e.*, urban or suburban rather than rural) during a representative time period (*i.e.*, one in which an unusually large number of holidays or vacation days does not occur). We request comments on whether such an approach, which limits sampling to only equipment provided by telephone companies, would lead to statistically sugnificant information. In addition, we seek comments assessing the feasibility of such an approach, including a discussion of the logistics, costs and difficulties associated with implementing this approach as well as suggestions of reasonable alternatives to obtain this information.

C. Treatment of ENFIA Services

139. ENFIA (Exchange Network Facilities for Interstate Access) is the generic term describing the access facilities that telephone companies have provided to other common carriers (OCCs) for origination and termination of the OCCs' MTS-WATS like interstate services. ENFIA A, the original form of access the telephone companies offered the OCCs, provides access through line side terminations into a Class 5 switch and requires the use of a seven digit number to enable an OCC customer to reach An OCC switch. ENFIA B and ENFIA C, more recent telephone company offerings, provide access through trunk side connections to Class 5 local offices and through trunk side connections to tandem offices, respectively. Unlike ENFIA A, ENFIA B provides signaling information, automatic number identification and answer supervision and permits subscriber use or rotary dial telephones to reach OCC switches. While ENFIA C does not provide these additional services, it permits the OCC switch to serve subscribers in more than one exchange directly.

140. On April 16, 1979, the FCC approved the ENFIA Interim Settlement Agreement that representatives of the OCCs and the telephone companies had negotiated to establish methods for computing the charges that the Bell Operating Companies (BOCs) and GTE operating companies would impose upon OCCs for their use of local facilities during the limited period covered by the agreement. *See Exchange Network Facilities for Interstate Access* (ENFIA), 71 FCC 2d 140 (1979). The agreement which would otherwise have expired on April 16, 1982, was extended by the Commission, and will now expire when the FCC access charge plan becomes effective or on April 16, 1984, whichever comes first.

141. The *Separations Manual* does not recognize OCC use of exchange facilities to originate and terminate their interstate service offerings as being either interstate or intrastate usage for purposes of cost allocation. Under the *Interim Cost Allocation Manual* adopted by the FCC, however, costs are allocated to ENFIA as an interstate service. In particular, the subscriber plant factor, discounted by 45 percent, is applied to ENFIA minutes of use to allocate non-traffic sensitive exchange plant costs to this service. The telephone companies providing ENFIA have filed interstate tariffs or contracts with the FCC and treat the revenues from this service as interstate.

142. Parties addressing the issue in their responses to the Board's June 12, 1981 *Order* agree that the *Manual* should be revised so that it explicitly allocates to the interstate jurisdiction, the investment, expenses and revenue attributable to interstate OCC-ENFIA use of local facilities. Most parties agree that the current *Manual* treatment of MTS and WATS leads to pricing distortions for these services when compared to competitive services like those provided by the OCCs. With respect to the issue of the most appropriate modification to correct this imbalance, however, they fall into two different camps.

143. Parties in the first group, including AT&T, would allocate the costs of non-traffic sensitive exchange plant, expenses and revenues attributable to OCC-ENFIA services in

the same way as MTS and WATS. With respect to allocating costs of traffic sensitive Category 6 central office equipment, they would include interstate OCC–ENFIA dial equipment minutes of use in the computation of interstate DEMs, but appear uncertain whether weighting factors should be applied to ENFIA DEMs. Centel suggests that there may be a need to develop new TWFs to apply to OCC–ENFIA usage of local switches if the cost of providing such services differed from that for local services. USITA believes that the possibility of weighting such DEMs should at least be considered.

144. In the other camp the OCCs assert that costs assigned to them should reflect the inferior interconnection they receive. They strongly oppose application of any usage sensitive allocation factor which would increase the cost of non-traffic sensitive exchange plant allocated to their services. If a usage sensitive factor is used to allocate such costs, they believe it should not exceed SLU. SPCC claims that the AT&T proposal would result in a one-step increase of 82 percent in the rates charged the OCCs. The OCCs assert that no weighting factor should be applied to their ENFIA A DEMs in allocating the cost of traffic sensitive local dial switching equipment because a call to or from an OCC local number is functionally indistinguishable from any other local call.[52]

145. We agree with the parties that the *Separations Manual* should explicitly recognize OCC-ENFIA use of local facilities. Assuming that a usage sensitive allocation factor is chosen to allocate non-traffic sensitive exchange plant costs to the interstate jurisdiction, AT&T has proposed that ENFIA minutes of use (MOU) be treated like interstate MTS minutes of use. The OCCs propose that these MOU be treated like exchange MOU. The former approach could in the short term lead to rate changing and customer dislocation for the OCC services. The latter would perpetuate the price distortions between competitive interstate services. We recommend that if a usage sensitive formula is adopted to allocate NTS exchange plant costs to the interstate jurisdiction, that formula be applied to ENFIA minutes without any transition factor. Proposed revisions to the *Manual* intended to implement our recommendation appear in Appendix A. While the impact of adopting this approach would be a function of the allocation factor adopted, this approach would shift some revenue requirements from the interstate to the state jurisdiction. Of course, if a usage sensitive factor is not adopted, there would be no need to adopt this proposal.

146. We agree with the OCCs that ENFIA A service, the predominant ENFIA service, uses local switches like exchange service. We believe the same can be said for ENFIA C service. We recommend that, for apportioning costs of traffic sensitive switching equipment, all ENFIA A and ENFIA C dial equipment minutes be treated like exchange service DEMs with no toll weighting factor applied to them. ENFIA–B, however, appears to use the local switch more like MTS and WATS open-end service than like exchange service. We are uncertain whether the similarity is close enough to require that the TWFs applied to MTS DEMs also be applied to DEMs attributable to ENFIA–B or whether there is a need to develop additional TWFs which would be smaller than the MTS TWFs and which would be applied only to ENFIA–B DEMs. In order to determine which is the more appropriate treatment, we are seeking comments that identify the differences between the use of traffic sensitive Category 6 COE made by ENFIA–B and the use made by MTS and that quantify the cost differentials related to those usage differences.

147. We believe that telephone companies, when doing their separations studies, must be able to distinguish between ENFIA interstate and intrastate minutes of use as well as to know the total ENFIA minutes of use. To assure that the companies have the necessary information, we would recommend that the OCCs be required to report their relative minutes of use for ENFIA services in a given study area to the telephone company providing them access in that area. Rather than defining "minutes of use" in the *Manual*, however, we would propose that the OCCs report "raw" billed minutes of use. We recommend that the *Manual* contain a statement of the principles which would govern the telephone companies' use of those raw numbers to compute usage sensitive allocation factors similar to the statement which describes the principles underlying the development of TWFs.[53] *See* Para. 24.831 of the *Separations Manual*. We specifically request suggestions for such principles to be incorporated into the *Manual*.

148. We are seeking comments discussing the strengths and weaknesses of our proposals for treatment of ENFIA costs as well as the proposed treatment of ENFIA minutes of use. We are also requesting comments analyzing whether the proposed revisions to the *Manual* would achieve the intended results and suggesting improvements to overcome any shortcomings.

D. Central Office Equipment

149. The *Separations Manual* divides central office equipment (COE) into eight categories, the largest of which is Category 6, Local Dial Switching Equipment.[54] Category 6 equipment is further subdivided into non-traffic sensitive (NTS) and traffic sensitive (TS) subcategories. To allocate the cost of non-traffic sensitive Category 6 COE to the interstate jurisdication, the *Manual* now applies the subscriber plant factor to MTS and WATS relative minutes of use. To apportion the costs of the traffic sensitive equipment between the two jurisdictions, the *Manual* uses dial equipment minutes of use (DEMs) for MTS and WATS, with weighting factors applied to the toll services.

150. In other sections of this *Order* we have discussed and, in some cases, proposed revisions to the *Manual* which would explicitly account for use of Category 6 COE by FX and CCSA/ONALS open-end access and ENFIA services. *See* Paras. 124–25 and 145–47, *supra*. In this section we discuss whether changes in the telecommunications environment—both economic and technical—compel changes in the rules for allocating the costs of COE, and the definition of Cateogy 6 COE, In particular, we focus on whether there is a need to recognize the impact of digital electronic technology reflected in the increased use of host-remote complexes.

151. Commenting parties are in substantial disagreement with respect to the need for changes in the treatment of central office equipment generally and Category 6 COE in particular. With few exceptions the telephone companies saw no need to change *Separations Manual* treatment of COE. The OCCs, however, asserted that there was a need for greater specificity in describing the equipment to be included in each category and, with respect to Category 6, distinguishing the equipment

[52] The ENFIA B and ENFIA C service offerings did not exist when the comments annd reply comments to the June 1981 *Order* were filed.

[53] Such principles might include, for example, that adjustments should be made to reflect OCCs' rounding seconds of use to the nearest half-minute or to reflect OCCs' billing for a minimum number of conversation minutes whether a customer in fact uses that number or fewer. For a more general discussion of our recommendations concerning the appropriate *Manual* treatment of usage measurements, *see* paras. 204–208. *infra*.

[54] *See* Para. 24.81 of the *Separations Manual*.

considered traffic sensitive from that considered non-traffic sensitive. They supported the general principle that whenever possible, costs should be identified and directly assigned to the cost causative service. Specific proposals to amend the *Manual* were, however, rare.

152. United noted that the classification of investment as traffic or non-traffic sensitive in stored program controlled central offices has become increasingly difficult and arbitrary. For this reason, it proposed classifying TS and NTS Category 6 COE by establishing a demarcation point between them at the network access selection port. [55] Local dial switching equipment between the main distributing frame [56] and parts serving as call originating junctors [57] for network access would be considered NTS. TS plant would include line finder [58] units and subscriber terminating trunk units or junctors.[59] SPCC in contrast would refine the definition of traffic sensitive Category 6 COE to identify the traffic sensitive equipment used for switching different types of calls and would create three subcategories of traffic sensitive equipment used for switching: local intraoffice, local interoffice and toll.

153. In its response to increased use of digital technology, Northeast Nebraska Telephone Company would go one step farther. It recommends creation of a distinct category of COE to include all digital switches. There would be no distinction between traffic sensitive and non-traffic sensitive plant in this category because, according to Northeast Nebraska, this distinction, which reflects the technological characteristics of older kinds of switches, is inappropriate to the new technology. While it leaves unspecified the factor to be used to allocate investment in this new category between the jurisdictions, the telephone company urges that the factor selected should create an incentive for companies to develop and invest in digital equipment. Northeast Nebraska finds that the usage sensitive allocation factors now under consideration for apportioning investment in Category 6 COE would provide a disincentive for rural carriers to invest in digital equipment.

154. Several parties agreed that the *Manual* should be revised to recognize the existence of host/remote complexes. These complexes, a result of recent advances in both analog and digital switching technology, consist of a base switching unit located in a central office linked to remote offices consisting primarily of subscriber line terminations and located some distance from the base unit. These remote units are usually dependent upon the host's central processing unit for call-processing and inter-location switching functions. Carriers may choose to use such remote units rather than additional central offices because they represent a savings in both transmission and switching costs. This choice, however, can affect toll revenues adversely.

155. AT&T has proposed that a host/remote complex be treated explicitly as Category 6 COE investment and has proposed incorporation of the following language in the *Manual* to accomplish this:

24.812 A host/remote local dial switching complex is comprised of an analog or digital host office and all of its remote locations. A host/remote local dial switching complex is treated as one local dial office.

24.821 . . . particular type of equipment (step-by-step, panel, crossbar, *electronic—analog or digital*, etc.) . . .

24.831 [Same changes as in 24.821.]

It would also add the following definitions to the *Manual* Glossary:

Host Central Office: An electronic analog or digital base switching unit containing the central call processing function which services the host office, the host office's remote locations and concentration equipment.

Remote Location: A remotely located subscriber line access unit which is normally dependent upon the central processor of the host office for call processing functions. A remote location has the necessary equipment and operating arrangements for terminating and interconnecting subscriber lines and trunks.

Concentration Equipment—Central office equipment in the same exchange as the serving office whose function is to concentrate traffic from subscriber lines onto a lesser number of circuits between the remotely located concentration equipment and the serving office concentration equipment or digital interface. Concentration equipment does not include the necessary equipment and operating arrangements for remotely interconnecting subscriber lines should the connecting facility experience service interruption.

156. The AT&T proposal appears to include only remote units with intra-location switching capability as part of a host/remote complex. Remote units lacking this capacity would be treated as concentration equipment. Shenandoah Telephone Company recommends including both categories of remote units as remote locations. Shenandoah is also concerned about the impact on toll settlements of replacing a central office by a small remote office served by a host at a different rate point; it fears that the AT&T definition does not adequately protect telephone companies making that replacement choice. Both GTE and Shenandoah believe that the term "exchange" in the AT&T proposal is ambiguous. GTE would clarify it by adding the following words to Par. 24.812 and to AT&T's definition of "remote location":

24.812 . . . The currently accepted contractual definition of an exchange will continue to apply.

Remote Location— . . . Also included is concentration equipment which is located in a separate exhange from the host central office.

In addition, if SLU is used to allocate costs of NTS components of a host/remote complex, Northeast Nebraska telephone company proposes excluding from the development of SLU the minutes of use between host and remote offices resulting from intraexchange calling by subscribers in the remote exhange area. It would treat such minutes of use as supervisory and non-revenue producing.

[55] In a telephone conversation initiated by the federal Joint Board staff on September 21, 1982, a representative of United explained that the telephone company had used the phrase "network access selection port" as a generic term to describe the point of demarcation between traffic sensitive and non-traffic sensitive Category 6 COE. For a step-by-step central office, these selection ports would in fact be the linefinder banks. For crossbar switches, United would distinguish between the ITT North crossbar and the Western Electric crossbar. The network access selection port for the former would be the subscriber line access (SLA) connection switch while for the latter it would be the junctor trunk. Finally, for digital electronic offices, United would select the line card and line card shelf as the port. In each case, the port and all switching equipment between it and the main distributing frame would be treated as non-traffic sensitive, while switching equipment on the "other side" of the port would be considered traffic sensitive.

[56] A distributing frame is: A rectangular bar steel framework having 'verticals' on which protectors and terminal blocks may be fastened, and open shelves, 'horizontals,' on which terminal blocks may be mounted. Smith, Glossary of Communications 161 (1971) (*Glossary*).

A main distributing frame is: A distributing frame at which outside plant cables terminate on vertical protector strips from which they cross-connect to central office line equipment terminated on horizontal blocks. *Glossary* at 162.

[57] The *Glossary* defines "originating junctor" as follows: In an electronic central office, a circuit which provides a temporary path from the 'line group' matrix to a register-sender, then, under direction of the register-sender, advances the call through an inlet circuit to the 'group selector' matrix. *Id.* at 20.

[58] A line finder is: A switching mechanism which finds a calling line out of a (large) group (over 100) and connects it to an intra-office trunk, usually to a local first selector. *Glossary* at 222–23.

[59] "Terminating junctor" is defined to be: (I)n an electronic central office, the circuit which connects to the calling line and performs register functions, such as: pulse repeating, party identification, dial tone control, coin detection, and coin refund. *Glossary* at 208.

157. We believe that the *Separations Manual* must at some point be revised to reflect the differences between digital switches and the switches they are replacing since existing *Manual* provisions for allocating costs do not treat these differences. In particular, we believe the *Manual* should specify the treatment to be accorded the cost of host/remote complexes. Our inclilnation at this time, however, is to defer any changes that would account for the increasing presence of digital technology in the network. The Joint USITA–Bell Digital Technology Task Group has not yet issued its joint recommendation for establishing separations procedures to treat digital switching applications including host/remote complexes. We believe that we need more information of the sort that the Group might provide before we can propose specific *Manual* revisions. We are also requesting comments concerning whether the AT&T proposal should be modified (as Shenandoah Telephone Company suggests) to enlarge the class of remote units treated as remote locations. Also, we seek comments as to whether additional revisions are required to protect local telephone companies from any sharp drop in toll revenues caused by their choice of the more efficient digital technology, and in particular host/remote complexes. In their comments parties should also specify to which category of central office equipment they would assign concentration equipment.

E. Revenue Accounting Expense and Business Relations Expense

158. Among its proposed modifications relating to access, AT&T recommends changes in the allocation of revenue accounting expense and business relations expense. AT&T Proposal, June 2, 1981, Attachment B, pp. J8–24. The number of classifications of revenue accounting expense would be expanded from three to five. Business relations expense is now segregated into toll ticket processing expense, local message processing expense and other billing and collecting processing expense. AT&T would add two more categories: billing, collecting and processing expenses "associated with charges to other providers of toll type services for exchange access," and "the expense associated with the supporting data needed to identify and segregate the exchange access revenues from interexchange network revenues." Essentially these changes would segregate expenses for the billing and collecting of access charge revenues from other common carriers.

159. Similarly, the changes proposed for business relations expense would attempt to segregate those expenses "associated with those employees engaged in negotiating, coordinating and supervising activities related to the provision of access facilities for interexchange services offered by other common carriers." These expenses can be found in Account 645, Local Commercial Operations, and Account 640, General Commercial Administration.

160. In support of these changes AT&T cites a section of the *Second Supplemental Notice* in Docket 78–72 (for revenue accounting expense) and a statement that "in order to segregate the Bell Point of Contact expenses in the access charge plan, they must be included in the allocation process."

161. General Telephone concurs with the AT&T proposals, as do other telephone companies. On the other hand, the OCCs, particularly SPCC and USTS, take exception to the AT&T suggestion. USTS notes "that the jurisdictional *Separations Manual* should not include procedures specific to individual types of carriers, categories of service or tariff names." USTS Comments, p. 20. USTS argues for "generic" procedures which are based on well-defined units, common to all carriers and services. It avers that the AT&T proposals are not general, but are specific to the OCCs.

162. SPCC argued that these proposals should not be considered because they are beyond the Joint Board's authority. SPCC Reply Comments, July 20, 1981, pp. 4–5. In a later round of comments, though, SPCC addressed the revenue accounting and business relations expense issues directly. SPCC Comments, August 17, 1981, pp. 60–64. Both proposals discriminate against OCCs, according to SPCC. While noting that it would not object to a fair allocation of revenue accounting expense, SPCC points out that the AT&T method would allocate these expenses to OCCs on the basis of the relative number of OCC customers. SPCC argues that it should be treated like other large volume private line users, and that AT&T would be singling out the OCCs for special discriminatory treatment. SPCC also contends that AT&T's proposed method for allocating business relations expenses would treat OCC services differently than AT&T services and "would potentially result in the allocation of more than 100% of the total expenses for this account because two different sets of allocation factors would be used." SPCC suggests that the equitable approach would be to allocate the OCCs' costs on the same basis as all other expenses in Account 640.

163. The Joint Board has every desire to increase the utility of the separations process and to facilitate its use in the development of access charges. *See* our discussion *supra*, at paragraphs 165–203. However, AT&T is here proposing a completely different means of handling expenses incurred by local companies in providing services to OCCs than used to account for expenses related to the interconnection of AT&T's toll services. It is true that the procedures for dealing with AT&T and the OCCs now differ. AT&T, though, will likely become a taker of access service under tariff. The justification for the distinction will disappear, if not through the development of an access charge, then through the August 24, 1982 consent decree reached in the Justice Department's antitrust suit against AT&T.

164. The changes proposed by AT&T appear to be more oriented toward segregating costs of dealing with OCCs than in the jurisdictional allocation of exchange costs. These suggestions further distinguish between AT&T and its competitors and will institutionalize this diverse treatment in the *Manual*. We tentatively believe that the changes proposed for revenue accounting expense and business relations expense should be rejected.

F. Separations Methodologies and the Access Charge

1. *Introduction.*

165. The changes in the *Separations Manual* recommended by this Joint Board would not exist in a vacuum. To recover the interestate revenue requirements determined by the *Separations Manual*, some type of rate mechanism is required. The development of competition in the industry makes it essential that no interstate carrier, and, indeed, no carrier operating in a competitive environment is given an artificial advantage in the recovery of these costs. Ensuring that costs are recovered fully and in a nondiscriminatory manner is the task undertaken by the Commission in the *MTS-WATS Market Structure Inquiry* (the *Access Charge Proceeding*).

166. There is an important logical distinction between the Joint Board's action in recommending cost assignment procedures and the Commission's action in designing access charge principles. As the Commission noted in its *Second Supplemental Notice* in the *Access Charge Proceeding*, 77 FCC 2d 224, it is certainly possible to charge for access on bases different from the separations

assignments so long as the total interstate revenue requirement is satisfied.[60]

167. Despite the logical distinction between access charges and separations, the combination of certain separations and access charge options may cause difficulties and make recovery of revenue requirements more difficult than would other combinations. Thus, it would be prudent to select separations principles and access charge rules that are complementary rather than in conflict.

2. *The Access Charge Options.*

168. In the June 1982, the Commission released its *Fourth Supplemental Notice of Inquiry and Proposed Rulemaking* in the *Access Charge Proceeding,* 90 FCC 2d 135 (1982). In this notice, the Commission sought comment on a variety of options for recovering interstate NTS revenue requirements. Specifically, the Commission recognized that the access charge must recover the revenue requirements determined through the separations process. The existence of this Joint Board further encouraged the Commission to consider a range of alternative access charge methodologies in the process of determining which methodology will best satisfy the Commission's goals of promoting both network efficiency and universal availability of service.

169. Rather than ask for comments on a single plan, the Commission requested comments on four fundamental approaches to NTS cost recovery. These approaches have been termed Pure I, Mixed I, Pure II, and Mixed II. The Commission sought comment on which of these plans, or which combination of plans, would best satisfy the Commission's objectives of enhancing network efficiency, preventing uneconomic bypass, eliminating unlawful discrimination, and maintaining nationwide availability of service.

170. Pure I restated the Commission's tentative approach enunciated in the *Second Supplemental Notice.* Under this plan, virtually all interstate services would pay for NTS exchange plant on a minutes of use basis. Such an approach, it was felt, would eliminate the comparative disadvantage under which MTS–WATS must labor as a result of the multiplicative SPF factor. *See Fourth Supplemental Notice,* 90 FCC 2d at 139–40.

171. A possible drawback of the Pure I approach is its effect on private line rates. Specifically, comments filed in response to the *Second Supplemental Notice* indicated that this plan would lead to private line access rate increases averaging 600 to 1000 percent. Such rate increases, it was argued, would lead to massive withdrawal from the telephone network and to the construction of uneconomic bypass systems.

172. Private line minutes of use have no effect on the total cost per line of private line service. A per minute charge would encourage private line subscribers to use their private line facilities less fully with no apparent advantage to anyone. Mixed I recognizes this; while it proposes to recover some costs allocated to the interstate jurisdiction based on use and the SPF multiplier in the case of MTS (as does Pure I), it would recover the remainder of these costs on a per line rather than a usage basis. The Mixed I approach proposes allocating a share of the public switched network "contribution" (*i.e.,* (SPF–SLU) x NTS plant in the public switched network) to the private line category in addition to directly assigning any private line costs to this category. The allocator discussed in the Notice is "equivalent lines" where each private line is one equivalent line and where each "common line" is SLU equivalent lines. This formula would recover somewhat fewer costs from private lines than would Pure I (although more costs than at present), and would not vary with private line use. By spreading the contribution between services, any artificial disadvantage held by MTS/WATS would be alleviated. *See Fourth Supplemental Notice,* 90 FCC 2d at 141–42.

173. Pure II is based on the recognition that non-traffic sensitive costs are non-traffic sensitive regardless of the category of service with which they are associated. Recovering such costs through a traffic sensitive rate would almost certainly lead to inefficient use of the network. Charging the cost causative customer on the basis by which costs are caused (*i.e.,* on the basis of the number of loops and the amounts of CPE and inside wiring held by each customer) is a major step toward an economically efficient price.[61] For this reason, Pure II would recover the interstate NTS cost assignment on a per loop basis. Each customer, no matter what his interstate use, would pay a flat rate NTS interstate access charge. *See Fourth Supplemental Notice,* 90 FCC 2d at 140.

174. The fourth plan, Mixed II, proposes a capped usage access charge under which users pay for service on a usage basis up to some limit. Heavy users, it is argued, would perceive the plan as a flat fee (*i.e.,* they will be at the ceiling) and would receive the advantages that they would have had under Pure II. As a result, they would not limit their calling in the way that they would under a pure usage plan. Since such call restrictions are inefficient, the flat fee component would enhance efficiency. It would also allow these users to make a more rational decision between the use of private lines and MTS/WATS, provided that they could not use private lines to appear as low volume users on their common lines. Since multiline business users are likely to be able to vary their use of the different lines to appear as heavy (capped) users of some lines and as nonusers or small users of other lines (and thereby pay less than the full costs of their loops), and because these users (as a class) have shifted additional CPE and inside wiring costs to the interstate jurisdiction, it was proposed that all multiline business users pay the cap regardless of per line usage. Small users under Mixed II would continue to pay for NTS plant on a usage basis so long as their NTS contribution is less than the cap, and would continue to pay less than heavy users. Because many small users make no, or very few, interstate calls, it is necessary that the ceiling be set somewhat higher than would be the per loop charge under Pure II. The Commission also requested comment on whether some form of equalization contribution from private lines would be appropriate. *See Fourth Supplemental Notice,* 90 FCC 2d at 142.

175. The Commission is also concerned about structures for recovery of traffic sensitive costs through access charges. There too, consistency between the *Separations Manual* methodology and the Commission's decision in the

[60] The Commission stated in the *Second Supplemental Notice:*

The argument that exchange access service compensation arrangements cannot be changed without Separations Manual changes confuses aggregate costs allocations between interstate and intrastate services with cost allocation among interestate services. Total interstate access charge revenue requirements . . . must be based upon the aggregate exchange plant costs allocated to interstate or foreign services through the jurisdicational separations process. . . . However, there is no misallocation between the state and interstate jurisdictions if aggregate interstate exchange plant costs are allocated among interstate services in a manner that differs from the message and private line allocations that were used to arrive at an aggregate allocation between interstate and intrastate services.

[61] Economic efficiency requires, *inter alia,* that prices be equal to the marginal cost of production, so long as externalities are not present and so long as marginal cost pricing results in full cost recovery. In some cases, deviations from marginal cost pricing are required. *See, e.g.,* Baumol and Bradford, "Optimal Departures from Marginal Cost Pricing," 50 *American Economic Review,* 265 (1970). In general, however, cost based pricing is required as at least the base on which corrections are built.

Access Charge Proceeding is desirable. In addition, the *Fourth Supplemental Notice* asked how the access charge should be collected, aggregated and managed. Various alternatives, ranging from telco by telco "bill and keep" (where each telco bills its calling customers and keeps the NTS interstate payments paid by its customers) to nationwide averaging, were set forth for comment. *See Fourth Supplemental Notice,* 90 FCC 2d at 147–52.

3. *Access Charges and Separations.*

176. All of these access charge plans and implementation possibilities take the costs assigned to the interstate jurisdiction from the *Separations Manual* as a given. As was noted in the *Fourth Supplemental Notice*, however, certain separations methodologies are more consistent with certain access charges approaches and less appropriate with others.

4. *Usage Based Separations.*

177. Usage based NTS allocation plans like SPF and SLU appear more consistent with usage based access charges. Usage, of course, is not precisely predictable. Heavy usage results in an increased allocation of NTS cost to the interstate jurisdiction.[62] Other things being equal, a usage based access charge would recover more revenue in periods of heavy use, allowing the revenue recovery to track the changes in revenue requirement fairly readily.

178. Any access charge associated with usage based separations would require estimation of usage levels. Usage based rates accompanied by usage based separation requires both an estimation of absolute usage and relative usage. A dramatic change in the way that access costs are recovered would be likely to result in changes in calling patterns that would be harder to predict than those resulting from relatively minor changes. Either a substantially different usage factor for separations purposes (which would require different access rates even under a constant access methodology) or the selection of a different access charge mechanism would militate against the continued use of any relative usage based proposals for separations since it would be difficult to predict the interstate allocation and the resulting revenue requirement.

5. *Nonusage Based Separations.*

179. Nonusage based separations, including both pure gross assignment and "buffered" gross assignment (*i.e.,* adjusted to reflect relative use) approaches are most desirable when accompanied by nonusage based access charges. Usage based access charges with a nonusage based assignment method could lead to difficulties that go beyond the estimation problems discussed above. Nevertheless, usage based access charges could be implemented with a nonusage based jurisdictional assignment.

180. One problem that might result from the combinaton of a nonusage based jurisdictional assignment process with a usage based access charge is an increasing cyclical variation in interstate calling patterns. To see this, assume a recession which lead to a decline in the number of interstate calls made. Should this occur, it would be necessary to increase the usage based access charge to recover the fixed interstate revenue requirement generated through the gross assignment based separations. This increase, however, would lead to further calling repression and to the need for still higher per unit access charges. Likewise an economic boom would increase calling, allowing for a reduction in per call access charges and to further calling stimulation.[63] In the past, however, recessions have led to reductions in the *rate* at which interstate traffic has grown, not to absolute decreases in the number of calls. If this trend continues, the danger of severe cyclical effects suggested above appears to be only a theoretical possibility.

181. It is apparent that such a combination of usage based access pricing and flat rate separations might lead to erratic calling patterns, making network design difficult and leading to dramatic underuse in certain periods and to heavy blockage in other periods. Even with usage based access charges, however, a nonusage sensitive separations method has some substantial advantages. First, a major goal of this proceeding is to alleviate the continued movement of costs to the interstate jurisdiction. Given past trends in relative usage, particularly if reinforced by an increasing move toward usage sensitive pricing for local service, a relative usage based formula is likely to result in continued undesirable cost shifts. A nonusage sensitive approach to separations would help prevent this. Second, the increase in interstate usage combined with nonusage sensitive allocations would allow gradual reductions in per call NTS rate recovery, moving toward the efficient per call price.

6. *Separations and the Mixed Plans.*

182. Within the limitations discussed above, either usage or nonusage based separations methodologies could be adapted to fit access charges based on either Pure I or Pure II. Because each user pays for access on the same basis, there is little danger that changes in one user's calling patterns would have an adverse effect on others. This is not the case with either of the mixed strategies. In both Mixed I and Mixed II, different types of network usage produce different effects on access charges. If the *Separations Manual* does not reflect this, it is possible that undesirable repercussions could follow.

183. Mixed I recognizes that private line costs do not depend on usage and would not change for these costs on a usage basis. Usage based separations procedures, however, would allocate private line costs on a usage basis.[64] Doing so would not bear any relationship to private line costs or cost recovery, and would tend to merge private line and switched costs, making it difficult to detect any inter-service cross-subsidy. So long as private line costs are to be recovered on a nonusage basis, it is important that private line costs be directly (grossly) assigned regardless of whether MTS/WATS costs are allocated on a usage basis or on a gross assignment basis. For the reasons discussed above, under Mixed I it might be desirable to allocate MTS/WATS costs on a gross assignment basis. This approach would also prevent further growth in the interstate share of costs.

184. Mixed II is largely based on a flat payment approach and attempts to preserve many of the economic advantages of Pure II. Nevertheless, a substantial share of total customers would continue to pay for NTS plant on a usage basis. Due to the differences in how NTS exchange costs are recovered under Mixed II, a pure usage based separations system would be somewhat inappropriate.[65] Likewise, a pure gross

[62] This, of course, is an eversimplification. In fact, NTS costs are allocated under SPF or SLU on a relative usage, rather than an absolute usage basis. As a result, and increase in interstate usage might result in a dramatic increase, in no change, or even in a decrease, in interstate assignment depending on whether it was accompanied by a decrease or an increase in intrastate use.

[63] Of course, a similar result could occur under a relative use allocation. Suppose that a recession led to decreased interstate calling. The reduction in interstate share would raise intrastate revenue requirements, resulting in fewer intrastate calls being made. This in turn would result in increased interstate revenue requirements and in further call repression.

[64] The present *Separations Manual* already makes a distinction between private lines and MTS/WATS, and is, therefore, consistent with a Mixed I type of approach. If Pure I were implemented, a consistent private line and MTS/WATS allocation might be more acceptable, although, as noted in the *Second Notice,* it would not be necessary. *See* n. 60 *supra.*

[65] A limit on the costs assigned to the interstate jurisdiction by the usage on any individual line

assignment approach might involve some difficulties.

185. Because large users' NTS contributions would be capped under Mixed II, these heavy users are likely to increase their use of the network (at least the MTS/WATS component of the network) substantially. Under a usage based *Separations Manual*, the result of this increase in usage would be a dramatic increase in the amount of costs assigned to the interstate jurisdiction. This increase in interstate costs would have to be reflected in the access charge either through a higher cap, higher per use charges for the small users, or most likely both. It would also result in a reduction in the intrastate revenue requirement.

186. The increased cap and usage charges would tend to result in an increased segmentation of the market between small and large users. Because the cap would be higher, there would appear to be two distinct services and the gap between the low usage charge and the high usage cap could appear so great that relatively few users would be able to make the transition from usage to capped schedules.[66] To the extent that a major purpose of the Mixed II approach is to allow as many users as possible to enjoy the benefits of cost based interstate rates, usage based separations would hamper achievement of this goal. A usage based separations methodology would also make Mixed II an unsatisfactory mechanism for a transition to eventual use of Pure II, should that be deemed desirable by the Commission.

187. Although a pure direct assignment approach in the *Separations Manual* with the interstate cost share no higher than at present would allow more users to take advantage of the cap and the low usage rates beyond this cap, it is not without difficulties of its own. These difficulties can be divided into those transitional difficulties implicit in a pure gross assignment approach for NTS costs and those caused by the mixed (usage/nonusage) nature of Mixed II.

188. Under pure gross assignment, all exchanges would allocate the same share of their total NTS costs to the interstate jurisdiction. If these costs are recovered through an interstate pool like that now in place, the use of a pure gross assignment would favor those who are now in low SPF areas, and disfavor those in high SPF areas. This problem is general to the pure gross assignment process and is discussed more fully below.

189. Any usage based access charge that is designed to recover NTS costs and that has averaged rates and pooled revenue would recover more revenue from those areas with heavy calling patterns and less revenue from those areas with light calling patterns. Under a pure gross assignment approach, the amount of money that these areas can assign to the interstate jurisdiction would not depend on usage; those areas that make heavy use of the interstate network would subsidize everyone else.[67]

190. To the extent that Mixed II recovers significant amounts of money through the usage component, or to the extent that there are significant differences in the percentage of users in different areas who reach the cap, some areas would be likely to pay much more into the pool than others, yet all would recoup the same share of total costs. This, of course, would result in a subsidy.[68]

191. A partial solution to this problem would be to "buffer" the gross assignment process. That is, instead of allowing each company to assign a certain fixed share of its costs to the interstate jurisdiction, the company-by-company assignment could be varied based on usage. Such buffered gross assignment would resolve the first problem posed by a pure gross assignment. It can do a less satisfactory job on the second problem unless there is a close relationship between SPF and absolute usage. The buffered gross assignment approach is advantageous because increased interstate usage would not lead to a continuing tendency to push more costs into the interstate jurisdiction while it would also eliminate the transitional problems of pure gross assignment.

7. *Separations and Pure II.*

192. Pure II could be implemented with virtually any type of assignment. If pure usage assignment or pure gross assignment were selected, there might be some transitional problems, and pure direct assignment might make continued pooling and averaging difficult to sustain. As is explained below, Pure II is most consistent with a buffered gross assignment in the short run, and with a pure gross assignment in the long run.

193. If the Joint Board and the Commission select a form of usage based assignment, a substantial share of NTS costs will be shifted to the interstate jurisdiction as a result of the call stimulation coming from Pure II. Under usage sensitive separations, the result of this would be lower local rates and a higher Pure II flat access charge. While this would not matter if all exchanges had the same costs and the same usage patterns, or if each telco set its own access charges, a usage assignment under separations coupled with a nationwide averaged Pure II access charge could result in substantial shifts in revenue between exchanges. The most obvious effects would be a substantial averaging of total bills if usage increased together. Because the Pure II access charge would absorb a large share of the total costs, and because the access charge would be the same for all, Pure II would especially benefit expensives exchanges.

194. In some areas, however, Pure II is likely to result in substantially greater traffic stimulation than in others. If a usage based separations process with widely averaged Pure II flat payments is used, the result is that some exchanges or companies would be able to attribute larger shares of their total NTS costs to the interstate jurisdiction than would others. Companies with substantial call stimulation would be able to lower local rates more than would other areas, yet all would have the same Pure II access charge. This form of subsidy appears unlikely to relate to need. It appears unreasonable to charge all areas the same access charge but to distribute the revenue on some basis other than who paid or who needs assistance. This problem with combining Pure II and usage sensitive separations can be avoided by eliminating nationwide pooling or by averaging the usage allocation. If pooling is desired, moving toward a gross assignment approach would be more straightforward and less prone to distortion.

195. Pure II access charges could be implemented more easily in a gross assignment separations environment. For example, under the pure gross assignment approach with nationwide averaged access rates, each exchange would face the same interstate rates and have the same share of its NTS costs covered by the interstate pool. Like Mixed II, however, this might require substantial changes in local rates in those areas that now benefit from a high SPF. Although it would be efficient to

could, in theory, eliminate this problem. Such a system does not appear administratively feasible, however.

[66] A similar or large increase in the interstate assignment would occur under the Pure II methodology. Since under Pure II, all users would be charged on a flat fee basis, usage based separations procedures would not result in the same segmentation as would Mixed II.

[67] The present usage based *Separations Manual* does not really solve this problem. An area can make very heavy use of the interstate network, contributing substantially to the recovery of interstate NTS costs, and yet have a low SPF through high local and intrastate toll usage as well. Such exchanges would subsidize exchanges with high SPFs and low total usage.

[68] *But see* n.67

move toward pure gross assignment (perhaps with some high cost factor), in the short run it might be appropriate to engage in some form of buffered gross assignment to prevent the need for sudden shifts in local rates.[69]

8. *Separations and Pure I.*

196. Like Pure II, Pure I is easy to implement under a variety of separations procedures. As noted above, there is some danger of associating usage based recovery with nonusage based assignments. Nevertheless, given the present trend in interstate usage, this danger is unlikely to develop in practice. Moreover, if interstate calling continues to grow, a gross assignment methodology would allow gradual reductions in NTS assignments per call and therefore in rates over time. Such reductions would move rates toward cost. If rates are averaged, gross assignment could lead to untargeted subsidies from high usage to low usage exchanges. Similar subsidies, however, could develop with relative use based separations as well.

197. Likewise, an assignment process by which both private line NTS costs and common line NTS costs are allocated between jurisdictions on the basis of relative usage would be consistent with Pure I. Pure I charges all users on the basis of usage with little regard to how costs are assigned in the first place.

198. Because a buffered gross assignment process would more closely match present intercompany transfers than would a pure gross assignment, a buffered gross assignment might be perferable to a pure gross assignment approach for transitional purposes. Even in the longer run, if widespread averaging of access charge costs continues, a continued buffering might be desirable.

199. Because Pure I and Pure II are "pure strategies," they are less sensitive to how costs are allocated than are mixed strategies. The Pure I usage based rate structure will result in subsidy flows between high usage and low usage areas under any situation of nationwide aggregation, but there is no reason to believe that such subsidies will be compounded by any particular separations methodology.

9. *Separations and Access Charges for Traffic Sensitive Plant.*

200. A fundamental goal of the *Access Charge Proceeding* is achievement of efficient cost-based pricing for traffic sensitive plant. A second is the creation of opportunities for competitors or competitive services to access telephone company exchange facilities at non-discriminatory rates. If the separations and access charge methodologies were inconsistent, then it would be very difficult, for example, to implement cost-based access pricing if the *Separations Manual* did not also rely on cost causation in the assignment of interstate costs. If use of one service results in the assignment to interstate of a weighted access factor that exceeds costs, access charges for either this service or for other services would necessarily depart from cost causation to afford full cost recovery.

201. For this reason, we request that parties identify possible inconsistencies between cost causation and the various proposed separations changes contained herein.

10. Subsidies, Access Charges and Separations.

202. Coordination between access charges and separations policy is also desirable in any decision to subsidize certain groups (*e.g.*, high cost areas). The assignment of costs to the interstate jurisdiction is only the initial step in any subsidy scheme. An exchange can assign all of its costs to the interstate jurisdiction without any subsidy flowing to customers from outside that exchange if the access charge is deaveraged and its customers pay the full access costs. Therefore, one goal of this proceeding is the design of separations methodologies that do not force the Commission to choose between its fundamental goals of fostering efficient service and nationwide availability, and satisfying any subsidy goals of the Board. If a subsidy to high cost areas is desirable, it would be extremely helpful to develop a separations methodology that does not force the Commission to deaverage access charges completely.

11. *Summary.*

203. In summary, the development of an access charge is partially divorced from the development of separations. Technically, any access strategy could be implemented with any separations strategy. However, combined with the "wrong" access charge, a given NTS allocation plan could produce results that would exacerbate rather than ameliorate the results that exist under the current Ozark Plan.

IV. Other Issues

A. Allocation of Traffic Sensitive Exchange Plant

204. Exchange plant also has a traffic sensitive (TS) component whose costs must be allocated to the appropriate jurisdiction. We are specifically examining here the issues of whether or not existing *Manual* language describing the dial equipment minutes of use (DEM) factor for allocating TS local dial central office equipment costs is sufficiently precise in delineating the particular factors to be considered and the procedures to be followed. In addition, we also discuss the issue of whether or not peak period use should supplant overall traffic volumes in the development of measurements of use.

205. The DEM factor currently applied to TS local dial switching equipment consists of a ratio of minutes of use for exchange and toll services as well as a multiplicative adjustment factor. Specifically, toll weighting factors (TWFs) are used to weight traffic sensitive dial equipment minutes of use for each office to reflect the difference in average cost per minute of use between toll and exchange service. According to the *Manual*, the weighting factor varies by the type of (switching) equipment installed in a given office, the size of the office, and whether or not a majority of the traffic originated in the office also terminates in the office. Generally speaking, comments filed in this proceeding relating to toll weighting factors seem to follow a pattern: telephone companies prefer less specificity while their competitors want more. AT&T argues that such factors should be developed in accordance with the principles presently set forth in the *Manual*. Precise factors should not be specified there because these factors change and new factors are needed over time to ensure representativeness. GTE and USITA also state that TWF should not be detailed in the *Manual*, a view shared by United Telephone Systems. Although it is not a telephone company, Rural Electrification Administration agrees that *Manual* specification of these factors would be too inflexible; rather, methods for deriving the factors as well as a requirement for periodic review and revision should appear in the *Manual*. On the other hand, three parties recommended incorporation of formulas into the *Manual*. Satellite Business Systems (SBS) posits that such specific factors (*e.g.*, TWF) should be characterized by long-run stability to minimize *Manual* changes and sufficient flexibility to accommodate new services and new factors. These factors, SBS argues, should be determined in evidentiary hearings. Southern Pacific Communications also proposed inclusion of particular formulas in the *Manual* and documentation of TWF with publicly available information. Central Telephone Company breaks ranks with the other commenting telcos,

[69] Another means of ameliorating the impact of such shifts would be for individual jurisdictions to initiate rate structure reforms such as measured usage.

urging specification of TWF in the *Manual* to ensure visibility, accountability, and consistency with other factors.

206. We believe that as a general rule the use of great detail in the *Manual* and the inclusion of formulas for each of the possible combinations of situations would be imprudent. Such a requirement would be tremendously burdensome to implement. In addition, it is likely that we would need to revise the *Manual* with great frequency as a result of rapidly changing technology. Although increased precision in the *Manual's* instructions is conceptually appealing, such a task would be unworkable in practice.

207. Rather, we are convinced that the preferred approach is to rely on meaningful principles and a degree of explicitness that falls short of tremendously detailed instructions or formulas. The potential for abuse inherent in this policy could be minimized by institution of the proper safeguards. As described in more detail below (*see* especially paras. 212–223), we believe that certain fundamental changes in the current administration of separations and toll settlements should result in a much more open and accountable process. First, we recommend the establishment of an "information bank" containing separations data. An association of exchange carriers would be created to administer the bank, making information available to interested parties on a cost compensatory basis. Second, a standing Federal-State technical review group would be instituted to address *Manual*-related disagreements and ambiguities. In short, the heightened public access to the separations process should sharpen implementation and administration of the *Manual* procedures, including calculation of TWFs, and any requisite clarification(s) would be provided by the neutral technical body. These measures in combination with our "principle" approach should ensure accountability and consistency while preserving the existing *Manual's* flexibility in the face of changing circumstances.

208. Nonetheless, we would refine current *Manual* language in this area to ensure clarity. We believe that the existing instructions are inadequate in their description of the requisite sampling procedures. *See* paras. 24.821 and 24.831 of the *Manual*. The deficiency would be remedied, we believe, by a requirement that sampling methods "which represent the population" be used in the separations studies undertaken. Our recommended language revisions to the *Manual* are set out in Appendix A.

209. Another issue related to TS exchange plant allocations concerns the appropriate basis for measurements of use. Several parties during the course of this proceeding have filed comments which propose the adoption of peak period criteria for measuring use. For example, the Ad Hoc Telecommunications Users Committee recommends the creation of usage measurements which reflect the relative peak period responsibility of exchange and interexchange services. Aeronautical Radio, Inc. (ARINC) suggests an allocation process for traffic sensitive plant which reflects the distribution of peak hour calling. Kansas Corporation Commission, too, finds that busy hour, busy season traffic distribution is a "reasonable" economic basis for allocating TS plant. Southern Pacific Communications Company proposes that cost allocation factors based on peak usage be adopted by the Joint Board concurrent with the Board's approval of AT&T's plan to develop seven-day studies. On reply, AT&T alleges that measurement of use on a peak period basis for jurisdictional separations purposes is both difficult and expensive to properly implement and is not feasible for certain services because of a lack of data. In view of the fact that peak usage must be determined for facility engineering purposes, we request that parties comment as to why peak measurement for cost allocation purposes would be unduly expensive or difficult.

210. Conceptually, reliance on average or total traffic distributions is less appealing than reliance on a peak basis since the level and timing of investment in TS telephone plant in the network are functions of peak traffic requirements. In practice, however, measurement of use on a peak period basis may be impractical whether it be for services or separations studies. If it could be shown that the revenue requirement impact of using either type of usage measurement is approximately the same in magnitude, then the economic rational for using a peak basis as an allocator of jurisdictional costs becomes substantially less compelling. This apparently was demonstrated by special studies conducted by AT&T and provided to NARUC in the early 1970's, when it was determined that the difference in interstate revenue requirements produced by peak period and total period usage allocation was not significant.[70] Based on these findings, it would appear that total period usage is not an unreasonable surrogate for the theoretically purer but relatively infeasible peak approach.

211. While these results are sufficiently persuasive to cause this Joint Board to accept the use of a total period approach at this juncture, we are convinced that an update of AT&T's impact studies of a decade ago is sorely needed. AT&T has informed us that such a new analysis would be both time-consuming and expensive. We nonetheless believe that the study cost would be justifiable, given the dollar value of the jurisdictional costs involved. To afford AT&T the requisite time to initiate and complete the updated analysis, we recommend that this issue be resolved during the next phase of the separations revisions process, *viz.*, the interexchange Joint Board proceeding. Hence, AT&T should be directed to begin the comparative impact study immediately to permit completion of the task during the intervening months.[71]

B. A More Open Separations Process

1. *Background.*

212. Another issue that this Joint Board is currently addressing is whether or not the current implementation and administration of the separations/toll settlements process should be modified. Traditionally, AT&T has served as the administrator of separations as well as settlements and division of revenues (DRs). Although the existing *Separations Manual* does not designate AT&T to be the overseer of these procedures, the company has *de facto* assumed this role by virtue of its large size and substantial resources.

213. Several parties to this proceeding posit that the current separations and toll settlements procedures should remain unchanged. AT&T claims that no anticompetitive manipulations can occur because of FCC oversight and internal audits of telephone company separations studies. USITA insists that "economic integration," *i.e.*, the existing partnership agreements among telcos concerning toll setlements and division

[70] *See* Attachment I, p. 4, of AT&T's Comments, dated September 11, 1981, which were filed in this proceeding.

[71] We envision a study that would gauge the relative revenue requirement effects of total *vis-a-vis* peak usage for at least traffic sensitive exchange plant as well as interexchange plant. The particular need for such an impact study for NTS exchange plant will, of course, depend on the future role of usage in allocating these plant costs, a determination which will be made in this proceeding. This order will apply to the various Bell operating companies after divestiture occurs.

of revenues, is the "glue" which holds our nationwide telephone network together. A number of parties who submitted comments or reply comments on the subject assert that the current administration of the separations/settlements process must be revised. Two entities, Kansas Corporation Commission and SBS, point toward greater specificity in definitions, procedures, and other descriptions in the *Manual* as the best means of minimizing the potential for AT&T abuse of the existing allocation process. In particular, the Kansas Commission expresses the opinion that this approach represents the most feasible safeguard since AT&T is viewed as the only practical administrator of the process because of the enormous amount of resources required to perform the task. SBS stresses AT&T's almost unlimited discretion in this area, thereby necessitating competitive assurances through the employment of more explicit instructions. Six parties argue that a new separations *modus operandi* is clearly needed but emphasize that a more "open" process is the preferred vehicle for such a change. MCI avers that the existing procedure in which it is subject to a subsidization mechanism administered by its competitors, AT&T and the independent telcos, violates the Fifth Amendment and various rulings of the U.S. Supreme Court. United States Transmission Systems (USTS) views AT&T's basic control over the process as the most serious flaw in the whole separations process and recommends the development of an independent separations data base and computer model suitable for testing the effects of proposed separations changes. In general, USTS calls for greater public scrutiny of the process. Southern Pacific Communications Company stresses that the current separations process is not conducive to a competitive environment and requests that the Joint Board require AT&T to furnish to the public all separations studies and reporting procedures. Rural Electrification Administration (REA) proposes that the Joint Board create a mechanism that would resolve disagreements fairly and quickly in a neutral forum. Finally, Chippewa County and Pigeon Telephone Companies both express concern about AT&T's ability to manipulate the current separations and settlements procedures, supporting the positions of REA and USTS, respectively.

214. The Joint Board firmly believes that the current implementation and administration of the separations/settlements process must be changed. First, the August 24, 1982 consent decree terminating the 1974 antitrust complaint brought by the Justice Department against AT&T effectively eliminates the need for the Bell Division of Revenues system currently in use. Under the decree, access charges for interstate interconnection with local Bell telephone company facilities will supersede this revenue apportionment mechanism.

215. Second, existing procedures afford AT&T fundamental control over the separations process and a concomitant ability to manipulate its implementation. This view is consonant with the assertions of the majority of parties in the proceeding which addressed this issue. Given the new structure and role fashioned for AT&T by the aforementioned decree, the rationale for retaining AT&T as the administrator of the jurisdictional cost apportionment process is even less compelling. Third, even if no major restructuring of the industry had been mandated by the resolution of the aforementioned AT&T case, significantly changed circumstances in this sector (*e.g.*, public policies promoting competition in many telecommunications submarkets) since the implementation process was last modified would warrant a new approach.

216. In essence, we recommend basic revisions to current implementation and administration procedures for separations. Our objectives are: (1) to adapt the traditional jurisdictional separations and settlements process to the new telecommunications environment; and (2) to improve the separations process through public access to information and impartial handling of *Manual*-related disputes. The assumptions that underlie the new regime which the Joint Board recommends include the following:

(1) Resolution of the AT&T antitrust suit through the entry of a consent decree has not eliminated the need for apportionment of costs;

(2) Establishment of access charges will not appreciably alter the basic cost allocation function of the separations process; and

(3) Legislation will not be passed by the United States Senate and House of Representatives that would fundamentally change the need for separations cost apportionments.

2. *The Proposal.*

217. Our recommended plan for improving the existing separations cost allocation process consists of three parts. First, we would introduce more "openness" into the process through the creation of an "information bank" which could be accessed by interested parties. Second, we would establish a Federal-State technical body which would recommend resolutions of *Manual*-related disagreements. These two propositions are discussed in greater detail below. Third, we believe that the use of principles and some explicit descriptions in the *Manual* rather than very detailed instructions would strike a proper balance between flexibility and specificity. This philosophy, coupled with fundamental changes in the *Manual* required by the new environment in telecommunications, would lead to needed improvements in the existing *Manual*. We have attempted to achieve this balance in our recommended modifications to existing *Manual* language set out in Appendix A.

a. *The Information Bank.*

218. Existing separations and toll settlements procedures are rooted in the era of monopoly telephone service, when the participants in the process (*i.e.*, telephone companies and regulators) were fewer in number and had relatively similar concerns, and implementation was more straightforward. The introduction of competition and the attendant increase in both the number of interested parties and the complexity of issues, however, suggest the need for modernization of the way separations and settlements are conducted.

219. One such modification would be to increase the openness of the process. The "correct" balance between openness and excessive intervention in these allocation activities is, of course, a calculus of a very subjective nature. However, we believe that this appropriate mix could be achieved by making the administration of separations more subject to public scrutiny. Summary data, detailed methodologies and results, and work papers of cost studies performed by telephone companies, *i.e.*, exchange carriers, would all be available at the proposed information bank. Public access to the information would occur immediately after completion of the telco studies, and charges for such information would be designed to recover the costs incurred by the telephone companies to make the requested materials and data available to interested parties. For example, the cost of telco staff members hired to assist "bank" customers and the office space needed to accommodate them would be recovered through a *pro rata* apportionment of these costs to customers other than regulatory agencies. Such an allocation could be determined by selecting a fair basis for

spreading this overhead (*e.g.*, number of pages requested by a party relative to the total pages requested during a given calendar year). Reproduction costs could be charged directly to nongovernment cost causers. Regulatory agencies would be exempted from paying for information since their data requests would presumably be made in pursuit of their statutory mandates.

220. We believe that the telephone industry is best situated to administer our bank proposal, especially in view of serious budget constraints confronting government agencies today. We find merit in the approach advanced in the FCC's *Fourth Supplemental Notice of Inquiry and Proposed Rulemaking*, released June 4, 1982, in its *Access Charge Proceeding* (CC Docket No. 78-72). There the Commission recommends that an association of exchange carriers be established to administer access charges. *See* especially paras. 48-57. The intra-industry entity would consist of both a governing board to set policy and a staff to implement that policy. The latter would include a small "in-house" group and a larger "outside" staff comprised of experienced current or former AT&T personnel. Among the functions to be performed by the staff would be compiling data and conducting cost studies. We believe that this organization would provide an acceptable infrastructure for implementing our recommendations outlined above. Parties are requested to submit comments on the desirability of the proposed information bank and its administration by the described association. Specifically, issues to be addressed include, *inter alia*, the extent of public availability of the various separations data and studies, frequency of access by interested parties, terms of charges for anyone using the available information, and the appropriate roles for regulatory agencies, telephone companies, the telcos' competitors, and others.

221. A transitional mechanism may well be required to handle the association's functions in the short run. One possible approach would be to permit AT&T's jurisdictional separations and DR organizations to administer access charges until the new entity becomes operational. These or other appropriate Bell personnel could then be transferred to the new association as soon as practicable. We encourage comments on the need for this or any other such transitional administrative entity.

b. *The Federal-State Technical Staff.*

222. A second fundamental change to existing separations procedures which we are seeking is the establishment of a standing Federal-State technical subcommittee to address any disagreements related to the *Separations Manual*. This new organization would be given the express authority to recommend resolutions of disputes and grievances involving the *Manual* to the FCC. The entity could also clarify *Manual*-related ambiguities on its own initiative, subject to FCC approval. The Commission would be required by law to render the ultimate decision regarding any given disagreement about the *Manual* but would view this proposed subcommittee's recommendations in much the same way that it views a Joint Board separations proposal, *viz.*, as a very significant input into the decision-making process. Funding of the technical staff would be accomplished either on a basis similar to that used for the Federal-State Joint Board staff and NARUC subcommittees [72] or through an assessment on regulated exchange carriers. The latter approach might require enabling legislation. The subcommittee would be composed of a minimum of seven persons, with four chosen by NARUC from the states and three selected by the FCC to represent federal interests. The subcommittee should include at least one attorney, one accountant, one economist, one engineer, and one public utility specialist. Each member would serve a fixed term, *e.g.*, three years, and may be reappointed. A chairman would be selected on the basis of voting by the subcommittee and would serve a one-year renewable term. Meetings would be held as the workload dictates, at locations deemed to be mutually acceptable to subcommittee members. Official records of subcommittee actions and documents would be kept on file at the NARUC headquarters in Washington, D.C., or, alternatively, in a location convenient for the subcommittee chairman. Finally, the subcommittee would coordinate as needed with the exchange carrier association which conducts the separations cost apportionments (see above), the various state commissions, and the FCC. We also seek comment from interested parties on such questions as the appropriate composition of the group, the preferred selection process, and a suitable agenda, charter, and location for the organization.

223. In essence, we believe that this technical review function, coupled with the aforementioned information bank and selective application of explicit language in the *Manual*, would appreciably enhance accountability and auditability in the separations process. Greater openness and appropriate revisions in the *Manual* instructions should provide significant incentives for a fair and just implementation of the process, while the arbitration mechanism should serve as a readily accessible forum for an impartial review of controversies involving the *Manual*.

C. Measurement of Usage

I. *Calendar Day or Business Day Studies.*

224. Under current separations procedures, telephone companies generally conduct five (business) day studies to measure holding time minutes of use.[73] These results are specifically used in the development of subscriber line usage (SLU) and dial equipment minutes of use (DEM) factors. *See* paras. 204-205 *supra*. The studies are typically done by each company on an annual basis for all of the central offices in a given study area.

225. One of the major issues we are addressing is the determination of the most appropriate method of measuring usage. A number of parties in this proceeding have urged that seven (calendar) day traffic studies become the new standard for computing holding time. On June 2, 1981, AT&T formally recommended the adoption of this methodology as part of its proposal to comprehensively revise the jurisdictional separations process. The calendar day approach is also supported by GTE, the Ad Hoc Telecommunications Users Committee, Lewis River Telephone Company, the Louisiana Public Service Commission, People's Counsel of Maryland, the New York State Department of Public Service, REA, SPCC, United Telephone System, USITA, Wyoming Telephone Company, and (on reply) Central Oklahoma Telephone Company and the Public Utility Commission of Texas. Kansas Corporation Commission appears to recommend the seven-day method over the five-day method, but may prefer a busy hour busy season basis to either of these methods. ARINC and Rochester Telephone Corporation

[72] For example, travel expenses would be covered by the agency which employs each member of the staff.

[73] Presently some companies perform traffic studies on a seven-day basis, a fact which certain parties (*e.g.*, Wyoming Telephone Company, *et al.*) attribute to the flexibility afforded AT&T as the administrator of the separations process under the *Ozark Manual*. As discussed above, we believe that replacement of AT&T in this capacity by a Federal-State technical review body, coupled with our other recommendations for a more open separations process, should minimize the potential for any unwarranted disparate treatment in the future.

believe that neither five-day nor seven-day studies should be used because they are opposed to any allocations of NTS costs based on usage factors. ARINC also rejects AT&T's proposal to use seven-day studies for traffic sensitive cost assignments, which it argues should be made based on cost causation and peak period usage. Haviland Telephone Company *et al.* note that seven-day studies will have little effect on the expected enormous upward pressure on local rates caused by AT&T's recommended phase-down from SPF to SLU. Northeast Nebraska Telephone Company specified no preference beyond the need for a representative period but is concerned about AT&T's ability to manipulate any such studies. Satellite Business Systems and the Rural Telephone Coalition both stop short of endorsing the calendar day methodology, instead proposing evidentiary hearings and a cost-benefit analysis, respectively, to determine representative usage.

226. A closely related question is whether or not the existing *Separations Manual* should be modified to reflect the specific traffic measurement study to be used. The following parties expressly find the existing *Manual* language regarding "measurement of usage . . . during a representative period" (Section 11.212) to be adequate for seven-day (or other) holding time studies: AT&T, GTE, Lewis River Telephone Company, Lousiana Public Service Commission, People's Counsel of Maryland, Northeast Nebraska Telephone Company, Rural Telephone Coalition, United Telephone System, USITA, Wyoming Telephone Company, and (on reply) Central Oklahoma Telephone Company. Those parties which address the subject of holding time studies but do not either reject or endorse *Manual* changes *per se* include Haviland Telephone Company *et al.*, Kansas Corporation Commission, New York State Department of Public Service, Southern Pacific Communications Company, and Texas Public Utility Commission. Parties which support modifications to the *Manual* are the Ad Hoc Telecommunications Users Committee, Central Telephone Company (Centel), Rural Electrification Administration (REA), and SBS. REA and apparently the Users Committee recommend specific language directing the use of seven-day studies, while Centel suggests a more general revision to the *Manual* which would, *inter alia*, clarify the term "representative period." SBS, in turn, proposes the use of an evidentiary hearing to establish criteria for measuring usage.

227. We believe that the weight of the evidence introduced in this proceeding thus far is heavily supportive of the adoption of seven-day usage studies. The overwhelming majority of parties which directly commented on this matter prefer a full week (including the weekend) basis to the current five (business) day approach. In fact, except for Aeronautical Radio and Rochester Telephone (which apparently oppose calendar day studies because they oppose a total period cost allocation basis for NTS plant),[74] none of the parties which specifically addressed the holding-time measurement question seem to reject the adoption of seven-day studies *per se*. Even the two express opponents of such studies have not stated an objection to the seven-day methodology in the event a total minutes of use approach is the standard recommended by the Joint Board. We find persuasive the argument that the five-day study is deficient and creates distortions because it omits the traffic patterns caused by weekend toll rate discounts. Accordingly, we recommend that the seven (calendar) day study become the new methodological basis for separations usage measurements. This approach should be followed uniformly by all applicable companies, unless compelling reasons exist to grant exceptions. We believe a Federal-State technical review subcommittee should help resolve any disagreements which occur regarding implementation of these studies.

228. An important consideration in implementing the changeover to a seven-day study basis is the specific timing of the change.[75] This new methodology would result in a significant shift of NTS costs to the interstate jurisdiction relative to the five-day analyses.[76] Failure to consider an appropriate transition period to mitigate any dislocative effects would be both imprudent and inconsistent with our general approach in other separations areas experiencing changes, such as CPE and NTS exchange plant. GTE has proposed that the new method be phased in over a three-year period. We find, however, that there is no need to establish a specific transition period for conversion to the calendar day studies *per se*. The NTS revenue requirement impact of such a change would be phased in automatically on the same time schedule chosen for the new NTS cost allocator. Although TS plant would have no similar built-in transition period, the much smaller dollar volume involved relative to NTS plant would ameliorate the effects of a "flash-cut" changeover to calendar day studies.

229. A final matter to be examined in this section is the question of the level of specificity required in the *Manual* to accommodate the use of calendar day traffic studies. We hold the view that specific identification of such studies for *Manual* purposes is neither necessary nor prudent. Instead, insertion of the phrase "for all traffic" after the words "representative period" in Section 11.212 of the current *Manual* should clarify our intent yet preserve the flexibility which we would seek in any *Manual*. We think this modified language satisfactorily describes the desired "fundamental principle" of a requisite "representative period for all traffic" by indicating that weekend use (with the associated increase in residential toll calling) should be included. The amount of detail in the *Manual* should only be increased if it is determined that the benefits of doing so outweigh the cost. Beyond this proposed change, we do not believe this would be the case since greater specificity, *e.g.*, stating the requirement for seven-day studies, would likely necessitate more frequent and burdensome changes in the *Manual as circumstances change (e.g.*, AT&T's rate structure and, hence, usage patterns are modified) without an assurance of significantly greater clarity in the process. We do not perceive that adding more explicit language in this case would generally offset the current *Manual* advantages of flexibility and sufficient detail to enunciate the desired principle.

230. At the same time, we are concerned that AT&T may, in fact, be unfairly or inconsistently administering this and other aspects of the separations

[74] Presumably, a party such as the Independent Alliance or NTIA, which also generally embrace a nonusage apportionment approach for NTS plant, would similarly oppose seven-day studies.

[75] This Joint Board is cognizant that future regulatory actions relating to jurisdictional separations may render this change—should it be adopted by the Commission—a relatively brief one. We are still considering in this docket the critical issue of the most appropriate basis for allocating NTS (exchange) plant; it is certainly not inconceivable that a nonusage basis will be endorsed by this Joint Board and subsequently the Commission. In addition, the question of the proper measurement of usage for TS plant allocations, *viz.*, peak period vs. total period, will be the focus of another Joint Board which will likely be established in the near future. Mindful of these possibilities, we nonetheless prefer to eschew engaging in such speculation and reiterate our preference for a calendar day study approach.

[76] For example, AT&T and GTE estimate that the resulting increases in interstate revenue requirements in 1979 would have been $589 million and $59 million, respectively. The impact on these two telephone systems in 1980 was estimated to be $568 million and $66 million.

and toll settlements processes.[77] To help minimize the potential for such manipulations or inadvertent errors, we have recommended the establishment of a mechanism whereby disputes involving the interpretation or application of the *Manual* could be fairly and expeditiously addressed. *See* paras. 222–223 *supra.*

2. *Services Other Than MTS, WATS, and Local Exchange.*

231. A second area of usage measurement is also being examined by this Joint Board, *viz.*, whether or not measurement of usage for telephone company or non-telco services other than MTS, WATS, and local exchange should be specified in the *Separations Manual.* These services would include, *inter alia,* private lines, foreign exchange, and CCSA.

232. No unanimity of opinion exists among the parties regarding this issue. AT&T urges that explicit *Manual* instructions would be too lengthy and detailed because measurement methodologies will vary among services and will probably change over time as new technology is absorbed. Rural Telephone Coalition and United Telephone also agree that considerable detail is not needed in this area but that the Bell System's implementation of usage measurement has been less than satisfactory. On the other hand, proponents of greater specificity in the *Manual, e.g.,* Rural Electrification Administration, aver that instructions should be specific enough to reasonably encourage accuracy in measuring minutes and to prevent or minimize disputes. Finally, Satellite Business Systems seeks to investigate the matter further through discovery and an evidentiary hearing.

233. We must emphasize the importance of modifying the *Manual* whenever the results of a meaningful cost-benefit analysis from the ratepayers' perspective would dictate such an action. The action preferred by this Joint Board is to fashion a *Separations Manual* which would contain a lucid statement of principles and some explicit descriptions but which would prudently stop short of stating very detailed instructions for implementing the *Manual. See* discussion at paras. 206, 217 *supra.* We believe that a proper balance can be struck between detail and guiding principles which would preserve needed flexibility in the process. The requirement of a "representative period for all traffic" that was instituted for calendar day studies should suffice here for those services whose usage must be gauged. Of course, for those services whose costs are to be directly assigned to the appropriate jurisdiction (*e.g.,* closed-end FX), measurement of usage would be irrelevant.

234. We are also cognizant that such flexibility has another dimension as well, namely, the potential for abuse of the separations procedures. For this reason, we have recommended: (1) the creation of a Federal-State staff subcommittee which would be empowered with the authority to recommend resolutions of *Manual*-related disagreements; and (2) the development of a more "open" separation(s) and settlements process. *See* paras. 212–223 *supra.* In this way we believe that a separations process can be effected which would prudently combine instructional or procedural simplicity with a specific mechanism designed to deter unfair manipulations and resolve disputes.

D. Modification to the Plan to Phase CPE Out of Separations

235. The intent of the CPE phase-out plan adopted by the Joint Board and the Commission is to facilitate the implementation of the Commission's policies regarding the detariffing of customer premises equipment (CPE) established in the *Second Computer Inquiry* [78] while also ensuring that detariffing does not result in abrupt and burdensome rate increases due to a sudden removal of CPE from the separations process. In order to accomplish these objectives, an adjustment to separations procedures is necessary to permit a gradual and even reduction of the contribution phenomenon that has resulted from the inclusion of CPE in separations.

236. As was described in our original *Recommended Decision and Order* and the Commission *Decision and Order* adopting our recommendation, 89 FCC 2d 1 (1982), this contribution phenomenon has resulted from the interstate allocation of some CPE costs through separations and the general state practice of pricing terminal equipment to recover full costs. The separations process merely determines the share of actual costs allocated to the interstate jurisdiction. The inclusion of CPE in separations, which, prior to the *Second Computer Inquiry* decision, was mandated under *Smith v. Illinois Bell Telephone Co.,* 282 U.S. 133 (1930), increases the share of actual NTS Book costs that is borne by interstate ratepayers. However, full capital recovery for CPE is achieved at the local level. Thus, the inclusion of CPE in separations provides a mechanism, unrelated to capital recovery for CPE, for increasing interstate settlements paid to local exchange carriers and maintaining lower intrastate rates. It is the even and gradual reduction of this contribution phenomenon that is the focus of the existing CPE separations plan.

237. The plan is implemented through several minor changes to the *Separations Manual.* Specifically, a new definition added to the Glossary identifies items of terminal equipment in Accounts 231 and 234 that are considered customer premises equipment for the purpose of detariffing under the *Second Computer Inquiry.* New provisions added to Section 2, Part 5, of the *Separations Manual,* Telephone Property—Station Equipment, require the segregation of investments in Accounts 231 and 234 between customer premises equipment and other station equipment, and provide for a phase-out of a specified level of customer premises equipment from the separations process. A new Section 25.3 establishes the CPE base amount, which is the level of CPE investment in Accounts 231 and 234 on December 31, 1982,[79] and directs that the base amount, reduced by one-sixtieth each month beginning in January 1983, be used in the separations process and allocated between the jurisdictions on the basis of the subscriber plant factor. Several other additions to the *Manual* have been made to create a corresponding phase-out of expenses and reserves associated with CPE.

238. The central purpose of this plan is to promote the removal of CPE from carriers' rate bases without imposing burdensome penalties by gradually and evenly diminishing the settlements contribution related to CPE that redounds to the benefit of local exchange customers in the form of lower intrastate rates. The plan was approved by the Commission on an interim basis so that the mechanism for removal of CPE from separations would be in place on the effective date of detariffing under the *Second Computer Inquiry* and so that the CPE plan could be integrated

[77] *See, e.g.,* comments filed by Northeast Nebraska Telephone Company, Rural Telephone Coalition, United Telephone System, and Wyoming Telephone Company.

[78] Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 FCC 2d 384 (1980), (*Final Decision*), *modified on reconsideration,* 84 FCC 2d 50 (1980), *further reconsideration,* 88 FCC 2d 512 (1981), *aff'd sub nom.,* CCIA v. FCC, Case No. 80–1471 (decided November 12, 1982).

[79] In accordance with a recently adopted amendment to the CPE plan, 90 FCC 2d 52 (1982), individual states may select, with the concurrence of affected carriers, an early freeze date for the CPE separations base amount.

with other separations changes recommended by the Joint Board. At the time that the plan was adopted by the Commission, it was recognized that the reorganization of the Bell System occasioned by the settlement of the Government's 1974 antitrust suit against AT&T might necessitate some revisions to the CPE plan. In its original *Decision and Order*, the Commission directed the Joint Board to review the likely effects of the *Modified Consent Decree*, especially the sudden removal of CPE from the rate bases of the Bell Operating Companies (BOCs), and to present a recommendation as to how changes to the plan needed to accommodate the divestiture of the BOCs can be coordinated with the Joint Board's recommendations for overall changes to separations procedures regarding exchange plant.

239. The United States District Court for the District of Columbia has now approved a *Modification of Final Judgment* which requires divestiture of the BOCs from AT&T within 18 months of the decree's effective date.[80] While the BOC's may continue to provide CPE to their customers, all embedded CPE that remains in the BOC's rate bases at the time of divestiture will be transferred to AT&T. Under such a reorganization of the Bell System, the current CPE separations plan would create accounting anomalies since the BOC's would no longer maintain any CPE in Accounts 231 and 234 to be identified for separations purposes. This would make it difficult to continue the phase-out of the settlements contribution for the BOC's and would place the customers of these companies at a disadvantage with respect to customers of independent telephone companies since an immediate cessation of the CPE-based settlements contribution after only the first year of a five-year phase-out plan would undoubtedly lead to the sort of precipitous rate increases that the plan is intended to avoid. Moreover, the present plan may lead to unintended results if embedded CPE is retained by AT&T. The phase-out plan is structured to provide a mechanism for the gradual and measured adjustment of exchange carriers to changed economic conditions brought about by the detariffing of CPE. There is neither any need nor any intent to have such a plan operate to the benefit of an interexchange carrier. Therefore, it is clear that some modifications to the CPE plan are required.

240. In general, it is proposed that the declining base for the CPE related contribution be clearly identified as the CPE base amount and that any continuing references to Accounts 231 and 234 for the derivation of CPE related investment for allocation purposes be deleted from the *Manual*, except for the references in new Par. 25.3 necessary to identify the CPE base amount.[81] Moreover, it is recommended that all components of subscriber access plant, namely subscriber line outside plant (excluding wideband), local dial switching equipment, inside wire, and the CPE base amount be aggregated and that the SPF substitute finally adopted by the Commission be applied to the aggregated amount. In order to accomplish this result, a new Part 10 entitled "Subscriber Access Plant" should be added to Section 2 of the *Manual*. Part 10 should be divided into two sections. The first should provide for the aggregation of the components of subscriber access plant, as identified in Par. 23.443 (subscriber line outside plant in Category 1.3), Par. 24.83 (the non-traffic sensitive portion of local dial switching equipment in Category 6), and Par. 25.25, renumbered 25.24 in Appendix A, (CPE base amount and inside wire in Category 5). The second section in Part 10 should contain a description of the allocative factor that is to be applied to subscriber access plant in place of SPF.

241. A few sections of the *Manual* must undergo minor adjustments to include the necessary references to the allocation of subscriber access plant in accordance with Part 10. Paragraph 23.444, which contains the description of SPF, should be deleted, and a section describing the SPF substitute should be included in the new Part 10. Paragraph 23.443 should be augmented to provide that, for the purpose of apportionment between state and interstate operations, the cost of subscriber line outside plant in Category 1.3 assigned to message telephone services is to be combined with other components of subscriber access plant assigned to message telephone services and allocated to each jurisdiction in accordance witht he formula set forth in Part 10. Similarly, the references in Par. 24.83 and Par. 25.25, renumbered 25.24 in Appendix A, to the subscriber plant factor now described in Par. 23.444 should be deleted. Language should be added to Par. 24.83 and new Par. 25.24 providing for the aggregation of the non-traffic sensitive portion of local dial switching equipment in Category 6 and other station equipment (Category 5) with other subscriber access plant and apportionment in accordance with procedures set forth in Part 10. In Part 5, references in Par. 25.11 to Account 23, Station Apparatus, and Account 234, Large Private Branch Exchanges, should be deleted and replaced with a reference to new Par. 25.3 of the *Manual* which establishes the CPE base amount. Paragraph 25.3 itself should be retitled "Establishment of CPE Base Amount." Finally, it is proposed that a new Part 11 be provided for the treatment of public telephone equipment, and that a separate allocative mechanism, different from that applied to other subscriber access plant, be applied to public telephones.

242. These modifications to the CPE separations plan will ensure that all local exchange carriers, including the BOCs, will continue to receive a declining CPE settlements contribution, and that none of them will be faced with the need for sudden and drastic rate increases due to the detariffing of CPE. In order to clarify the purpose and effect of the inclusion of the CPE phase-out plan in the separations process, it is proposed that a new Par. 11.27 be added to the general provisions in Section 1 of the *Manual* which outlines the fundamental principles underlying separations procedures. This paragraph describes separations as a mechanism for allocating costs between state and interstate jurisdictions by identifying the dollar level of separated costs to be borne by interstate ratepayers and leaving the remainder after subtraction of the interstate portion from actual book costs to be borne by intrastate ratepayers.

243. After the first year the amount of the contribution actually received will differ from the amount that would have been received under the frozen SPF due to the introduction of a new allocative factor for non-traffic sensitive plant. However, the application of the new factor to the CPE base amount will still create the desired effect of a measured phase-out of the contribution, even if the total amount received is, in some cases, less than it would have been under SPF. Moreover, the application of the new allocative factor to an aggregated amount of subscriber access plant that includes the CPE base amount will allow the most efficient and equitable transition to the SPF substitute, and is consonant with the Commission's desire of avoiding the use of SPF throughout

[80] *Modification of Final Judgment*, United States v. Western Electric Co., Inc. and American Telephone and Telegraph Co., Civil Action No. 82-0192 (D.D.C. filed August 24, 1982).

[81] These and other proposed changes to the language which currently appears in the *Manual* are set out in Appendix A.

the full five years of the CPE phase-out plan.

244. As a final matter concerning CPE, we are requesting comments on how standard mobile telephone equipment should be treated for separations purposes if it is deregulated. Standard mobile terminal equipment was not deregulated in the *Second Computer Inquiry,* although cellular telephone equipment was deregulated in *Cellular Mobile Telephone Proceeding,* CC Docket No. 79–318, 89 FCC 2d 58 at 83–85 (1982). If standard mobile radio equipment is also deregulated it will not be allocated between the jurisdictions through the separations process. The basic question is whether it should be phased out of separations gradually as is being done with the majority of embedded CPE or removed on a flash-cut basis. The determination concerning which course to follow would appear to depend in large measure on the amount of standard mobile radio equipment in use and whether it is generally priced at full cost as the Joint Board found to be the case with other CPE, thereby producing a contribution to local exchange operations. We request information and comments relevant to these options. Other suggestions for dealing with the appropriate separations treatment of this equipment are also welcome.

E. Other Changes Proposed for the Separations Manual

245. AT&T, GTE and SPCC have also proposed several additional changes to the *Manual.* Our recommendations for dealing with these matters are contained in this section. Before we move to specific proposals, there are a few general issues which must be discussed.

246. The major question, of course, is which of the proposals fall under the purview of this Joint Board. We believe that we have a mandate to make any necessary changes dealing with the allocation of exchange plant. Questions of the appropriateness of the current interexchange separations procedures will be left to a future Joint Board. The AT&T and GTE proposals can be roughtly sorted into those related to exchange and those dealing with interexchange allocations. Obviously, some changes will affect the allocation of both types of costs. Our view is that, if a proposal affects exchange allocations and can readily be disposed of, we will handle it here. We disagree, then, with parties such as the Wyoming Telephone Company which argued that most of the AT&T proposals are irrelevant to this proceeding. Comments, p. 3. Clearly, the need to reform the separations process exists. Whether specific proposals fit into neat classifications will not obviate the need to review them. This is an appropriate forum for the resolution of any exchange related separations proposal. Accordingly, we shall address most of the proposals. However, we recommend leaving consideration of the AT&T proposals to revise existing treatment of the following items to the future Interexchange Joint Board: (1) Interexchange circuit plant; (2) foreign directory expense; (3) rate and route; and (4) centralized ticket investigation.

247. As noted above, SPCC has made a number of points concerning the allocation of costs to access which it believes OCCs should not be forced to pay. For example, SPCC points to advertising and antitrust litigation expenses which are being allocated to services used by the OCCs, asserting that such use of the "separations process can subvert the development of full and fair competition in interexchange communications." SPCC Comments, p. 9. While SPCC's arguments are important, they are ratemaking matters which are better addressed in tariff proceedings. The fact is that expenses incurred by the local companies are only allocated among jurisdictions through separations procedures. Whether SPCC, any OCC or any customer should compensate the company for a specific expense is a rate issue which should be resolved in the appropriate jurisdiction and is beyond the duties of this Joint Board.

248. Finally, SBS, SPCC and several other parties argued that "direct assignment" is appropriate for expenses; *i.e.,* expense allocation need not follow investment allocations. SBS argues that the current method of expense allocation following investment allocation may result "in expenses being assigned to jurisdictions and services in which they have not been incurred and to which they have given no benefits." SBS Further Reply Comments, p. 6. The Joint Board agrees in principle that direct assignment of expenses is desirable. However, the costs of developing specific methods and information to perform the expense allocation must be considered. We are not convinced that the allocation of exchange costs can be significantly improved beyond those changes made here without significant increases in the data requirements for or the cost of the separations process.

1. *Exchange Trunks.*

249. AT&T proposes that the exchange trunk in Category 1.22 in paragraph 23.43 of the *Manual* be divided into two new categories. Now, exchange trunk plant in Category 1.21 includes exchange trunk plant used only for exchange messages while 1.22 includes exchange trunk plant used only for toll and plant used partly for exchange and toll message services. Under the proposal, new 1.22 would include exchange trunk plant used exclusively for message toll and new 1.23 would include exchange trunk plant used jointly. The new 1.21 and 1.23 would also include exchange trunks for "message-like services." AT&T projects no impact on the Bell System jurisdictional revenue requirements.

250. With the exception of SPCC, the parties commenting on this proposal are in general agreement. SPCC sees a possibility that ENFIA and FX/CCSA minutes of use could be doubly counted by being included in both categories 1.21 and 1.23. We disagree with SPCC's suggestion that specific services be identified in the categories to counter what SPCC sees as a potential abuse; such specificity would greatly constrain the flexibility of the *Manual.* See paras. 217, 229 *supra.* However, we do believe that the reference to "message-like services" is unnecessary because these are subsumed in the "toll message" classification. Other than this point, we agree that the proposed change will improve the allocation of exchange trunk costs to toll and we recommend its adoption.

2. *Land and Buildings Simplification.*

251. The proposal for land and buildings simplification would eliminate the weighting of manual central office equipment costs used in allocating Operating Room and Central Office Equipment Space. The purpose of the weighting is to account for the fact that manual switching and circuit equipment occupies different amounts of space per dollar of equipment costs as compared to other equipment. AT&T argues that technological changes have eliminated the need for this weighting. AT&T estimates that this change will transfer $750,000 of Bell System revenue requirements from the interstate to the intrastate jurisdictions. This is a noncontroversial proposal which will result in updating *Manual* procedures. We recommend that it be adopted.

3. *Direct Assignment Principle.*

252. AT&T suggests that a new paragraph 11.25 be added to Section 1 of the *Manual* which would allow direct assignment to the appropriate jurisdiction of costs which have previously been identified as interstate or intrastate. This change would accommodate instances where a company provides services to a second company and identifies the billed

amounts for those services as interstate or intrastate. Rather than book these amounts to a USOA account and then separate them according to the directions of the *Manual* for the appropriate account, the amounts would be directly assigned. AT&T estimates that this change will not shift revenue requirements among jurisdictions. This is apparently a noncontroversial change. We endorse this proposal which, at least in a small way, will simplify the separations process.

4. *Extended Area Service—Accounts 644 and 675.*

253. AT&T proposals concerning the treatment of Extended Area Service in Accounts 644 and 675 would modify the allocation of Account 644, Connecting Company Relations Expense, and Account 675, Other Expenses, so that the costs of extended area service (EAS) would be assigned directly to exchange. Currently, Account 644 is first assigned to message toll and private line on the basis of their respective settlement amounts. The message toll and private line amounts are then split by jurisdiction. This proposal would add a third category, extended area services, to the message toll and private line categories and assign costs on the basis of related settlements. EAS amounts would, therefore, be assigned directly to exchange.

254. Account 675 is now separated on the basis of telephone plant in service. This change would identify EAS settlements and other amounts in Account 675 and assign them directly to exchange. The allocation of the rest of the account would be unchanged. The modification of Account 644 procedures would transfer about $40,000 of Bell System revenue requirements to intrastate while AT&T estimates that the Account 675 change would transfer about $28 million of Bell System revenue requirements to intrastate.

255. USITA "strenuously objects to these two proposed changes." USITA Comments, p. 15. This disagreement with AT&T is based on the two organizations' differing views of EAS. AT&T views EAS as exchange service. USITA argues that EAS is "a toll substitute interexchange service which is different from regular toll only in the way it is priced." USITA Comments, p. 14. USITA sees upward pressure on local rates for Independent customers because of the conversion of toll calling to EAS without fair and equitable EAS settlement arrangements. GTE concurs with the AT&T proposals.

256. The Joint Board recommends that the AT&T proposals be adopted. The direct allocation of EAS to exchange service is appropriate. Although EAS could be construed as a substitute for toll, it is offered as an exchange service to customers, priced as an exchange service and typically designed to serve areas viewed as having interests common enough to compel their inclusion in the same local calling area. We can find no overriding reason to accept USITA's view.

5. *Property Tax Apportionment—Account 307.*

257. The AT&T proposal concerning the separations treatment of property taxes in Account 307 would allow apportionment of property taxes levied on portions of plant in service among operations on the basis of the separation of the cost of the property upon which the tax is levied. This change provides an option which would more closely relate tax allocations to the plant being taxed. This is a noncontroversial change which would transfer about $2 million of Bell System revenue requirements to interstate. We recommend that this change be adopted.

6. *Standard Work Seconds (SWS).*

258. AT&T, in Attachment D of its proposal, proposes to allocate the following, in whole or in part, on the basis of standard work seconds: (1) manual switchboards, operators' quarters, and certain traffic expenses (p. 26) [82]; (2) TSPS (p. 26); (3) directory assistance (p. 31); (4) service observing expense (p. 39); (5) certain expense allocations utilizing exchange groupings (p. 40); (6) number services record work (p. 46); and (7) rest and lunch rooms (p. 49). AT&T argues that standard work seconds have displaced traffic units as the primary basis for measuring the efficiency of operator work. Therefore, they are the appropriate basis for allocating the above named expenses which are now allocated largely on the basis of traffic units. The major difference in the two measures is that the standard work seconds approach does not contain an element for "waiting to serve" time. AT&T notes that

> [t]echnological innovations such as automatic call distribution systems have virtually eliminated the amount of time for the operator to wait to receive the next call. Standard work seconds thus more accurately represent the work which the operator performs in the current service environment.

AT&T Proposal, Attachment D, p. 26

259. USITA, United and GTE disagree with the AT&T suggestion. United points out that it and many other independents rely on traffic units for purposes of administration and efficiency analysis. Further, the "Bell System Operating Efficiency Plan operator services personnel relate SWS to capacity tables, which reflect waiting to serve time, to determine the proper operator force size." United Comments, Attachment D, p. 3. United agrees that SWS should be used where electronic operator positions exist, provided SWSs are weighted to include an element of "waiting to serve" time. For non-electric toll positions, traffic units should be used.

260. GTE proposes that "weighted standard work seconds" be used. Technology has reduced but not eliminated "waiting to serve" time, GTE notes. It is argued that "waiting to serve" time varies for different operations and, therefore, SWS should be weighted "to reflect a representative distribution of "waiting to serve" time. GTE Comments, Attachment 2, p. 30. USITA agrees with the basis for the AT&T proposal as it applies to the new electronic switchboards. However, it points out that "there are many switchboards in service in the Independent industry (and perhaps the Bell System), where 'waiting to serve' time is still an element of the operator work time." USITA Comments, p. 16. USITA argues that traffic units should continue to be used to allocate the cost of older switchboards.

261. We believe that a change to standard work seconds to allocate manual equipment, as proposed by AT&T, is premature and not fully supported. We believe that traffic units should remain the basis for these types of allocation. According to AT&T's Division of Revenues explanatory material, traffic units are a sort of "common denominator" used to express the relative time required by an operator to handle various kinds of calls or work operations. Standard work seconds can fill this function, too. While standard work seconds may be the current means of measuring operator work for administrative or efficiency analysis purposes in electronic offices, many operations are not structured to render accurate allocation measures through use of SWS. Further, it has been argued that initial position seizures to which operator standard work seconds are related in developing work load information may not necessarily represent the service actually provided to the caller because of possible malfunctions or electrical surges. However, we do not feel that such an argument would be sufficient to prevent the use of SWS. It merely points to an element of uncertainty in the consideration of the use of SWS which may not make a significant difference.

262. In the allocation of costs, we have been and still are concerned with

[82] These cites refer to page numbers in Attachment D of the AT&T Proposal.

messages. Unit calls (or traffic units) have been a preferred measure of operator work because they relate more closely to the costs incurred, including "waiting to serve" time. "Waiting to serve" time is commonly related to another aspect of efficiency—the sizing and productivity of a team of operators rather than individuals. The fact that traffic units are so widely used across the industry (and have such a long history of use and interpretation) facilities inter-company and inter-technological comparisons. Also, there may be a cost involved for companies with larger portions of manual equipment to convert to use of SWS.

263. We should point out that the failure to account for "waiting to serve" time may not necessarily invalidate the use of standard work seconds for the jurisdictional separation of costs. Thus, our preference for traffic units is a mild one. We would welcome an answer by AT&T to the objection of the Independents and further explanation, documentation, and support for this proposed change in response to this *Order*.

7. *TSPS Processor Use.*

264. For the reasons stated above, we oppose the use of standard work seconds in its proposal for allocating costs associated with various TSPS activities. However, we endorse the AT&T proposal to use processor real time to allocate the costs of TSPS stored program control, memory and remote trunk access. AT&T estimated that the change it first proposed for TSPS would have transferred about $13 million of Bell System revenue requirements to intrastate. Our modification of the proposal should result in a lower figure.

8. *Revision of Directory Assistance Traffic Units.*

265. AT&T proposes that the cost of directory assistance boards and related traffic expenses be allocated on the basis of standard work seconds, that the current practice of identifying calls as toll or local by type of incoming trunk and specifying the equipment to be included in this classification. AT&T also suggests that the jurisdiction be determined by relation to tariffed services, not trunk identification. USITA and United disagree with the use of standard work seconds while GTE says that current separations processes are appropriate.

266. In line with our discussion above, we prefer that standard work seconds not be used for allocating these costs. AT&T's agrument that current technology has made it infeasible to identify and determine incoming trunks may be valid in many circumstances. This would imply that special sampling studies must be used exclusively for allocating the proposed standard work seconds among operations. This proposed wording change is probably unnecessary. In the absence of trunk identification the studies would be used exclusively under the current language. There would be no choice. The current language could be clarified to note that in the absence of a feasible trunk identification method studies may provide the exclusive basis for allocation. Use of the tariff applicable to the call in question for allocation purposes appears to add an additional complicating step to the process. It is unclear how the specific relationship to the tariff will be established and what this new practice would entail for local companies. We recommend that this last change be held in abeyance. If AT&T wishes, it may return with a more detailed proposal, including examples of how its plan would be implemented in filings made before the Interexchange Joint Board.

9. *Intercept.*

267. AT&T proposes that the *Manual* be modernized to account for the fact that intercept investment is no longer in switchboards, but in automated systems which involve no operators or switchboards. It would add a reference to automated intercept systems to Section 2, Part 4, paragraph 24.332 of the *Manual*. AT&T projects no effect on Bell System jurisdictional revenue requirements. We agree with this noncontroversial modification and recommend that it be adopted.

10. *Network Administration, Accounts 621 and 624.*

268. Network administration expenses are now separated on the basis of relative numbers of traffic units. AT&T recommends having the allocation made on the basis of the separation among operations of book costs of the related dial switching equipment which AT&T identifies as COE Categories 2 through 7. GTE agrees with AT&T's proposal, but agrues that COE Category 1 should also be included in any change to the *Manual*. GTE states that the proposal "fails to recognize the administrative effort required in the network area associated with direct trunking terminating on manual cordboards, tandem toll and exchange trunks terminated on the boards, design and layout of the switchboard multiple, as well as administration of TSP and TSPS systems which require efforts similar to any other switching system." GTE Comments, Attachment 2, p. 34. AT&T projects a shift of $60 million of revenue requirements to intrastate, while GTE appears to show a net decrease in toll revenue requirements. We agree with GTE that AT&T has failed to justify the exclusion of Category 1 COE. These costs should be considered in the allocation of network administration expenses. We recommend that the GTE modification be adopted.

11. *Account 622—Modification for Special Services.*

269. AT&T proposes that the *Manual* be changed to allow private line expenses booked to Account 622 to be allocated to private line services. The *Manual* now prohibits this and this change will conform the *Manual* to industry practice. This unopposed change will be useful and will apparently leave the jurisdictional allocations unchanged. We recommend that this suggestion be adopted.

12. *Service Observing Expense, Account 622.*

270. AT&T recommends replacing service observing units with service observing seconds to allocate service observing expense. Service observing seconds are analogous to standard work seconds and do not contain an element for "waiting to receive a call" time. For the reasons we opposed the use of standard work seconds, we recommend that this proposal be rejected as well.

13. *Determination of Exchanges, Accounts 624, 627 and 631.*

271. This modification would eliminate the practice of allocating certain traffic expenses in Accounts 624, 627, and 631 by groups of exchanges, rather than by individual exchange. The grouping is allowed under special circumstances listed in paragraph 44.14 of the *Manual*. If amended, Account 624, Operator's Wages, and Account 627, Operator's Employment and Training, would be apportioned on an individual switchboard basis, and Account 631, Miscellaneous Central Office Expense, would be allocated on a study area basis. The Joint Board endorses the idea of eliminating exchange groupings. However, the basis of allocation proposed—standard work seconds—causes us to recommend rejection of the proposal. If AT&T cares to rework its suggestion (or make a further case for SWS), we will consider these changes.

14. *Wage and Hour Differential Ratio, Account 624.*

272. AT&T's proposal concerning the wage and hour differential ratio would eliminate the weighting now applied where the proportion of traffic among discount periods differs appreciably from the average 24-hour period or when wage differentials apply or when both of these circumstances apply (paragraph 44.442 of the *Manual*). AT&T argues that the weighting factors and the expensive study needed to develop these factors

are unnecessary because the proportional differences in the distribution of interstate versus intrastate operator work by period of the day and day of the week have been "virtually eliminated." This change would transfer $6 million of Bell System revenue requirements to intrastate, by AT&T's estimate. The Joint Board agrees that the weighting described is unnecessary and recommends the adoption of this change.

15. *Number Services Record Work, Account 624.*

273. Number services record work expenses are included with operator's wages and are now allocated on the basis of traffic units. AT&T proposes classifying number services work into directory assistance, intercept, and calling card service. Directory assistance and intercept would then be allocated on the basis of standard work seconds. Calling card service would be allocated based on credit card messages. Despite GTE's disagreement, the Joint Board believes that this classification should be disaggregated and that it is particularly important to remove a mechanized service (calling card) from the allocations of operator's wages. Once again, the use of standard work seconds must be rejected. The lack of accounting for "waiting to serve" time, as discussed above, leads us to reject the proposal as written. We prefer that traffic units be used to allocate the directory assistance and intercept portions of this expense.

16. *Rest and Lunch Rooms—Dining Service, Account 626.*

274. This proposal would remove the requirement that this expense be apportioned separately for each exchange or group of exchanges. Instead, the expense would be allocated on a study area basis. We agree that the allocation of this expense down to the exchange level is an unnecessary step in the process and recommend that AT&T's proposal be adopted. This change apparently has no effect on the overall amounts allocated between jurisdictions.

17. *Land and Buildings, Category 5.*

275. GTE proposes that Category 5 be redefined to include the costs of building space used by another company for intrastate purposes. Now Category 5 is defined as space used by another company for interstate operations and is directly assigned to interstate. GTE wishes to remove the reference to interstate, to allow for situations where land and building space are used for intrastate or both interstate and intrastate. New Category 5 would then be allocated by relative use.

276. The Joint Board recommends rejection of this proposal. At this time Category 5 only contains interstate costs and requires only the direct assignment of those costs to the interstate jurisdiction. GTE's proposal will increase the complexity of the current procedure and add another category in which allocation depends on a relative use measure. We prefer to rely upon direct assignment whenever possible.

18. *Outside Plant Simplification Cable Conversion.*

277. The *Manual* now requires that outside cable plant be converted to equivalent 19 or 22 gauge pairs. GTE points out that the conversion is necessary only when there is a mixture of gauges in a sheath or complement. GTE suggests that paragraph 23.3111 be modified to remove the requirement that the equivalence be stated in 19 or 22 gauge. We agree that this is a useful change to the *Manual* and recommend its adoption. There should be no jurisdictional revenue requirement effect from this change.

19. *Plant Furnished to Another Company.*

278. In a proposal similar to its proposal for redefining Land and Buildings Category 5, GTE suggests that Categories 2.1, OSP Furnished to Another Company for Interstate Use, and 8.21, Interexchange Circuit Equipment Furnished to Another Company for Interstate Use, both be changed to account for such facilities offered to other companies for joint interstate/state use or for state use. These categories then would be allocated on a relative use basis.

279. As with the earlier proposal, we recommend that this change be rejected. We recognize that the circumstances described by GTE do occur. However, we do not believe that it is desirable to complicate the allocation of costs among jurisdictions to account for these situations. Current procedures seem adequate to accommodate GTE's proposal. If GTE would like to restate its proposals for this and Land and Buildings Category 5 and resubmit them with specific actual examples of the use of the proposed procedures, it may do so in the upcoming Interexchange Joint Board proceeding.

20. *Material and Supplies.*

280. GTE proposes that the basis for allocating Account 122, Material and Supplies, be changed from the apportioned cost of outside plant in service to the apportioned cost of central office equipment, large PBX equipment, and outside plant in service. GTE reasons that, because Account 122 includes central office and large PBX equipment, they too should be included in the basis for apportioning the account. This change would increase GTE's intrastate revenue requirements.

281. Account 122, according to Part 31 of the FCC Rules, includes:

> * * * the cost of unapplied material and supplies held in stock * * * including plant supplies, motor vehicle supplies, tools, fuel, and other supplies; and material and articles of the company in process of manufacture for supply stock.

Section 31.122 of the Commission's Rules. Account 121 does not include items in stock recorded in Account 231, Station Apparatus.

282. In light of what is included in Account 122, it is not clear why GTE proposed the basis of allocation it did. For example, total plant in service, less investment in station apparatus, could have been an equally rational choice. Granted, the logic for allocating Account 122 on the basis of outside plant is not particularly compelling, either. Additionally, we should point out that large PBX equipment will be included in the phase-out of CPE and this should be considered in evaluating the efficacy of any change. We recommend that this proposal be rejected. The need for any change in the current procedures has not been convincingly demonstrated.

21. *Test Desk Work—Account 603, Trunk Testing.*

283. GTE recommends that test desk work associated with trunk testing be segregated between exchange trunk and interexchange circuit plant based on equivalent rather than relative circuit miles. GTE claims that this change would provide consistency between the allocation of Outside Plant (OSP), COE and the associated testing expense. The Joint Board recommends rejection of this change. First, the inconsistency, if any, is minor. Second, our reading of the proposal indicates that this change is arbitrary and GTE offers no compelling rationale to support it. GTE is welcome to revise and clarify this proposal and present it for consideration in the Interexchange Joint Board proceeding.

22. *Interest Charge Construction.*

284. GTE's proposal is to add a phrase to Paragraph 33.21, of the *Manual* which purportedly will make the basis for apportioning interest charged construction consistent with the basis on which the interest was accrued. We believe the GTE proposal only confuses the current paragraph 33.21 language and does nothing to improve the allocation of interest charged construction. We recommend that it be rejected.

23. *Investment Credits-Net—Account 304.*

285. Account 304, Investment Credits-Net, is segregated between amounts associated with station connections and other plant accounts. Those amounts associated with station connections are allocated on the basis of apportioned station connections. The remainder is allocated on the basis of telephone plant in service excluding station connections. GTE proposes that we eliminate the segregation between station connections and other plant and just allocate the total amount of investment tax credits on the basis of separated telephone plant in service. We agree with GTE that taking the intermediate step of segregating the investment credits to station connections does not improve the jurisdictional separations process. We recommend that this change be adopted.

24. *Interest Not Related to Capital Obligations.*

286. AT&T asserts that the current *Separations Manual* is not specific enough with respect to the allocation of interest not related to capital obligations. AT&T agrees that the current practice calls for allocation of these expenses on a basis consistent with the apportionment of the item causing the expense, but argues that other *Manual* language may be construed to allow these expenses to be treated as fixed charges, apportioned on the basis of net plant. AT&T advances clarifying language and notes that such a change would have no jurisdictional revenue requirement effect.

287. GTE, United, Central and USITA disagree with the AT&T proposal with varying degrees of stridency. Except for AT&T, the participants in this proceeding appear to agree that current procedures are at least adequate. A controversy also exists between AT&T and USITA over the proper treatment of interest not related to capital obligations which is beyond our charter to resolve. We suggest that the resolution of that problem be reached in another forum. We are convinced that no change is needed in the current procedure and recommend rejection of the AT&T proposal.

25. *Separations Studies Expense.*

288. GTE notes that the "identification and apportionment of separations studies expense are not specifically mentioned in the current *Separations Manual*" and goes on to recommend changes which would explicitly recognize the separations study expenses in at least five accounts. GTE then would allocate these expenses to state toll or interstate toll, arguing that the primary purpose of separations procedures is to identify toll costs. Therefore, the costs of the studies would be allocated to toll.

289. We disagree with GTE's suggestion. As the *Manual* says, separations is "the process by which telephone property costs, revenues, expenses, taxes and reserves are apportioned among the operations." *Separations Manual*, p. 95. "Operations" are defined as exchange, toll and state toll. It is clear that the purpose of separations is to develop costs for all of the operations, not merely to develop toll costs. Current practices properly reflect this fact. Accordingly, we recommend rejection of the GTE suggestion.

26. *Other Operating Taxes—Account 307.*

290. GTE points out that there is no separate treatment of franchise taxes in this category. GTE's proposal would remedy this situation by separating franchise taxes from the other taxes and allocating them on the basis of the apportionment of Account 100.1, Telephone Plant in Service, just as property taxes, capital stock taxes and "other taxes" are now allocated. Franchise taxes may be levied based on local revenues, total revenues, property owned or another basis at the discretion of the taxing authority. GTE reasons that "since the franchise tax is for the purpose of permitting the telephone companies to operate within a franchised area, it should be apportioned consistent with the classification of services rendered to the public," that is, telephone plant in service.

291. The other taxes in this category are apportioned based on the allocation of some other account or set of accounts representative of or based on the way the tax was levied. For example, property taxes are apportioned based on telephone plant in service; social security taxes are allocated on the basis of the wage portion of several expenses; and gross receipt taxes are allocated on the basis of the separation of the receipts, earnings or income on which the taxes are levied.

292. We believe that franchise taxes should be treated as a separate item and that franchise taxes should be allocated based on the way the tax is levied. If franchise taxes are based on revenues, they should be allocated based on revenues and so forth. We recommend that a separate classification be added to handle franchise taxes and that the apportionment be accomplished as described here.

27. *COE Equipment.*

293. The *Separations Manual* now allocates the cost of COE not assigned to any specific category among the categories in proportion to the cost of equipment directly assigned to categories. *Separations Manual* para. 24.131. Central office power equipment used by only one category of COE is directly assigned to that category. *See Separations Manual* para. 24.1311. Power equipment directly assigned to a specific category may either use the central 48 volt power supply as its power source or rely upon a stand alone power source.

294. GTE proposes to change paragraph 24.1311 to specify that the cost of power equipment used by one category should be directly assigned to that category before the costs of common central office equipment are distributed among the categories.[83] It asserts that this would simplify study procedures by permitting the distribution of the cost of the central 48 volt power supply among the categories in proportion to the cost of all equipment directly assigned to categories, including power supplies directly assigned under paragraph 24.1311. GTE adds that this modification to the *Separations Manual* would have no significant impact upon its jurisdictional revenue requirements.

295. We are, at this time, unconvinced that any change in the *Manual* is needed to permit the simplified study procedures GTE seeks. If some modification is required, however, we would tentatively recommend the following change to paragraph 24.131 rather than the change to paragraph 24.1311 that GTE proposes:

> 24.131 The cost of common equipment not assigned to a specific category * * * is distributed among the categories in proportion to the cost of equipment, *including power equipment*, directly assigned to categories.

We believe that this change would achieve the result GTE seeks with fewer words than its proposal.

28. *COE Emergency Power.*

296. The *Separations Manual* now distributes the cost of fixed emergency power equipment on the same basis as the cost of the power equipment it protects. *See Separations Manual* paragraph 24.1313. It distributes the cost of portable emergency power plant among the categories based on the assignment of the costs of all other COE

[83] The specific change GTE proposes is the addition of the following *underscored* words to Para. 24.1311:

> The cost of power equipment used by one category is assigned directly to that category, *e.g.*, 130 volt power supply provided for circuit equipment, *prior to the distribution of common equipment not assigned to a specific category.*

in the study area. *See Separations Manual* paragraph 24.1314.

297. GTE proposes that the *Separations Manual* treat portable emergency power equipment as it now treats such fixed equipment.[84] According to GTE, the present treatment of the portable equipment costs results in their improper allocation because it may distribute a share of those costs to categories of equipment not protected by the portable units. GTE adds that adopting its proposal would have no significant impact on its jurisdictional revenue requirements.

298. Cost causation principles would appear to support GTE's proposal. It is unclear, however, that the language change GTE proposes will achieve the result it seeks. For example, if certain portable emergency plant protects both power equipment directly assigned to one category and power equipment either assigned directly to a second category or treated as common equipment, the GTE proposal fails to tell how that portable plant's costs should be allocated. We believe that the result GTE seeks could be achieved by deleting paragraphs 24.1314 and 24.1313 and treating the costs of emergency power equipment on the same basis as all other central office power equipment. The following additions to paragraph 24.131 and paragraph 24.1311 would make the intended treatment clear:

> 24.131 The cost of common equipment not assigned to a specific category, *e.g.*, power equipment, *including emergency power equipment* * * * is distributed among the categories in proportion to the cost of equipment directly assigned to categories.
>
> 24.1311 The cost of power equipment used by one category is directly assigned to that category * * *. *The cost of emergency power equipment protecting only power equipment used by one category is also directly assigned to that category.*

We are soliciting comments that discuss: (1) whether there are any practical reasons for continuing to distinguish in the *Manual* between emergency power equipment and the remaining central office equipment; (2) the costs and benefits of changing the *Manual* to achieve the result GTE seeks; and (3) whether either of the two proposals, either as made or with amendments, will achieve this result.

29. *Technical Wording Changes of AT&T's Attachment E.*

299. AT&T has provided the Joint Board with 56 pages of revisions to the Separations Manual. These changes remove references to obsolete equipment and services no longer offered, and specify accounts which are new. These changes were presented in Attachment E of AT&T's proposal of June 2, 1981. We recommend that these technical changes be adopted. AT&T's annotated Attachment E is incorporated here as part of this item's Appendix A. Appendix A also includes the *Manual* wording changes proposed by the Joint Board in this *Order.*

300. The preceding section contains our analysis and recommendations concerning a wide range of very specific changes in the *Separations Manual* based on the filings to date in this proceeding. We request comments on the views expressed above. Where specific questions concerning a particular issue are set out in the relevant section, interested parties should attempt to respond to them if they choose to address that issue.

F. Legal Issues

301. We now turn to the legal issues remaining for resolution in this proceeding. The most significant of these questions involves the legality of various methods of allocating NTS local exchange plant. We begin the analysis of the group of issues by discussing whether separation of NTS plant is required, and, if so, whether the separation must be based on relative usage. We also discuss whether a relative use measure other than minutes of use is legally acceptable, and analyze the legal implications of a high cost factor in the separations formula. We also discuss certain procedural issues.

1. *Principles Governing Jurisdictional Separations.*

a. *Is Separations of NTS Plant Required.*

302. In 1913, the Supreme Court issued its opinion in the *Minnesota Rate Cases,* 230 U.S. 352 (1913). This case arose when three railroads challenged Minnesota's authority to adopt intrastate rates which forced a reduction in interstate rates as well. This was the first time that the Court found that separations was necessary. It stated that

> [w]here the business of the carrier is both interstate and intrastate, the question of whether a scheme of maximum rates fixed by the state for intrastate transportation affords a fair return, must be determined by considering separately the value of the property employed in the intrastate business and the compensation allowed in that business under the rates prescribed.

230 U.S. at 435.

303. The Supreme Court spoke again in *Smith* v. *Illinois Bell Telephone Company,* 282 U.S. 133 (1930), where the Illinois Commerce Commission had attempted to prescribe lower local and intrastate rates. The Court determined that the Commission had not distinguished between intrastate and interstate expenses. It observed that

> [u]nless an apportionment is made, the intrastate service to which the exchange property is allocated will bear an undue burden—to what extent is a matter of controversy.

282 U.S. at 151.

304. The Supreme Court next addressed the issue in two cases under the Natural Gas Act. *Lone Star Gas Co.* v. *Texas,* 304 U.S. 224 (1938), involved a gas company which procured and transported most of its gas within Texas, but which did procure and then pipe a small amount of its gas from Oklahoma into Texas. In response to an allegation that the Texas Railroad Commission had failed to make a proper segregation of interstate and intrastate properties and businesses, the Court stated:

> This was not a case where the segregation of properties and business was essential in order to confine the exercise of state power to its own proper province. Compare *Smith* v. *Illinois Bell Telephone Co.,* 282 U.S. 133, 148, 149. Here, as we have seen, the Commission in its method of dealing with the property and business of appellant as an integrated operating system did not transcend the limits of the state's jurisdiction or apply an improper criterion to its determinations. 304 U.S. at 241.

305. Again, in *Colorado Interstate Gas Co.* v. *FPC,* 304 U.S. 581 (1945), the Court found no necessity for separations. It stated:

> A separation of properties is merely a step in the determination of costs properly allocable to the various classes of services rendered by a utility. But where, as here, several classes of services have a common use of the same property, difficulties of separation are obvious.

324 U.S. at 589.

306. Other courts have reached contrary conclusions.[85] The Supreme Court appears to allow greater discretion to federal agencies than to state agencies in deciding whether to perform separations. The *Minnesota Rate Cases* and *Smith* base their rationale heavily upon the state commissions' lack of jurisdiction over interstate assets. They require separations in order to limit the authority of the state commissions. The

[84] GTE would accomplish this by deleting Paragraph 24.1314 of the *Manual* and revising Paragraph 24.1313 to read:

The cost of emergency power equipment is distributed on the same basis as the cost of the power equipment it protects.

[85] Capital Transit Co. v. D.C.P.U.C., 213 F. 2d 176 (D.C. Cir. 1953); Washington Utilities and Transportation Commission v. FCC, 513 F. 2d 1142 (9th Cir. 1975).

Court in *Colorado Interstate Gas Company*, however, dealt with the jurisdiction of a federal agency, the Federal Power Commission, and found no separations to be necessary.

307. Under the Communications Act, the Federal Communications Commission may regulate only interstate and foreign commerce in communication by wire and radio. 47 U.S.C. 151.[86] To that end, it is desirable to separate those facilities used in interstate communications from those facilities subject to the jurisdiction of state commissions. Section 221(c) of the Act gives the Commission the jurisdiction to classify the property of common carriers as interstate or intrastate. Property which is used entirely for interstate communications, or entirely for intrastate communications, is easily classified. However, plant used jointly for intrastate and interstate communications raises more difficult questions. Nevertheless, broad discretion in allocating joint plant is well established. In the *Minnesota Rate Cases*, 230 U.S. at 432–433, the Court stated that

> [i]f the situation has become such, by reason of the inter-blending of the interstate and intrastate operations of interstate carriers, that adequate regulation of their interstate rates cannot be maintained without imposing requirements with respect to their intrastate rates which substantially affect the former, it is for Congress to determine, within the limits of its constitutional authority over interstate commerce and its instruments the measure of the regulation it should apply.

308. The Fourth Circuit has upheld FCC preemptory power over terminal equipment used for both interstate and intrastate communications in *North Carolina Utilities Commission v. FCC*, 552 F. 2d 1036 (4th Cir. 1977). In *California v. FCC*, 567 F. 2d 84 (D.C. Cir. 1977), the Commission was held to have jurisdiction over foreign exchange (FX) and common control switching arrangement (CCSA) facilities offered by common carriers even though the facilities were located entirely within a single state. The most recent decision on this point is *New York Telephone Company v. FCC*, 631 F. 2d 1059 (2nd Cir. 1980). That case involved an attempt by the New York State Public Service Commission to require surcharges for the use of local exchange facilities by subscribers to interstate FX and CCSA services. The Second Circuit held that when the FCC has chosen to preempt a field of regulation in order to protect interstate traffic, its jurisdiction will be upheld. The court stated:

> Even if the local exchange service is separable technologically and in terms of cost assessments from the dedicated private line in FX and CCSA service, there is no doubt that the NYT surcharge on interstate FX/CCSA users * * * substantially affects the conduct or development of interstate communication and encroaches upon FCC authority * * *. Accordingly, we uphold the FCC's assertion of jurisdiction here.

631 F. 2d at 1066.

309. It therefore appears that the Supreme Court, especially in the case of joint plant, will afford great discretion to a federal agency in determining whether or how to separate plant and expenses between the interstate and intrastate jurisdictions. Whether separations is required by the courts or not, a separations approach was adopted by the Commission after *Smith* when it approved the *Separations Manual* published by the National Association of Regulatory Utility Commissioners. 14 FCC Ann. Rep. 86 (1948). As noted above, several parties have presented proposals or arguments based on the theory that no separation of NTS costs by jurisdiction is required under the Communications Act. These proposals fall into two groups—first that the FCC can preempt jurisdiction over all NTS costs, and, second that the FCC can (or must) permit the various states to have jurisdiction over all NTS costs. Parties are invited to comment on the legality of either or both propositions. Parties believing that either approach would be legal are also invited to specifically address the desirability of a discretionary assignment of 100 percent of NTS exchange costs to either the interstate or intrastate jurisdictions.

b. *Must Separations Be Based on Relative Use.*

310. The courts have never specified that relative use alone must form the basis of separations procedures. In the *Minnesota Rate Cases*, the method approved for two railways' property separation was dervied from raw figures for intrastate passenger miles, interstate passenger miles, intrastate tonnage miles, and interstate tonnage miles. Then, high cost multipliers of 1.15 and 2.5, respectively, were applied to the intrastate figures. The resulting proportion was the basis for dividing operating expenses. 230 U.S. at 362. In *Smith*, the court directed that

> [w]hile the difficulty in making an exact apportionment of the property is apparent, and extreme nicety is not required, only reasonable measures being essential, * * * by some practical method the different uses of the property [must] be recognized and the return properly attributable to the intrastate service * * * ascertained accordingly.

282 U.S. at 150–151.

311. In *New York Telephone Company*, the Second Circuit allowed the entire cost of local exchange service used in connection with interstate FX and CCSA services to be allocated to the intrastate rate base, regardless of usage. In *Utah Power and Light Co. v. Pfost*, 286 U.S. 165 (1932), the Supreme Court considered rates for electric power generated in one state and delivered in another. In addressing the amount of power which the state Commissioner of Law Enforcement could regulate, the Court stated:

> measurements and calculations are more or less complicated. Absolute precision in either probably cannot be attained * * *. The law, which is said not to require impossibilities, must be satisfied, in many of its applications, with fair and reasonable approximations.

286 U.S. at 190–191.

312. The Fifth Circuit, in *Southwestern Bell Telephone Company v. San Antonio*, 75 F. 2d 880 (5th Cir. 1935), reviewed a state commission decision in which interstate losses of AT&T and Western Electric were blamed for Southwestern Bell's intrastate rate increase request. In requiring separations, the court stated:

> [A] failure to trace each of the items to its unit will not defeat their consideration. Substantial and approximate correctness is enough where perfect accuracy is not attainable.

75 F. 2d at 885. Finally, in *Colorado Interstate Gas Co.*, the Supreme Court stated:

> Judgment and discretion control both the separation of property and the allocation of costs when it is sought to reduce to its component parts a business which functions as an integrated whole * * *. These circumstances illustrate that considerations of fairness, not mere mathematics, govern the allocation of costs.

324 U.S. at 591. Therefore, we tentatively conclude that it is lawful to adopt a separations procedure which does not rely on use, but rather assesses costs by making a gross assignment to the interstate jurisdiction.

c. *If Separations is Based Upon Relative Use, Must It Rely on Minutes of Use?*

313. After determining that separations was necessary, the Supreme Court in *Smith* remanded the case to the district court for a determination of interstate and intrastate allocations. On remand in *Illinois Bell Telephone Co. v. Gilbert*, 3 F. Supp. 595 (N.D. Ill. 1933), the lower court allocated property not used

[86] "Interstate Communication" means communication from one state to another but does not include communication between points in the same state, territory, or possession of the United States if such communication is regulated by a state commission. 47 U.S.C. 153(e).

exclusively for interstate or intrastate purposes based upon actual proportionate use, although it said that the apportionment was not exact. It did not specify that minutes of use were counted. That plan was affirmed in *Lindheimer v. Illinois Bell Telephone Co.*, 282 U.S. 151, 155 (1934), with the statement,

> On the further hearing, that difficult task was so well performed that no question is now raised as to the allocation of property to the intrastate or interstate services, respectively, in the Chicago area, the allocation being made on the basis of use.

In *Smith*, 282 U.S. at 147, the company's computation of use is explained by the statement that "one-half of one per cent of calls originated by subscribers resulted in interstate toll calls." That calculation clearly reflects number of calls, not minutes of use. Therefore, we tentatively conclude that, even if a usage basis is required for jurisdictional separations, it need not be based on minutes of use.

d. *Legality of a High Cost Adjustment in Certain Areas.*

314. Although there is no authority specifically on point, legal precedent seems to afford the Commission broad discretion concerning whether and how to separate interstate and intrastate plant. Section 1 of the Communications Act states that one of Congress' objectives in creating the Commission was

> to make available, so far as possible, to all people of the United States a rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges.

Increasing the percentage of joint plant allocated to the interstate jurisdiction in high cost areas would help prevent separations changes from causing unduly large local rate increases in these areas. Without a high cost factor, the proposed separations changes may negatively affect some rural telephone subscribers' ability to afford local service. Thus, a high cost factor would promote "[n]ation-wide * * * service * * * at reasonable charges." It therefore appears lawful to adopt a high cost factor for certain areas to prevent excessive increases in local rates, furthering the goal of Nation-wide service.

2. *Necessity of Evidentiary Hearings.*

315. Several parties, including SBS, MCI, Kansas Corporation Commission, SPCC, and USTS have alleged a need for evidentiary hearings in this proceeding. AT&T, GTE, and USITA challenge this position. On February 23, 1981, the Joint Board found that there was no need for evidentiary hearings in this proceeding at that time. 85 FCC 2d 757 (1981). The Commission also rejected similar arguments later in this proceeding. 86 FCC 2d 190 (1981). Both orders conclude that the legislative history of Section 410 of the Act does not require evidentiary hearings. They state that the Administrative Procedures Act, 5 U.S.C. § 501 *et seq.*, and relevant case law do not require more than notice and comment in this proceeding. We continue to believe that those conclusions are correct and tentatively reject the claim that evidentiary proceedings are now necessary.

V. Summary and Conclusion

316. In June, 1980, the Commission established this Joint Board to address and recommend resolutions to three major issues which reflect the sweeping changes that have confronted the telecommunications industry since the *Separations Manual* was last revised. In the intervening decade the number of new entrants and competitive offerings in many telecommunications markets, including the longstanding telephone company monopolies, has increased dramatically. Deregulation has occurred in many areas as traditional rules and regulations have been re-evaluated and, in appropriate cases, relaxed or eliminated. Rapid and significant changes in technology occurring during the past twelve years have made many telecommunications systems and supporting equipment systems prematurely obsolete. These factors, combined with the rapid unpredictable growth of NTS costs allocations to the interstate jurisdiction, have exerted enormous pressure on regulations to reevaluate existing procedures and practices in the jurisdictional separations process.

317. We have already examined the first issue, the impact on separations caused by the deregulation of CPE ordered in the Commission's decision in the *Second Computer Inquiry*, and have recommended that CPE be phased out of the separations process over a five-year period. ("The Popenoe Plan"). We have also proposed that an early CPE freeze date be set so that state programs for the sale of CPE to subscribers might be instituted before January 1, 1983 ("The Gravelle Amendment"). The Commission has adopted both of these recommendations with only minor changes, and revised the *Separation Manual* to implement the modified recommendations. We have now turned to the two remaining issues, the allocation of exchange plant investment between the interstate and intrastate jurisdictions and the compatibility of the separations process with the access charge plan being developed in CC Docket No. 78-72. The participants in this proceeding have already expended a tremendous effort in grappling with these most complex questions. Over seventy parties have submitted comments addressing these issues. Eleven regional hearings, at which more than 150 individuals and organizations made presentations have also been held. Presentations by industry and state commission representatives relating to SPF and other NTS allocation methods, a series of Joint Board staff meetings, and three data requests initiated by the Joint Board and addressed by Bell and independent telephone companies have also developed our understanding of the issues.

318. In this *Order*, we discuss specific issues relating to exchange cost allocations and recommend resolutions for several. We recommend that five (business) day traffic studies be replaced by seven (calendar) day studies. We also recommend that the *Manual* assign all costs that are identificable as entirely interstate or intrastate in nature to the appropriate operation or jurisdiction. In addition, we propose that interstate FX-CCSA open-end access investment and expenses and revenues be recognized as interstate in nature. We would also propose that the *Manual* explicitly recognize OCC-ENFIA use of local facilities. Concerning administration of separations and toll settlements, we propose to establish an "information bank" which would disseminate separations data on a cost compensatory basis to interested parties. In addition, we believe that a standing Federal-State technical staff should be created to recommend to the Commission, resolutions of any *Manual* related disputes or grievances.

319. We also set forth in this *Order* a "menu of options" concerning allocation of non-traffic sensitive exchange plant. We describe the advantages and disadvantages of usage based, nonusage based (or gross assignment), and hybrid approaches, and discuss representative proposals advanced during this proceeding. We also review other elements of the Joint Board's "generic forumula" (*i.e.*, an HCF and a transition factor) and request public comments on these items. Finally, we have completed a preliminary analysis of the legal issues related to implementing each of these methods of allocating NTS plant and have asked for comments on this analysis. We believe that further comments on these methods and proposals are essentials to our ability to select the most appropriate NTS costs allocator. It is our opinion that, given the

many dollars involved and the basic complexity of this issue, any attempt to resolve it without adequate information would be short-sighted and imprudent. The Joint Board does not consider the access charge plans in the FCC Fourth Supplemental Order in Docket 78-72 to be part of this order for separations changes, and any discussion of such access charge plans in this order is for background discussion only and is not presented here for comments as an alternative proposal of the Joint Board for changes in the *Separation Manual.*

320. We invite interested parties to comment on these tentative conclusions. We request that they include detailed legal analyses of the Commission's obligation to perform separations, its authority to include a high cost factor in the separations process, its power to implement separations procedures not based on use, and its duty to hold evidentiary hearings.

321. The Joint Board will hold an oral argument on March 16, 1983 before deciding the issues which remain for resolution in this proceeding. Parties wishing to participate should notify this Joint Board by no later than January 31, 1983, and an announcement regarding the oral argument will be issued in advance of this date. Such notices of intent to participate should indicate both the subjects which the parties wish to address and the amount of time they need for their presentations. Participation will be limited to those parties who will have filed formal documents in this proceeding, including comments in response to, *inter alia,* our *Order Requesting Comments,* released on June 10, 1981, and this *Order Requesting Further Comments.* The scope of the presentations will be confined to explanations and advocacy by the parties of positions which they have advanced in this proceeding. While it is our intention to accommodate as many parties as possible, we reserve the right to select representatives of particular viewpoints and encourage parties having similar interests to choose a group spokesman.

322. Members of the public are advised that this proceeding is being treated as a nonrestricted notice and comment rulemaking proceeding under the Commission's *Ex Parte* Rules, and that *ex parte* contracts are generally permitted. The Joint Board has also adopted certain supplemental *ex parte* restrictions which apply to the conduct of this proceeding before the Joint Board. These restrictions do not apply to Commission review of the Joint Board's recommendations. FCC 82-106, released March 5, 1982. All written materials which are not filed in accordance with a pleading cycle established by the Joint Board are to be accompanied by a Petition for Leave to File showing cause why the material should be considered by the Joint Board. The Joint Board will not consider any filing made outside the authorized pleading cycle and received by the Federal Communications Commission less than 15 days in advance of a Joint Board meeting at which the Joint Board is to consider the subject matter of that filing.[87] Written *ex parte* presentations need not be accompanied by a Petition for Leave to File and may be received in the discretion of the Joint Board or staff member involved. However, no written *ex parte* presentations are to be made during the 15-day period immediately preceding a Joint Board meeting except in response to an inquiry initiated by a member of the Joint Board or its staff. Oral *ex parte* presentations, except those initiated by Joint Board members or members of its staff,[88] will also be prohibited during the final seven days preceding Joint Board meetings. The Commission's *Ex Parte* Rules governing nonrestricted informal rulemaking proceedings continue to apply to the extent that they are not inconsistent with the procedures outlined above.

323. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments in the proceeding must prepare a written summary of that presentation. On the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally,* § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

[87] In calculating this 15-day period, neither the day on which the material is filed nor the day on which the Joint Board meeting is to be held are to be counted.

[88] This procedure is different from that set out in the Commission's *Ex Parte* Rules governing nonrestricted informal rulemaking proceedings which prohibit Commission initiated *ex parte* presentations during the cutoff period.

VI. Ordering Clauses

324. Accordingly, it is ordered, that interested persons may file comments concerning the issues discussed above on or before December 15, 1982. An original and four copies shall be filed with the Secretary of the Federal Communications Commission. One copy shall be filed with each State Joint Board member and each designated state staff member. Replies to these comments may be filed on or before January 15, 1983. All parties listed on the official service list are to serve copies of their filings on the other parties on the service list. Interested persons not listed on the official service list are welcome to participate, but the other parties need not serve them with copies of their filings and the interested parties not on the official service list need not serve others with copies of their comments. In reaching its decision the Joint Board and the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Report and Order.*

The Federal-State Joint Board.

Note.—The Appendices originally contained in this document are not printed herein due to the effort to minimize publishing costs. However, copies of this document in its entirety may be obtained from the distribution centers listed in the FCC Office of Public Affairs, Room 202, 1919 M St., NW., Washington, D.C. 20554, (202) 254-7674. A copy is also available for inspection in the Commission's Dockets Branch, Room 239, and the FCC Library, Room 639, both located at 1919 M St., NW., Washington, D.C.

[FR Doc. 82-33091 Filed 12-2-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-777; RM-4196]

FM Broadcast Station in Plantation Key, Florida; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of FM Channel 276A to Plantation Key, Florida, in response to a petition filed by John T. Galanses. The

proposal could provide a second FM service to that community.

DATES: Comments must be filed on or before January 13, 1983, and reply comments must be filed by January 28, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: November 16, 1982.

Released: November 29, 1982.

1. A petition for rule making was filed September 9, 1982, by John T. Galanses ("petitioner") proposing to assign Channel 276A to Plantation Key, Florida,[1] as its second FM assignment. Petitioner expressed an interest in applying for the channel, if assigned. The channel can be assigned in compliance with the Commission's minimum distance separation requirements.

2. In view of the fact that the assignment could provide a second FM service to Plantation Key, Florida, the Commission believes it is appropriate to propose amending the FM Table of Assignments (§73.202(b)) of the Commission's Rules with respect to the following community:

City	Channel No.	
	Present	Proposed
Plantation Key, Florida	262	262, 276A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before January 13, 1983, and reply comments on or before January 28, 1983, and are advised to read the Appendix for the proper procedures.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involved channel assignment.s An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitues an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has nto been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference

[1] Petitioner submitted community data in support of the assignment. However, in view of the action taken in *Revision of FM Policies and Procedure*, BC Docket No. 80-130, 90 F.C.C. 2d 88 (1982), that information is no longer required.

Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-33086 Filed 12-2-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-332; RM-3756; RM-4184]

FM Broadcast Stations in Newport, Washington; Sandpoint, Idaho,[1] and Libby, Montana;[1] Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This consolidated action seeks additional information relative to the provisions of § 73.240 of the Commission's multiple ownership rules, regarding proposals to assign FM Channel 285A to Newport, Washington, as its first FM assignment, filed by Pend Oreille Valley Broadcasting, and to substitute FM Channel 292A for 269A at Libby, Montana, with the concurrent reassignment of Channel 269A to Sandpoint, Idaho, as its second assignment, in response to a petition filed by Tri-County Broadcasting.

DATES: Comments must be filed on or before January 13, 1983, and reply comments must be filed on or before January 28, 1983.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: November 16, 1982.

Released: November 29, 1982.

By the Chief, Policy and Rules Division:

1. This proceeding involves two separately-filed proposals which are jointly considered herein since they are somewhat related. First, we will set forth background information related to the Newport proposal which has already been available for comment, followed by the additional petition for Sandpoint, Idaho, and Libby, Montana, which has not yet been the subject of a notice of proposed rule making.

Proposal in BC Docket No. 81-332 (RM-3756)

2. On March 18, 1982, the Commission adopted a Report and Order concerning Newport, Washington (RM-3756), 47 13841, published April 1, 1982, which terminated that proceeding for failure of Pend Oreille Valley Broadcasting ("petitioner") to make the requisite showing of continuing interest in its proposal to assign FM Channel 285A to that community as its first Class A FM assignment.

3. In response to the Report and Order, an unopposed petition for reconsideration was filed by the petitioner, in which it states that its delay in filing supporting comments was attributable to the pendency of its AM application for Newport. It states that it is concerned that the community cannot support two broadcast facilities, but, nevertheless, indicates that it is committed to constructing an FM station in Newport, if assigned.

Proposal in BC Docket No. 81-332 (RM-4184)

4. A petition for rule making was filed by Gerald E. Carpenter, Eric E. Carpenter and Louis Musso, III, d/b/a Tri-County Broadcasting ("Tri-County"), proposing the substitution of Channel 292A for unused Channel 269A at Libby, Montana, with the concurrent reassignment of Channel 269A to Sandpoint, Idaho, which could provide the latter community with its second FM assignment. Petitioner states it will apply for the channel, if assigned to Sandpoint, Idaho, as proposed.

Discussion

5. Before ruling on the merits of the proposals, it will be necessary for petitioners to supply additional information in order to determine if they would be in contravention of § 73.240 of the Commission's Rules regarding regional concentration of control and prohibited signal overlap.

6. In order to clarify our concern with respect to the multiple ownership rules, it is essential that the following background information be considered. Specifically, the individuals comprising the petitioner in RM-3756, Pend Oreille Valley Broadcasting, also appear to be the same persons who constitute the petitioner in RM-4184, Tri-County Broadcasting. Tri-County is also the licensee of Channel 221A in Colville, Washington, and the only applicant for Channel 296A in Deer Park, Washington. Newport, Deer Park and Sandpoint are all within 100 miles of Colville, and within 25 miles of each other. Section 73.240 prohibits generally the acquisition of a station if such would result in the common ownership of three broadcast stations where any two are within 100 miles of the third and there is, or will be, primary service contour overlap of any of the related stations. Thus, in such situations, the Commission has the responsibility to examine and prohibit a media ownership pattern which would create a *de facto* regional concentration of control or actual service overlap.[2]

7. In view of the above, and in order to determine whether there would be commonality of interest and operation of control between the proposed Newport, Deer Park and Sandpoint facilities, petitioner shall supply information regarding the nature and extent of the interests of Messrs. Gerald E. Carpenter, Eric E. Carpenter and Louis Musso III, in both Pend Oreille Valley Broadcasting and Tri-County Broadcasting.

8. Additionally, petitioner is required to provide information to demonstrate whether there would be any overlap of the predicted 1 mV/m contours of the proposed Newport, Deer Park and Sandpoint stations and, if so, what measures it will employ to resolve the prohibited signal overlap.

9. As previously set forth in the notice, we reiterate that the Newport proposal (RM-3756) requires a transmitter site restriction of approximately 2.2 kilometers (1.4 miles) northwest of the community to aviod short-spacing to Station KCJF (Channel 282) in Kellogg, Idaho. The Commission has previously sought and obtained approval by the Canadian government in the Newport proposal since that community is located within 320 kilometers (200 miles) of its border.[3] The Sandpoint, Idaho, and Libby, Montana, proposals can be made consistent with the domestic minimum distance separation requirements of the Commission's Rules. However, Canadian concurrence must be obtained for these proposals as both communities are likewise located within 200 miles of the common border, and the Libby substitution would be 11 miles short-spaced to first adjacent Channel 291B at Creston, British Columbia.

10. In order to give further consideration to these requests, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel no.	
	Present	Proposed
Sandpoint, Idaho	237A	237A, 269A.
Libby, Montana	269A	292A.
Newport, Washington		285A.

[1] The communities have been added to the caption.

[2] This situation would no longer be of concern to us from an assignment standpoint if another interest were expressed in the Newport and Sandpoint proposed assignments.

[3] Approval was also given to the short-spacing this proposal would cause to Channel 284 in Cranbrook, B.C.

11. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

12. Interested parties may file comments on or before January 13, 1983, and reply comments on or before January 28, 1983, and are advised to read the Appendix for the proper procedures.

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

14. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792. However, menbers of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the notice of proposed rule making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the notice of proposed rule making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following precedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rule making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties m ust be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Rely comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-33085 Filed 12-2-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-778; RM-4201]

TV Broadcast Station in Block Island, Rhode Island; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposed the assignment of UHF Television Channel 69 to Block Island, Rhode Island, as its first television assignment in resonse to a petition filed by Venture Research Group.

DATES: Comments must be filed on or before January 13, 1983, and reply comments must be filed on or before January 28, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Adopted: November 16, 1982.

Released: November 29, 1982.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the petition for rule making filed September 20, 1982, by Venture Research Group ("petitioner"), seeking the assignment of UHF Television Channel 69 to Block Island, Rhode Island. Petitioner expressed an interest in applying for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements and other criteria.

2. Block Island (population 489) [1] is located off the coast of Rhode Island

[1] Population figures are taken from the 1970 U.S. Census.

approximately 45 kilometers (29 miles) southeast of Newport, Rhode Island.

3. Petitioner states that the basis of Block Island's economy is tourism which provides approximately 80% of its revenue. It believes that the community's income could be supplemented by light "cottage" industry and broadcasting. While light industry suffers from the remoteness of the community and high shipping costs petitioner believes that broadcasting would benefit from its location close to excellent, affluent markets. Petitioner tells us that programming will be of a maritime/vacation nature and would be transmitted to parts of New York, Rhode Island, Connecticut and Massachusetts. Population density and high average income provides maximum chance of success.

4. In view of the foregoing, the Commission believes that it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Commission's Rules) with regard to the following city:

City	Channel No.	
	Present	Proposed
Block Island, Rhode Island		69-

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before January 13, 1983, and reply comments on or before January 28, 1983, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rule making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-33084 Filed 12-2-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 76

[CT Docket No. 82-434]

Amendment of the Commission's Rules Relative to Elimination of the Prohibition on Common Ownership of Cable Television Systems and National Television Networks; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: At the request of an interested party and in order to permit the fullest possible comment, the Commission grants an extension of time for filing comments and reply comments in response to the notice of proposed rulemaking in CT Docket No. 82-434, FCC 82-323, 47 FR 39212 (September 7, 1982). The notice initiates a proceeding to determine whether the Commission should delete the existing rule, 47 CFR § 76.501(a)(1), prohibiting national television networks from owning cable television systems.

DATES: The comment period is extended to December 14, 1982, and the reply comment period is extended to January 31, 1983.

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

FOR FURTHER INFORMATION CONTACT: Robert H. Ratcliffe, Mass Media Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: November 19, 1982.

Released: November 24, 1982.

In the matter of; Amendment of Part 76, Subpart J, § 76.501 of the Commission's Rules and Regulations Relative to Elimination of the Prohibition on Common Ownership of Cable Television Systems and National Television Networks.

By the Chief, Cable Television Bureau.

1. Time, Inc., has requested that the time for filing comments in the above-referenced proceeding be extended from November 29, 1982, to December 14, 1982.

2. In support of its request, Time, Inc., indicates that it is engaged in gathering and analyzing extensive data, including information relating to programming, actual viewing, potential viewership, and firm incomes, in an effort to provide the Commission with as much factual and analytical information as possible as a basis for resolving the complex and important questions raised in this proceeding. Petitioner states that the brief extensions requested is necessary in order to permit completion of this process in a manner which will allow the full benefit of it research efforts to be realized.

3. Given the complicated yet fundamental nature of the issues posed by this proceeding, we are anxious to receive the most thoughtful and extensive comments which the parties are able to provide. Granting the requested extension will further our objective in this regard, yet we do not believe, given its brief nature, that it will unduly delay the subject proceeding or prejudice other parties.

Accordingly, it is ordered that, the dates for filing comments and reply comments in the above-captioned proceeding are extended to December 14, 1982, and January 31, 1983, respectively.

This action is taken by the Chief, Cable Television Bureau, pursuant to authority delegated by § 0.288(a) of the Commission's Rules.

Federal Communications Commission.

William H. Johnson,

Chief, Cable Television Bureau.

[FR Doc. 82-33087 Filed 12-2-82; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 233
Friday, December 3, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. No. 92-463, that the membership to the Administrative Comference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs, will meet in Plenary Session on Thursday, December 16, 1982 at 2:00 p.m. and December 17, 1982 at 9:00 a.m. in The Amphitheater of the Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C.

The Conference will consider, not necessarily in the order stated, the following agenda items:

1. A proposed amendment to Section 3 of the Bylaws of the Conference.
2. A proposed recommendation respecting Federal officials' liability for Consitutional violations.
3. A proposed recommendation on judicial review of rules in enforcement proceedings.
4. A proposed statement on discipline of attorneys practicing before Federal agencies.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037, telephone (202) 254-7020.

Dated: November 30, 1982.

Richard K. Berg,

General Counsel.

[FR Doc. 82-32981 Filed 12-2-82; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Availability of Surplus Cheese and Butter

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Food and Nutrition Service announces that it will provide an additional 280 million pounds of surplus process cheese and 75 million pounds of surplus butter to requesting State agencies for distribution to eligible recipients. The process cheese and butter being made available by this anouncement is in addition to the total 220 million pounds of cheese and 50 million pounds of butter which has already been made available by the Department under a special surplus distribution program which was first authorized in December 1981.

FOR FURTHER INFORMATION CONTACT: Joseph E. Shepherd, Director, Food Distribution Division, Food and Nutrition Service, Park Office Center, Alexandria, Virginia 22302, (703) 756-3680.

DATE: Requests for allocations of the process cheese and butter must be submitted by December 31, 1983.

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service will provide at least 280 million pounds of process cheese and 75 million pounds of butter to agencies of State governments which request it for distribution to eligible recipients. The Department will pay the cost of transporting the cheese and butter from Federal storage facilities to centralized storage facilities of recipient State agencies. State agencies will be responsible for arranging and financing distribution of the cheese and butter within the State.

The cheese and butter are being offered under the provisions of section 416 of the Agriculture Act of 1949 and section 1114 of the Agriculture and Food Act of 1981. The cheese and butter may be used only in nonprofit school lunch programs; nonprofit summer camps for children, other child nutrition programs providing food service; in nutrition projects operating under authority of the Older Americans Act of 1965, including congregate nutrition sites and providers of home-delivered meals; in assistance to needy persons; and in charitable institutions, including hospitals, to the extent that needy persons are served.

Distribution to needy persons for use in the preparation of meals in the home may be made only through food banks participating in the program established under section 211 of the Agriculture Act of 1980. State agencies wishing to distribute cheese and butter for this use will be required to assist the Department in designating food banks for participation in that program. State agencies must ensure that food banks have adequate refrigerator facilities for the storage of the cheese and adequate freezer facilities for the storage of the butter or the ability to distribute it within 48 hours of receipt.

State agencies participating in this distribution of cheese and butter will be required to enter into an agreement with the Food and Nutrition Service if they have not already done so. This agreement will embody the terms and conditions under which the cheese and butter are being provided. A copy of the agreement may be obtained from the appropriate Regional Administrator, Food and Nutrition Service. Agencies wishing to participate in the distribution should, by December 31, 1983, advise the appropriate Regional Administrator, in writing, of their interest and of the amount which they would like to receive. There is no limitation on the amount of cheese and butter which may be requested by a State agency. However, if requests for the cheese and butter exceed the amount available, the butter will be allocated among the States on the basis of state population.

Dated: November 5, 1982.

Robert E. Leard,

Associate Administrator.

[FR Doc. 82-33080 Filed 12-2-82; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

CMS Electric Cooperative, Inc.; Finding of no Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the

Council on Environmental Quality Guidelines (40 CFR Part 1500), and REA Bulletin 20–21:320–21, Environmental Policies and Procedures, has made a Finding of No Significant Impact with respect to proposed financing assistance to CMS Electric Cooperative, Inc., (CMS) of Meade, Kansas, for the construction of 115 kV transmission facilities. The proposed facilities will be located in Clark and Comanche Counties, Kansas.

FOR INFORMATION CONTACT: A copy of REA's Finding of No Significant Impact and Environmental Assessment and CMS's Borrower's Environmental Report (BER) may be obtained from the Director, Distribution Systems Division, Room 3304, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382–8848, or from CMS Electric Cooperative, Inc., P.O. Box 74, Meade, Kansas 67864, telephone (316) 873–2184.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by CMS and has determined that it represents an accurate assessment of the environmental impact of the proposed project. The proposed project consists of the construction of 27 km (17 mi) of 115 kV transmission line from Coldwater in Comanche County west to Route 34 in Clark County where it will terminate at a proposed 115/24.9 kV substation. Based upon the BER and related data, REA prepared an Environmental Assessment (EA) concerning the proposed project and its impacts.

The BER and EA adequately consider potential impacts of the proposed project on resources including threatened and endangered species, important farmlands, cultural resources, wetlands and floodplains. Some of the H-frame pole structures will cross 9.5 km (6 mi) of prime farmland. No practicable alternative to crossing this land is available.

Alternatives examined include taking no action, undergound construction, constructing a 34.5 kV line in lieu of the proposed 115 kV transmission line. REA also considered an alternative transmission line route and substation site. After reviewing these alternatives, REA determined that the proposed project is acceptable because it best meets CMS's needs with a minimum of adverse impact.

(This Program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees)

Dated: November 23, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82–32737 Filed 12–2–82; 8:45 am]

BILLING CODE 3410–15–M

CIVIL AERONAUTICS BOARD

[Docket 40987]

Taino International Airways, Inc.; Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to him.

Dated at Washington, D.C., November 26, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82–33057 Filed 12–2–82; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Countervailing Duty Investigation; Carbon Black From Mexico

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of countervailing duty investigation.

SUMMARY: On the basis of a petition filed with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of carbon black receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before February 1, 1982.

EFFECTIVE DATE: December 3, 1982.

FOR FURTHER INFORMATION CONTACT: John M. Davies, Office of Investigations, Import Administration, International, Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–3174.

SUPPLEMENTARY INFORMATION:

Petition

On November 8, 1982, we received a petition filed on behalf of the U.S. industry producing carbon black. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Mexico of carbon black receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and therefore section 303 of the Act applies to this investigation. The merchandise being investigated is nondutiable, and there are no "international obligations" within the meaning of section 303(a)(2) of the Act which require an injury determination for nondutiable merchandise from Mexico. Therefore, under this section the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on carbon black, and we have found that the petition meets these requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of carbon black, as described in the "Scope of the Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by February 1, 1983.

Scope of the Investigation

Carbon black currently enters the United States duty-free under item number 473.0400 of the *Tariff Schedules of the United States Annotated.* Carbon black is elemental carbon, with some incidental or planned surface oxidation, that is formed under the controlled cracking, heating and cooling of a petroleum derivative feedstock. Carbon black is used primarily in the tire and rubber industries as a filler, a coloring agent, an anti-weathering agent, a strength reinforcing agent, and a wear-resistance agent.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Mexico of carbon black receive the following benefits which constitute bounties or grants: preferential prices on

petroleum products and natural gas used to manufacture carbon black; preferential investment incentives; preferential benefits from government shareholding in the two Mexican carbon black producers; preferential federal and state tax incentives; preferential financing; government-financed industrial promotion; internal transportation benefits; preferential rates on commercial risk insurance; preferential credits for export production; preferential export marketing benefits; import duty rebates on equipment used in export production; and a discriminatory dual exchange rate system.

A specific allegation in the petition concerns federal tax incentives received by the carbon black industry under the export tax certificate program known as Certificado de Devolucion de Impuesto (CEDI). The government of Mexico notified us that as of August 25, 1982, it has discontinued the eligibility of products for the CEDI program. However, since the CEDI program has not been eliminated, we are including it as part of our investigation to determine whether manfuacturers, producers, or exporters in Mexico of carbon black in fact receive benefits under this program.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

November 26, 1982.

[FR Doc. 82-33039 Filed 12-2-82; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE INPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Level for Certain Man-Made Fiber Products From the Socialist Republic of Romania

November 30, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Applying special carryforward amounting to 2,100 dozen to the level of restraint established for man-made fiber suits in Category 643/644, produced or manufactured in Romania and exported during the agreement year which began on April 1, 1982. The adjusted level will be 26,358 dozen.

(A detailed description of the textile categories in term of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654))

SUMMARY: The Bilateral Wool and Man-Made Fiber Textile Agreement of September 3 and November 3, 1980, as amended, between the Governments of the United States and the Socialist Republic of Romania, provides, among other elements of flexibility, for the borrowing of designated percentages of yardage from the succeeding year's level (carryforward). Under the terms of the bilateral agreement, the United States has agreed to grant special carryforward of 2,100 dozen in Category 643/644. This amount will be charged to the level for this category during the agreement year beginning on April 1, 1983.

EFFECTIVE DATE: November 30, 1982.

FOR FURTHER INFORMATION CONTACT: Diana Bass, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On April 1, 1982, there was published in the **Federal Register** (47 FR 13856) a letter dated March 25, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain wool and man-made fiber textile products, produced or manufactured in Romania and exported during the twelve-month period which began on April 1, 1982. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the twelve-month level of restraint previously established for Category 643/644 to 26,358 dozen.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 30, 1982.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: On March 25, 1982, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption and withdrawal from warehouse for consumption during the twelve-month period which began on April 1, 1982 and extends through March 31, 1983 of wool and man-made fiber textile products in certain specified categories, produced or manufactured in Romania, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Effective on November 30, 1982, paragraph 1 of the directive of March 25, 1982 is further amended to increase the level established for man-made fiber textile products in Category 743/644 to 26,358 dozen.[2]

The action taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of man-made fiber textile products from Romania has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-33038 Filed 12-2-82; 8:45 am]

BILLING CODE 3510-25-M

Announcing an Import Restraint Level for Certain Man-Made Fiber Textile Products From Costa Rica, Effective January 1, 1983

November 30, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing an import restraint level of 1,929,000 dozen for man-made fiber brassieres in Category 649, produced or manufactured in Costa Rica and exported to the United States during the twelve-month period beginning on January 1, 1983.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654))

SUMMARY: On September 22, 1980, the Governments of the United States and Costa Rica exchanged diplomatic notes establishing a cotton, wool, and man-made fiber textile agreement beginning on January 1, 1980 and extending for

[1] The term "adjustment" refers to those provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of September 3 and November 3, 1980, as amended, between the Governments of the United States and the Socialist Republic of Romania which provide, in part, that: (1) Specific level of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (2) consultations may be held to adjust levels of restraint for categories not subject to specific limits; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to reflect any imports after March 31, 1982.

four years through December 31, 1983. The agreement establishes a specific level of restraint for man-made fiber textile products in Category 649 during the agreement year beginning on January 1, 1983 and extending through December 31, 1983. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of man-made fiber textile products in Category 649, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 1983 and extending through December 31, 1983, in excess of 1,929,000 dozen.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 30, 1982.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury
Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of September 22, 1980 between the Governments of the United States and Costa Rica, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1983 and for the twelve-month period extending through December 31, 1983, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 649, produced or manufactured in Costa Rica, in excess of 1,929,000 dozen.

In carrying out this directive entries of man-made fiber textile products in Category 649 which have been exported to the United States prior to January 1, 1983, shall, to the extent of any unfilled balance, be charged against the level of restraint established for such goods during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982. In the event the level of restraint established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

The level set forth above is subject to adjustment in the future according to the provisions of the bilateral agreement of September 22, 1980, between the Governments of the United States and Costa Rica which provide, in part, that: (1) The specific limit may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654).

In carrying out the above directions the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Costa Rica and with respect to imports of man-made fiber textile products from Costa Rica has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-33037 Filed 12-2-82; 8:45 am]

BILLING CODE 3510-25-M

COMMODITY FUTURES TRADING COMMISSION

Applicants for Registration as Associated Persons: No-Action Position

Correction

In FR Doc. 82-32496, beginning at page 53764, in the issue of Monday, November 29, 1982, on page 53765, in the middle column the second complete paragraph designated as "3.", line 5, remove the phrase "or an associated person".

BILLING CODE 1505-01-M

Part-Time Career Employment

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed Implementation of the Federal Employees Part-Time Career Employment Act of 1978.

SUMMARY: The Federal Employees Part-Time Career Act of 1978 (Pub. L. 95-437) requires Federal agencies to establish and maintain a program for part-time career employment and change the personnel ceiling and fringe benefit provisions for part-time career Federal employees. The Regulations issued by the Office of Personnel Management define coverage under the Act for employment (5 CFR Part 340) and health insurance (5 CFR Part 890) and outline the responsibilities of that Office. The Commodity Futures Trading Commission is publishing this proposal to outline the agency's part-time employment policies.

DATES: Comments must be received on or before January 3, 1983.

ADDRESS: Send or deliver comments to: Commodity Futures Trading Commission, Office of the Secretariat, Room 806, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Vivian J. Ferguson 202/254-3275.

I. General Provisions

A. *Purpose.* This proposed policy implements Pub. L. 95-437, the Federal Employees Part-Time Career Employment Act of 1978, by establishing a continuing program in the Commodity Futures Trading Commission (CFTC) to provide part-time career employment opportunities.

B. *Policy.* It is the policy of CFTC to provide part-time career employment opportunities in positions through GS-15 (or equivalent) subject to agency resources and the mission requirements.

C. *Definitions.* "Part-time career employment" means regularly scheduled work of from 16 to 32 hours per week performed by employees in competitive or excepted appointments in tenure groups I or II.

D. *Applicability.* This proposed policy is applicable to all CFTC offices.

E. *Exceptions.* This proposed policy does not apply to positions in the Senior Executive Service or others at GS-16 and above.

II. Program Implementation

A. *Program Coordinator.* The Director of Personnel is designated the CFTC Part-time Employment Coordinator with responsibility for:

(1) Consulting on the part-time employment program with the Director of Equal Employment Opportunity, Federal Women's Program Coordinator, Handicapped Program Coordinator, representatives of employee unions, and other interested parties;

(2) Responding to requests for advice and assistance on part-time employment within the agency;

(3) Maintaining liaison with groups interested in promoting part-time employment opportunities;

(4) Overseeing the development and implementation of part-time employment goals and timetables; and,

(5) Preparing reports on part-time employment for transmittal to OPM.

B. *Goals and Timetables.* On an annual basis, as part of the manpower and budget process, management will set goals for establishing or converting positions for part-time career employment and a time-table setting forth interim and final deadlines for achieving the goals. In setting such goals, management will consider, among ofther things, the Commission's mission and occupational mix, workload fluctuations, affirmative action, geographic dispersion, effect on providing services to the public, and employee interest in part-time employment.

C. *Reporting.* The Commission will report as required to the Office of Personnel Management on the part-time employment program. The program will be reviewed through internal personnel management evaluations.

III. Practices and Procedures

A. *Part-Time Employment Practices.* Management will review positions which become vacant for the feasibility of filling those positions on a part-time career employment basis. Part-time career positions will be advertised in vacancy announcements. Agency employees may request and receive consideration to change from full-time to part-time schedules. Formal requests shall (a) be in writing, (b) be addressed through the immediate supervisor to the Division/Office Head, and (c) state the employee's reason(s) for the rquest. The Division/Office Head will approve the request based upon the needs of the organization, the reason(s) of the employee, personnel/staffing limitations and/or any ot the other factors listed under Paragraph II. B. Requests for a change from part-time to full-time career employment must be approved by the Exceutive Director because of Commission-wide impact affecting the maximum employment ceiling and staff years. Any employee requesting a change from full-time to part-time career employment, upon request, will be advised of the effects on pay and fringe benefits by the Director of Personnel.

B. *Effect on Employment Ceilings.* Effective October 1, 1980, part-time career employees will be counted on the basis of the fractional part of the 40 hour week actually worked. For example, two employees each working 20 hours a week will count as one employee.

C. *Effect on Employment Benefits.* Career part-time employees are entitled to coverage under the Federal Employees Group Life Insurance and Federal Employees Health Benefits Program. The Government contribution for health insurance of eligible part-time employees will be prorated on the basis of the fraction of a full-time schedule worked.

D. *Effect on Leave.*

(1) *Annual Leave*—Career part-time employees earn annual leave on a pro rata basis at the rate determined by years of service. The maximum carryover of 240 hours remains unaffected.

(2) *Sick Leave*—Career part-time employees earn sick leave at the rate of one (1) hour for every twenty (20) hours in pay status.

No Leave (annual or sick) is earned for hours worked in excess of 80 hours in a pay period.

(3) Other Leave-Leave Without Pay (LWOP), Absence Without Leave (AWOL), Court Leave, Funeral Leave or Excused Absences are not affected.

(4) Career part-time employees are not eligible for Military leave.

For all categories of leave to which part-time employees are eligible, leave is charged only for absences during those hours the employee is scheduled to work.

Dated: November 29, 1982.

Jane K. Stuckey,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 82-32979 Filed 12-2-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Advisory Committee has been scheduled as follows:

Tuesday & Wednesday, 15-16 February 1982, HQS, LANTCOM, Norfolk, VA. The entire meeting, commencing at 0900 hours each day is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

Dated: November 30, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-33001 Filed 12-2-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Advisory Council on Dependents' Education; Meeting Change

AGENCY: Advisory Council on Dependents' Education.

ACTION: Amendment of notice.

SUMMARY: This document is intended to notify the public of changes in the notice of meeting of the Advisory Council on Dependents' Education, published November 15, 1982, on pages 51469-70. The meetings will be scheduled at the same times (December 6-9, 1982) and the agendas will remain the same, but the location will be at the Capitol Holiday Inn, 550 C Street, SW., Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Dr. William F. Keough, Administrator of Education for Overseas Dependents, 400 Maryland Avenue, SW., Washington, D.C. 20202, (202) 245-8787.

Dated: November 18, 1982.

Wendy Borcherdt,

Acting Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 82-33116 Filed 12-2-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Case No. F-006]

Energy Conservation Program For Consumer Products, Petition for Waiver of Furnace; Test Procedures From Amana Refrigeration, Inc.

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a "Petition for Waiver" from Amana

Refrigeration, Inc. (Amana), requesting a waiver from the existing Department of Energy (DOE) test procedures for furnaces. The petition requests DOE to grant relief from the test procedure requirements relating to the measurement of losses due to cycling in determining the annual fuel utilization efficiency (AFUE) improvement attributable to the condensing of flue gases. An addendum dated September 13, 1982 requests a direct measurement method to determine the steady state efficiency improvement attributable to the condensing of flue gases needed to determine output capacity. Amana seeks to use a National Bureau of Standards (NBS) condensate test method for AFUE instead of the present DOE test procedures which base condensation calculations on the average flue gas temperature. Amana further seeks to modify the NBS test method in order to calculate steady state efficiency. DOE is soliciting comments, data, and information respecting the petition.

DATES: DOE will accept comments, data, and information not later than January 3, 1983.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-006, Mail Stop CE-113.1, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-113.1, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-33, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9510.

SUPPLEMENTARY INFORMATION:

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3266, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27, Petitions for Waiver, to allow the Assistant Secretary for Conservation and Renewable Energy temporarily to waive test procedures for a particular basic model. 45 FR 64108 (September 26, 1980). Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedures or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data.

Amana Refrigeration, Incorporated (Amana), filed a Petition for Waiver from the DOE test procedures for furnaces. Specifically, the petitioner believes that the use of the existing furnace test procedure will lead to results that provide materially inaccurate comparative data when these test procedures are applied to the EGHW series condensing furnace line manufactured by Amana. The EGHW series furnace incorporates a heat exchanger system known as the "Heat Transfer Module." With such a system the temperature of the flue gas is lowered below the dew point so that condensation takes place.

The Amana petition seeks a waiver from the DOE test method basing condensation calculations on the average flue gas temperature. Amana contends that its EGHW series furnace line condenses more of the water vapor than the DOE test method predicts. Thus, Amana believes the DOE test method underestimates the true efficiency of its EGHW series furnace and that the requested test procedure will allow it to take full credit for the gains due to condensation.

Amana requests the use of the condensate measuring method as set forth in Appendix C of National Bureau of Standards Interagency Report 80-2110, "Recommended Testing and Calculation Procedures for Estimating the Seasonal Performance of Residential Condensing Furnaces and Boilers," dated April 1980, to determine the energy efficiency of its EGHW series furnace line.

Amana contends that this alternate test method "will more truly measure the efficiency of condensing furnaces" and is of sufficient reliability to permit in-house testing by manufacturers. Amana, therefore, requests that it be allowed to use in-house testing.

Since the time of receiving this petition for waiver, Amana communicated to DOE that the flue loss method in the existing test procedures underestimates the steady state efficiency for condensing furnaces. Amana contends that underestimates of steady state efficiency result in underestimates of furnace output capacity since furnace output capacity is the product of steady state efficiency and the measured input rate. Amana desires to report furnace output capacity that reflects the improvement due to the condensing mode. Amana, therefore, has proposed a direct measurement method of determining the steady state efficiency of its EGHW series furnace. Amana requests that it be allowed to use this method to determine steady state efficiency and output capacity of its furnace.

By letter of September 13, 1982, Amana submitted to DOE an "Addendum to Petition for Waiver" which outlined a direct measurement method for determining the steady state efficiency. DOE is considering the request to use this procedure as part of the original Petition for Waiver submitted July 30, 1982, and is thereby including both requests in today's publication.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety including the additional request. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition, particularly the request to permit in-house testing.

Issued in Washington, D.C., November 5, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

July 30, 1982.

Subject: Petition For Waiver.

Assistant Secretary for Conservation and Solar Energy,

Department of Energy; Office of Conservation and Renewable Energy, Washington, D.C. 20585.

Gentlemen: Under the provisions of 10 CFR 430.27 a Petition For Waiver from the Test Procedures in 10 CFR 430, Subpart B, Appendix N, dated 12 August 1980 is requested by Amana Refrigeration, Inc., Amana, IA.

Amana Refrigeration is a manufacturer of residential and commercial gas forced air furnaces and air conditioning products as well as refrigerators, freezers, microwave ovens and room air conditioners.

In the very near future Amana Refrigeration plans to manufacture and market a line of Gas-Fired Forced Air Furnaces that will be operating in the condensing mode that will be tested under the provisions of 10 CFR Part 430, Subpart B, Appendix N. These units incorporate a compact heat exchanger known as a Heat

Transfer Module (HTM[R]) which Amana has manufactured and marketed since the early 1970's. The HTM is a compact fin and tube heat exchanger surrounding a gas flame. A working fluid is passed through the heat exchanger where the heat is given up to the air from the conditioned space by means of a fan or blower. In the models for which this waiver is requested the flue products exiting the HTM are collected and passed through a third heat exchanger which is also in the air stream of the conditioned air blower. The temperature of the flue gas is lowered below the dew point so that condensation takes place. These furnaces will be designated as EGHW series. Testing of this product in our laboratory by the methods prescribed in the Appendix N do not reflect the total latent heat recovered when operating in the condensing mode.

The present prescribed test method is based on the dew point of the average flue gas temperature and does not account for other phenomena such as film condensation on the surfaces of the heat exchanger. The D.o.E. test method, therefore, does not reflect the actual total condensation.

Amana Refrigeration states that the tests as outlined in the National Bureau of Standards Publication NBSIR 80-2100 Appendix C dated April 1980 more accurately measures the condensate and thereby the efficiency of condensing furnaces.

Because the presently prescribed D.o.E. test method does not accurately reflect the true efficiency of condensing type furnaces the manufacture of this type of highly efficient Gas Fired Forced Air Furnace is at a competitive diasdvantage. The consumer is not made aware of the true efficiency and may not make a sound decision to purchase the more efficient product.

The Petitioner, Amana Refrigeration, Inc., requests the granting of this waiver to permit the option to test per the method outlined in NBSIR 80-2100 for its condensing type furnaces. Amana Refrigeration further concurs with Lennox and Arkla that in-house testing by the method prescribed in NBSIR 80-2100 should be allowed.

Other manufacturers:

To the best of our knowldge there are three other manufacturers of condensing type furnaces. They are:

1. Hydrotherm, Inc. Rockland Avenue Northvale, NJ 07647
2. Lennox Industries, Inc. Dallas, TX
3. Arkla Industries, Inc. Evansville, IN

If further information is required please contact the undersigned.

Sincerely,

Amana Refrigeration, Inc.

Robert DeHaan,

Chief Engineer, Heating/Cooling Products.

September 13, 1981.

Assistant Secretary for Conservation and Solar Energy,

Department of Energy, Office of Conservation and Renewable Energy, Washington, D.C. 20585.

Subject: Addendum to Petition for Waiver dated July 30, 1982.

Gentlemen: Since the time of our filing the petition for Waiver to the provisions of 10 CFR 430 referenced above it has come to our attention that there is no provision made for the determination of steady state efficiency. An expression of steady state efficiency and consequently output capacity is required for publication in our literature.

Amana therefore wishes to amend our petition of July 30, 1982, to include the following method for determination of steady state efficiency for condensing furnaces and boilers.

Method for Determination of Steady State Efficiency for Condensing Furnaces and Boilers

Test Conditions:

(1) Unit shall be installed according to the requirements given in Section 2 of the published test procedure 10 CFR 430..
(2) Unit shall be leveled prior to test.
(3) Times for beginning and end of condensate collection shall be determined by a clock or timer with a minimum resolution to one second.
(4) Condensate drain lines shall be attached to the unit as specified in the manufacturer's installation instructions.
(5) The flue pipe installation must not allow condensate formed in the flue pipe to flow back into the unit. Flue gases shall not flow out of the drain with the condensate.
(6) Collection containers shall be glass or polished stainless steel.
(7) Collection containers must have a vent opening to the atmosphere.
(8) The scale for measuring the containers and condensate shall be calibrated with an error no larger than ±.05 percent over the range of interest.

Test Method:

(1) The condensing furnace or boiler should be operated in a steady state condition in accordance with the procedures for non-condensing units given in Section 3, using flue gas, air or water flow, and room ambient conditions given in Section 2 of the condensing furnace and boiler test procedures.
(2) The condensate collection containers shall be dried prior to use and shall be at room ambient temperature prior to a sample collection.
(3) Tare weight of the collection container must be measured and recorded prior to the sample collection.,
(4) Condensate shall be collected for a period of 15 minutes.
(5) Condensate mass shall be measured immediately at the end of the collection period to prevent evaporation loss from the sample.

Calculating Condensing Steady State Efficiency:

(1) Determine the mass of the condensate produced, M_c, by subtracting the tare container weight from the total container and condensate weight.
(2) Calculate heat gain due to condensation, $L_{G,SS}$, in percent by the following equation:

$$L_{G,SS} = \frac{m_c(1\text{bm}/15\text{ min}) \times 4 \times 1053.3\ (\text{Btu}/1\text{bm}) \times 100}{Q_{IN}(\text{Btu/hr})}$$

(3) Calculate the Loss, $L_{c,SS}$, due to hot condensate going down the drain.

$$L_{c,SS} = \frac{L_{G,SS}\ 1.0(T_{f,ss} - 70) - .45(T_{f,ss} - 42)}{1053.3}$$

(4) Calculate the condensing steady state efficiency by adding the percent heat gain due to condensing, $L_{G,SS}$, to the previously calculated non-condensing steady state efficiency, n_{ss}, and by subtracting $L_{c,SS}$.

$$n_{SS,c} = n_{SS,nc} + L_{G,SS} - L_{c,SS}$$

Sincerely,

Amana Refrigeration, Inc.

Robert DeHann,

Chief Engineer, Heating and Cooling Products.

[FR Doc. 82-32974 Filed 12-2-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 82-CERT-023]

Bethlehem Steel Corp.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

On November 16, 1982, Bethlehem Steel Corporation (Bethlehem), 8th & Eaton Avenue, Bethlehem, Pennsylvania, 18106, filed with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 an application for certification of an eligible use of up to 1.5 million cubic feet of natural gas per day which is expected to displace the use of approximately 10,013 gallons (238.4 barrels) of low pour No. 6 fuel oil (1.0 percent sulfur) per day at its Steelton Plant in Steelton, Pennsylvania.

The eligible seller of the natural gas is Industrial Energy Service Company, The Empress House, Station Square, Pittsburgh, Pennsylvania 15219. The gas will be transported by the Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25325; and UGI Corporation, P.O. Box 858, Valley Forge, Pennsylvania 19482, a local distribution company.

Because the natural gas involved in this application may be available only for a fifty-five (55) day period ending January 10, 1983, Bethlehem has requested that the certification be issued expeditiously in order that it may be in a position to take full advantage of this oil displacement opportunity.

The ERA has carefully reviewed Bethlehem's application for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in

the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Bethlehem's application satisfies the criteria enumerated in 10 CFR part 595. We are, therefore, granting the certification and transmitting that certification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual certification, is available for public inspection at the ERA Natural Gas Branch Docket Room, Room 6144, RG-64, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

The requested certification is being issued prior to the 10-day public comment period because this natural gas may be available to displace fuel oil only for a limited fifty-five (55) day period, ending January 10, 1983, and it is in the public interest to maximize the displacement of fuel oil.

Given the limited availability of the gas and the authority of the Administrator to terminate a certification for good cause (10 CFR 595.08), it is not in the public interest to permanently lose this opportunity to displace fuel oil while public comments are being solicited.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Natural Gas Branch, Room 6144, RG-64, 12th & Pennsylvania Avenue NW., Washington, D.C. 20461, Attention: Paula Daigneault, within ten (10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the 10 day comment period. The request should state the person's interest, and, if appropriate. why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Bethlehem and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., November 29, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-32975 Filed 12-2-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 5990-001]

City of Forsyth, Georgia; Surrender of Preliminary Permit

November 29, 1982.

Take notice that the City of Forsyth, Georgia, Permittee for the proposed High Falls Hydroelectric Power Project No. 5990, has requested that its preliminary permit be terminated. The permit was issued on June 8, 1982, and would have expired on November 30, 1983. The project would have been located on the Towaliga River in Monroe County, Georgia.

The Permittee filed its request on October 21, 1982, and the surrender of the preliminary permit for Project No. 5990 is deemed accepted as of the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-33060 Filed 12-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4532-001]

City of Gillette, Wyoming; Surrender of Preliminary Permit

November 29, 1982.

Take notice that the City of Gillette, Wyoming, Permittee for the proposed Gray Reef Dam Hydroelectric Project No. 4532, has requested that its preliminary permit be terminated. The permit was issued on September 24, 1981, and would have expired on February 28, 1983. The project would have been located on the North Platte River in Natrona County, Wyoming.

The Permittee filed its request on October 21, 1982, and the surrender of the preliminary permit for Project No. 4532 is deemed accepted as of the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-33061 Filed 12-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4506-001]

City of Westernport, Maryland; Application for License (Over 5 MW)

November 29, 1982.

Take notice that the City of Westernport, Maryland (Applicant) filed on July 8, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for construction and operation of a water power project to be known as Bloomington Lake Project No. 4506. The project would be located on the Potomac River in Garrett County, Maryland and Mineral County, West Virginia. Correspondence with the Applicant should be directed: CE Maguire, Inc., 60 First Avenue, Waltham, Massachusetts 02254, Attn: Mr. Edward Dunn.

Project Description—The proposed run-of-the-river project would utilize the U.S. Army Corps of Engineers Bloomington Lake Dam and Reservoir and would consist of: (1) A proposed steel penstock 10.0 feet in diameter, trifurcating into three separate penstocks of 4.0 feet, 6.5 feet, and 6.5 feet, each leading into one of the three proposed turbine units; (2) a new reinforced concrete powerhouse, approximately 130.0 feet long and 65.0 feet wide; (3) three proposed generating units of 2,186 kW, 5,830 kW, and 5,830 kW, giving a total installed capacity of 13,846 kW; (4) a proposed tailrace, 17.0 feet long and 12.0 feet in diameter; (5) proposed transmission lines; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 55,000 MWh. This license application was filed during the term of Applicant's preliminary permit for Project No. 4506.

Purpose of Project—Power generated by the proposed project will be sold to Virginia Electric Power Company.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before February 7, 1983, either the competing application itself [See 18 CFR 4.33(a) and (d)] or a notice of intent [See 18 CFR 4.33(b) and (c)] to file a competing application. Filing of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all

protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before February 7, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-33062 Filed 12-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-51-000]

El Paso Natural Gas Co.; Application

November 29, 1982.

Take notice that on October 27, 1982, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP83-51-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Gulf Oil Corporation (Gulf), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it would receive the subject gas at its existing meter station located in Block 237, East Cameron Area, South Addition, offshore Louisiana, and would redeliver the gas for the account of Gulf at a sub-sea level point of interconnection located in Block 241, Vermilion Area, offshore Louisiana. It is stated that the proposed transportation and delivery service is to be accomplished utilizing a portion of Applicant's undivided 66⅔ percent interest in a 3.01-mile 8⅝-inch O.D. lateral pipeline extending from Block 237 to Block 241.

Applicant states that the instant proposal results from a request made by Gulf to Applicant and others for assistance in making available to Gulf certain natural gas supplies produced from wells drilled in Block 237 in which Gulf has a leasehold interest. Applicant states that its proposed transportation and delivery of natural gas for the account of Gulf would be governed by the provisions of a gas transportation agreement dated February 3, 1982, between Applicant and Gulf.

Applicant further states that under the terms of the transportation agreement, it agrees to transport, for the account of Gulf, such volumes of natural gas as Gulf may cause to be tendered to Applicant, but in no event shall Applicant be obligated to accept on any day in excess of the applicable contract quantity set forth in Exhibit C of the transportation agreement. Applicant indicates that at present, the contract quantity is 1,200 Mcf of natural gas per day.

Applicant proposes to charge Gulf a monthly demand charge equal to the product of the then applicable contract quantity times $5.1183, plus a commodity charge of 16.83 cents per Mcf for all volumes of natural gas transported and delivered in excess of the contract quantity.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-33063 Filed 12-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6308-000]

Feldspar Energy Corp.; Application for License (5 MW or less)

November 29, 1982.

Take notice that Feldspar Energy Corporation (Applicant) filed on May 10, 1982, and revised on September 20, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for construction and operation of a water power project to be known as the Port Leyden Hydroelectric Project No. 6308. The project would be located on the Black River in the Village of Port Leyden, Towns of Leyden and Lyonsdale, Lewis County, New York. Correspondence with the Applicant should be directed to: Mr. Charles B. Mierek, 838 Arlington Drive, Tucker, Georgia 30084.

Project Description—The proposed run-of-river project would consist of:

(A) An upper development comprising: (1) The rehabilitated 10-foot-high 105-foot-long concrete dam owned by Lyonsdale Hydroelectric Co., Inc. having spillway crest elevation 870.0 feet m.s.l.; (2) a reservoir with a surface area of 60 acres and a storage capacity of 800 acre-feet at normal surface elevation 870.0 feet m.s.l.; (3) an intake structure along the left bank connecting to the lower development powerhouse through a 12-foot-diameter, 1,440-foot-long penstock; (4) a concrete intake structure along the right bank; (5) a canal; (6) a concrete and steel powerhouse containing a generating unit having a rated capacity of 300-kW operated under a 13-foot head and at a flow of 300 cfs; (7) a 40-foot-long 4,160-v transmission line; (8) a substation; (9) a 300-foot-long 23-kV transmission line; and (10) a tailrace; and

(B) A lower development comprising: (1) The rehabilitated 15-foot-high 100-foot-long concrete dam owned by

Cataldo Hydro Power Associates having spillway crest elevation 856.8 feet m.s.l.; (2) a reservoir with a surface area of 6 acres and a storage capacity of 48 acre-feet at normal surface elevation 854.0 feet m.s.l.; (3) an upstream concrete retaining wall along the left bank having crest elevation 859.0 feet m.s.l.; (4) an intake structure along the left bank; (5) a 10-foot-diameter penstock; (6) a surge tank connected to the 12-foot-diameter penstock; (7) a concrete and steel powerhouse containing a generating unit rated at 500-kW operated under a 22-foot head and at a flow of 300 cfs through the 10-foot-diameter penstock and also containing a generating unit rated at 2,200-kW operated under a 35-foot head and at a flow of 850 cfs through the 12-foot-diameter penstock; (8) a 1,040-foot-long 4,160-v transmission line connecting to the substation; and (9) a tailrace.

Purpose of Project—Project energy would be sold to Niagara Mohawk Power Corporation. Applicant estimates that the average annual energy output would be 14 million 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. 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—Anyone desiring to file a competing application must submit to the Commission, on or before January 28, 1983, either the competing application itself [See 18 CFR 4.33 (a) and (d)] or a notice of intent [See 18 CFR 4.33 (b) and (c)] to file a competing application. Filing of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et. seq. (1981).

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before January 28, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-33064 Filed 12-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4558-001]

Long Lake Energy Corp.; Surrender of Preliminary Permit

November 29, 1982.

Take notice that Long Lake Energy Corporation (LLEC) Permittee for the proposed Lake Algonquin Project No. 4558 has requested that its preliminary permit be terminated. The preliminary permit was issued on October 29, 1981, and would have expired on March 31, 1983. The proposed project would have utilized the existing Lake Algonquin dam on the Sacandaga River in Hamilton County, New York. LLEC concluded that the project would not be economically feasible to develop.

LLEC filed its request on November 10, 1982, and the surrender of its permit for Project No. 4558 has been deemed accepted as of the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-33065 Filed 12-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2991-001, 2992-001, and 2993-001]

Ohio Edison Co.; Surrender of Preliminary Permit

November 29, 1982.

Take notice that the Ohio Edison Company (OE) Permittee for the proposed New Cumberland, Belleville and Willow Island Projects Nos. 2991, 2992, and 2993, respectively, has requested that its preliminary permits be terminated. The preliminary permits were issued on May 20, 1982, and would have expired on April 30, 1983. The proposed projects would have utilized three existing U.S. Army Corps of Engineers Lock and Dams on the Ohio River in West Virginia, Ohio and Pennsylvania. Ohio Edison indicates that the projects are not needed based upon OE's current load forecasting. Ohio Edison made its request by letter dated November 1, 1982, and the surrenders of its permits for Projects Nos. 2991, 2992, and 2993 have been deemed accepted as of the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-33066 Filed 12-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-70-000]

Overthrust Pipeline Co.; Application

November 29, 1982.

Take notice that on November 5, 1982, Overthrust Pipeline Company (Applicant), 79 South State Street, Salt Lake City, Utah 84147, filed in Docket No. CP83-70-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transporation of natural gas on behalf of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Tennessee, whose affiliate, Tennessee Overthrust Gas Company, is a partner in Overthrust Pipeline Company pursuant to Applicant's General Partnership Agreement as amended on October 8, 1982, owns or controls significant natural gas reserves in Uinta County, Wyoming, which are remote from Tennessee's pipeline system but are proximate to the transmission facilities of Applicant. Applicant states that it has entered into a service agreement with Tennessee dated October 11, 1982, whereby Applicant would receive for

transportation Tennessee's natural gas at Applicant's Whitney Canyon Meter Station, Uinta County, Wyoming. Applicant avers that pursunt to the terms of the agreement thermally equivalent volumes of gas would be redelivered to Wyoming Interstate Company, Ltd., for the account of Tennessee at Applicant's Rock Springs Meter Station, Sweetwater County, Wyoming. Applicant proposes to provide firm transportation for up to 56,000 Mcf per day. Applicant further states that it would provide new daily contract demands for all shippers on the Overthrust Segment to accommodate Tennessee's volumes as follows:

Shippers	Existing contract demand (Mcf)	Proposed contract demand (Mcf)
Colorado Interstate Gas Company	40,000	30,000
Columbia Gas Transmission Corporation	55,000	42,000
Natural Gas Pipeline Company of America	132,000	99,000

The proposed service, it is stated, would be rendered pursuant to Applicant's Rate Schedule PSC through December 31, 1982, and thereafter pursuant to Applicant's Rate Schedule T.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein; if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-33067 Filed 12-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6003-001]

Public Utility District No. 1 of Jefferson County, Washington; Surrender of Preliminary Permit

November 29, 1982.

Take notice that Public Utility District No. 1 of Jefferson County, Washington, Permittee for the proposed Watson Creek Project No. 6003, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 16, 1982, and would have expired December 31, 1983. The project would have been located on Watson Creek in Jefferson County, Washington. The Permittee stated that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed its request on October 29, 1982, and the surrender of the preliminary permit for Project No. 6003 is deemed accepted as of the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-33068 Filed 12-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5269-001]

Scott Paper Co.; Surrender of Preliminary Permit

November 29, 1982.

Take notice that Scott Paper Company, Permittee for the proposed Jackman Creek Project No. 5269, has requested that its preliminary permit be terminated. The permit was issued on December 22, 1981, and would have expired on November 30, 1983. The project would have been located on the Jackman Creek in Skagit County, Washington.

The Permittee filed its request on November 9, 1982, and the surrender of the preliminary permit for Project No. 5269 is deemed accepted as of the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-33069 Filed 12-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-96-000]

Texas Eastern Transmission Corp.; Application

November 29, 1982.

Take notice that on November 17, 1982, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP83-96-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for New Jersey Natural Gas Company (New Jersey), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is asserted that New Jersey has purchased a supply of natural gas from Equitable Gas Company (Equitable). Applicant states that it would receive up to 30,000 dekatherms (dt) equivalent of gas from Equitable, by displacement, at the existing point of interconnection between Applicant and Equitable located at Applicant's meter station 355 in Westmoreland County, Pennsylvania, or at other mutually agreeable existing delivery points in Applicant's Zone C and would transport and redeliver equal quantities, less shrinkage, to New Jersey at the existing point of interconnection between Applicant and New Jersey located at Applicant's meter station 953 in Middlesex County, New Jersey, and other mutually agreeable delivery points. Applicant further states that the proposed transportation service would be limited to a term commencing on the date of initial delivery and would terminate six months from such date.

Applicant proposes to charge New Jersey the presently applicable effective Rate Schedule TS-1 basic rate of 18.72 cents per dt equivalent under the proposed transportation service. Applicant proposes to charge New Jersey the presently applicable effective Rate Schedule TS-1 excess rate of 21.58 cents per dt equivalent for quantities transported and delivered by Applicant which, when added to the quantities delivered to New Jersey under Applicant's Rate Schedule TS-1, non-firm SS-II and other transportation

agreements, exceed the combined total curtailment of natural gas sales to New Jersey under all of Applicant's firm sales rate schedules. In addition, Applicant proposes to retain applicable shrinkage which presently is 5 percent of all gas received for transportation from April 16 through November 15 of each year and 11 percent of all gas received for transportation from November 16 through April 15 of each year.

Applicant asserts that the proposed service would not adversely affect or displace capacity for services or sales to high priority users.

It is explained that the transportation of natural gas for New Jersey would enable New Jersey to implement its purchase of natural gas and to help fulfill its need for a greater natural gas supply.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-33070 Filed 12-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI83-42-000]

Union Texas Petroleum Corp.; Application for Disclaimer of Jurisdiction or in the Alternative for a Temporary Certificate of Public Convenience and Necessity

November 29, 1982.

Take notice that on November 3, 1982, Union Texas Petroleum Corporation (Union Texas) filed an application for disclaimer of jurisdiction, or in the alternative, for a temporary certificate of public convenience and necessity authorizing the sale of gas from Block 75, Vermilion Area, Offshore Louisiana.

Union Texas asserts that the Commission does not have jurisdiction under either the Natural Gas Act (NGA) or the Natural Gas Policy Act (NGPA) over its proposed sale to Texas Eastern Corporation (Texas Eastern). The proposed sale would be from a Federal lease executed after April 20, 1977. Union Texas states that no production or sale of gas occurred with respect to the lease before the enactment of the NGPA. Further Union Texas claims that Section 601(a)(1)(A) of the NGPA removes the subject gas from NGA jurisdiction. With regard to Section (2)(18)(A)(i) of the NGPA, Union Texas avers that the subject gas would not be dedicated under that section because that section was not effective until the NGPA was enacted on November 9, 1978 and until that date gas was dedicated to interstate commerce in the usual manner under the NGA.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-33071 Filed 12-2-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-63-000]

Wyoming Interstate Co., Ltd.; Application

November 29, 1982.

Take notice that on November 4, 1982, Wyoming Interstate Company, Ltd. (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP83-63-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Tennessee Gas Pipeline Company, a division of Tenneco Inc. (Tennessee), and the revision of the current contract demand volumes of its existing transportation customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to transport up to 75,000 Mcf of natural gas per day on a firm basis for Tennessee and to reduce the contract demand volumes of other existing shippers [1] by a total of 75,000 Mcf per day. Applicant states that pursuant to a gas transportation service agreement dated October 11, 1982, it would receive the subject gas at the Rock Springs delivery point in western Wyoming and redeliver the gas to Trailblazer Pipeline Company

[1] Those shippers are Colorado Interstate Gas Company, Columbia Gas Transmission Corporation, Natural Gas Pipeline Company of America, and Northern Natural Gas Company, a division of InterNorth, Inc.

at the Rockport delivery point in northeastern Colorado. It is stated that the proposed service would be rendered pursuant to Applicant's Rate Schedule T and that any volumes tendered to Applicant by Tennessee in excess of the contract demand would be transported as overrun service on a best-efforts basis under Applicant's Rate Schedule I.

Further, Applicant requests waiver of § 154.22 of the Commission's Regulations to permit the requisite service agreements and tariff revision to become effective upon issuance of Commission authority for the transportation services proposed herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 20, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unles otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 82-33072 Filed 12-2-82; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51443; TSH-FRL-2256-7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of five PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 83-251, February 16, 1983.
PMN 83-252, February 19, 1983.
PMN 83-253, 83-254 and 83-255, February 20, 1983

Written comments by:

PMN 83-251, January 17, 1983.
PMN 83-252, January 20, 1983.
PMN 83-253, 83-254 and 83-255, January 21, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-51443]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, D.C. 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The Complete non-confidential document is available in the Public Reading Room E-107.

PMN 83-251

Manufacturer. Confidential.
Chemical. (G) Phenoxy modified alkyd.
Use/Production. (S) Industrial resin for conventional and low VOC coating. Prod. range: 2,500-50,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, inhalation and eye, a total of 53 workers, up to 8 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. 10-000 kg/yr released to air and water with 10-10,000 kg/yr to land. Disposal by incineration, approved landfill and sewer.

PMN 83-252

Manufacturer. Confidential.
Chemical. (G) Alkyl amino-amide salt.
Use/Production. (G) Open use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by publicity owned treatment works (POTW) and landfill.

PMN 83-253

Manufacturer. Confidential.
Chemical. (G) Maleated rosin monobasic acids glycerol ester.
Use/Production. (G) Open use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 2 workers, up to 1 hrs/da, up to 22 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land. Disposal by POTW and landfill.

PMN 83-254

Manufacturer. Confidential.
Chemical. (G) Maleated rosin monobasic acids pentaerythritol ester.
Use/Production. (G) Open use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manfacture: a total of 2 workers, up to 1 hrs/da, up to 22 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land. Disposal by POTW and landfill.

PMN 83-255

Importer. CIBA-GEIGY Corporation.
Chemical. (G) Dicarboxylic acid monoester.
Use/Import. (G) Contained use. Import range: Confidential.
Toxicity Data. Acute oral: 2,100 mg/kg; Acute dermal: 5,000 mg/kg; Irritation: Skin—Slight, Eye—Slight: Skin sensitization: None.
Exposure. Processing: dermal and inhalation.
Environmental Release/Disposal. No release. Disposal by incineration.

Dated: November 26, 1982.

Paul V. Fuschini,

Acting Director, Management Support Division.

[FR Doc. 82-32913 Filed 12-2-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59109; TSH-FRL-2256-8]

Dicarboxylic Acid Monoester; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on appropriateness of granting the exemption.

DATE: Written comments by: December 20, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-59109]" and the specific TME number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-401, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

TME 83-10

Close of Review Period. January 6, 1983.

Importer. CIBA-GEIGY.

Chemical. (G) Dicarboxylic acid monoester.

Use/Import. Confidential. Import range: 3 months—200 kg.

Toxicity Data. Acute oral: 2,100 mg/kg; Acute dermal: 5,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; (Delayed) skin sensitization—none

Exposure. Processing: dermal and inhalation, a total of 2 workers, up to 2 hrs/da, up to 3 days; Use: dermal and inhalation, 6 workers (maximum), 8 hrs/da, up to 20 da.

Environmental Release/Disposal. No release expected except rare accidental spills. Disposal by EPA-approved incineration or other method in compliance with EPA and local regulations.

Dated: November 26, 1982.

V. Paul Fuschini,

Acting Director, Management Support Division.

[FR Doc. 82-32912 Filed 12-2-82; 8:45 am]

BILLING CODE 6560-50-M

[14-9-FRL 2257-2]

Issuance of PSD Permit to Southern California Edison Co.

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to Southern California Edison Company, located at the Coolwater Generating Station on East Santa Fe Street, in Daggett, San Bernardino County, California, EPA project number SE 80-01.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by February 1, 1983.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on December 9, 1981 the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to construct a demonstration coal gasification plant and 100 MW combined-cycle power plant at the Coolwater Generating Station, East Santa Fe Street, Daggett, San Bernardino County, California.

This permit has been issued under EPA's PSD (40 CFR 52.21) regulations and is subject to certain conditions including allowable emission rates as follows: for SO_2 (Scot/Claus incenerator): 4.4 lbs/hr for 0.70% or less sulfur coal, and 196 lbs/hr for greater than 0.70% sulfur coal; for SO_2 (turbine): 35 lbs/hr for less than 0.70% sulfur coal and 175 lbs/hr for greater than 0.70% sulfur coal. For NO_x (turbine) the allowable emission rate is 140 lbs/hr and for Co (turbine) it is 77 lbs/hr.

Best Available Control Technology (BACT) requirements for NO_x is a water injection system; for SO_2 BACT includes use of a Scot/Claus unit for gasified coal stream.

Air Quality Imact Modeling was required for SO_2 NO_x, and CO. Continuous monitoring is required; the source is subject to New Source Performance Standards.

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Kathryn Strickland (M-5), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8201.

Dated: November 19,1982.

David P. Howekamp,

Air Management Division, Region 9.

[FR Doc. 82-32998 Filed 12-2-81; 8:45 am]

BILLING CODE 6560-50-M

[A-4-FR 2254-5]

Standards of Performance for New Stationary Sources; Delegation of Additional Standards to North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Informational notice.

SUMMARY: On September 24, 1982, the State of North Carolina requested delegation of authority to implement and enforce EPA's new source performance standards (NSPS) for six additional categories of air pollution sources: storage vessels for petroleum liquids constructed after May 18, 1978, glass manufacturing plants, lead-acid battery manufacturing plants, automobile and light-duty truck surface coating operations, phosphate rock plants, and ammonium sulfate manufacture. Since EPA's review of pertinent state laws, rules and regulations showed them to be adequate to implement and enforce these Federal standards, the Agency has delegated authority for these standards to North Carolina.

EFFECTIVE DATE: October 19, 1982.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV Office, 345 Courtland Street, NE, Atlanta, Georgia 30365. All reports required pursuant to the newly delegated

standards should not be submitted to the EPA Region IV office, but should instead be sent to the following address: Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources & Community Development, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT: Walter Bishop of the EPA Region IV Air Management Branch, 345 Courtland Street, NE, Atlanta, GA 30365, telephone 404/881-3043 (FTS 257-3043).

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with §§ 101, 110 and 111 of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS) to any State which has adequate implementation and enforcement procedures.

On November 24, 1976, EPA delegated to North Carolina the authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS) for the source categories that had been promulgated by EPA as of March 23, 1976. Thereafter, EPA delegated to North Carolina authority for additional source categories—ferroalloy production facilities, kraft pulp mills, lime manufacturing plants, grain elevators, electric utility steam generating units for which construction is commenced after September 18, 1978, and stationary gas turbines. On September 24, 1982, the North Carolina Division of Environmental Management requested delegation of authority to implement and enforce the NSPS for the following source categories:

40 CFR Part 60, Subpart Ka—Storage Vessels for Petroleum Liquids Constructed after May 18, 1978);
40 CFR Part 60, Subpart CC—Glass Manufacturing Plants;
40 CFR Part 60, Subpart KK—Lead-Acid Battery Manufacturing Plants;
40 CFR Part 60, Subpart MM—Automobile & Light-Duty Truck Surface Coating Operations
40 CFR Part 60, Subpart NN—Phosphate Rock Plants; and
40 CFR Part 60, Subpart PP—Ammonium Sulfate Manufacture.

After a thorough review of the request and information submitted, the Regional Administrator determined that such delegation was appropriate for these source categories with the conditions set forth in the original delegation letter of November 24, 1976, and granted the State's request in a letter dated October 19, 1982. North Carolina sources which are subject to the requirements of the aforementioned standards are now under the jurisdiction of the State of North Carolina.

Sec. 101, 110, 111, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7411, and 7601)

Dated: November 10, 1982.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 82-33033 Filed 12-2-82; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2258-6]

Availability of Environmental Impact Statements Filed November 22 Through November 26, 1982 Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, General Information 382-5075 or 382-5076.

Corps of Engineers:
EIS No. 820764, Final, COE, PA, Cowanesque Lake Reformulation Study, Cowanesque River, Tioga County, Due: Jan. 3, 1983
EIS No. 820759, Final, COE, MS, Vicksburg Harbor Improvement and Expansion, Warren County, Due: Jan. 3, 1983
Department of Interior:
EIS No. 820756, Draft, BLM, OR, Eugene Ten-Year Timber Management Plan, Benton/Lane/Douglas/Linn Cos., Due: Jan. 24, 1983
Department of Transportation:
EIS No. 820755, Draft, FHW, NY, I-508 (I-88/I-81 Connector) Completion, Construction, Broome County, Due: Jan. 17, 1983
EIS No. 820763, Final, FHW, WA, Northriver Drive Construction, Maple St. to Mission Ave., Spokane Co., Due: Jan. 3, 1983
Department of Housing and Urban Development:
EIS No. 820762, Draft, HUD, FL, Meadow Woods Development (PUD), Mortgage Insurance, Orange County, Due Jan. 17, 1983
EIS No. 820761, Draft, HUD, TX, Randolph Subregion Areawide Study, Guadalupe, Bexar and Comal Cos., Due: Jan. 17, 1983
Department of Agriculture:
EIS No. 820758, Draft, SCS, AR, Larkin Creek Watershed Flood Protection Plan, Lee & St. Francis Cos., Due: Jan. 25, 1983
EIS No. 820757, Draft, SCS, MS, Bayou Pierre Flood Protection/Multi-Purpose Plan, Copiah/Lincoln Cos., Due: Jan. 17, 1983
Amended Notices:
EIS No. 820649, FSuppl, COE, MN, Chaska Flood Control Plan, Minnesota River, Carver County, *Published FR 10/08/82—Review period reestablished due to noncompletion of distribution, Due: *Dec. 13, 1982
EIS No. 820730, Draft, COE, *ND, PRO Lake Darling Flood Control, Renville/Ward/McHenry/*Bottineau Cos., *Published FR 11/12/82—Incorrect State and County, Due: Dec. 27, 1982
EIS No. 820731, Draft, COE *ND, *Velva/Lake Darling Flood Control Project, McHenry County, *Published FR 11/12/82—Incorrect state and title, Due: Dec. 27, 1982
EIS No. 820753, Final, NPS SEV, CA, NV, Death Valley Nat'l Monument Natural/Cultural Resources Mgmt., *Published FR 11/26/82—Review period reestablished due to noncompletion of distribution, Due: *Jan. 3, 1983
EIS No. 820728, Draft, AFS, CO, Grand Mesa, Uncompahgre and Gunnison NFs Land and Resource Mgmt., *Published FR 11/12/82—Incorrect due date, Due: *Feb. 19, 1983

Dated: November 30, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82-33108 Filed 12-2-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

On November 24, 1982, the Federal Communications Commission submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632-7513. Comments should be sent to Edward H. Clarke, Office of Management and Budget, OIRA, Room 3201 NEOB, 726 Jackson Place, NW., Washington, D.C. 20503.

- Title: Equal Employment Opportunity Program—10 Point Model Program and Guidelines

Form No. FCC 396
Action: Extension (Renewal)
Respondents: Licensees of AM, FM and TV commercial and noncommercial stations
Estimated Annual Burden: 3,619 Responses; 12,666 Hours.

- Title: Equal Employment Opportunity Program—5 Point Model Program and Guidelines

Form No. FCC 396-A
Action: Extension (Renewal)
Respondents: Licensees of AM, FM and TV commercial and noncommercial stations
Estimated Annual Burden: 1,432 Responses; 1,432 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

November 29, 1982.

[FR Doc. 82-32977 Filed 12-2-82; 8:45 am]

BILLING CODE 6712-01-M

ITU 1985 Space World Administrative Radio Conference Advisory Committee; Meeting

November 30, 1982.

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing it (Space WARC Advisory Committee).

Task Group B-4 of Working Group B: Institutional Accommodations of New Services and Technololgies.

Chairman: S. A. Levy (202) 331-2624.

Date: Friday, December 17, 1982.

Time: 9:00 A.M.-12:00 Noon.

Location: Hogan & Hartson, 7th Floor, 815 Connecticut Avenue, N. W., Washington, D. C. 20006.

Agenda

(1) Introductions.
(2) Approval of Agenda.
(3) Discussion of INTELSAT Perspectives on ITU Planning Options.
(4) Further Discussion of Outline Paper on Institutional Implications of Alternative planning Approaches.
(5) Future Work Program.
(6) Other Business.
(7) Next Meeting.
(8) Adjournment.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-33077 Filed 12-2-82; 8:45 am]

BILLING CODE 6712-01-M

[File No. 26008-CL-P-(17)-82; CC Docket No. 82-776; File No. 26132-CL-P-(12)-82; File No. 26190-CL-P-(16)-82]

Advance Mobile Phone Service, Inc. et. al; Designating Applications For Consolidated Hearing On Stated Issues

Accepted November 16, 1982.

Released November 19, 1982.

In re application of; Advanced Mobile Phone Service, Inc., For a construction permit to establish a cellular system to operate on frequency Block B in the domestic public cellular radio telecommunications service to serve the Boston, Massachusetts, New England County Metropolitan Area. In re applications of; Yankee Telecom Corp. and Cellular Mobile Systems of Massachusetts, Inc.; for construction permits to establish a cellular system to operate on frequency Block A in the domestic public celular radio telecommunications service to serve the Boston, Massachusetts, New England County Metropolitan Area, memorandum opinion and order granting application and designating applications for hearing.

By the Chief, Common Carrier Bureau:

1. Presently before the Chief, Common Carrier Bureau, under delegated authority, are the captioned applications, filed by Advanced Mobile Phone Service, Inc. (AMPS), Yankee Telecom Corp. (Yankee), and Cellular Mobile Systems of Massachusetts, Inc. (CMS), for new cellular radio systems to serve the Boston, Massachusetts, New England County metropolitan Area (NECMA).[1] Yankee and CMS have filed petitions to deny each other's application. No petitions to deny were filed against the AMPS application.[2] Responsive pleadings have been filed.

2. As discussed below, we find that the petitions fail to raise any substantial and material issues requiring designation for hearing. Since we find that the public interest would be served thereby, we are granting the AMPS application.[3] The Yankee and CMS applications are electrically mutually exclusive; accordingly, we are designating those application for a comparative hearing in accordance with the Commission's special hearing procedures for cellular radio applications announced in the Commission's *Report and Order* in CC Docket No. 79-318, 86 FCC 2d 469 (1981), *modified, Memorandum Opinion and Order on Reconsideration* 89 FCC 2d 58 (1982), *and further modified, memorandum Opinion and Order on Further Reconsideration,* 90 FCC 2d 571 (1982). We are also requiring the applications to be modified, as set forth below.

Yankee Application

3. The CMS petition argues that Yankee's proposal does not comply with § 22.909(a)(2) and 22.205(h)(3) of the Commission's Rules[4] regarding control point monitoring and that Yankee does not justify its requested waivers of those rules; that Yankee has not demonstrated its financial qualifications to construct and operate its proposed system; and that Yankee's proposed Cellular Geographic Service Area (OGSA) extends beyond the boundaries of the Boston NECMA in violation of Rules § 22.903(a).[5]

4. *Control point monitoring.* Section 22.209(a)(2) of the Rules requires each cellular system to provide operators on duty at the system's control point "* * * during the normal rendition of service." Yankee proposes to staff its control point from 7:00 A.M. to 8:00 P.M., Monday through Friday, and from 7:00 A.M. to 5:00 P.M. on Saturday. During the remaining hours and on Sunday, Yankee proposes to monitor its system from a remote alarm center. Although Yankee believes that its proposal complies with §§ 22.209(a)(2) and 22.205(h)(3), Yankee requests waivers of those rules, if necessary. In addition, in its opposition to the CMS petition, at p. 5, Yankee states that it will provide control point operators 24 hours per day, 7 days per week, if its proposal is found not to comply with the Commission's Rules and if its waiver requests are denied.

5. We find that Yankee's part-time staffing proposal does not satisfy § 22.909(a)(2) since the term "the normal rendition of service" refers to all times that a radio station is radiating and not, as Yankee claims, to a station's peak hours of operation. Furthermore, we find that waivers of §§ 22.209(a)(2) and 22.205(h)(3) would not serve the public interest because the absence of a control point operator on duty would preclude providing service to properly licensed "roamers", contrary to the requirement of 47 CFR Section 22.911(b).

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[1] As noted in the captions, AMPS, a wholly-owned subsidiary of the American Telephone and Telegraph Company (AT&T), is requesting the wireline allocation (frequency block B) and both Yankee and CMS are requesting the nonwireline allocation (frequency block A) in the Boston market. In its Memorandum Opinion and Order on Further Reconsideration in CC Docket No. 79-318, 90 FCC 2d 571 (1982), at para. 21, the Commission decided to base cellular service areas in New Enlgland on NECMAs rather than on Standard Metropolitan Statistical Areas (SMSAs). The Boston-Lowell-Brockton-Lawrence-Haverhill, Massachusetts-New Hampshire, NECMA is composed of the following counties: Rochingham County, New Hampshire, Essex County, Middlesex County, Suffolk Co., Plymouth Co. and Norfolk Co., Mass.

[2] Petitions to defer Commission action on the AMPS application have also been filed by Yankee and CMS. We find it is premature to rule on these petitions at this time for the reasons stated by the Commission in deferring action on identical petitions in the Chicago market. *See* Memorandum Opinion and Order Granting Application and Designating Applications for Hearing (Chicago Order), FCC 82-452, released November 1, 1982, at para. 16.

[3] Section 22.901 of our Rules requires that cellular service be provided by an AT&T affiliate only through a separate subsidiary. AMPS has demostrated in its application that it has met this requirement. Our Rules also require that AMPS submit a cellular capitalization plan for Commission approval. AMPS did submit its plan on May 25, 1982. Our decision here is subject to, and conditioned on, action on the capilization plan. See paragraph 19 *infra.* We recognize that further approval may be required when ownership in AMPS in Boston is changed pursuant to the impending AT&T reorganization.

[4] 47 CFR 22.909(a)(2) and 22.205(h)(3).

[5] In contrast with the Commission's cellular radio rules, service to "roamers" over conventional mobile telephone systems is not mandatory (although such service is encouraged). *See 47 CFR 22.509(b). This situation exists because there are usually several licensees of conventional systems in each market to provide regular and "roamer" service, unlike cellular, for which there will be only two licensees per market. Thus, while waivers of § 22.509(b) are routinely granted for automated conventional systems, 2See* Buffalo Valley Telephone Co., 89 FCC 2d 1265, 1267 (1982), there are compelling reasons for requiring compliance with the regulation for cellular systems.

Therefore, we conclude that waivers of the control point staffing requirement are inappropriate for cellular systems.[6] Accordingly, Yankee is directed to file an amendment to its application specifying full-time control point monitoring with the Administrative Law Judge (ALJ) to be assigned to this hearing.[7]

6. *Financial qualifications.* In order to meet its projected construction and first-year operating costs of approximately $12,667,000, Yankee relies primarily (1) on a May 28, 1982 letter from the Bank of New England committing up to $12,000,000 to fund Yankee's proposal, (2) on a $1,000,000 equity contribution form Zip-call, Inc. a 50 percent owner of Yankee, and (3) on the written testimony of Mr. Stuart Sobotnick, Vice President—Finance and Treasurer of Metromedia, Inc. (Metromedia), which is a fifty percent owner of Yankee, to provide Yankee with up to an additional $12,000,000 from $160 million of cash resources from operations committed for cellular systems. Yankee's financial showing also includes a letter to Metromedia from Manufacturers Hanover Trust Co., for $12,000,000 funding for Yankee's proposal.

7. We have reviewed the terms of the Bank of New England commitment letter and find that, under the applicable precedent, Yankee has shown reasonable assurance that this loan will be available to it. *Multi-State Communications Inc.* v. *FCC*, 590 F2.d 1117 (D.C. Cir. 1978), *cert denied*, 440 U.S. 959 (1979); *Las Vegas Valley Broadcasting Inc.* v. *FCC*, 589 F.2d 594 (D.C. Cir. 1978); *Merrimack Valley Broadcasting Inc.*, 82 FCC 2d 166 (1980). However, Yankee has not demonstrated the availability of the $1 million equity contribution from Zip-Call, Inc. In this regard, the application did not contain a commitment from Zip-Call to make this contribution. In addition, Zip-Call's balance sheet does not demonstrate sufficient net liquid assets to met its commitment; Zip-Call did not submit any other evidence of its being able to meet its commitment. Specifically, Zip-Call's balance sheet shows net liquid assets, the excess of current assets over current liabilities, in in the amount of only $375.634. See *Merimack, supra, Chicago Order, supra*, note 2 at para. 8.[8]

8. *Metromedia.* Allegations against the financial ability of Metromedia have been raised in virtually all of the markets in which it has applied. It is alleged that Metromedia cannot rely on cash flow from operations to meet all its cellular commitments; and even if it were allowed to rely on cash flow, it is not sufficient to meet all of its cellular and other common carrier ventures. In the Boston market CMS alleges that the letter from Manufacturer's Hanover Trust Company does not provide reasonable assurance that the funds will be available.

9. Metromedia's showing in the Yankee application does not demonstrate reasonable assurance that Metromedia will be able to meet all of its cellular commitments, including its $12 million commitment to Yankee. Metromedia claims it will use cash resources from operations to finance its cellular ventures. The long standing Commission standard, however, is not current assets but net liquid assets. See *Chicago Order, supra*. Exhibit 24, Schedule P, in Yankee's application contains Metromedia's comparative Balance Sheet as of May 9, 1982. The excess of current assets over current liabilities is about $59 million. Thus, Metromedia's net liquid assets total $59 million. The letter from Manufacturer's Hanover Trust Company to Metromedia merely states that the "Company is willing to give favorable consideration to a $12 million loan to support Metromedia's financial commitment to Yankee". Under applicable precedent this letter does not demonstrate reasonable assurance that the loan will be available to it. Compare *Chicago Order, supra*, note 3, at para. 9.

10. With its reply to the petition to deny, Yankee submitted a supplemental amendment to its financial showing. This amendment was returned by the Common Carrier Bureau by letter dated August 21, 1982. On September 13, 1982, Yankee filed a petition for reconsideration of the acton returning the amendment and resubmitted the amendment. Because financial issues have been raised against Metromedia in virtually all the markets in which it has applied,[9] we will dismiss the petition[10] but reconsider and accept the amendment on our own motion. We do this in order to avoid relitigating Metromedia's financial qualifications in all the markets in which it has applied. An additional reason for resolving Metromedia's financial qualification at this time is that the Commission recently approved Metromedia's acquisition of various radio common carriers, including Zip-Call, Inc., which have a joint interest with Metromedia in cellular applications. See *Beep Communications Systems, Inc. et al.*, FCC 82T-26, released November 8, 1982. These acquisitions will cause Metromedia's ownership interest in the applicants to increase or, as is the case here, to leave Metromedia as the sole cellular applicant. In *Beep, supra*, the Commission exempted Metromedia from the "cut-off" provisions of Section 22.31(e)(3) for the requisite ownership amendments. Because the intervening ownership changes may have an effect on the applicant's financial showings, for the sake of administrative and procedural efficiency and because we desire to put to rest to the extent possible in this proceeding Metromedia's ability to finance its cellular commitments listed above, we will accept the Metromedia amendment. We emphasize that by this decision we are not modifying our general policy of not allowing major amendments in cellular proceedings. See *Order on Reconsideration*, 89 FCC 2d 58 at para. 69 and *Order*, FCC 82-409 released September 3, 1982. The special circumstances in this case warrant this limited exception. Finally, we find that our acceptance and consideration of the Metromedia amendment will not prejudice any other party to the proceeding or give any comparative advanatage to Yankee.

11. The amendment contains a letter from the Bank of New England, essentially the same as the first, except in this letter Metromedia's role in Yankee is recognized. We have found at paragraph 7, *supra*, that under applicable precedent, Yankee has shown reasonable assurance that this loan will be available to it. *Multi-State, supra*.

12. The amendment also contains an affidavit from Stuart Subotnick, Vice-President and Treasurer of Metromedia,

[6] 47 CFR 22.903(a).

[7] As explained *infra*, we are allowing Yankee and CMS to file other amendments to their applications with the ALJ. We note that the issue of part-time control point monitoring for cellular systems is one of first impression and, as explained above, must be considered differently from conventional systems. Furthermore, Yankee has agred to full-time staffing, if necessary. Under these circumstances, we believe that dismissal of Yankee's application on this point, as urged by CMS, is unwarranted.

[8] Yankee also states in its application, that should any additional funding be necessary, it estimates that it will generate revenues of $2,066,000 from first year cellular operations. However, Yankee's projected income statement also shows a net loss in the first year of operation. Thus, we will not take into consideration the projected revenues.

[9] Metromedia has cellular commitments in New York, Los Angeles, Chicago, Philadelphia, Washington, Baltimore, Miami and Tampa/St. Petersburg, Florida.

[10] Our rules provide that reconsiderations of interlocutory actions by delegated authority will not be entertained. *See* Sections 1.102, 1.106.

which describes Metromedia's plan for meeting its various cellular commitments. Direct cellular commitments for Metromedia total $133 million and Metromedia is allocating $225 million of an established line of credit for this purpose. This line of credit is evidenced by a letter from Manufacturers Hanover Trust Company, which states that this bank is acting as agent bank in establishing a $300 million line of credit for Metromedia. The letter also states that the commitments from all the banks to date total $295,000,000. Under applicable precedents, Metromedia has shown reasonable assurance that this loan will be available to it. *Multi-State, supra.*[11]

13. *Conclusion*—We find that Metromedia has provided reasonable assurance that it has sufficient funds available to cover $133 million committed to its nine cellular applications. Accordingly, we conclude that no financial issue should be designated for hearing against any Metromedia subsidiary based on Metromedia's ability to finance its commitments for nine cellular applications. Any additional financial issues relevant to specific markets will be resolved in subsequent orders. We also conclude that Yankee has provided reasonable assurance that $24 million will be available to cover its construction and operating costs for one year. Accordingly, we conclude that no financial issue should be designated for hearing against Yankee.

14. *Extension of CGSA.* Yankee's proposed CGSA includes several areas outside the boundaries of the Boston NECMA and within the boundaries of other NECMAs. Yankee asserts that these proposed extensions are *de minimis* and that they comply with 47 CFR § 22.903(a) and with the guidelines regarding *de minimis* extensions announced in our *Public Notice* dated March 24, 1982, Mimeo 2973, "Cellular Application Filing Procedures." However, Yankee requests a waiver of § 22.903(a) for proposed Cells Nos. 9, 10, and 12 if the Commission finds that they are not in compliance with that rule. Alternatively, Yankee requests elimination of any of those cells if waivers are not warranted. CMS opposes Yankee's proposed extensions outside the Boston NECMA, arguing that Yankee is, in effect, proposing a regional cellular system in the Boston area in violation of § 22.903(a).

15. In its *Memorandum Opinion and Order on Further Reconsideration* in CC Docket No. 79–318, *supra*, note 1, the Commission announced that no cellular service area in New England would be permitted to extend into any other NECMA. Therefore, it is not necessary for us to determine whether any of Yankee's proposed CGSA extensions outside the Boston NECMA are *de minimis*. We note also that AMPS' and CMS' proposed CGSAs extend beyond the Boston NECMA boundaries into other NECMAs in several places. Since the Commission adopted the NECMA standard for cellular service areas in New England *after* the filing date for all Boston cellular applications, we will allow Yankee and CMS to file conforming amendments.[12] The amended CGSA and 39 dBu contours shall not cover any area not previously covered by the nonconforming 39 dBu contours. These amendments should consider the effects, if any, that these changes may have on other parts of the applications. Due to these circumstances, brief extensions of time may be granted at the discretion of the ALJ. While we recognize that the Bell system is the predominant wireline carrier serving New England, the possibility remains that another wireline company may apply for and receive a grant of the wireline allocation in a NECMA adjacent to Boston. Since AMPS is the sole wireline applicant for Boston we will not require it to amend its application. However, AMPS, authorization will not include areas outside the boundaries of the Boston NECMA.

CMS Application

16. *Financial qualifications.* The principal argument raised in the Yankee petition is that CMS has not demonstrated its financial qualifications to construct and operate its proposed system. We find this argument to be without merit. Graphic Scanning Corp. (Graphic), CMS' parent company, has committed itself to fund $11,800,000 for the CMS Boston cellular system. The June 2, 1982, commitment letter from Graphic to CMS covers the projected costs of construction and operation for one year and specifically states that none of those funds have been committed to other cellular system applications or to other projects. We find that this satisfies the requirement of Rules § 22.917(b) that resources used to demonstrate financial ability regarding one cellular system may not include funds committed elsewhere. In the *Chicago Order*, FCC 82–452, the Commission found that Graphic and its cellular subsidiaries have provided reasonable assurance that they will have sufficient funds available to cover construction of 30 cellular systems in the top 30 markets. The Commission further concluded that no financial issues should be designated for hearing against any Graphic subsidiary based on the ability of Graphic to finance the construction and operation for one year of 30 cellular systems. Those findings control the disposition of Yankee's argument here.

17. Yankee also argued that CMS understated its equipment costs for Motorola EMX500 switches in the instant application. CMS' estimates are not unreasonable on their face, and it has adequately responded to this allegation in its opposition; thus we find that a substantial and material issue has not been raised. The general allegation that one applicant's estimated costs are lower than another's is insufficient to warrant the addition of a financial issue in hearing. See *Chicago Order*, at para. 13.

Conclusions

18. Based on our analysis of the applications and our resolution of the contested issues in this order, we find the applicants to be legally, technically, financially and otherwise qualified to construct and operate their proposed cellular systems. As indicated in our previous discussions, the captioned applications do not comply with certain cellular rules. In the *Chicago Order*, at para. 17, the Commission determined that inflexible application of the rules to the applications in the 30 largest markets would not be in the public interest. Accordingly, we are requiring the applicants to bring their applications into conformance with the rules as specified in this order. We emphasize that the amendments ordered here may not be used to give Yankee or CMS a comparative advantage in the hearing proceeding. As the Commission stated

[11] Metromedia also showed: another line of credit from Citibank (New York) in the amount of $30 million, evidenced by a letter of commitment from the bank; net liquid assets in excess of $26 million evidenced by its second quarter report for the quarter ended July 4, 1982; and an estimate of the proceeds of the sale to a limited partnership of the assets of Foster and Klein, an outdoor advertising division of Metromedia, of at least $330 million, the partnership interests to be publicly sold through Metromedia's agent Bear, Stearns & Co. A letter from the general partner of Bear, Stearns was attached as an exhibit to demonstrate Metromedia's ability to finance its other non-cellular commitments. The fact that Metromedia is allocating particular funds for its cellular ventures eliminates inquiry into the issue of whether it is financially qualified for cellular and its other radio common carrier ventures. *See* Chicago Order, *supra* note 3, at para. 6.

[12] Yankee must amend the CGSA and associated 39 dBu contours for cells 6, 7, 8, 9, 10, 11 and 12, and CMS must amend the CGSA and associated 39 dBu contours for cells MA011007, MA012001, MA012002, MA013001, MA014001 and MA014002.

in the *Chicago Order*, in markets for which applications have not yet been filed, strict conformance with the rules will be required, and absent unusual circumstances, the applicants will not be allowed to amend nonconforming applications. We further find that the grant of AMPS' application, as conditioned below, will serve the public interest, convenience, and necessity.

19. Accordingly, it is ordered, that the application of Advanced Mobile Phone Service, Inc., File No. 26008-CL-P-(17)-82, is granted, conditioned upon the Commission's action on the AT&T Cellular Capitalization Plan submitted on May 25, 1982, as provided by Section 22.901(d)(3) of the Commission's Rules. AMPS authorization will not include areas outside the boundaries of the Boston NECMA.[13]

20. It is further ordered, pursuant to section 309 of the Communications Act of 1934, as amended, that the applications of Yankee Telecom Corp., File No. 26132-CL-P-(12)-82, and Cellular Mobile Systems of Massachusetts, Inc., File No. 26190-CL-P-(16)-82, are designated for hearing in a consolidated proceeding upon the following issues:[14]

(a) to determine on a comparative basis the geographic area and population that each applicant proposes to serve;[15] to determine and compare the relative demand for the services proposed in said areas; and to determine and compare the ability of each applicant's cellular system to accommodate the anticipated demand for both local and roamer service;

(b) to determine on a comparative basis each applicant's proposal for expanding its system capacity in a coordinated manner within its proposed CGSA in order to meet anticipated increasing demand for local and roamer service;[16]

(c) to determine on a comparative basis the nature and extent of the service proposed by each applicant, including each applicant's proposed rates, charges, maintenance, personnel, practices, classifications, regulations and facilities (including switching capabilities);[17] and

(d) to determine, in light of the evidence adduced under the foregoing issues, what dispostion of the referenced applications would best serve the public interest, convenience and necessity.

21. It is further ordered, that the Separated Trial Staff (the Hearing Division and other individuals specifically designated) of the Common Carrier Bureau is made a party to the proceeding.[18]

22. It is further ordered, that the applicants shall file written notices of appearances under § 22.916(b)(3) of the Commission's Rules within 10 days after publication of this order in the **Federal Register.**

23. It is further ordered, that the hearing shall be held according to the procedures specified in § 22.916 of the Rules, except as otherwise noted here, at a time and place and before an Administrative Law Judge to be specified in a later order.

24. It is further ordered, that exceptions to the initial decision of the Administrative Law Judge under § 1.276 of the Commission's Rules shall be taken directly to the Commission.

25. It is further ordered, that Yankee Telecom Corp. and Cellular Mobile Systems of Massachusetts, Inc. are directed to file the conforming amendments specified in this order within 10 days after publication of this order in the **Federal Register** and that all applicants are directed to file rebuttal cases under § 22.916(b)(4) of the Rules within 45 rather than 30 days after publication of this order in the **Federal Register.**

26. It is further ordered, that, except to the extent granted in this order, the Petitions to Deny filed by Yankee and CMS are denied, and the Petition for Reconsideration filed by Yankee is dismissed.

27. It is further ordered, that the requests by Yankee for waivers of Rule §§ 22.909(a)(2), 22.205(h)(3), and 22.903(a) are denied.

28. It is further ordered, that any authorization granted to CMS as a result of the comparative hearing shall be conditioned on, and without prejudice to, reexamination and reconsideration of that company's qualifications to hold a cellular license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

29. It is further ordered, that any authorization granted as a result of this proceeding shall be conditioned upon obtaining the appropriate antenna structure clearances.

30. This order is issued under Section 0.291 of the Commission's Rules and *Order Delegating Authority*, FCC 82-435, released October 6, 1982, and is effective on its release date. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the Rules may be filed within the time limits specified in those sections. See also Rule § 1.4(b)(2).

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[13] AMPS' authorization is conditioned upon its obtaining the appropriate antenna structure clearances. AMPS will not be authorized to render service to the public during service tests even after it files FCC Form 403 for a license to cover. Service to the public cannot commence until the covering license becomes effective. Equipment tests, however, may be conducted. AMPS's authorization (FCC Form 463) will reflect these conditions.

[14] There are two issues that are not to be considered in the comparative hearing. The first is the financial qualifications of the applicants. Financial ability is a basic rather than a comparative qualification for cellular licensing. Cellular Communications Syatems, 86 FCC 2d 469, 501-02 (1981). We have found both of the applicants included in the comparative hearing to be financially qualified. The second issue not to be considered is the qualifications of Cellular Mobile Systems of Massachusetts, Inc. or its parent Graphic, to the extent that such qualifications may be affected by the issues included in the Commission's order designating certain 35 and 43 MHz paging applications for hearing. A.S.D. Answer Service, Inc. *et al.* (*ASD*), FCC 82-391, released August 24, 1982. Those issues will be thoroughly reviewed in that separate proceeding and should not be reargued in the context of a cellular hearing. As set forth in para. 28, *infra*, the Commission reserves the right to reexamine and reconsider the qualifications of Cellular Mobile Systems of Massachusetts, Inc. to hold a cellular license should *ASD* be resolved adversely to any of CMS' affiliate or parent companies or to any of their principals. *See* Chicago Order, at n. 19.

[15] For purposes of comparison, the geographic areas that an applicant proposes to serve includes that area within the proposed 39 dBu contours which, in turn, falls within the proposed Cellular Geographic Service Area and the relevant New England County Metropolitan Area. Consideration should be given to the presence of densely populated regions, highways, and areas likely to have high mobile usage characteristics as well as indications of a substantial public need for the services proposed. *See* 86 FCC 2d at 502.

[16] In making this comparsion, preference should be given to designs entailing efficient frequency use, including not only the applicant's plans with regard to cell-splitting and additional channels, but also the degree of frequency reuse the system will be capable of, and the applicant's ability to cooridnate the use of channels with adjacent or nearby cellular systems. *See* 86 FCC 2d at 502-503.

[17] *See* 86 FCC 2d at 503 for a discussion of the relative importance of the evidence submitted under this issue.

[18] Members of the separated trial staff are non-decision making personnel and they will not participate in decision making or agency review on an *ex parte* basis in this case, either directly or through contact with other Common Carrier Bureau personnel. Any investigative or prosecuting functions will be performed by the Separated Trial Staff in connection with its role as a party to the adjudication of these cellular radio applications. All other personnel of the Common Carrier Bureau, unless identified in a subsequent order as required to be separated, are designated as decision-making and they may advise the Commission as to the ultimate disposition of any appeal of an Initial Decision in this proceeding. *See* Communications Act of 1934 as amended 409(c) (47 U.S.C. 409 (c)); Administrative Procedure Act 554 (d) (5 U.S.C. 554 (d)); § 1.1221 of the Commission's Rules.

31. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Gary M. Epstein,

Chief, Common Carrier Bureau.

[FR Doc. 82-32976 Filed 12-2-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Forms Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 USC Chapter 35).

Type: Revision

Title: Eligibility Determination Part C—Duplication of Benefits/Preplacement Interview.

Abstract: Information obtained identifies and evaluates possible insurance coverage thus avoiding duplication of benefits. Form also ascertains changes in applicants situation, determines eligibility and identifies types of assistance applicant receives.

Tyoe of Respondents: Individuals

Number of Respondents (Annual): 16,500

Burden Hours: 2,375

OMB Desk Officer: Ken Allen (202) 395-3786

Copies of the above information collection clearance package can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley (202) 287-9906, Federal Plaza Center, 500 C Street SW, Washington, DC 20472

Written comments and recommendations for the proposed information collection packages should be sent to Linda Shiley, FEMA Reports Clearance Officer, Federal Plaza Center, 500 C Street, SW, Washington, DC 20472 and to Ken Allen, Desk Officer, OMB Reports Management Branch, Room 3235 New Executive Office Building, Washington, DC 20503.

Charles M. Girard,

Associate Director.

[FR Doc. 82-33000 Filed 12-2-82; 8:45 am]

BILLING CODE 6718-01-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection packages for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

- *Type:* New.

Title: Housing Resources Card.

Abstract: Form used to collect descriptive information about existing available housing resources for use by disaster victims in Presidentially declared disasters.

Type of respondents: Individuals.

Number of respondents: (Annual), 5,000.

Burden hours: 425.

- *Type:* New.

Title: Request for Loan Information.

Abstract: Form used when occupant of temporary housing requests sale price reduction for purchase of FEMA-owned mobile home. Documents information from financial institutions concerning occupants ability to secure financing.

Type of respondents: Individuals.

Number of respondents: (Annual), 500.

Burden hours: 85.

- *Type:* Revision of OMB No. 3067-0039.

Title: Recertification Questionnaire and Recommendation.

Abstract: Information is required to document information provided by temporary housing occupant concerning relocation efforts and needs for continued assistance..

Type of respondents: Individuals.

Number of respondents: (Annual), 5,000.

Burden hours: 2,080.

- *Type:* New.

Title: Eligibility Determination-Alternate Housing.

Abstract: Form is used to work out and document determination regarding availability of adequate alternate housing for victims in disasters declared by the President. Also used for recertification of continued assistance and adjustment in sales price of mobile homes.

Type of respondents: Individuals.

Number of respondents: (Annual), 2,000.

Burden hours: 166.

OMB Desk Officer: Ken Allen (202) 395-3786.

Copies of the above information collection clearance packages can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley (202) 287-9906, Federal Plaza Center, 500 C St., SW, Washington, D.C. 20472.

Written comments and recommendations for the proposed information collection packages should be sent to Linda Shiley, FEMA Reports Clearance Officer, Federal Plaza Center, 500 C Street, SW, Washington, D.C. 20472 and to Ken Allen, Desk Officer, OMB Reports Management Branch, Room 3235 New Executive Office Building, Washington, D.C. 20503.

Charles M. Girard,

Associate Director.

[FR Doc. 82-32999 Filed 12-2-82 ;8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Coastal Bend Bancshares, Inc., et al.; Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Coastal Bend Bancshares, Inc.*, Robstown, Texas; to acquire 53.9 percent of the voting shares of Coastal Bend National Bank, Corpus Christi, Texas. Comments on this application must be received not later than December 29, 1982.

2. *National Bancshares Corporation of Texas*, San Antonio, Texas; to acquire 100 percent of the voting shares or assets of Southwest State Bank, Corpus Christi, Texas. Comments on this application must be received not later than December 29, 1982.

Board of Governors of the Federal Reserve System, November 29, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-32986 Filed 12-2-82; 8:45 am]

BILLING CODE 6210-01-M

Trust Co. of Georgia; Proposed Commencement of Equity Financing Activities Through Trust Co. Mortgage

Trust Company of Georgia, Atlanta, Georgia, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to engage through its subsidiary, Trust Company Mortgage, Atlanta, Georgia, in equity financing for income producing real properties and acting as an investment or financial advisor providing portfolio investment advice to any other person for investments in real property.

These activities would be performed from offices of Applicant's subsidiary in Atlanta, Georgia, and the geographic area to be served is the United States.

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 29, 1982.

Board of Governors of the Federal Reserve System, November 29, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-32987 Filed 12-2-82; 8:45 am]

BILLING CODE 6210-01-M

Union Bancshares, Inc. et al.; formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1)) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares/ or assets of a bank. The factors that are considered in acting on the applications are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marieta Street, N.W., Atlanta, Georgia 30303:

1. *Union Bancshares, Incorporated,* Marksville, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Union Bank, Marksville, Louisiana. Comments on this application must be received not later than December 29, 1982.

2. *United Pensacola Bacshares, Inc.,* Pensacola, Florida; to become a bank holding company by acquiring 89.595 percent of the voting shares of Bank of Pensacola, Pensacola, Florida. Comments on this application must be received not later than December 28, 1982.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago. Illinois 60690:

1. *Du Page Bancshares, Inc.,* Glen Ellyn, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Du Page Bank & Trust Company, Glen Ellyn, Illinois. Comments on this application must be received not later than December 28, 1982.

2. *Guthrie County Bancshares, Inc.,* Guthrie Center, Iowa; to become a bank holding company by acquiring 80 percent or more of the voting shares of Guthrie County State Bank, Guthrie Center, Iowa. Comments on this application must be received not later than December 28, 1982.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Morgantown Deposit Bancorp, Inc.,* Morgantown, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of the sucessor by merger to Morgantown Deposit Bank, Morgantown, Kentucky. Comments on this application must be received not later than December 29. 1982.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Pueblo Bancorporation,* Pueblo, Colorado; to become a bank holding company by acquiring 95 percent of the voting shares of Pueblo Bank & Trust Co., Pueblo, Colorado. Comments on this application must be received not later than December 28, 1982.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Statewide Bancshares Corporation,* Cedar Hill, Texas; to become a bank holding company by acquiring at least 88 percent of the voting shares of First Bank & Trust Company, Cedar Hill, Texas. Comments on this application must be received not later than December 29, 1982.

Board of Governors of the Federal Reserve System, November 29, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-32988 Filed 12-2-82; 8:45 am]

BILLING CODE 0210-01-M

UST Corp. et al.; Bank Holding Companies; Proposed de Novo Nonbank Activities

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage de novo, directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating

how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for 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 the date indicated.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *UST Corp.*, Boston, Massachusetts (investment advisory activities; Texas, Florida): To continue to engage, through its subsidiary, FCA Corp., in investment advisory activities and financial planning services, including analyzing and recommending appropriate investments, furnishing general economic information and advice, furnishing statistical forecasting services and industry studies and making general financial planning recommendations. These activities were commenced de novo from offices in El Paso, Texas in December, 1981, and in Tampa, Florida in August, 1982, without prior Board approval. These activities would continue to be conducted from offices located in El Paso, Texas and Tampa, Florida, serving western Texas and the State of Florida, respectively. Comments on this application must be received not later than December 27, 1982.

B. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Utah): To establish a de novo office of Citicorp Homeowners, Inc. and a de novo office of Citicorp Person-to-Person Financial Center of Utah at a shared location in Salt Lake City, Utah. The activities in which the de novo offices of Citicorp Homeowners, Inc. and Citicorp Person-to-Person Financial Center of Utah each propose to engage at the shared office location are: the making or acquiring of loans and other entensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the de novo office of Citicorp Homeowners, Inc., and the de novo office of Citicorp Person-to-Person Financial Center of Utah shall be comprised of the entire State of Utah for all the aforementioned proposed activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center of Utah and Citicorp Homeowners, Inc. Comments on this application must be received not later than December 28, 1982.

2. *Citicorp*, New York, New York (consumer finance activities; Pennsylvania): To expand the service area of an existing office of Citicorp Person-to-Person Financial Center, Inc. located in Vienna, Virginia and an existing office of Citicorp Homeowners, Inc., at the same Vienna, Virginia location. The proposed expanded service area shall be the entire State of Pennsylvania for the following activity, previously approved for both offices: the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate. Comments on this application must be received not later than December 28, 1982.

3. *Citicorp*, New York, New York (consumer finance and credit related insurance activities; Oregon): To expand the activities and service areas of four existing offices of its subsidiary, Citicorp Person-to-Person Financial Center, Inc. and to establish four de novo offices of Citicorp Homeowners, Inc. at the same locations. The activities in which the de novo offices of Citicorp Homeowners, Inc. propose to engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, or loans and other extensions of credit; the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for each of the de novo offices of Citicorp Homeowners, Inc. shall be comprised of the entire State of Oregon for all the aforementioned proposed activities. The new activities in which the offices of Citicorp Person-to-Person Financial Center, Inc. propose to engage de novo are: the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for each office of Citicorp Person-to-Person Financial Center, Inc. shall be comprised of the entire State of Oregon for the aforementioned proposed activities and a portion of Citicorp Person-to-Person Financial Center, Inc.'s previously approved activities, specifically, the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc. The aforementioned activities will be conducted from offices in Portland and Salem, Oregon. These offices will serve the entire State of Oregon. Comments on this application must be received not later than December 29, 1982.

4. *Citicorp*, New York, New York (consumer finance and credit related insurance activities; North Carolina, South Carolina): To expand the activities of an existing office of Citicorp Acceptance Company, Inc., located in Winston-Salem, North Carolina. The new activities in which the office proposes to engage de novo are: The sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the making of loans to individuals and businesses to finance the purchase of mobile homes, modular units or related manufactured housing,

together with the real property to which such housing is or will be permanently affixed, such property being used as security for the loans; and the servicing, for any person, of loans and other extensions of credit. In addition, the office proposes to broaden its previously approved activities of the extension of loans to mobile home dealers for the financing of inventory (floor planning) and working capital purposes and the purchasing and servicing for its own account of sales finance contracts relating to mobile homes, to engage in such activities with regard to all types of dealers and all types of consumer installment paper. The proposed service area for the aforementioned activities shall be comprised of the entire States of North Carolina and South Carolina. Comments on this application must be received not later than December 29, 1982.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *American Banks of Florida, Inc.*, Jacksonville, Florida (credit insurance activities; Florida): To engage, through its subsidiary, American Security Life Insurance Company, in both direct underwriting and reinsurance of credit life insurance and credit accident and health insurance which is directly related to extensions of credit by it or its banking subsidiary, American National Bank of Jacksonville. These activities would be conducted from an office located in Jacksonville, Florida, serving Duval County, Florida. Comments on this application must be received not later than December 27, 1982.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Pacific National Bancshares*, Eureka, California (leasing activities; Northern California): To engage, through its subsidiary, Pacific National Bancshares Leasing in leasing personal property and acting as an agent, broker or adviser in leasing such property. These activities would be conducted from offices in Willows, California, serving Northern California. Comments on this application must be received not later than December 28, 1982.

Board of Governors of the Federal Reserve System, November 29, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-32989 Filed 12-2-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82F-0334]

Air Products and Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Air Products and Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,4,7,9-tetramethyl-5-decyn-4,7-diol as a component in paper and paperboard coating intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204; 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3657) has been filed by Air Products and Chemicals, Inc., Box 538, Allentown, PA 18105, proposing that the food additive regulations be amended to provide for the safe use of 2,4,7,9-tetramethyl-5-decyn-4,7-diol as a component of coatings for paper and paperboard in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: November 22, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-32723 Filed 12-2-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82F-0337]

Air Products and Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Air Products and Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the ethylene oxide adduct of 2,4,7,9-tetramethyl-5-decyn-4,7-diol as an adjuvant in paper and paperboard for food contact.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204; 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3660) has been filed by Air Products and Chemicals, Inc., Box 538, Allentown, PA 18105, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of the ethylene oxide adduct of 2,4,7,9-tetramethyl-5-decyn-4,7-diol as an adjuvant in paper and paperboard for food contact.

The potential evironmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: November 22, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-32724 Filed 12-2-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0145]

International Drug Scheduling; Convention on Psychotropic Substances; Benzodiazepines and Foreign Exemptions and Notice of Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit written comments concerning proposals by the World Health Organization (WHO) that the Commission on Narcotic Drugs of the United Nations impose international manufacturing and distribution restrictions, pursuant to international treaty, on certain "benzodiazepine" or "minor tranquilizer" drugs (drugs that produce sedative-hypnotic, anti-anxiety, and anti-convulsant effects). FDA also is announcing that an informal public meeting will be held on December 17,

1982, on the WHO proposals. The comments received in response to this notice and the public meeting will be considered in preparing the United States' position on these proposals for a meeting of the Commission on Narcotic Drugs in Vienna, Austria, on February 7–16, 1983. This notice requesting written comments is required by the Controlled Substances Act.

DATES: The public meeting will be held on December 17, 1982, starting at 1 p.m. Comments by January 3, 1983.

ADDRESSES: The public meeting will be held in Conference Rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD. Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., National Center for Drugs and Biologics (HFN–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301–443–6490.

SUPPLEMENTARY INFORMATION: This notice offers interested persons an opportunity to comment on international drug control measures that have been proposed by WHO under the 1971 Convention on Psychotropic Substances (Psychotropic Convention). These proposed control measures include determinations made by WHO over a 2-year period.

I. 1981 Cycle

FDA, on behalf of the Department of Health and Human Services (HHS), issued a notice in the **Federal Register** of April 10, 1981 (46 FR 21447) announcing, among other things, that the United States was notified by WHO that WHO may make recommendations to the Commission on Narcotic Drugs on whether any changes would be justified in the current scheduling status under the Psychotropic Convention of the following 12 benzodiazepine drugs: Chlordiazepoxide, clonazepam, clorazepate, diazepam, flurazepam, lorazepam, medazepam, nitrazepam, oxazepam, oxazolam, prazepam, and temazepam.

A WHO expert group met in November 1981 to evaluate the scheduling status of these 12 benzodiazepines. On December 14, 1981, HHS received notice from WHO through the Department of State that WHO would recommend that the Commission on Narcotic Drugs control each of these 12 benzodiazepine substances in schedule IV of the Psychotropic Convention. (See 46 FR 61374; December 18, 1981.) The Commission on Narcotic Drugs, of which the United States is a member, was scheduled to vote on the proposals for the control of these 12 benzodiazepines at the February 1982 meeting. The Commission on Narcotic Drugs did not, however, take any action on these 12 substances at the February 1982 meeting, primarily because the WHO expert group's technical assessment report of those substances upon which the control recommendations were made was not available to the members of the Commission on Narcotic Drugs in time for adequate review before that meeting. It should be noted that the 1981 WHO assessment on these 12 substances is now on file in FDA's Dockets Management Branch (address above) and HHS expects that these 12 substances will be considered for possible control at the February 1983 meeting along with another group of 14 benzodiazepine substances discussed below in section II.

Of the 12 substances reviewed in 1981, 9 are currently controlled domestically in schedule IV of the Controlled Substances Act, i.e., only medazepam, nitrazepam, and oxazolam are not currently domestically controlled. See 21 CFR 1308.14(c). Placing these 12 substances in schedule IV of the Psychotropic Convention 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 chlordiazepoxide, clonazepam, clorazepate, diazepam, flurazepam, lorazepam, oxazepam, prazepam, and temazepam (each currently controlled domestically in schedule IV of the Controlled Substances Act), the proposed Commission on Narcotic Drugs action, if adopted, would not obligate the United States to reschedule them domestically. However, the proposed action, if adopted, would require additional manufacturer reporting requirements for each substance controlled internationally to be issued by the Drug Enforcement Administration under section 307(e) of the Controlled Substances Act (21 U.S.C. 827(e)), as amended by the Psychotropic Substances Act of 1978 (Pub. L. 95–633). Also, the proposed action, if adopted, would require placement of medazepam, nitrazepam, and oxazolam (those 3 substances of the 12 not currently controlled domestically) into a domestic schedule sufficient to meet treaty obligations.

II. 1982 Cycle

Earlier this year, the United States was notified that WHO may make recommendations to the Commission on Narcotic Drugs on whether any of the following 15 benzodiazepine drugs should be scheduled under the Psychotropic Convention: Alprazolam, bromazepam, camazepam, cloxazolam, estazolam, fludiazepam, flunitrazepam, halazepam, ketazolam, nimetazepam, nordazepam, pinazepam, tetrazepam, and triazolam. None of these 15 substances is currently scheduled internationally. The United States was asked to supply WHO with information and data that would aid WHO in making its recommendations to the Commission on Narcotic Drugs. The Commission on Narcotic Drugs will meet in February 1983 to make international scheduling decisions.

Under section 201(d)(2)(A) of the Controlled Substances Act (21 U.S.C. 811(d)(2)(A)), FDA, on behalf of HHS, issued a notice in the **Federal Register** of May 7, 1982 (47 FR 19793) requesting interested persons to submit relevant comments and data on these substances. Comments and information received were considered and the information was subsequently submitted to WHO, as requested. A WHO expert group met in September 1982 to evaluate the scheduling status of these 15 benzodiazepines.

HHS has received official notification from WHO through the Department of State that WHO has recommended that the Commission on Narcotic Drugs control 14 of these 15 drugs (i.e., each of the benzodiazepines listed above except halazepam) in schedule IV of the Psychotropic Convention. WHO made no recommendation for the international control of halazepam. The information HHS received from the Department of State, including the basis (assessment) for the WHO recommendations, is also on file in FDA's Dockets Management Branch (address above). This information may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Placing these 14 substances reviewed in 1982 in schedule IV of the Psychotropic Convention 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 alprazolam (currently controlled domestically in schedule IV of the Controlled Substances Act, see 21 CFR 1308.14(c)), the proposed Commission on Narcotic Drugs action, if adopted, would not obligate the United States to reschedule alprazolam domestically. However, the proposed action, if adopted, would require additional manufacturer reporting requirements for each such drug controlled internationally to be issued by the Drug

Enforcement Administration under section 307(e) of the Controlled Substances Act (21 U.S.C. 827(e)), as amended by the Psychotropic Substances Act of 1978 (Pub. L. 95–633). Also, it should be noted that the remaining 13 benzodiazepines recommended for control by WHO are not currently marketed nor controlled in the United States (although triazolam has been proposed for control (46 FR 23953, April 29, 1981) in schedule IV of the Controlled Substances Act). These 13 substances, if controlled under the Psychotropic Convention, would have to be placed into a schedule under the Controlled Substances Act sufficient to meet treaty obligations.

III. Summary of WHO Recommendations

WHO has reviewed information pertaining to a number of benzodiazepines marketed throughout the world for clinical use. WHO considered diazepam to be the "benchmark" for this class of drugs and found that abuse of diazepam existed sufficient to warrant its international control (see 1981 WHO assessment). WHO found that the remaining substances (Except halazepam) are similar to each other and to diazepam in their pharmacological profile. WHO found that this similarity to diazepam of these drugs would lead to their being subject to similar abuse and cause similar ill-effects, and that they are also likely to constitute public health and social problems warranting international control as documented for diazepam (see 1981 and 1982 WHO assessments). Thus, WHO has recommended to the Commission on Narcotic Drugs that the following 26 benzodiazepine drugs be controlled internationally in schedule IV of the Psychotropic Convention:

1981 CYCLE

	Current domestic control	Current convention control	Proposed convention control	Marketed in U.S.
1. Chlordiazepoxide	IV	0	IV	Yes.
2. Clonazepam	IV	0	IV	Yes.
3. Clorazepate	IV	0	IV	Yes.
4. Diazepam	IV	0	IV	Yes.
5. Flurazepam	IV	0	IV	Yes.
6. Lorazepam	IV	0	IV	Yes.
7. Medazepam	0	0	IV	No.
8. Nitrazepam	0	0	IV	No.
9. Oxazepam	IV	0	IV	Yes.
10. Oxazolam	0	0	IV	No.
11. Prazepam	IV	0	IV	Yes.
12. Temazepam	IV	0	IV	Yes.

1982 CYCLE

	Current domestic control	Current convention control	Proposed convention control	Marketed in U.S.
1. Alprazolam	IV	0	IV	Yes.
2. Bromazepam	0	0	IV	No.
3. Camazepam	0	0	IV	No.
4. Clobazam	0	0	IV	No.
5. Cloxazolam	0	0	IV	No.
6. Estazolam	0	0	IV	No.
7. Fludiazepam	0	0	IV	No.
8. Flunitrazepam	0	0	IV	No.
9. Ketazolam	0	0	IV	No.
10. Nimetazepam	0	0	IV	No.
11. Nordazepam	0	0	IV	No.
12. Pinazepam	0	0	IV	No.
13. Tetrazepam	0	0	IV	No.
14. Triazolam [1]	0	0	IV	No.

[1]Triazolam was recently approved for marketing by FDA pending a final scheduling decision under the Controlled Substances Act. Triazolam has been proposed for control in schedule IV of the Controlled Substances Act, see 46 FR 23953, April 29, 1981.

Therefore, as required by section 201(d)(2)(B) of the Controlled Substances Act (21 U.S.C. 811(d)(2)(B)), FDA, at the direction of the Assistant Secretary for Health, HHS, invites interested persons to submit comments about these proposed Commission on Narcotic Drugs actions. The comments received will be considered by FDA (in consultation with the National Institute on Drug Abuse) on behalf of 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 Commission on Narcotic Drugs meeting in February 1983.

IV. Open Public Meeting

FDA, on behalf of HHS, has concluded that it is in the public interest to hold an open public meeting for the purpose of allowing interested persons to present their views on the proposed Commission on Narcotic Drugs actions discussed above. See 21 CFR 10.65.

The meeting will be informal and is intended for the presentation of views on the proposed actions only. Thus, although the FDA official(s) conducting the meeting may direct questions to those presenting views for purposes of clarification, no participant may interrupt the presentation of another participant for any reason. Any interested person may attend and present his or her views provided that FDA receives written notice of intent to participate at least 3 days before the meeting. The open public meeting will be held on Friday, December 17, 1982, starting at 1 p.m. in Conference Rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. Written notice of intent to participate should be sent to Edwin Dutra, Rm. 11B–06 (address above).

V. Foreign Exemptions

Finally, it should be noted that the Psychotropic Convention allows member countries to unilaterally exempt drug preparations meeting stated criteria (see Article 3 of the Convention) from certain controls imposed by the Convention, subject to termination by the Commission on Narcotic Drugs. The United States, as a voting member of the Commission on Narcotic Drugs, helps determine whether the exemptions taken by various countries should be allowed to continue. The Commission on Narcotic Drugs makes its determinations about the exemptions taken based, in part, on recommendations by WHO. The United States will thus be called upon to vote at the Commission on Narcotic Drugs meeting on the status of certain exemptions taken by France and Finland under the Psychotropic Convention. Information received by HHS from WHO through the Department of State on these exemptions is also on file at FDA's Dockets Management Branch. FDA also intends to consider any comments received on these exemptions in formulating the HHS recommendations to the Secretary of State on the United States' position on them for the Commission on Narcotic Drugs meeting.

Interested persons may, on or before January 3, 1983 submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 24, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-32717 Filed 12-2-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82F-0339]

Morton Chemical; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Morton Chemical has filed a

petition proposing that the food additive regulations be amended to provide for the safe use of a polyurethane laminating adhesive for fabricating retortable pouches and related high temperature laminates for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204; 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (Sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3673) has been filed by Morton Chemical Division of Morton-Norwich Products, Inc., 2 North Riverside Plaza, Chicago, IL 60606, proposing that § 177.1390 (21 CFR 177.1390) of the food additive regulations be amended to provide for the safe use of a polyurethane adhesive containing polyester-epoxy resins cross-linked by an adduct of toluene diisocyanate and trimethylol propane.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: November 22, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-32721 Filed 12-2-82; 8:45 am]

BILLING CODE 4160-01-M

Ophthalmic Device Section, Ophthalmic, Ear, Nose, and Throat and Dental Devices Panel; Cancellation of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the meeting of the Ophthalmic Device Section of the Ophthalmic, Ear, Nose, and Throat, and Dental Devices Panel scheduled for December 16 and 17, 1982.

FOR FURTHER INFORMATION CONTACT: George C. Murray, National Center for Devices and Radiological Health (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910; 301-427-7940.

SUPPLEMENTARY INFORMATION: FDA is cancelling the meeting of the Ophthalmic Device Section of the Ophthalmic, Ear, Nose, and Throat, and Dental Devices Panel, which was to be held December 16 and 17, 1982, 9 a.m., Auditorium, 200 Independence Ave. SW., Washington, DC. The meeting was to have both open and closed portions. Notice of the meeting was published in the **Federal Register** of November 12, 1982 (47 FR 51226).

Dated: November 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-32719 Filed 11-26-82; 10:31 am]

BILLING CODE 4160-01-M

Panel on Review of Allergenic Extracts; Republishing of Meeting Notice; Revised Schedule

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is republishing the notice announcing a meeting of the Panel on Review of Allergenic Extracts scheduled for December 13, 1982. The meeting was announced in the **Federal Register** of November 12, 1982 (47 FR 51226), and notice is being republished because of a revised schedule.

Panel on Review of Allergenic Extracts

Date, time, and place. December 13, 8:30 a.m., Rm. 115, Bldg. 29, Office of Biologics, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 2:45 p.m.; closed presentation of data, 2:45 p.m. to 4:15 p.m.; closed committee deliberations, 4:15 to 4:45 p.m.; open committee deliberations, 4:45 p.m. to 5:30 p.m.; Clay Sisk, National Center for Drugs and Biologics (HFN-6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates data on the safety, effectiveness, and appropriate use of allergenic products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss safety, effectiveness, manufacturing, and labeling information in support of license applications from several manufacturers of modified allergenic extracts.

Closed presentation of data. The panel will discuss trade secret or confidential commercial information regarding license applications for modified allergenic extracts. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee discussion. The committee will discuss manufacturing information on pending license applications for modified allergenic extracts. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chariman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be

requested from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for a law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to signifiantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review or data and information on speccific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to fromulate advice and recommendations to the agency on matters that do not independently justify closing.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-32720 Filed 12-2-82; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare Program; Criteria for Defining Skilled Nursing Facility Under Section 1861(j)(1) of the Social Security Act

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of HCFA ruling.

SUMMARY: This notice announces a HCFA ruling that restates HCFA's long-standing interpretation of what constitutes a skilled nursing facility under section 1861(j)(1) of the Social Security Act.

FOR FURTHER INFORMATION CONTACT: Robert E. Wren, Director, Division of Provider Services, Office of Coverage Policy (301) 594-9820.

SUPPLEMENTARY INFORMATION: We plan to compile and publish all HCFA rulings in the "Health Care Financing Administration Rulings" booklet which will be indexed for citation purposes. When this ruling is republished in the booklet, it will be known as HCFAR 83-2. The text of the HCFA ruling is as follows:

Criteria for Defining Skilled Nursing Facility

Purpose: This ruling provides public notice of the criteria the Secretary has established for defining "skilled nursing facility" under section 1861(j)(1) of the Social Security Act (the Act).

Citations: Sections 1812 and 1861 of the Social Security Act (42 U.S.C. 1395d and 1395x).

Pertinent History: Under the Hospital Insurance Program (Medicare—Part A), payment for covered inpatient hospital and skilled nursing facility (SNF) services is available for a limited number of days during each benefit period or "spell of illness". Once a beneficiary has exhausted that allotted number of days (150 days for inpatient hospital care and 100 days for SNF care), no further Part A program payment is available for those services until the beneficiary ends that "spell of illness" and begins a new one (Section 1812(a) of the Act, 42 U.S.C. 1395d(a)). A patient's "spell of illness" begins on the day he or she is furnished hospital or SNF services and ends when he or she has not been an inpatient of a hospital or SNF for 60 consecutive days (Section 1961(a) of the Act, 42 U.S.C. 1395x(a)).

The material following section 1861(j)15) of the Act (42 U.S.C. 1395x(j)(15)) specifies that for purposes of determining when a "spell of illness" ends under section 1861(a), a SNF is defined by section 1861(j)(1) of the Act (42 U.S.C.1395x(j)(1)). This latter provision defines a SNF as a facility which

> (1) is primarily engaged in providing to inpatients (A) skilled nursing care and related services for patients who require medical or nursing care, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

Thus, a beneficiary who continuously resides in a nursing home meeting this definition is considered an inpatient of a SNF under section 1861(a), and cannot close out his or her "spell of illness" for purposes of receiving renewed benefits.

HCFA developed criteria early in the program which clarify their definition of a skilled nursing facility. These criteria are included in section 3412 of the *State Operations Manual.* The HCFA ruling published in this notice restates the criteria set forth in that manual.

Ruling

Criteria for Defining Skilled Nursing Facility Under Section 1861(j)(1) of the Social Security Act

An institution meets the section 1861(j)(1) definition of 'skilled nursing or rehabilitation facility' only if all the following criteria are met.

A. *Nursing Services.*—Nursing services are provided under the direction or supervision of one or more registered nurses or licensed practical or vocational nurses without regard to whether they are 'waived.' This condition will be considered met even if the nurse is also the administrator of the facility or is employed on a part-time basis.

B. *24-Hour Nursing Services.*—There are nursing personnel on duty 24 hours a day. The term 'nursing personnel' includes registered nurses, licensed practical or vocational nurses without regard to whether they are 'waived' or

not, practical nurses, student nurses, nursing aides, and orderlies.

C. *Nurse-Bed Ratio.*—The number of full-time equivalent nursing personnel to the number of beds is not less than an average ratio of 1 to 15 per shift.

Note.—Generally, there will be a close equivalency between the number of beds and average number of patients in an institution. Where the circumstances indicate a significant discrepancy in these factors, the ratio of nurses to the average patient census should be used in determining section 1861(j)(1) status.

A facility which has three 8-hour shifts would have to have a minimum of the equivalent of three full-time nursing personnel during a 24-hour period for each 15 beds. It is not necessary that the 1 to 15 ratio be maintained for each shift, but the average of all shifts must be at least 1 to 15. Nursing personnel include all those persons listed in paragraph B above. In determining the ratio, nurses who are also administrators should be counted as nursing personnel.

D. *Other Services.*—Bed and board are provided to inpatients in connection with the furnishing of nursing care, plus one or more medically related health services such as physicians' services, physical, occupational or speech therapy, diagnostic and laboratory services, and administration of medication. (Social, diversional, or recreational services provided by the institution would not be considered medically related health services.)

(Secs. 1812 and 1861 of the Social Security Act, 42 U.S.C. 1395d and 1395x)

(Catalog of Federal Domestic Assistance Program No. 13.773)

Dated: November 30, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 82-33136 Filed 12-1-82; 12:48 pm]

BILLING CODE 4120-03-M

Office of Human Development Services

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part D of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Office of Human Development Services (OHDS) (45 FR 64253): (1) To reduce the Administration on Aging from seven units to four by consolidation of management functions and of program operation functions and; (2) to move the Federal Council on Aging Staff to the Office of the Assistant Secretary for Human Development Services. The language to be inserted to implement these changes is as follows:

1. Part D, Chapter DG, "The Administration on Aging", as published in the **Federal Register** on January 27, 1981 (46 FR 8752), is to be deleted in its entirety and replaced by the following:

DG.00 Mission. The Administration on Aging (AoA) is the principal agency designated to carry out the provisions of the Older Americans Act (OAA) of 1965, as amended. Advises the Secretary, the Assistant Secretary for Human Development Services, Department components and other Federal Departments and Agencies on the characteristics, circumstances and needs of older people and develops policies, plans and programs designed to promote their welfare. Administers a program of formula grants to States to establish State and community programs for older persons under Title III of the Act (45 CFR Part 1321). Provides policy and procedural direction, advice and assistance to States to promote the development of State-administered community-based systems of comprehensive social services for older persons. Approves or disapproves State plans. Responsible for program management. Administers programs of training, research and demonstration under Title IV of the Act.

Serves as lead agency within the Office of Human Development Services (HDS) on all issues concerning aging. Advocates for the needs of older persons in HDS program planning and policy development. Develops standards, issues best practice guidelines, disseminates information, provides technical assistance, and initiates policy related to services provided to older persons funded by HDS.

DG.10 Organization. The Administration on Aging is headed by the Commissioner on Aging who reports directly to the Assistant Secretary for Human Development Services and which consists of:

Office of the Commissioner [DGA]
Public Liaison Staff [DG-1]
Office of Planning, Evaluation and Dissemination [DGP]
  Division of Program Analysis [DGP1]
  Division of Technical Information and Dissemination [DGP2]
Office of Managment and Policy Control [DGQ]
  Division of Policy Control and Coordination [DGQ1]
  Division of Management and Budget [DGQ2]
Office of State and Tribal Programs [DGN]
  Division of Program Management and Regional Operations [DGN1]
  Division of Operations and Fiscal analysis [DGN2]
Office of Program Development [DGD]
  Division of Research and Demonstrations [DGD1]
  Division of Education and Training [DGD2]
  Division of Services Systems Development [DGD3]

DG.20 Functions. A. *Office of the Commissioner* (DGA) establishes priorities, sets policies, assures policy consistency, and directs plans and programs conducted by the Administration on Aging. Advocates at the Federal level for the needs, concerns, and interests of older people. Advises the Secretary, Assistant Secretary for Human Development Services, Department agencies, and other Federal departments and agencies on the characteristics, circumstances, and needs of older people and on policies, plans and programs designed to promote their welfare. The Deputy Commissioner is the Commissioner's principal associate in carrying out the mission of the agency.

A.1. *Public Liaison Staff* (DG-1) serves as an advocate for older people with voluntary organizations. Undertakes plans to coordinate activities in behalf of older people. Collaborates with other Federal agencies to assist older persons by the development of interagency agreements which are then implemented by the appropriate technical divisions. Coordinates joint interests and initiation of projects with other Federal agencies and other levels of government. Provides close liaison with the Federal Council on Aging, and other Federal committees focused on the aging. Works with national aging organizations, professional societies, universities, and academic organizations to identify mutual interests and plan voluntary and funded approaches. Assures affirmative action throughout the Aging Network and is responsible for implementing within AoA the Consumer Affairs Plan of the Office of Human Development Services.

Stimulates and coordinates AoA international activities in research, training, and technical assistance; and coordinates AoA international activities with Office of Human Development Services units concerned with international affairs. Cooperates with multilateral international agencies, such as the United Nations, in planning and participating in international conferences and meetings. Arranges for visits of personnel interested in aging from other nations and assists U.S. personnel in arranging visits to other countries.

B. *Office of Planning, Evaluation and Dissemination* (DGP) analyzes, synthesizes and interprets all issues

related to AoA program policy; prepares and interprets AoA long range, short range and discretionary plans; develops and interprets AoA goals and objectives; performs statistical analyses related to the aging; plans and manages the AoA evaluation program, considering appropriate subject matter input from other AoA units; performs systems analysis on aging related problems; manages a program for the collection, analysis, and dissemination of information related to the aging.

B.1. *Division of Program Analysis* (DGP1) conducts policy studies on a wide range of basic progam issues affecting AoA programs and the general needs of the aging; reviews legislation, and research, evaluation and demonstration findings for planning and program implications; works with groups in the field of aging that have an evaluation capacity to obtain special needs analyses; prepares detailed position papers which include policy objectives, analyses of existing data, and possible strategies for achieving objectives as a preface to the development and recommendation of priorities to the Commissioner; develops and issues AoA goals and objectives; prepares the AoA long and short range plans and the discretionary funding plan with appropriate subject-matter input from other AoA units; provides interpretation and guidance for implementation of the long and short range plans to all AoA units; and reviews all AoA policy documents for consistency with the long and short range plans. Coordinates with the Office of Program Development (AoA), staff offices of the Office of Human Development Services and Departmental staff offices on planning issues and development. Coordinates preparation of annual AoA reports to the President and Congress.

Advises the Central and Regional Offices of AoA, State and Area Agencies on Aging, and other agencies and organizations on their statistical data needs, uses of data, and methods of collecting the data; maintains a knowledge of data generated by a wide range of agencies and organizations; provides chairperson and secretariat services to the Task Force on Statistics; in support of planning and program requirements performs routine and special analyses of data for AoA offices, other Federal and non-Federal organizations, and the general public.

Administers evaluation of AoA programs and other related national programs affecting older people as authorized by Title II, Section 202(a)(14) and Section 206(a), of the OAA. Develops AoA plans and priorities for evaluation of programs in consultation with appropriate units. Manages contracting for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for AoA, with technical input from AoA divisions.

B.2. *Division of Technical Information and Dissemination* (DGP2) is responsible for the AoA technical and substantive information system; provides technical input to the AoA planning, policy development and budget cycles on technical information systems. Maintains a central library of technical information in the field of aging; maintains a network of contacts with other specialized information sources in the field; arranges for document reproduction services; participates in annual user conferences of professional organizations; consults with the national network on aging regarding technical assistance for information systems; and maintains a collection of index documents and microfiche for the use of AoA and other interested individuals. Edits and produces the Aging Magazine aimed at professionals and constituents in the field of aging.

Reviews all products from AoA and the OAA network to identify new findings which will be useful to older people and professionals operating in the field of aging, concentrating particularly on research, demonstration and evaluation findings. Determines the relative utility of each product, its potential users, and the most effective way to disseminate information to users.

C. *Office of Management and Policy Control* (DGQ) is responsible for policy control and coordination, regulations development and coordination, analysis and development of legislation, preparation of required reports, budget development, preparation of justifications for the annual budget request, provision of guidance to other AoA units concerning their technical input to policy and regulations development; coordinating the annual operational planning including detailed work plans, Merit Pay performance plans, employee performance plans; management of the Merit Pay and Employee Management Performance Systems, and execution of a variety of administrative management tasks including the AoA personnel and executive secretariat functions. Coordinates with appropriate staff offices of the Office of Human Development Services (HDS) in carrying out these functions. Provides liaison with HDS on Equal Employment Opportunity matters. Responds to inquiries from the public in the form of letters and telephone inquiries.

C.1. *Division of Policy Control and Coordination* (DGQ1) develops regulations and formal policy statements for use by AoA, State and Area Agencies on Aging and local agencies and organizations responsible for programs under the OAA, coordinating as appropriate with the Office of Program Coordination and Review/HDS and Office of Policy Development/HDS.

Coordinates development within AoA of legislative proposals; develops testimony, background statements, and other policy documents for use by the Commissioner in legislative and other policy forums; in coordination with HDS and OS legislative staff analyzes proposed and enacted legislation related directly or indirectly to the OAA, analyzes non-Federal legislative activity related to the elderly.

Maintains task assignment and correspondence control and other internal agency communications systems, including coordinating and controlling the issuance of AoA policy documents (i.e., program instructions, assistance memoranda, and information memoranda). Reviews all incoming and outgoing documents for policy implications and ensures that they are considered by the responsible subject matter specialists.

Responds to written, phone and personal inquiries from all sources dealing with services and needs of the aging; when appropriate, coordinates the provision of technical and policy interpretations from responsible organizational units within and outside AoA. In emergency situation, refers individuals or families to the appropirate State and/or Area Agency on Aging for assistance in meeting the needs of the older person.

Is responsible for review request for information under the Freedom of Information Act and arranging for appropriate responses to the requests.

C.2. *Division of Management and Budget* (DBQ2) translates the long and short range plans into procedural guidance for AoA units concerning performance appraisal planning, work planning and budget prepartion. By means of this system which incorporates the Secretary's Operational Management System, the Management and Budget Division also coordinated the development of strategies for action and subsidiary plans as well as processes for monitoring and reporting on progress toward achieving stated objectives. Works with the Office of

Policy Development (OPD) of the Office of Human Development Services (HDS) in the formulation, review and reporting of operational objectives.

Works with Office of Management Services (OMS)/HDS to prepare budget presentations for use at the Departmental, Office of Management and Budget, and Congressional levels. Formulates budget in accordance with Assistance Secretary for Human Development Services guidelines and instructions. Exercises funds control for all formula grant, discretionary grant and contract, and salary and expense accounts. Processes AoA fiscal documents required to make and manage grants and contracts and tracts financial status of all AoA program and salary and expense funds. Responsible for consultant services review (General Administrative Manual Chapter 8-15).

Implements the central office Merit Pay and employee appraisal system in accordance with Department policy and assists the Commissioner and other AoA units in implementing this system. manages the central office Merit Pay pool.

Serves as a central source for responding to request for administrative services, manages the world processing system, surpervises timekeeping and payrool functions, develops staffing plans, coordinates the development of employee training plans, coordinates the granting of incentive awards, develops space utilization and communication plans and maintains general liaison with personnel, management analysis and administrative services offices at the Office of Human Development Services level. Assures equal employment opportuntiy within the Central Office of AoA.

D. *The Office of State and Tribal Programs* (DGN) serves as the focal point within AoA for the operation and assessment of the programs authorized under Titles III and VI of the Older Americans Act (45 CFR Parts 1321 and 1328) and is responsible for supervising and directing the activities of the ten Regional Offices of the Administration on Aging in the execution of their responsibilities. In response to guidance from the Office of Planning, Evaluation and Dissemination and the Office of Management and Policy Control, provides technical input to long range planning and proposes operational plans and subject matter input to the budget process. Executes the Ombudsman program authorized under the OAA. Implements the AoA program in the field through provision of guidance and information concerning AoA programs to the staff of Regional Offices and interpretation of regulations and policy implementing Titles III and VI of the OAA. Operational contacts between AoA Central and Regional Offices are through the Office of State and Tribal Programs.

Issues substantive operating procedures to guide Regional Offices in the conduct of their responsibilities; establishes standards for Merit Pay and EPMS plans in the Regional Offices; manages the Regional Merit Pay pool; regularly assesses the performance of Regional Office staff against the established standards. Provides guidance to Regional Offices on the processing, approval, or recommendation for disapproval of State Plans under the OAA.

Is responsible for collection, analysis and distribution of program performance data on State and Area Agency and tribal organization implementation of OAA programs. Implements the formula for distribution of Title III funds to the States and controls accounting and reprogramming of funds under that Title.

In consultation with the Division of Management and Budget and the Office of Equal Opportunities and Civil Rights/ Office of Human Development Services, provides guidance to Regional Offices on a variety of management issues relating to such areas as civil rights, minority contracting, age discrimination and regulations about the handicapped.

Maintains information on the professional development and technical capacity of Regional staff, and identifies training needs and recommends training courses to assure a Regional staff capacity for responding to emerging program and management demands.

Provides technical input to development of regulations and policy on Titles III and VI of the OAA. Develops program plans and instructions for AoA Regional Offices and State and Area Agencies to improve the service programs funded under the OAA. Fosters, oversees, assists, and assesses the development of State administered community based systems of social services to the elderly as authorized under Titles III and VI of the OAA.

D.1. *Division of Program Management and Regional Operations* (DGN1) provides day-to-day direction and technical assistance to Regional Offices to assure proper and effective implementation of OAA programs. Develops guidance for, and assists in the development of, annual Regional work plans, and monitors their implementation.

Coordinates with Office of Program Coordination and Review/office of Human Development Services (HDS) and the Office of Management Services/ HDS to assure that proper administrative support and financial resources are available to enable the Regional Offices to carry out their responsibilities.

Coordinates with other AoA Offices to enable Regional Offices to provide timely information and technical assistance to existing and potential grantees of AoA discretionary programs. Manages Regional Office monitoring of AoA discretionary grant activities.

Provides assistance relative to Merit System Standards and their implementation by State agencies. Works with other AoA Offices to assure that timely responses to requests for policy interpretation and technical assistance from State agencies and other grantees are provided to the Regional Offices.

Maintains a control system of Central Office/Regional Office requests to prevent overloading and duplicative demands on staff and defines priorities and expectations for Regional Office activities. Represents AoA in discussions with field coordination units at the HDS and Department levels.

Manages program of services for older Indians authorized under Title VI of the OAA, and develops and executes the Ombudsman provisions of the OAA throughout the aging network.

D.2. *Division of Operations and Fiscal Analysis* (DGN2) develops and operates a management information system focused on the effectiveness and efficiency with which services are delivered. Coordinates and conducts operational studies, program analyses, and evaluations on special issues of concern to the Commissioner, Regional Offices, State and Area Agencies on Aging. Prepares reports on program operations under Title III for the Commissioner, other AoA offices, Office of the Secretary, the Congress and the public.

For formula grant activities, develops financial management standards for State and Area Agencies and provides guidance on and interpretation of 45 CFR Part 74 to AoA staff, in coordination with Office of Program Coordination and Review/HDS. Based on formula grants management policies and procedures approved by the HDS, controls administrative accounting and reprogramming of formula grant funds under the OAA.

Responds to audit issues raised by Department and General Accounting Office audit reviews and assures the proper analysis and resolution of audit findings by Regional Offices for final action by the Commissioner and the Assistant Secretary for HDS.

Develops Title III performance profiles of State and Area Agencies on Aging. Through the analysis of State Plans, evaluation findings, audit reports, and progress reports, prepares early warnings of program and management issues.

E. *Office of Program Development* (DGD) assesses the need for, develops strategies and priorities about, and conducts activities for the development of adequate knowledge for improving the circumstances of older people. Develops a knowledge base for policy decisions and program development and coordination through support of a wide range of research, demonstration, training and long term care activities. Develops personnel resources for the delivery of demonstrations, geriatric fellowships, and training programs. In response to guidance from the Office of Planning, Evaluation and Dissemination and the Office of Management and Policy Control, provides technical input to long range planning and proposes operational plans and subject matter input to the budget process. Promotes coordination of research, demonstration, and long term care activities. Oversees the grant and contract activities designed to carry out research, demonstration, and long term care activities, and develops AoA policies and criteria for monitoring grants and contracts supported through the Office. Assesses results of these activities to recommend utilization strategies to the Division of Technical Information and Dissemination of the Office of Policy Evaluation and Dissemination.

Implements strategies for improving the quality of facilities, programs, and services for the nation's older population. Maintains information on programs in other federal agencies and national voluntary agencies which have potential for relating to these strateties.

Develops policy for information and referral services. Provides technical assistance for State Agencies on Aging in the development of information and referral services. Provides the chairperson for, and secretariat services to, the Inter-Departmental Task Force on Information and Referral.

Administers programs to increase the supply of trained personnel in the field of aging, to increase knowledge in other professional fields of the processes of aging and the circumstances and requirements of older people, and to increase the availability, accessibility, and adequacy of training and educational programs on aging within educational institutions throughout the country. Within overall AoA strategy and long range plans, conducts continuing studies and periodic reviews of manpower needs and resources in the field of aging, develops and monitors a national plan for increasing these resources, and prepares reports thereon for the Administration on Aging, the Federal Council on Aging, the Office of the Secretary, the President and the Congress.

Encourages, and provides partial support for, university-based gerontology programs. Works in collaboration with Office of Program Coordination and Review/Office of Human Development Services (HDS) in the coordination of education and manpower development activities of AoA with other HDS training programs and with similar activities of other Federal agencies and of professional and voluntary organizations in the field of aging.

E.1. *Division of Research and Demonstrations* (DGD1) plans, manages and assesses the research and demonstrations programs of AoA, for the purpose of eliciting new knowledge and techniques to improve the circumstances of older Americans. Develops the research and demonstration components of the knowledge building plan. Administers the program of research and demonstration authorized under Section 310, Title IV–B and Title IV–C of the OAA, including monitoring progress and evaluating the performance of grantees and contractors, and coordinating through the Office of State and Tribal Programs the Regional Office monitoring of sub-national grantees and contractors. Promotes coordination of research and demonstration with other AoA programs and takes positive action to encourage the utilization of research and demonstration project results and findings by other AoA programs.

E.2. *Division of Education and Training* (DGD2) plans, manages and assesses AoA's programs to assure trained staff for programs serving older Americans, including the AoA internal staff development activity. Administers a program for developing curricula and providing training related to preparation for professional, teaching, research, as well as paraprofessional careers in the field of aging through grants to or contracts with educational institutions. Along with the Division of Services Systems Development makes grants for planning, developing, and operating multidisciplinary centers of gerontology designed to serve the purposes set forth under Title IV–E of the OAA. Provides technical assistance and consultation on education and training needs and programs to States and educational institutions and organizations at all levels. Develops criteria for evaluating the effectiveness of education and career training programs and the performance of AoA grantees and contractors, and through the Office of State and Tribal Programs, coordinates the Regional Office monitoring of training grants and contracts.

Develops and administers a program in staff development and continuing education for personnel in the field of aging and for established professional and paraprofessional personnel in related fields who seek to develop competencies for work in the field of aging. Allocates manpower development funds to State and Area Agencies in conducting and supporting short term training for network personnel and personnel of provider agencies, including lay volunteers, to improve their competencies for serving older people. Plans and manages the internal AoA staff development activity. Develops criteria for evaluating short term training. Under policy guidance from the Office of Policy, Evaluation and Dissemination develops and disseminates material on occupational information, personnel needs and job requirements in the field of aging. Designs techniques and instruments for evaluation of education and training programs.

E.3. *Division of Services Systems Development* (DGD3) develops services and systems guidelines and implements strategies for improving services and developing new services based on results of evaluating studies and increasing knowledge about the specialized needs and changing circumstances of older people. Under policy guidance from the Office of Policy, Evaluation and Dissemination develops and disseminates standards, optional models, and "best practice" suggestions on services to the elderly, for use by the Regional Offices, State and Area Agencies on Aging. Contributes subject matter expertise to the development by the Division of Education and Training of technical assistance materials and in-service training curricula concerning these standards, models, and best practice suggestions targeted at building the capabilities of State and Area Agency staff and staff of other social service programs to improve their competence in serving older people.

Develops and implements new initiatives. Provides subject matter expertise to the Public Liaison Staff in negotiation of agreements with other Federal, other public agencies and volunteer organizations. Cooperates with those agencies and organizations to

implement the interagency agreements within its subject matter area.

Promotes, assists and assesses the development of information and referral services for the aging within AoA, the Department, other Federal agencies, State and Area Agencies on Aging, State Social Services agencies, other non-Federal public and private agencies, and organizations associated with the service-providing network. Develops policy issuances on Information and Referral (I&R) matters for both professional and public audiences, provides secretarial services for the Interdepartmental Task Force on I&R, and analyzes the need for and results of research in I&R.

Administers long term care activities authorized under the OAA, including monitoring the progress and evaluating the performance of grantees and contractors. Promotes coordination of such activities and takes positive action to encourage the utilization of project results and findings within AoA.

Provides technical input to the AoA planning and policy development activities and the annual budget development cycle; develops and implements operational plans. Implements approved strategies for improving the quality of facilities, programs, and services related to long term care for the nation's older population. Maintains information on programs in other Federal agencies and national voluntary agencies which have potential for relating to these strategies. Participates in Departmental and inter-departmental activities which concern health and social services related to long term care; reviews and comments on Departmental regulations and policies regarding institutional and non-institutional long term care. 2. Part D, Chapter DA, "Assistant Secretary for Human Development Services", as published in the **Federal Register** on September 29, 1980 (45 FR 64256), is to be amended by adding paragraph six at the end of Section DA.20 Functions as follows:

6. Federal Council on Aging Staff (DAA) provides general staff support for a Presidential-level advisory body, the Federal Council on Aging (FCA). Provides all meeting and hearing arrangements. Prepares an Annual Report for Congress and such other reports as are authorized by the Federal Advisory Committee Act. Conducts or supervises the production of studies, research, or analysis of various matters affecting the elderly as background for Council deliberations and recommendations.

Dated: November 22, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-33081 Filed 12-2-82; 8:45 am]

BILLING CODE 4130-01-M

Office of the Secretary

United Nations' Draft Guidelines for Consumer Protection; Public Review

AGENCY: Office of Consumer Affairs, HHS.

This notice is to alert interested parties of the availability for review and comment of a set of *Draft Guidelines for Consumer Protection* currently being circulated to member countries by the United Nations' Secretary-General. Development of the United States' response is being coordinated by the United States Office of Consumer Affairs in cooperation with the United States Department of State. Written public comments are welcomed. Interested parties may obtain a copy of the draft guidelines and further information from Mr. Wiliam Brew, Special Assistant for Legislative and Public Affairs, U.S. Department of State/EB, 22nd & C Streets, NW., Room 6822, Washington, D.C. 20520 (202/632-1682). Comments are to be submitted to Mr. Brew at the above address on or before December 31, 1982.

The United States Office of Consumer Affairs is established under E. O. #11583 issued February 24, 1971. The Office is directed, among other functions, to assure that the interests of consumers are presented and considered in a timely manner by appropriate levels of the Federal Government in the formulation of policies.

Robert F. Steeves,

Deputy Director.

[FR Doc. 82-33105 Filed 12-2-82; 8:45 am]

BILLING CODE 4150-04-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C Chapter 35). The following are those packages submitted to OMB since the list was last published on November 26.

Public Health Service

National Institutes of Health

Subject: Clinical, Laboratory, and Epidemiologic Characterization of Individuals at High Risk of Cancer (0925-0080)—Reinstatement
Respondents: Individuals
OMB Desk Officer: Richard Eisinger

Social Security Administration

Subject: Report of Continuing Disability Interview Covering Recipients of Disability Benefits (SSA-454)—Revised
Respondents: Individuals
Subject: Report of Black Lung Student Beneficiary as End of School Year (SSA-2613)—New
Respondents: Individuals
Subject: Petition to Obtain Approval of a Fee for Representing a Claimant Before SSA (SSA-1560)—Revision
Respondents: Individuals
Subject: Report by Person Entitled to Special Age 72 Social Security Payments (SSA-1625)—Revision
Respondents: Individuals
OMB Desk Officer: Milo Sunderhauf

Office of the Secretary

Subject: Survey of State/Local General Assistance and Refugee Assistance Programs—New
Respondents: State and local welfare agencies
OMB Desk Officer: Milo Sunderhauf

Health Care Financing Administration

Subject: Statement of Expenditures for Medical Assistance Payments (HCFA-64)—Revision
Respondents: State Medicaid agencies
Subject: Inpatient Hospital and Skilled Nursing Facility Admission and Billing Form
Respondents: Hospitals and skilled nursing facilities
Subject: Section 4440: State Medicaid Manual—Home and Community Based Services Model Waiver Request (HCFA-382)—New
Respondents: State Medicaid agencies
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses:

J. J. Strnad, HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524-F, Washington, D.C. 20201

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer)

Dated: November 26, 1982.

Dale W. Sopper

Assistant Secretary for Management and Budget.

[FR Doc. 82-32876 Filed 12-2-82; 8:45 am]

BILLING CODE 4150-04-M

Social Security Administration

Reallotment of Funds for 1982; Low-Income Home Energy Assistance Program

AGENCY: Social Security Administration, HHS

ACTION: Notice of final determination of funds available for reallotment.

SUMMARY: Section 2607 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8626) permits the Secretary of the Department of Health and Human Services to reallot unused Low-Income Home Energy Assistance Program (LIHEAP) funds among LIHEAP grantees. Procedures established by the Department at 45 CFR 96.81 require each grantee to report to us by August 1 of each year the amount of funds available for reallotment. Grantees reported that no FY 1982 funds are available for reallotment. Therefore, we have determined that no Fiscal Year 1982 funds will remain unused in that fiscal year, with the exception of funds to be held available by grantees for use in Fiscal Year 1983, pursuant to Section 2607(b)(2) of the Omnibus Budget Reconciliation Act of 1981. Accordingly, we will not undertake the reallotment of Fiscal Year 1982 funds.

FOR FURTHER INFORMATION CONTACT: Norman L. Thompson, Director, Office of Energy Assistance, (202) 245-2030.

Dated: November 29, 1982.

John A. Svahn,

Commissioner of Social Security.

[FR Doc. 82-33078 Filed 12-2-82; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Areas of Critical Mineral Potential

AGENCY: Bureau of Land Management, Interior.

ACTION: Request for nominations to identify "Areas of Critical Mineral Potential".

SUMMARY: The Department of the Interior is requesting the public to nominate areas of high mineral interest which are formally segregated from the mining and mineral leasing laws, or areas which are administratively restricted from the mining and mineral leasing laws. This request is made in response to the President's April 5, 1982, "National Materials and Minerals Program Plan and Report to Congress". The Department of the Interior, Bureau of Land Management will use these nominations to identify "Areas of Critical Mineral Potential" within certain withdrawn lands as part of a larger effort to return lands to multiple use, where appropriate.

DATE: Public nominations should be submitted by March 7, 1983.

ADDRESS: Send nominations to: Director (580), Bureau of Land Management, 1800 C Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Zimmerman, Bureau of Land Management (202)343-3557; Mr. Robert M. Anderson or Ms. Susan Marcus Bureau of Land Management (202)343-3207.

SUPPLEMENTARY INFORMATION: The National Materials and Minerals Policy, Research and Development Act of 1980, (30 U.S.C. 1601, et seq) directed the President to present a program plan and report to the Congress regarding actions taken by the Administration to implement the Act. In preparation for the report, the President's Cabinet Council on Natural Resources and the Environment undertook a review of energy, minerals and materials policy issues, especially the increasing dependence of the United States and the free world upon foreign sources for strategic and critical minerals. On April 5, 1982, the President submitted his National Materials and Minerals program and Report to the Congress.

The national energy minerals policy as expressed in the report recognizes: (1) The critical role of energy and minerals to our economy, national defense, and standard of living; (2) the vast, unknown and untapped energy and mineral wealth of America and the need to keep the public's land open to appropriate energy and mineral exploration and development; (3) the critical role of the Federal Government in alerting the Nation to energy and minerals issues and in ensuring that national decisionmakers take into account the impact of their decisions on energy and minerals policy; and, (4) the need for long-term, high potential payoff research activity of wide generic application to improve and augment domestically available energy and minerals resources.

Over time, a large amount of this land has been withdrawn from energy and mineral entry by administrative actions. Indications are that some of this land may contain energy and mineral deposits. The public is requested to nominate those areas so that they can be evaluated by the Bureau to determine their energy and mineral potential in order to make more Federal land available for exploration and development. The Administration will focus immediate attention on those areas as it is part of the Federal Government's responsibility as steward of the public lands to remove obsolete restrictions that limit or preclude multiple use of the public lands, including energy and mineral exploration and development.

The Department of the Interior will use the nominations received pursuant to this notice to identify "Areas of Critical Mineral Potential." It is not the purpose of the Areas of Critical Mineral Potential to formally classify lands but rather to identify areas which the BLM should consider in its withdrawal review program. Nominations are sought for any Federal lands or areas of Federal mineral interest in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, except as noted below. For Areas of Critical Mineral Potential managed by the Bureau of Land Management, the Bureau will use the information as additional input to its resource management planning. For Areas of Critical Mineral Potential managed by other Federal agencies, the Bureau will consult with the appropriate agency to identify opportunities to open the lands to energy and mineral exploration and development. Because of the complexity of native claims under the Alaska Native Claims Settlement Act and the remaining selection entitlements of the State of Alaska under the Alaska Statehood Act, energy and mineral resources in Alaska are being evaluated under separate programs. Therefore, nominations for Areas of Critical Mineral Potential in Alaska will not be considered.

The following lands or land management systems are not included in this request, and nominations on these lands will not be considered:

1. Indian reservations and other Indian holdings;

2. National Wildlife Refuge System or other lands administered by the Fish and Wildlife Service or by the Secretary of the Interior through the Fish and Wildlife Service;

3. National Park System/National Parks, Monuments, Historic Sites, etc.;
4. National Wild and Scenic Rivers System;
5. National System of Trails; and,
6. Designated Wilderness Areas.

Nominations requested from the public via this invitation are not limited to any specific energy or mineral resource. Nominations can be in the form of a letter and should be as specific as possible and include:

1. Minerals of interest (optional).
2. A map or land description by aliquot parts of the public land surveys or protracted surveys, showing the area nominated.
3. A brief statement of the rationale for the nomination (i.e. mineral occurrence or exploration potential).
4. A brief description of the nature and the effect of the withdrawal or segregation, if known.
5. The name, address, and phone number of the person who may be contacted by technical personnel of the Bureau of Land Management assigned to review the nomination.

Geologic maps, cross sections, and sample analyses may be included. Published literature and reports may be cited in support of nominations. Each nomination should be limited to a specific withdrawal or segregation.

Each nomination should be limited to no more than three typewritten pages but may contain maps, or bibliographic material in excess of that limit.

The principal authors of this request are Mr. William P. (Perry) Pendley, Deputy Assistant Secretary for Energy and Minerals and Dale Zimmerman, Assistant to the Deputy Director, Energy and Minerals Resources, Bureau of Land Management.

Dated: November 26, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 82-33003 Filed 12-2-82; 8:45 am]

BILLING CODE 4310-84-M

Availability of the Draft Bisti, De-Na-Zin, Ah-Shi-Sle-Pah Proposed Wilderness Areas Environmental Impact Statement; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, Department of the Interior, has prepared a draft environmental impact statement (DEIS) on: (1) The proposed wilderness designation of the Bisti and De-na-zin Wilderness Study Areas (WSAs); and (2) the proposed non-wilderness designation of the Ah-shi-sle-pah WSA. Also available is a companion document to this EIS, the Cumulative Overview (CO). The CO analyzes the significant cumulative and synergistic impacts of the Bisti, De-na-zin, Ah-shi-sle-pah Proposed Wilderness Areas; the New Mexico Generating Station; and San Juan River Regional Coal Leasing.

Pursuant to section 3(d) of the Wilderness Act of 1964, notice is also given that public meeting will be held on the above proposed actions. The Bureau of Land Management is requesting oral and written comments on the EIS's and the CO from November 30, 1982 through 4:30 p.m. on February 7, 1983. Both informal open houses and formal hearings will be held for oral comments.

TIMES AND LOCATIONS: The Draft EIS and CO will be available from November 30, 1982 through February 7, 1983. Informal open house meetings will be held to review and discuss the draft EIS in the following New Mexico locations:

Farmington, December 14, 1982 from 3 to 9 p.m., Civic Center, 212 West Arrington, Exhibit Hall 1

Albuquerque, December 14, 1982, 3 to 9 p.m., Convention Center, Isleta-Jemez Room, 401 Second NW.

Crownpoint, December 15, 1982, 3 to 9 p.m., Navajo Chapter House

Gallup, December 16, 1982, 3 to 9 p.m., Holiday Inn Meeting Room, Highway 66 West

Taos, December 16, 1982, 3 to 9 p.m., Kachina Lodge, Cabaret Room, North Pueblo Road

Formal public hearings are scheduled for the following locations:

Crownpoint, January 10, 1983, starting 1 p.m., Navajo Chapter House

Farmington, January 12, 1983, starting 9 a.m. and 7 p.m., Civic Center, 212 Arlington, Exhibit Hall 1

Albuquerque, January 14, 1983, starting 9 a.m. and 7 p.m., Four Seasons Motel, 2500 Carlisle Blvd., NE.

A specific time to testify should be reserved by contacting the BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501, (505) 988-6316. However, preregistration is not required for testifying. Written comments are encouraged even if an oral presentation is made.

ADDRESSES: Single copies of the Draft EIS and CO may be obtained from the Albuquerque District Office, P.O. Box 6770, Albuquerque, New Mexico 87107. In addition, review copies may be examined at the following locations:

Bureau of Land Management Officers

New Mexico State Office, Public Affairs Staff, Room 2016, U.S. Post Office and Federal Building, P.O. Box 1449, Santa Fe, New Mexico 87501 (505) 988-6316

Albuquerque District, 3550 Pan American Freeway, NE, P.O. Box 6770, Albuquerque, New Mexico 87107 (505) 766-2455

Farmington Resource Area, 900 North La Plata Highway, P.O. Box 568, Farmington, New Mexico 87401 (505) 325-3581

Taos Resource Area, Montevideo Plaza, P.O. Box 1045, Taos, New Mexico 87571 (505) 758-8851

Socorro District Office, 198 Neel Avenue, P.O. Box 1219, Socorro, New Mexico 87801 (505) 835-0412

Review copies will also be available at the following public and university libraries:

State and Public Libraries

Albuquerque Public Library, 501 Copper Avenue, NW., Albuquerque, New Mexico 87102

Aztec Public Library, 201 W. Chaco, Aztec, New Mexico 87401

Crownpoint Community Library, c/o Lioness Club, P.O. Box 731, Crownpoint, New Mexico 87313

Cuba Public Library, Box 5, La Jara, Cuba, New Mexico 87027

Farmington Public Library, 302 N. Orchard, Farmington, New Mexico 87401

Gallup Public Library, 115 W. Hill Avenue, Gallup, New Mexico 87301

Mother Whiteside Memorial Library (Public), 525 W. High Street, P.O. Box 96, Grants, New Mexico 87020

*New Mexico State Library,*325 Don Gaspar Avenue, Santa Fe, New Mexico 87503

Harwood Foundation Library (Public), 25 LeDoux, P.O. Box 766, Taos, New Mexico 87571

University and College Libraries

University of New Mexico, General Library, Albuquerque, New Mexico 87131

Navajo Community College Library, Shiprock Branch, P.O. Box 580, Shiprock, Arizona 87420

Northern New Mexico Community College, P.O. Box 250, Espanola, New Mexico 87532

San Juan College, 4601 college Blvd., Farmington, New Mexico 87401

University of New Mexico, Gallup Campus, Learning Resources Center, 200 College Road, Gallup, New Mexico 87301

New Mexico State University/Grants, 1500 Third Street, Grants, New Mexico 87020

New Mexico Highlands University, Donnelly Library, National Avenue, Las Vegas, New Mexico 87801

College of Santa Fe, Fogelson Memorial Library, St. Michael's Drive, Santa Fe, New Mexico 87501

Colorado State University, Fred Schmidt, CSU Library, Fort Collins, Colorado 80523

Written comments should be sent to: State Director (912), Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501. Comments will be accepted through February 7, 1983, at close of business (4:30 pm) at the New Mexico State Office.

ADDITIONAL INFORMATION: The Bisti, De-na-zin, Ah-shi-sle-pah Proposed Wilderness Areas EIS analyzes a proposed action and three alternatives. The proposed action is to designate as wilderness areas the Bisti and De-na-zin, WSA's, and to place the Ah-shi-sle-pah WSA under non-wilderness designation. Under the No Action Alternative, the Bisti and De-na-zin, WSAs would be placed under Area of Critical Environmental Concern (ACEC) designation, and the Ah-shi-sle-pah WSA would be placed under non-wilderness designation. Alternative 1 involves the wilderness designation of a part of the present De-na-zin, WSA, and Alternative 2 would place the Ah-shi-sle-pah WSA under wilderness designation.

The CO analyzes the significant cumulative and synergistic impacts of the three proposed actions for which the BLM is preparing EIS's. Impacts that require additional analysis beyond that in the Draft EIS are identified as those on air quality, noise, cultural and paleontological resources, visual resources, recreation and wilderness, social and economic conditions, and transportation.

The Draft EIS and CO should be retained to be used in conjunction with the final documents. The final documents may incorporate the drafts by reference and include modifications and corrections to the drafts. The final documents will also include a record of public comments and the responses to these comments.

FOR FURTHER INFORMATION CONTACT: Richard Fagan, Albuquerque District Office, Bureau of Land Management, 3550 Pan American Freeway, NE, P.O. Box 6770, Albuquerque, New Mexico 37107, (505) 766–2455.

Dated: November 24, 1982.

Charles W. Luscher,

New Mexico State Director, Bureau of Land Management.

[FR Doc. 82–33043 Filed 12–2–82; 8:45 am]

BILLING CODE 4310–84–M

Availability of the Draft San Juan River Regional Coal Environmental Impact Statement; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management (BLM), Department of the Interior, has prepared the draft San Juan River Regional Coal Environmental Impact Statement (EIS). This draft EIS analyzes: (1) The proposed 1983 competitive leasing of Federal coal in the San Juan River Coal Production Regions; and (2) the Preference Right Lease Applications. Also available is the Cumulative Overview (CO), a reference document to the San Juan River Regional Coal EIS. The CO analyzes the significant cumulative and synergistic impacts of New Mexico Generating Station EIS, the Bisti, De-na-zin, Ah-shi-sle-pah Proposed Wilderness Areas EIS, and the San Juan River Regional Coal EIS.

DATES: BLM is requesting comments on the draft EIS. All substantive comments on the draft EIS, which are received by February 7, 1983 (close of business), will be considered in the preparation of the final EIS. Both informal open houses and formal hearings will be held for oral comments at the following locations and times.

Open house:

Farmington, December 14, 1982, from 3 to 9 p.m., Civic Center, 212 West Arrington, Exhibit Hall 1

Albuquerque, December 14, 1982, 3 to 9 p.m., Convention Center, Isleta-Jemez Room, 401 Second NW.

Crownpoint, December 15, 1982, 3 to 9 p.m., Navajo Chapter House

Gallup, December 16, 1982, 3 to 9 p.m., Holiday Inn Meeting Room, Highway 66 West

Taos, December 16, 1982, 3 to 9 p.m., Kachina Lodge, Cabaret Room, North Pueblo Road

Formal public hearings:

Crownpoint, January 10, 1983, starting 1 p.m., Navajo Chapter House

Farmington, January 12, 1983, starting 9 a.m. and 7 p.m., Civic Center, 2132 West Arrington, Exhibit Hall 1

Albuquerque, January 14, 1983, starting 9 a.m. and 7 p.m., Four Seasons Motel, 2500 Carlisle Blvd., NE.

A specific time to testify should be reserved by contacting the BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501, (505) 988–6316. Written comments are encouraged even if an oral presentation is made.

ADDRESSES: Written comments should be sent to State Director (912), Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501. Comments will be accepted until February 7, 1983, close of business (4:30 p.m.).

Single copies of the Draft EIS and CO may be obtained from the Albuquerque District Office, P.O. Box 6770, Albuquerque, New Mexico 87107. In addition review copies may be examined at the following locations:

Bureau of Land Management Offices:

New Mexico State Office, Public Affairs Staff, Room 2016, U.S. Post Office and Federal Building, P.O. Box 1449, Santa Fe, New Mexico 87501 (505) 988–6316

Albuquerque District, 3550 Pan American Freeway, NE, P.O. Box 6770, Albuquerque, New Mexico 87107 (505) 766–2455

Farmington Resource Area, 900 La Plata Road, P.O. Box 568, Farmington, New Mexico 87401 (505) 325–3581

Taos Resource Area, Montevideo Plaza, P.O. Box 1045, Taos, New Mexico 87571 (505) 758–8851

Socorro District Office, 198 Neel Avenue, P.O. Box 1219, Socorro, New Mexico 87801 (505) 835–0412

Review copies will also be available at the following libraries:

State and Public Libraries:

Albuquerque Public Library, 501 Copper Avenue NW, Albuquerque, New Mexico 87102

Aztec Public Library, 201 W. Chaco, Aztec, New Mexico 87401

Farmington Public Library, 302 N. Orchard, Farmington, New Mexico 87401

Gallup Public Library, 115 W. Hill Avenue, Gallup, New Mexico 87301

Mother Whiteside Memorial Library (Public), 525 W. High Street, P.O. Box 96, Grants, New Mexico 87020

Crownpoint Community Library, c/o Lioness Club, P.O. Box 731, Crownpoint, New Mexico 87313

Cuba Public Library, Box 5, La Jara, Cuba, New Mexico 87027

Harwood Foundation Library (Public), 25 LeDoux, P.O. Box 766, Taos, New Mexico 87571

New Mexico State Library, 325 Don Gaspar Avenue, Santa Fe, New Mexico 87503

University and College Libraries:

University of New Mexico, General Library, Albuquerque, New Mexico 87131

Navajo Community College Library, Shiprock Branch, P.O. Box 580, Shiprock, Arizona 87420

Northern New Mexico Community College, P.O. Box 250, Espanola, New Mexico 87532
New Mexico State University, San Juan Campus, 4601 College Blvd., Farmington, New Mexico 87401
University of New Mexico, Gallup Campus, Learning Resources Center, 200 College Road, Gallup, New Mexico 87301
New Mexico State University/Grants, 1500 Third Street, Grants, New Mexico 87020
New Mexico Highlands University, Donnelly Library, National Avenue, Las Vegas, New Mexico 87701
College of Sante Fe, Fogelson Memorial Library, St. Michael's Drive, Santa Fe, New Mexico 87501

ADDITIONAL INFORMATION: The San Juan River Regional Coal EIS analyzes five coal leasing alternatives: (1) No Action, existing and planned development and 26 Preference Right Lease Applications (2.2 billion tons of Federal coal); (2) Bypass Alternative, 129 million tons of Federal coal in 8 tracts; (3) Minimum Surface Owner Conflict, 916 million tons of Federal coal in 11 tracts; (4) Target Alternative, 1.32 billion tons of Federal coal in 24 tracts; (5) High Alternative, 1.94 billion tons in 39 tracts. Alternative 4 is the preferred alternative.

The CO analyzes the significant cumulative and synergistic impacts of the proposed actions on which the BLM is preparing EISs. Those impacts which are presented in greater detail than discussed in the Draft EIS are identified as air quality, cultural and paleontological, visual, recreation and wilderness, social and economic conditions, and transportation.

The Draft EIS and CO should be retained to be used in conjunction with the final documents. The final documents may incorporate this draft by reference. The final documents will also contain a record of public comments and the responses to these comments, including text modifications and corrections, as appropriate.

FOR FURTHER INFORMATION CONTACT: Rich Watts, Farmington Resource Area, Bureau of Land Management, 900 La Plata Highway, P.O. Box 568, Farmington, New Mexico 87499, (505) 325-3581.

James M. Parker,
Associate Director, Bureau of Land Management.

Dated: November 16, 1982.

Approved By: **Garrex Carruthers,**
Assistant Secretary, Land and Water Resources.

Dated: November 24, 1982.

[FR Doc. 82-33044 Filed 12-2-82; 8:45 am]
BILLING CODE 4310-84-M

[INT DEIS 82-74]

Availability of Draft Environmental Impact Statement (EIS) on Public Service Company of New Mexico's Proposed New Mexico Generating Station and Possible New Town (NMGS), Draft Cumulative Overview, and Notice of Public Hearings

AGENCY: Bureau of Land Management, New Mexico State Office, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, New Mexico State Office, announces the availability of the subject EIS and the associated Cumulative Overview Document for public review and comment. This EIS was prepared pursuant to Section 102(2) of the National Environmental Policy Act of 1969 (NEPA) and the final Council on Environmental Quality regulations implementing the procedural provisions of NEPA.

The proposed action considered in the EIS includes a four-unit, 2,000 megawatt coal-fired generating station and ancillary facilities to be constructed on a site approximately 35 miles southeast of Farmington in San Juan County, New Mexico. Also included in the proposal are a water delivery system from the San Juan River to the plant site and two 500 kilovolt transmission lines from the plant site to a proposed substation in Sandoval County, New Mexico.

The purpose of the draft EIS is to disclose the potential social, economic, and environmental effects of the NMGS proposal and its alternatives to ensure that these factors are adequately considered along with technical and other considerations in the decisionmaking process.

This draft EIS is one of a series of environmental and related documents concerning the BLM's San Juan Basin Action Plan (SJBAP). This Action Plan considers six separate but interrelated actions proposed within the San Juan Basin area of New Mexico. This EIS and the Cumulative Overview Document (CO) issued with it are an integral part of the SJBAP which also includes the San Juan River Regional Coal Leasing EIS, the Bisti, De-na-zin, Ah-she-sle-pah Proposed Wilderness Areas EIS, the Ute Mountain Land Exchange Environmental Assessment (EA), and the Bisti Coal Preference Right Leasing EA.

The public comment period on the NMGS EIS will run from November 30, 1982 through February 7, 1983 with all comments due by close of business February 7, in the BLM New Mexico State Office, Santa Fe. Comments should be addressed to: State Director (912), Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87501.

Informational public meetings are scheduled for December 1982 to provide a public forum to clarify questions and concerns about the NMGS EIS and the related SJBAP documents which will all have been released by that time. The meetings have been scheduled as follows:

- December 14, Civic Center, Farmington, NM, 3 to 9 p.m.
- December 14, Convention Center, Albuquerque, NM, 3 to 9 p.m.
- December 15, Chapter House, Crownpoint, NM, 3 to 9 p.m.
- December 16, Holiday Inn, Gallup, NM, 3 to 9 p.m.
- December 16, Kachina Lodge, Taos, NM, 3 to 9 p.m.

In addition, formal public hearings have been scheduled in January 1982 to receive oral and written public comments on the NMGS EIS and other SJBAP documents. These meetings are scheduled as follows:

- January 10, Chapter House, Crownpoint, NM, beginning at 1:00 p.m.
- January 12, Civic Center, Farmington, NM, beginning at 9:00 a.m.
- January 14, (and 15th if necessary because of the number of registrants), Four Seasons Motor Lodge, Albuquerque, NM, I-40 and Carlisle Blvd., beginning at 9:00 a.m. (each day)

A specific time to testify at any of the formal public hearings can be reserved by contacting the BLM New Mexico State Office Public Affairs Staff at (505) 988-6316 or FTS 476-6316; however, no preregistration is required to testify. Written submissions are encouraged even if oral testimony is given.

A limited number of copies of the draft NMGS EIS will be available upon request at the following BLM offices:
New Mexico State Office, Public Affairs Staff (912), U.S. Post Office and Federal Building, P.O. Box 1449, Santa

Fe, NM 87501, (505) 988–6316 FTS 476–6316

New Mexico State State Office, NMGS Staff (934A), Rm. 122, Federal Bldg., Cathedral Place, P.O. Box 1449, Santa Fe, NM 87501, (505) 988–6184 FTS 476–6184

FOR FURTHER INFORMATION CONTACT:

For the NMGS EIS: Leslie M. Cone, NMGS Project Manager, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87501, (505) 988–6184 FTS 476–6184.

For the overall San Juan Basin Action Plan: Gene Day, Chief, San Juan Energy Project Staff, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87501, (505) 988–6214 FTS 476–6214.

Monte G. Jordan,

Associate State Director.

[FR Doc. 82-33045 Filed 12-2-82; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to conduct certain activities with endangered species:

Applicant: Arizona Zoological Society, Phoenix, AZ—PRT 2-9833

The applicant requests a permit to import one female Galapagos tortoise (*Geochelone elephantopus*) from the Rotterdam Zoo, the Netherlands, for enhancement of propagation.

Applicant: Knoxville Zoological Park, Knoxville, TN—PRT 2-9825

The applicant requests a permit to import two captive-bred Siberian tigers (*Panthera tigris altaica*) from the Leipzig Zoo, East Germany, for enhancement of propagation.

Applicant: Dr. Joseph J. Cech, Jr., University of California at Davis, Davis, CA 95616—PRT 2-9788

The applicant requests a permit to take (collect) up to 100 Mojave chub fish (*Gila mohavensis*) for scientific research.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: November 30, 1982.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82-33059 Filed 12-2-82; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Appomattox Court House National Historical Park, Va.; Boundary Revision

AGENCY: National Park Service, Interior.

ACTION: Notice of revision of park boundary.

Section 308(a) of the Act of October 21, 1976, Public Law 94-578 (90 Stat. 2735) established the Park Boundary as depicted on the map entitled "Boundary Map, Appomattox Court House National Historical Park," numbered 340-20,000A, dated September 1976. The effect of this boundary was to sever the lands of one of the affected landowners leaving an 8.50 acre tract landlocked.

Section 301, Paragraph (9) of Public Law 91-646, approved January 2, 1971 (84 Stat. 1905), authorizes the acquisition of land which is an uneconomic remnant. The 8.50 acre parcel was acquired pursuant to this Act.

Pursuant to Section 5 of Public Law 95-42, approved June 10, 1977 (91 Stat. 211), notice is given that the boundary of the Appomattox Court House National Historical Park has been revised to include this 8.50 acre parcel. This parcel of land is depicted as Tract 01-136 on Land Status Map numbered 340/80,005, Segment 01, dated January 1981, prepared by the Land Resources Division of the Mid-Atlantic Region of the National Park Service.

The map in on file and available for inspection in the administrative office of the Appomattox Court House National Historical Park, Appomattox, Virginia, 24552; in the office of the Mid-Atlantic Region, Land Resources Division, Custom House, Room 502, Second and Chestnut Streets, Philadelphia, Pennsylvania, 19106; and in the office of the National Park Service, Department of the Interior, 18th and C Streets, Washington, DC, 20240.

Dated: November 18, 1982.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 82-33049 Filed 12-2-82; 8:45 am]

BILLING CODE 4310-70-M

Glacier Park Boat Co.; Intention to Negotiate Concession Contract

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 sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Regional Director, Rocky Mountain Region, National Park Service, proposes to negotiate a concession contract with Glacier Park Boat Company, Inc., authorizing it to continue to provide boating facilities and services for the public at Glacier National Park, Montana for a period of approximately five (5) years from November 1, 1982, through December 31, 1987.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on October 31, 1982, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision in effect, grants Glacier Park Boat Company, Inc., the opportunity to meet the terms and conditions of any other proposal submitted in response to this notice which the Secretary may consider better than the proposal submitted by Glacier Park Boat Company, Inc. If Glacier Park Boat Company, Inc., amends its proposal and the amended proposal is substantially equal to the better offer, then the proposed new contract will be negotiated with Glacier Park Boat Company, Inc.

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 sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Regional Office National Park Service, 655 Parfet Street, Denver, Colorado 80225, for information as to the requirements of the proposed contract.

Dated: November 12, 1982.

Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 82-33048 Filed 12-2-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 387]

Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of provisional exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATE: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278

or

Tom Smerdon, (202) 275-7277

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

"These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness."

Sub-No.	Name of railroad, contract No. and specifics	Review board [1]	Decided date
423	Burlington Northern Railroad Co., ICC-BN-C-0153, Supplement 3, (Grain and grain products)	3	11-26-82
424	Missouri-Kansas-Texas Railroad Co., ICC-MKT-C-0206, Supplement 1, (Wheat flour)	2	11-26-82
425	Chicago and North Western Tranportation Co., ICC-CNW-C-0385, (Grain or oil seeds)	2	11-26-82
426	Consolidated Rail Corp., ICC-CR-C-0226, (Grain and grain products)	3	11-26-82
427	Soo Line Railroad Co., ICC-SOO-C-0112, Supplement 2, (Woodpulp and printing paper)	3	11-26-82

[1] Review Board No. 2, Members Carleton, Williams, and Ewing; Member Ewing not participating. Review Board No. 3, Members Krock, Joyce, and Dowell; Member Krock not participating.

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

(49 U.S.C. 10505)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-32900 Filed 12-2-82; 8:45 am]

BILLING CODE 7035-01-M

[OP-5FC 261]

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,

Secretary.

Note.—Please direct status inquiries to Team 5, (202) 275-7289.

MC-FC-81020. By decision of November 22, 1982 issued under 49 U.S.C. 10926 and the transfer rules of 49 CFR Part 1132, Review Board Number 3 approved the transfer to DA-PAUL TRANSPORT, INC., of Indian Orchard, MA, of Certificate No. MC 145679 (Sub-18, 19, and 22) issued to A & A TRANSPORT, INC., of Palmer, MA, authorizing the transportation of *general commodities* (except classes A and B explosives), between points in MA, NH, CT, RI, and NY, on the one hand, and, on the other, points in the U.S.; *food and related products,* between Amarillo, TX, and points in Parmer, Hale, and Lubbock Counties, TX, Wichita, KS, and points in Ford, Finney, Wyandotte, and Johnson Counties, KS, Otoe County, NE, Kansas City, MO, and points in Buchanan and Atchison Counties, MO, on the one hand, and, on the other, points in the U.S.; *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Kansas City, KS, and points in Baldwin and Tuscaloosa Counties, AL, Los Angeles, Orange, San Francisco, Tulare, and San Diego Counties, CA, Kent County, DE, Duval, Liberty and Escambia Counties, FL, Walker County, GA, Grundy County, IL, Allen Parish, LA, Essex and Bristol Counties, MA, Oakland County, MI, Harrison County, MS, Middlesex, Union, and Warren Counties, NY, Brooklyn and Niagara Counties, NY, Summit and Fairfield Counties, OH, Columbia and Jackson Counties, OR, Allegheny County, PA, Hampton County, SC, Hardeman and Davidson Counties, TN, Travis and Harris Counties, TX, and Pierce County, WA, on the one hand, and, on the other, points in the U.S. (except AK and HI). Upon consummation, pursuant to the request of transferor, the authority retained by the transferor will be amended as follows: the authority in MC-145679 Subs 1 and 16 will be cancelled; the destination States of MA, NH, CT, RI, and NY will be deleted from Certificates MC-145679 Subs 4, 6, 7, 9, 14, and 20; in paragraph (1) of MC-145679 Sub 15 the points "of Moss Pt., MS, Farmingdale

and Long Island City, NY, and Woburn and South Hadley, MA," and the entire paragraphs of (2), (3), (4), and (5) will be deleted; in MC-145679 Sub 17, Fitchburg, MA will be deleted as an origin point; in MC-145679 Sub 24, Kent County, RI, as an origin point and the destination States of MA, CT, NH, RI, and NY will be deleted.

Note.—Transferee is not a carrier.

No. MC-FC-81025. By decision of November 18, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132 and 49 CFR 1145.11, Review Board Number 3 approved the transfer to M O C O INVESTMENTS, INC., of Denver, CO, of Certificate No. MC-74009 and License No. MC-12311, issued April 12, and November 22, 1954, respectively, to BEKINS VAN & STORAGE CO., of Denver, CO, authorizing the transportation of household goods, over irregular routes, between points in CO; and operations as a broker at Denver, CO, in connection with transportation by motor vehicle of household goods between points in the U.S. An application for temporary authority has been filed. Representative: Charles M. Williams, 655 Capitol Life Center, 1600 Sherman St., Denver, CO 80203.

[FR Doc. 82-33005 Filed 12-2-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier 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 use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: California Fresno Investment Co., P.O. Box 527, Fresno, CA 93709.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: California Fresno Transportation Co. (a California corporation).

1. Parent corporation and address of principal office: Campbell Soup Company, Campbell Place, Camden, New Jersey 08101.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation are as follows:

Corporate Name and State of Incorporation

Campbell Finance Corp., Delaware
Campbell Foods Distributing Corp., New Jersey
Campbell Foreign Sales Corp., Delaware
Campbell Hospitality, Inc., New Jersey
Campbell Investment Company, Delaware
Campbell Sales Company, New Jersey
Campbell Soup Company (Sumter Plant) Inc., South Carolina
Campbell Soup (Texas) Inc., Texas
Campbell's Soup Inter-America, Inc., New Jersey
Camsco Mushroom Company, Inc., Ohio
Capistrana Finance Corp., Delaware
Capistrana Products Corp., New Jersey
Champion Valley Farms, Inc., New Jersey
Costa Apple Products, Inc., New York
Dixon Canning Corp., California
Domsea Farms, Inc., Washington
Fine Oven Products, Inc., New York
Godiva Chocolatier, Inc., New Jersey
Hanover Trail of Maryland, Inc., Maryland
Hanover Trail, Inc., Pennsylvania
Herider Farms, Inc., Texas
Joseph Campbell Company, New Jersey
Juice Bowl Products, Inc., Florida
Lexington Gardens, Inc., Connecticut
MB Bakery, Inc., California
Martino's Bakery, Inc., California
Mrs. Paul's Kitchens, Inc., Pennsylvania
Pepperidge Farm, Incorporated, Connecticut
Pepperidge Farm Mail Order Company, Inc., Connecticut
Pietro's Corp., Washington
Seattle Restaurant Food Supply, Inc., Washington
Snow King Frozen Foods, Inc., Pennsylvania
Southeastern Wisconsin Products Company, Inc., Wisconsin
Technological Resources, Inc., New Jersey
Valley Tomato Products, Inc., California
Vlasic Foods, Inc., Michigan
Win Schuler Foods, Inc., Michigan

1. Parent corporation and address of principal office: Howard Industries, Inc., Airport Industrial Park, Laurel, Mississippi 39440.

2. Wholly-owned subsidiary which will participate in the operations and State of incorporation: Howard Transportation, Inc. (a Mississippi corporation) Airport Industrial Park, Laurel, MS 39440.

1. Parent corporation and address of principal office: Malt-O-Meal Company, 1520 TCF Tower, Mineapolis, Minnesota 55402.

2. Wholly-owned subsidiary which will participate in the operations, and address of principal office: Profile Extrusions, 800 East 10th St., Hastings, MN 55033.

1. Parent corporation and address of principal office: Nackawic Mechanical Ltd., Industrial Park, Nackawic, New Brunswick, Canada F0H 1P0.

2. Wholly-owned subsidiary which will participate in the operation, and State of incorporation: Nackawic Transport Ltd.—Nackawic, NB, Canada.

1. *Parent corporation and address of principal office:* TEXAS WESTERN EXPRESS, INC., Suite 502, 301 NE Loop 820, Hurst, TX 76053.

2. *Wholly-owned subsidiaries which will participate in operations:*

(1) Bumper Service of Ft. Worth, Fort Worth, TX
(2) Dallas Bumper Service, Dallas, TX
(3) Metro Bumper, Grandprairie, TX
(4) Dal Chrome, Dallas, TX
(5) United Bumper, Shreveport, LA
(6) United Bumper, Dallas, TX
(7) Production Stampings, Columbus, OH
(8) Production Stampings, Fort Worth, TX
(9) Wichita Bumper, Wichita, KS
(10) Denver Bumper Service, Denver, CO
(11) NUPAR, Detroit, MI
(12) NUPAR, Mansfield, TX
(13) Keystone Bumper, Los Angeles, CA
(14) American Bumper, Mobile, AL
(15) Electro Bumper, Kansas City, MO
(16) El Paso Plating, El Paso, TX
(17) Houston Bumper, Houston, TX
(18) Bumper Service of Houston, Houston, TX
(19) Quality Bumper, Houston, TX
(20) Trinity Bumper, Beaumont, TX
(21) Southwest Bumper, Austin, TX
(22) Manning Bumper, Corpus Christi, TX
(23) Sam's Nuchrome, New Orleans, LA
(24) Buryles Bumper, Oklahoma City, OK
(25) Supreme Bumper, Toledo, OH
(26) Bumper Recycles of North America, Washington, DC

1. Parent corporation and address of principal office: Western Mountain Oil, Inc., a Nevada Corporation, 290 South Arlington Ave., Reno, Nevada 89501.

2. Wholly-owned subsidiary which will participate in the operations and State of incorporation: Norr-West Terminal Co., Inc. (incorporated in the State of Nevada) (Berry-Hinckley), 290 South Arlington Ave., Reno, NV 89501.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-33006 Filed 12-2-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications are governed by 49 CFR 1160.1-1160.23 of the Commission's Rules of Practice. These rules were published in the **Federal Register** of December 31, 1980, at 45 FR 86771 and redesignated at 47 FR 49583, November 1, 1982. For compliance procedures, refer to the **Federal Register**

issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1160.40–1160.49. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to Team 2, (202) 275–030.

Volume No. OP2–303

Decided: November 29, 1982.

By the Commission, Review Board No. 1, members Parker, Chandler, and Fortier.

MC 150992 (Sub-1), filed November 16, 1982. Applicant: H.O. ENGEN, INC., P.O. Box 249, Sterling, VA 22170. Representative: J. Curtis Bradley, III, Suite 1301–1600 Wilson Blvd., Arlington, VA 22209, 703–522–0900. Transporting *general commodities* (except classes A and B explosives and household goods), between points in VA, WV, MD, and DC, on the one hand, and, on the other, points in CT, DE, KY, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and DC.

MC 152543 (Sub-4), filed November 22, 1982. Applicant: J & S TRANSPORTATION, INC., 1015 North St., Conyers, GA 30207. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237, (404) 477–1525. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Cargill, Inc., of Forest Park, GA.

MC 153862 (Sub-3), filed October 18, 1982, published in the **Federal Register** issue of November 8, 1982, and republished, as corrected, this issue. Applicant: E & F TRUCKING, INC., R.D. #3, Denver, PA 17517. Representative: Daniel W. Krane, P.O. Box E, Shiremanstown, PA 17011, 717–761–0520. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Bucks, Tioga, Lycoming, Northumberland, Dauphin, Cumberland, York, Lancaster, Lebanon, Schuylkill, Montour, Columbia, Sullivan, Bradford, Susquehanna, Wyoming, Luzerne, Wayne, Lackawanna, Pike, Monroe, Carbon, Northampton, Lehigh, Berks, Philadelphia, Montgomery, Chester, Delaware, and Cumberland Counties, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI). The purpose of this republication is to add "Bucks County" to the territorial description.

MC 155912, filed November 17, 1982. Applicant: BALTIMORE WAREHOUSING & TRANSPORTATION, INC. 2701 Boston St., Baltimore, MD 21224. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St. NW., Washington, DC 20005, 202–296–3555. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between Baltimore, MD, on the one hand, and, on the other, those points in the U.S., in and east of MN, IA, MO, OK, and TX.

MC 162813 (Sub-1), filed November 17, 1982. Applicant: LEHIGH PORTLAND CEMENT CO., d.b.a. LEHIGH TRUCKING, 537 East Lafayette St., Marianna, FL 32446. Representative: Albert D. Burger, Lehigh Furniture, P.O. Box 640, Marianna, FL 32446, 904–526–2811. Transporting *furniture and fixtures*, between points in the U.S. (except AK and HI), under continuing contract(s) with La Salle-Deitch Co., Inc., of Elkhart, IN.

MC 164712, filed November 19, 1982. Applicant: PTD, INC., 4303 Speaker Rd., Kansas City, KS 66106. Representative: Thomas A. Stroud, 109 Madison Ave., Memphis, TN 38103, 901–526–2900. Transporting *petroleum products*, between Kansas City, KS, on the one hand, and, on the other, points in MO.

MC 164783, filed November 19, 1982. Applicant: SKYLARK MEATS, INC., 4430 South 110th St., Omaha, NE 68137. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501, 402–475–6761. Transporting *food and related products*, between points in Douglas County, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 164793, filed November 22, 1982. Applicant: FLORILLI ENTERPRISES, INC., 8002 31st St. West, Rock Island, IL 61201. Representative: Stephen H. Loeb, Suite 4, 2777 Finley Rd., Downers Grove, IL 60515, 312–953–0330. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Service Steel Company, of East Moline, IL.

MC 164793 (Sub-1), filed November 22, 1982. Applicant: FLORILLI ENTERPRISES, INC., 8002 31st St. West, Rock Island, IL 61201. Representative: Stephen H. Loeb, Suite 4, 2777 Finley Road, Downers Grove, IL 60515 (312) 953–0331. Transporting *such commodities as are dealt in or used by food and chain grocery stores, between points in the U.S. (except AK and HI).*

For the following, please direct status inquiries to Team 3 (202) 275–5223.

Volume No. OP3–29

Decided: November 26, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 134084 (Sub-10), filed November 9, 1982. Applicant: SHROCK TRUCKING,

INC., P.O. Box 428, Hubbard, OR 97032. Representative: Lawrence V. Smart, Jr., 419 NW., 23d Ave., Portland, OR 97210 (503) 226-3755. Transporting (1) *lumber and wood products* and (2) *building materials,* between points in AZ, CA, CO, ID, MT, NV, NM, OR, TX, UT, WA and WY.

MC 138104 (Sub-111), filed November 9, 1982. Applicant: MOORE TRANSPORTATION CO., INC., 3509 N. Grove St., Fort Worth, TX 76106. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116 (817) 731-8431. Transporting *coal and coal products and petroleum,* (a) between points in TX, LA, AR, OK and NM and (b) between points in TX, LA, AR, OK and NM, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146055 (Sub-21), filed November 9, 1982. Applicant: DOUBLE "S" TRUCKLINE, INC., 731 Livestock Exchange Bldg., Omaha, NE 68107. Representative: James F. Crosby, 7363 Pacific St., Suite 210 B, Omaha, NE 68114 (402) 397-9900. Transporting *food and related products,* between points in the U.S. (except AK and HI).

MC 147005 (Sub-2), filed November 9, 1982. Applicant: STEPHEN J. GROVE, d.b.a., GROVE TRUCKING, 4055 Hubbard St., Emeryville, CA 94608. Representative: Michael S. Rubin, 100 Bush St., Suite 410, San Francisco, CA 94104 (415) 421-6743. Transporting, for or on behalf of the U.S. Government, *general commodities* (except classes A and B explosives, secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 148614 (Sub-4), filed November 9, 1982. Applicant: CALDWELL TRUCKING, INC., Box 120 Star Rt., Pendleton, OR 97801. Representative: Lawrence V. Smart, Jr., 419 N W 23rd Ave., Portland, OR 97210 (503) 226-3755. Transporting *food and related products,* between points in Umatilla County, OR, on the one hand, and, on the other, points in CA, WA, and MT.

MC 161315 (Sub-1), filed November 10, 1982. Applicant: GREEN STREAK SERVICES, INC., 101 North 2d St., Mankato, MN 56001. Representative: Jerry Hess, P.O. Box 43640, St. Paul, MN 55164 (612) 633-7911. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in WA, OR, CA, ID, MT, WY, NV, UT, CO, AZ, and NM, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163305, filed November 9, 1982. Applicant: TONKA TRANSPORTATION, INC., 4144 Shoreline Blvd., Spring Park, MN 55384. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424 (612) 927-8855. Transporting *such commodities* as are dealt in or used by manufacturers or distributors of automotive products, retail store merchandise, metal and plastic toys, and ceramic crafts and supplies, between points in Hennepin and Chisago Counties, MN, Lincoln County, KY, and El Paso County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163785, filed November 12, 1982. Applicant: AG TRANSPORT, INC., Route 1, Box 482, Byron, GA 31008. Representative: Michael G. Gray, 909 Ball St., P.O. Box 1234 Perry, GA 31069 (912) 987-1415. Transporting *forest products and lumber and wood products,* between points in the U.S. (except AK and HI).

MC 164645, filed November 8, 1982. Applicant: Y & S BUS SERVICE, 312 Kerby Hill Rd., Fort Washington, MD 20744. Represntative: John E. Anderson (same address as applicant) (301) 567-1502. Transporting *passengers and their baggage,* in the same vehicle, in special and charter operations, beginning and ending at points in MD, VA, and DC, and extending to points in the U.S. (except AK and HI).

MC 164664, filed November 9, 1982. Applicant: BRIGS HORSE TRANSPORT, INC., 93 Mattakeesett St., Pembroke, MA 02359. Representative: Francis E. Barrett, Jr., 10 Industrial Park Rd., Hingha, MA 02043 (617) 749-6500. Transporting *horses (other than ordinary livestock) and equipment and paraphernalia,* incidental to the transportation and display of such horses and attendants, between those points in the U.S. in and east of ND, SD, NE, KS, OK and TX.

MC 164704, filed November 15, 1982 Applicant: J & J TRUCKING CO., 410 Elliot St., Cincinnati, OH 45215. Representative: Philip B. Cochran 50 W. Broad St., Columbus, OH 43215 (614) 464-4103. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of appliances, capeting and home furnishings, between points in IN, KY, and OH, on the one hand, and, on the other, those points in the U.S. in and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching County, MN, to the international boundary line between the U.S. and Canada.

For the following, please direct status inquiries to Team 4 at 202-275-7669.

Volume No. OP4-043

Decided: November 29, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 19537 (Sub-10), Filed November 15, 1982. Applicant: MAJORIE C. BEAN, CLARK TILLMAN TUCKER AND VIRGIL BROOKS TUCKER, III, d.b.a. CLARK TRUCK LINE, 628 Carnation St., Tupelo, MS 38801. Representative: Thomas A. Stroud, 109 Madison Ave, Memphis, TN 38103 (901) 526-2900. Transporting *general commodites* (except classes A and B explosives, household goods, and commodities in bulk), between points in Pontotoc County, MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—Applicant seeks to tack this authority with its presently held operating rights.

MC 136786 (Sub-247), filed November 12, 1982. Applicant: ROBCO TRANSPORTATION, INC., 4475 NE. 3d St., Des Moines, MN 50313. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424 (612) 927-8855. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with Ocean Spray Cranberries, Inc., of Plymouth, MA.

MC 164726, filed November 19, 1982. Applicant: C & D VAN HORN, INC., P.O. Box 93, Valley, St., Delaware, NJ 07833. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517 (717) 344-8030. Transporting *sugar,* between Yonkers, NY, on the one hand, and, on the other, points in MA, CT, RI, NJ, PA, NY, MD, DE, and VT.

Volume No. OP4-045

Decided: November 29, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 13777 (Sub-13), filed November 15, 1982. Applicant: AAA TRANSPORTATION, INC., 2957 South East Rd., Indianapolis, IN 46206. Representative: Norbert B. Flick, 2250 Beechmont Ave., Cincinnati, OH 45230 (513) 231-4831. Transporting *metal products, machinery and transportation equipment,* between points in the U.S. in and east of MN, IA, MO, AR, and TX.

MC 42487 (Sub-1066), filed November 15, 1982. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R.-

Oldenburg, P.O. Box 3062, Portland, OR 97208 (503) 226–4692. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Mattel Toys, div. of Mattel, Inc., of Hawthorne, CA.

MC 121667 (Sub-13), filed November 15, 1982. Applicant: SMALLEY TRANSPORTATION COMPANY, 410 Ware Blvd., Suite 400, P.O. Box 5175, Tampa, FL 33675. Representative: Ansley Watson, Jr., 512 N. Florida Ave., P.O. Box 1531, Tampa, FL 33601 (813) 223–2411. Transporting *such commodities* as are used in the manufacture and distribution of lawn and patio furniture, between points in the U.S. (except AK and HI), under continuing contract(s) with Sun Terrace Casual Furniture, div. of Gay Products, Inc., of Clearwater, FL.

MC 144757 (Sub-25), filed November 17, 1982. Applicant: DAKOTA PACIFIC TRANSPORT, INC., 3104 E. St. Patrick, Rapid City, SD 57701, Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701, (605) 343–4036. Transporting *metal products*, between points in the U.S. (except AK and HI).

MC 146377 (Sub-6), filed November 16, 1982. Applicant: EDWARD McGILL, INC., 3 General Ave., Rome GA 30161. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237, (404) 477–1525. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Dayton Steel Service, Inc., of Rome, GA.

MC 155137 (Sub-1), filed November 10, 1982. Applicant: TRANSPORTATION REFRIGERATION, INC., d.b.a. GENERAL TRANSPORTATION SERVICES, 120 Gun Club Rd., Jacksonville, FL 32239. Representative: Eugene Crossway, P.O. Box 8307, Jacksonville, FL 32239, (904) 757–7423. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in Duval, Dade, Hillsboro, and Broward Counties, FL, Chatham County, GA, New Hanover County, NC, and Dorchester County, SC, on the one hand, and, on the other, points in AL, FL, GA, NC, and SC.

MC 164687, filed November 17, 1982. Applicant: CEMACO, INC., 12 Birch St., Emerson, NJ 07630. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, (212) 239–4610. Transporting *household goods and furniture and fixtures*, between points in NY, NJ, CT, DE, PA, and MA.

For the following, please direct status inquiries to Team 5 at 202–275–7289.

Volume No. OP5-262

Decided: November 24, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 79658 (Sub-36), filed November 12, 1982. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills, (same address as applicant), 812–424–2222. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with National Can Corporation of Chicago, IL.

MC 146228 (Sub-2), filed November 8, 1982. Applicant: WHITING PUBLIC WAREHOUSES, INC., 9450 Buffalo St., Hamtramck, MI 48212. Representative: Daniel L. Whiting (same address as applicant), 313–871–0333. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Detroit, MI, and points in IL, WI, KY, IA and PA.

MC 146438 (Sub-18), filed November 12, 1982. Applicant: ETV, INC., P.O. Box 393, Comstock Park, MI 49321. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49685–0801, 616–941–5313. Transporting *farm products*, between points in AL, CA, DE, FL, TX, and SC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 153679 (Sub-7), filed November 5, 1982. Applicant: CUMBERLAND FREIGHT LINE, INC., 13th St., Smyrna, TN 37167. Representative: J. Greg Hardeman, 618 United Southern Bank Bldg., Nashville, TN 37219, 615–244–8100. Transporting (1) *pulp, paper and related products*, between points in TN, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Rock-Tenn Company of Tullahoma, TN and (2) *such commodities* as are dealt in or used by retail or wholesale groceries or grocery distribution warehouses, between points in the U.S. (except AK and HI), under continuing contract(s) with MFP Enterprises of Biglerville, PA.

MC 153679 (Sub-8), filed November 8, 1982. Applicant: CUMBERLAND FREIGHT LINE, INC., 13th St., Smyrna, TN 37167. Representative: J. Greg Hardeman, 618 United Southern Bank Bldg., Nashville, TN 37219, 615–244–8100. Transporting (1) *such commodities* as are dealt in or used by retail or wholesale groceries or grocery distribution warehouses, between points in TN, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *such commodities* as are dealt in or used by department or discount stores, between points in Shelby County, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI.)

MC 156488 (Sub-4), filed October 28, 1982. Applicant: CONTRANS, INC., 6716 Berger, Kansas City, KS 66111. Representative: Donald J. Quinn, Commerce Bank Bldg., 8901 State Line—Suite 232, Kansas City, MO 64114, (816) 444–7474. Transporting *janitorial supplies and related products*, between points in the U.S. (except AK and HI).

MC 163409, filed November 4, 1982. Applicant: SHER-DEL TRANSFER, INC., 147 Attorney St, New York, NY 10002. Representative: Paul W. Assenza, 22 Savin Ct., Staten Island, NY 10304, (212) 351–0624. Transporting *General commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Aacorn Warehouse, Inc., of Brooklyn, NY.

MC 164608, filed November 8, 1982. Applicant: BRUNOZZI TRANSFER & TRUCK RENTAL, INC., 22 DeRosa Dr., R.D. 5, Vineland, NJ 08360. Representative: Robert R. Brinker, Suite 1100, 1660 L St., N.W., Washington, DC 20036, 202–452–7456. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Dougherty Brothers Co., of Buena, NJ; Meteor Glass Corp., of Vineland, NJ; Owens-Illinois, Inc., of Toledo, OH; and Scott Paper Company, of Philadelphia, PA.

Volume No. OP5-264

Decided: November 26, 1982.

By the commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC 2978 (Sub-21), filed November 18, 1982. Applicant: CLE-MAR CARTAGE, INC., P.O. Box 428, Cromwell, IN 46732. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, 317–846–6655. Transporting *coal*, between points in the U.S. (except AK and HI), under continuing contract(s) with Mid-America Coal Co. of Cromwell, IN.

MC 30089 (Sub-12), filed November 12, 1982. Applicant: FRANK W. LILLY, INC, P.O. Box 111, Turtle Creek, PA 15145. Representative: James F. Lilly, (same address as applicant), (412) 823–5657. Transporting *food and related products* between points in the U.S. (except AK and HI), under continuing contract(s) with Heinz USA, Division of H. J. Heinz Co, of Pittsburgh, PA.

MC 126898 (Sub-16), filed November 15, 1982. Applicant: BULLDOG HIWAY EXPRESS, P.O. Box 506, Charleston, SC 29402. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168, 703-629-2818. Transporting *general commodities* (except classes A and B explosives, and commodities in bulk), between points in AL, TN, and VA, on the one hand, and, on the other, points in FL, GA, NC, and SC.

MC 127049 (Sub-18), filed November 12, 1982. Applicant: KRUEPKE TRUCKING, INC., 2881 Highway 45, Jackson, WI 53037. Representative: Charles D. Dye, Swan Lake Village, Saddle Ridge No. 832, Portage, WI 53901, 608-742-3579. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, IA, IN, KY, MS, MO, NC, OH, SC, VA, and WV on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 128868 (Sub-8), filed November 18, 1982. Applicant: TEXAS CONSTRUCTION SERVICE COMPANY OF AUSTIN, 2905 Howard Lane, Round Rock, TX 78664. Representative: Thomas F. Sedberry, P.O. Box 2023, 2600 Austin National Bank Tower, Austin, TX 78701-78768, 512-472-8355. Transporting *lime*, between points in AZ, on the one hand, and, on the other, points in AZ, CA, NM, and TX.

MC 140159 (Sub-24), filed November 12, 1982. Applicant: C.L. FEATHER, INC., P.O. BOX 1190, Altoona, PA 16603. Representative: Thomas M. Mulroy, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222, 412-471-3300. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between those points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the eastern boundaries of Itasca County, MN, thence northward along the eastern boundaries and Koochiching Counties, MN, to the international boundary line between the U.S and Canada, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141619 (Sub-3), filed November 18, 1982. Applicant: LOY E. SIGMAN dba. NEW WAY TRANSPORTATION, Route 1, Box 392, Statesville, NC 28677. Representative: Clayton R. Byrd, 2870 Briarglen Dr., Doraville, GA 30340, 404-491-1696. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Catawba and Iredell Counties, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 142258 (Sub-9), filed November 12, 1982. Applicant: DALE BLAND TRUCKING, INC., Rural Route 1, Switz City, IN 47465. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204-3491, (317) 638-1301. Transporting *commodities in bulk*, between those points in the U.S. in and east of MN, IA, MO, OK and TX.

MC 145288 (Sub-5), filed November 12, 1982. Applicant: SPECIALIZED HAULING CORPORATION, Box 488, Barre, VT 05641. Representative: John P. Monte, Box 686, Barre, VT 05641, (802) 476-6673. Treated *utility poles, cross arms, and railroad ties*, (a) between points in FL, GA, MD, NC, and SC, on the one hand, and, on the other, points in CT, MA, MD, ME, MI, NH, OH, PA, RI, and VT, and (b) between points in CT, MA, ME, NH, NY, RI, and VT.

MC 156839, filed November 4, 1982. Applicant: RICHARD WITTEVEEN, d.b.a. WITTMARK ASSOCIATES, 4300 Lavera Drive, High Point, NC 27260. Representative: Richard Witteveen (same address as applicant), (919) 454-5723. Transporting *furniture*, between points in Dillon County, SC, on the one hand, and, on the other, points in the U.S., under continuing contract(s) with Dillon Furniture Manufacturing Co., of Dillon, SC.

MC 159409, filed November 12, 1982. Applicant: CHARLES F. BONANNO, 264 North Brow St., East Providence, RI 02914. Representative: Charles R. Reilly, 301 Davisville Rd., North Kingstown, RI 02852, (401) 884-0969. Transporting *plastic medical items* between points in Providence County, RI, and Plymouth and Worcester Counties, MA.

MC 161839 (Sub-1), filed November 12, 1982. Applicant: TRANS-AMERICA COURIER SYSTEMS, INC., 74-09 37th Ave., Jackson Heights, NY 11372. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836-1144. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in NY, NJ, CT, PA, and MA.

MC 163189, filed November 12, 1982. Applicant: A.W. MADDOCK, INC., 8720 State Highway 85, Jonesboro, GA 30236. Representative: J.L. Fant, P.O. Box 577, Jonesboro, GA 30237, 404-477-1525. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. under continuing contract(s) with The Original Great American Chocolate Chip Cookie Company, Inc., of Atlanta, GA.

MC 164469, filed October 20, 1982. Applicant: SONOCO TRANSPORTATION, INC., P.O. Box 160, Hartsville, SC 29550. Representative: Donald B. Sweeney, Jr., P.O. Box 2366, Birmingham, AL 35201, (205) 254-3880. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 164659, filed November 12, 1982. Applicant: HI-TECH EXPRESS, INC., P.O. Box 192, Lewisville, MN 56060. Representative: M. J. Castle (same address as applicant), (507) 642-8925. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 164679, filed November 12, 1982. Applicant: THOMAS A. SNYDER, d.b.a. SNYDER TRUCKING, 4325 E. Western Star Blvd., Phoenix, AZ 85044. Representative: Thomas A. Snyder (same address as applicant), 602-893-3794. Transporting (1) *machinery and building materials*, between points in AZ, on the one hand, and, on the other, points in the U.S. (except AK and HI). (2) *furniture and fixtures*, between points in AZ, on the one hand, and, on the other, points in CA, TX, MA, NC, SC, and IL.

MC 164689, filed November 12, 1982. Applicant: O. M. SCOTT & SONS COMPANY, 14111 Scottslawn Rd., Marysville, OH 43041. Representative: Daniel J. Sweeney, 1750 Pennsylvania Ave. NW., Washington, DC 20006, (202) 393-5710. Transporting *such commodities* as are used in the manufacture, distribution, and sale of automobiles and motorcycles, between points in the U.S. (except AK and HI), under continuing contract(s) with Honda of America Mfg., Inc., and Bellemar Parts Industries, Inc., of Marysville, OH.

MC 164719, filed November 18, 1982. Applicant: NCV INDUSTRIES, INC., 4716 South 79 Ave., Ralston, NE 68127. Representative: Arlyn L. Westergren, Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114, 402-397-7033. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Dodge and Washington Counties, NE, on

the one hand, and, on the other, points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-33008 Filed 12-2-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications are governed by 49 CFR 1160.1-1160.23 of the Commission's Rules of Practice. These rules were published in the **Federal Register** on December 31, 1980, at 45 FR 86771 and redesignated at 47 FR 49583, November 3, 1982. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1160.40-1160.49. Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the applications later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to Team 2, (202) 275-7030.

Volume No. OP2-304

Decided: November 29, 1982.

By the Commission, Review Board No. 1, members Parker, Chandler, and Fortier.

MC 150602 (Sub-5), filed November 12, 1982. Applicant: CHARLES A. McCAULEY, INC., 100 Industrial Way, Hawthorn, PA 16230. Representative: Larry D. McCauley (same as applicant), (814) 365-5983. Transporting (1) *general commodities* (except classes A and B explosives and household goods), between Ellendale and Milton, DE, Bartow, Baskins, Bay Pines, Belleair, Belleair Beach, Jungle, Oakhurst, Seminole, Walsingham and West Lake Wales, FL, Arco, Darlington, Leslie, MacKay and Moore, ID, Adams, Batesville, Greensburg, Huntersville, Morris, New Points, Prescott, Shelbyville, Spades, Sunman and Waldron, IN, Linwood, Northfield, Pleasantville, Port Morris Junction, South River and Wright, NJ, Canastota, Chauncey, King Bridge and Oneida Castle, NY, Bald Eagle, Julian, Lewisburg, Lochiel, Mifflinburg, Milesburg, Montandon Junction, Port Matilda, Rouseville, St. Marys, Titusville, Tyrone, Unionville, Vail and Wingate, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

Note.—The purpose of part (1) of this application is to substitute motor carrier for abandoned rail carrier service.

Applicant must certify to the Commission, prior to operations, that all rail service has actually terminated at the involved points. To accomplish this, applicant will be required to send an affidavit marked "Certification of Rail Service Termination" to the Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington, DC 20423.

MC 164762, filed November 19, 1982. Applicant: DAVID W. McKIM, d.b.a. DAVID McKIM CONTRACT TRUCKING, P.O. Box 1191, Ferndale, WA 98248. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309, 515-244-2329. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners,* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 3 at 202-275-5223.

Volume No. OP3-31

Decided: November 26, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing. (Member Ewing not particpating.)

MC 144584 (Sub-9), filed November 9, 1982. Applicant: WASHINGTON-CALIFORNIA EXPRESS, INC., Eugene Dr., Plains Township, PA 18702. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517, (717) 344-8030. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except HI).

MC 164684, filed November 15, 1982. Applicant: EAGLE BROKERAGE, 3203 Third Ave., North #301, Billings, MT 59101. Representative: Gene A Rademacher (same address as applicant), (406) 245-5132. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 164705, filed November 16, 1982. Applicant: DON BRUMLEY, 5422 98th St., Lubbock, TX 79424. Representative: Terry Holt, 8212 Ithaca #9, Lubbock, TX 79423 (806) 797-9743. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor

vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 164724, filed November 9, 1982. Applicant: SALT CREEK TRUCKING CO., INC., 3025 W. Salt Creek Lane, Arlington Heights, IL 60005. Representative: William H. Towle, 180 N. LaSalle St., Rm. 3520, Chicago, IL 60601, (312) 332-5106. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 164754, filed November 15, 1982. Applicant: DAN'S TRUCKING, INC., 2725 Marywood Drive, Southport, IN 46227. Representative: Walter F. Jones, Jr., 1111 E. 54th Street, Suite 155, Indianapolis, IN 46220, (317) 257-4060. Transporting *food and other edible products and byproducts* intended for human consumption (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 4 at 202-275-7669.

Volume No. OP4-044

Decided: November 29, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 164736, filed November 12, 1982. Applicant: EDWARD E. PAULES, R.D. 23, Box 3, York, PA 17403. Representative: David Zimmerman, P.O. Box 1564, York, PA 17405, (717) 854-3138. Transporting, (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, (3) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, and (4), *used household goods* for the account of the United States Government incidental to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI).

MC 164746, filed November 15, 1982. Applicant: FREIGHT TRAFFIC SERVICE COMPANY, INC., 27479 Schoolcraft, Livonia, MI 48150. Representative: James Ash, 2524 Vermont NE., Albuquerque, NM 87110, (505) 298-7511. As a broker of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 164767, filed November 17, 1982. Applicant: ARROWPAC, INC., 2600 Penhorn Ave., North Bergen, NJ 07047. Representative: A. David Millner, 7 Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, (201) 992-2200. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 5 at 202-275-7289.

Volume. No. OP5-263

Decided: November 24, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 160679 (Sub-1), filed November 9, 1982, Applicant: WOODS REFRIGERATED SERVICE, 16 Rubin Court, Novato, CA 98947. Representative: Jim Pitzer, 15 South Grady Way-Suite 321, Renton, WA 98055, 206-235-1111. Transporting *food and other edible products and by products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 164589, filed November 4, 1982. Applicant: M.A.S. SERVICES, INC., P.O. Box 117, Mainland, PA 19451. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202, (716) 854-5870. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 164609, filed November 8, 1982. Applicant: WIEDERHOLT TRANSPORT, INC., Route 2, Box 426, Hazel Green, WI 53811. Representative: Richard A. Westley, 4506 Regent St., Ste 100, P.O. Box 5086, Madison, WI 53705-0086, 608-238-3119. Transporting *food and other edible products and by products intended for human consumption*, (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 164549, filed November 3, 1982. Applicant: ROBERT M. McKEON, 31 Colonial Way, North Dartmouth, MA 02747. Representative: Robert M. McKeon (Same address as above) (617) 993-3844. To operate as a *Broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5-265

Decided: November 26, 1982.

By the Commission, Review Board No. 3, Members Kraock, Joyce, and Dowell.

MC 164649, filed November 8, 1982. Appplicant: DAVID B. OTTUM. 615 South Dickinson St., Madison, WI 53703. Representative: Charles E. Dye, Swan Lake Village, Saddle Ridge No. 832, Portage, WI 53901, 608-742-3579. Transporting *food and other edible products and by products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 164688, filed November 12, 1982. Applicant: VINSONS TRUCKING, INC., 2703 Mason, Flint, MI 48505. Representative: Robert E. McFarland, 2855 Coolidge, Ste. 201A, Troy, MI 48084, (313) 649-6650. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, (3) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, (4) *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI).

MC 164739, filed November 17, 1982. Applicant: LEONARD GLEN HALL, JR., 2628 E. 198th St., Lynwood, IL 60411. Representative: Leonard Glen Hall, Jr., (same address as applicant), 312-895-3373. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary

[FR Doc. 33007 Filed 12-2-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice; Correction

In FR Doc. 82-30604 beginning on page 50576 in the issue of Monday, November 8, 1982, make the following correction:

On page 50584, middle column, under MC 158618, Schneider Trucking Co., Inc.,

in the ninth line, "NM" should appear between "NV" and "OK."

BILLING CODE 1505-01-M

[Docket No. AB-3 (Sub-No. 30)]

Rail Carriers; Missouri Pacific Railroad Company—Abandonment—in Saline and Grant Counties, AR; Notice of Findings

The Commission has found that the public convenience and necessity permit the Missouri Pacific Railroad Company to abandon 22.4 mile line of railroad between milepost 368.3 near Sheridan Junction and milepost 390.7 near Sheridan, a distance of 22.4 miles in Saline and Grant Counties, AR. A Certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be resubmitted within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27 (formerly 49 C.F.R. 1121.38).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-33004 Filed 12-2-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Senior Executive Service

The Agency for International Development intends to distribute bonuses to its Senior Executive Service members for the rating period which ended September 30, 1982 on or before December 31, 1982.

Shirley D. Renrick,

Deputy Chief, Washington Division, Office of Personnel Management, Agency for International Development.

[FR Doc. 82-33042 Filed 12-2-82; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-132]

Certain Hand-Operated, Gas-Operated Welding, Cutting and Heating Equipment and Component Parts Thereof; Notice Concerning Procedure for Submission of Information on Public Interest Factors

Notice is hereby given that oral presentations concerning remedy, bonding, and the public interest considerations, factors the Commission is to consider in the event it determines relief should be granted, will be heard beginning at 9:00 a.m. on December 15, 1982, in Room 201, Waterfront Center, 1010 Wisconsin Avenue, NW., Washington, D.C. 20007. Written submissions on these questions may be submitted at any time until that date.

If oral presentations are made, participants will have the option of presenting the statement of a witness under oath, subject to cross-examination, or making an oral statement of positon, not under oath, and not subject to cross-examination.

In the oral presentations all parties, interested persons, and government agencies will be limited in their presentations to no more than 15 minutes, not including cross-examination. Each participant will be permitted an additional 5 minutes for closing arguments after all oral presentations have been concluded. Requests for permission to make oral presentations of positions should be filed, in writing, with the Secretary of the Commission at his office in Washington no later than close of business, December 8, 1982.

The Secretary shall publish this notice in the **Federal Register.**

Issued: November 19, 1982.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 82-32823 Filed 12-2-82; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board of the National Institute of Corrections; Bylaws

Notice is hereby given that the National Institute of Corrections (NIC) has amended the Bylaws which govern its affairs and operations as authorized under 18 U.S.C. sections 4351–4353 (1974). The Bylaws (which were published in the **Federal Register** Vol. 41, No. 174, Tuesday, September 7, 1976 at pp. 37612–37614, amended in the **Federal Register** Vol. 43, No. 251, Friday, December 29, 1978 at pp. 61032–61033 and also amended Vol. 46, No. 41, Tuesday, March 3, 1981 at pp. 15001–15002) as amended follow.

Allen F. Breed,

Director, National Institute of Corrections.

National Institute of Corrections

Bylaws

November 22, 1982.

Article I—Title and Objects

The name of this organization shall be the Advisory Board of the National Institute of Corrections (NIC) hereinafter referred to as the Board of NIC or the Board.

Under the authority of 18 U.S.C. sections 4351–4353 (1974) as provided for by Pub. L. 93–415, Title V, Part B hereinafter referred to as 18 U.S.C. sections 4351–4353 (1974), NIC's overall goal is to aid the development of more effective and humane federal, state and local correctional systems which will contribute to the safety of offenders, staff and the community by:

1. Providing the stimulus for cooperative and consolidated action by all groups impacting on corrections.
2. Establishing close working relationships with national, state and local correctional agencies.
3. Developing at all levels in corrections, a large sense of professionalism.
4. Drawing other professional groups into a closer relationship with correctional planning and practice.

In order to implement these objectives, 18 U.S.C. section 4351–4353 (1974) outlines five primary assistance areas that form the core of NIC's activities: training, research and evaluation, policy formulation and implementation, clearinghouse and publication, and technical assistance.

18 U.S.C. section 4351–4353 (1974) expressly charges the Board of NIC with both the authority and responsibility to develop and supervise the overall policy of NIC. The primary responsibility of the Board in this regard shall be to review and approve the Annual Program Plan presented by the Director of NIC.

Article II—Organization

Section 1. *Membership and terms of office*—As required under 18 U.S.C. section 4351–4353 (1974), the Board of NIC shall consist of sixteen members:

Six individuals or their respective designees shall serve as ex officio members, these include: The Director of

the Federal Bureau of Prisons, the Administrator of the Law Enforcement AssistanceAdministration, Chairman of the U.S. Parole Commission, the Director of the Federal Judicial Center, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, and the Assistant Secretary for Development of the Department of Health and Human Services. Any ex officio member of the Board who selects a designee to serve in his position shall notify the Board's chairman in writing of such action. This written notification must include the name and position of the designee. Any change in a respective designee must follow the same notification procedure.

Five members of the Board of NIC must qualify as practitioners at the federal, state or local level in the area of corrections. These individuals shall be appointed by the Attorney General for staggered three year terms.

The five remaining members of the Board of NIC shall be selected from the private sector such as business, labor and education and shall have demonstrated an active interest in corrections. These five members shall be appointed by the Attorney General for staggered three year terms.

Upon completion of the term of each of the ten members not serving ex officio, the Attorney General shall appoint successors who will each serve for a term of three years. Terms of appointment of each of the ten members not serving ex officio shall bear the effective date of January 1. *In the absence of an appointment of a successor by the Attorney General, the incumbent member shall continue to serve as a Board member until a successor is appointed.*

Section 2. *General Duties.* The Committee as a whole shall:

A. Review all proposed amendments to these bylaws,

B. Review all legislation impacting upon NIC,

C. Participate with the Director of NIC in the development of a long-range fiscal plan for Prisons, Jails, and Community Corrections,

D. Participate with the Director of NIC in the development of annual program plans for NIC, and

E. Review all documents and guidelines dealing with grant and contract funding for NIC.

Section 3. *Officers of the Board*—The Board annually shall elect a chairman and three vice-chairmen. These officers shall be elected by a simple majority vote of the Board. The term of the office for the chairman and vice-chairman shall be one year commencing upon completion of the Board's fall/winter meeting. *As a general rule,* no chairman or vice-chairman shall serve more than two consecutive one year terms.

No ex officio member of the Board may serve as chairman of the Board. No designee may serve as an officer of the Board.

A. The Chairman shall:

1. Preside over all meetings of the Board.

2. Consult with Board members and the Director of NIC and develop an agenda for each meeting. The agenda shall include but not be limited to: a report from each standing and when appropriate from each ad hoc committee or task force, a report from the Director of NIC, and any proposed amendment to these bylaws.

3. Appoint as many ad hoc committees or task forces as are necessary to assist NIC in the accomplishment of its objectives.

4. Appoint each vice-chairman elected by the Board to chair one of three specific standing committees established under these bylaws and appoint members of those committees.

5. Perform such other functions and duties as the Board may authorize or request within the parameters of NIC's legislation (18 U.S.C. section 4351–4353 (1974)).

The Chairman of the Board is a member of all committees and task forces of the Board and shall be entitled to vote on any committee or task force of the Board. The Chairman of the Board shall be counted in the quorum of any committee or task force.

In event of his absence the chairman shall designate in writing one of the three standing committee vice-chairmen who will serve in his place. In event of the long term incapacitation or demise of the chairman the following rule of succession shall be applied. If eligible, succession shall occur in descending order:

1. Chairman, Prisons Committee.

2. Chairman, Jail Committee.

3. Chairman, Community Corrections Committee.

B. Each vice-chairman shall:

1. Serve as a chairman of one of the three standing committees established under these bylaws. In the event of his absence the chairman of any standing committee of the Board must designate a replacement for the interim.

Section 4. *Committee Structure*

A. *The Executive Committee* shall consist of the chairman of the Advisory Board and the three (3) chairman for each of the three standing committees and shall serve as an appellate review board making recommendations to the Director of NIC in cases of appeal by applicants for grants and contracts:

The Executive Committee shall have the authority to:

1. Take appropriate action for the Board as a whole when not in session.

2. Act as an appellate review Board for hearing the appeals from actions of the three standing committees.

B. *Standing Committees*—There shall be three standing Committees as follows: (1) Prisons, (2) Jails, (3) Community Corrections. Each of the standing committees will be composed of no more than five and not less than three members of the Board. Each standing committee shall be balanced as equally as possible with members from each of the three categories of Board members, i.e., ex officio, practitioners and private sector representatives. At no time shall more than two members from any one category serve on any one standing committee. No individual Board member shall serve on more than two standing committees at any one time. No designee may serve as chairman of a standing committee.

Each of the three standing committees through its chairman, shall make its recommendations known to the Board at its regular meetings.

Standing committee responsibilities include:

1. Reviewing concept papers and proposals appropriate to their committees specialty area (Prisons, Jails, Community Corrections) that are in excess of $300,000 and making recommendations to the Director regarding funding,

2. Working with assigned staff in developing annual program plan particularly as it relates to a standing committee subject area like prisons, jails, and community corrections,

3. Reviewing the fiscal allocations within the preceding year's Annual Program Plan and making recommendations regarding funding adequacy and future funding for the Division with whom the committee works,

4. Helping to develop policy for the Division with whom they work, and

5. Review, on a quarterly basis, grant award summaries covering grants made in their respective subject areas (Prisons, Jails, and Community Corrections).

C. *Ad Hoc Committees and Task Forces*—the chairman is empowered to appoint as many ad hoc committees and task forces from the Board's membership as deemed appropriate to conduct the business of the Board. As with standing committees, representation on ad hoc committees should reflect, if possible, all three categories of Board membership as

outlined in Article II, Section 1 of these bylaws.

Upon the recommendation of the Director, or the Chairman of the *ad hoc* committee or task force, or upon the recommendation of the Board, the Chairman is empowered to appoint, because of their expertise, non-members of the Board to special subcommittee of *ad hoc* committees or task forces.

There shall be a nominating committee which will be appointed annually by the chairman. This committee shall nominate a slate of candidates to replace each elected officer. Upon submission to the Board of its recommendations the committee shall be discharged.

Article III—Director of NIC

As provided for by 18 U.S.C. section 4351(h) (1974), the Director of NIC shall be appointed by the Attorney General after consultation with the Board of NIC

Under 18 U.S.C. section 4351(h) (1974), the Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of NIC and may employ such staff, faculty and administrative personnel, subject to the Civil Service and classification laws, as are necessary to the functioning of NIC. The Director shall have the power to acquire and hold real and personal property for NIC and may receive gifts, donations, and trusts on its behalf. the Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the Board.

In accordance with the policies of the Board of NIC and applicable law, the Board of NIC delegates to the Director the authority to issue procedures, regulations, and guidelines to implement these policies.

It shall be the primary duty of the Director of NIC to present NIC's Annual Program Plan to the Board, and to execute the Annual Program Plan upon Board approval.

The Director of NIC shall also have the following duties as applicable to the Advisory Board: (1) To provide appropriate staff support to the Board and its committees as may be necessary for the fulfillment of their duties, (2) to present a report to the Board of NIC at each meeting of the activities of NIC to date, (3) to maintain an up-to-date file of any written authorization which ex officio members of the Board of NIC must file when designating an individual to serve in their place as provided for under 18 U.S.C. sections 4351–4353 (1974), (4) to provide for the keeping and recording of the minutes of any meeting of the Board of NIC and upon request for any of the Board's committees, (5) to provide all Board members with notice of the upcoming meetings, the agenda for the meeting, the minutes of the last meeting and any other appropriate materials, (6) to provide the Board through such means as it may direct a quarterly report of grant and contract awards.

Article IV—Standard Operating Procedure

The Director of NIC shall promulgate Standard Operating Procedures for the management and control of Institute business and activities. Where such procedures have direct impact on Advisory Board responsibilities they will be submitted to the Board for review before becoming operational. Any Standard Operating Procedure falling into this category will be attached to and become a part of these bylaws after being published in the **Federal Register.**

Article V—Meetings

The Board shall meet three times annually. However, when deemed necessary, extra meetings may be called by the chairman or by at least two thirds of the Board.

Written notice of each meeting of the Board of NIC stating the place, date and hour of the meeting, shall be given to each member at least three weeks prior to the date of the meeting.

Notice of any special or extra meeting of the Board of NIC called by the chairman or two-thirds of the Board shall indicate that it is being issued by or at the direction of the persons calling the meeting and shall state the purpose or purposes for which the meeting is being called. Special or extra meetings may be called at any time with consent of two-thirds of the Board. Notice of a special or extra meeting may be given by telephone and/or by mail and ratified by two-thirds of the Board at the special or extra meeting.

Notice of all meetings of the Board shall be given to the public. Such notice shall be published in the **Federal Register** at least 15 days prior to the meeting, provided that in emergencies, such requirements may be waived. This notice shall contain a statement of the purpose of the meeting, a summary of the agenda, and the time, place, and location of such meeting.

Except for executive sessions, meetings of the Board shall be open to the public for observation. The chairman may invite more active participation from the public when such action is appropriate and does not interfere with the orderly transaction of the Board's business.

Executive sessions may be called by a majority vote of a quorum of the Board in public. No final action shall be taken at such meetings except upon votes in open session. These sessions shall not be used to obstruct the fullest possible public accessibility to meetings.

Article VI—Voting

All members of the Board of NIC shall each be entitled to a vote on any issue before the Board. Proxy voting will be allowed at any meeting of the Board of NIC or at any meeting of its committees or task forces. The proxy must be written and filed with the chairman prior to the voting on the issue in question. Proxies may not be used to form a quorum.

In the event there is a need for the Board to vote on any issue between regularly scheduled meetings, the Chairman, with the consent of the Executive Committee, may conduct a mail ballot. Advisory Board members will be given a minimum of fifteen days within which to respond to a mail ballot.

Under the 18 U.S.C. section 4351, a member serving ex officio may designate an individual to serve and vote in his position at any meeting of the Board or its committees and task forces. Selection of a designee does not preclude an ex officio member from attending and voting at any meeting of the Board, its committees or task forces in place of his respective designee.

No action of the Board of NIC shall be valid and binding without a vote by a quorum of its members. A quorum of the Board shall consist of one-half or more of its members or designees.

Article VII—Compensation of Board Members

Under 18 U.S.C. sections 4351–4353 (1974), the members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States. Members of the Board who are full-time officers or employees of the United States shall serve without additional compensation, but may be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Board pursuant to 18 U.S.C. sections 4351–4353 (1974), be entitled to receive compensation at the rate not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5, United States Code, including travel-time, and while away from their homes or regular places of business may

be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code for persons in the Govenment service employed intermittently. Compensation and reimbursement as provided for by this Article shall be made only upon written request.

Article VIII—Parliamentary Authority

Meetings of the Board and its committees shall be conducted in accordance with the rules contained in "Robert's Rules of Order Revised." These rules shall govern the Board in all cases where applicable and in which they are not inconsistent with these bylaws. Special rules of order preempting those contained in "Robert's Rules of Order Revised" may be adapted by the Board. Any special rules of order are to be incorporated in these bylaws as a separate section under this Article.

Article IX—Amendment of the Bylaws

These bylaws may be amended at any meeting of the Board or a majority vote of a quorum of the Board. Amendments to the bylaws may be proposed by the Executive Committee or by any five members of the Board of NIC. Any proposed amendments must be written, signed and sent to Board members at least 15 days in advance of the meeting at which they will be discussed.

Article X—Notice of the Bylaws

Notice of these bylaws shall be published in the Federal Register.

[FR Doc. 82-32982 Filed 12-2-81; 8:45 am]
BILLING CODE 4410-16-M

DEPARTMENT OF LABOR

Employment and Training Administration

Bon-Art Industries, Inc. 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 adjustment assistance issued during the period November 22, 1982–November 26, 1982.

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 223 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-13,522; Bon-Art Industries, Inc., Fairlawn, NJ

TA-W-13,356; H.W. Gossard Co., Inc., Malden, MO

TA-W-12,988; Uniroyal Tire Co., Eau Claire, WI

TA-W-13,350; Puna Sugar Co., Ltd, Keaau, HI

TA-W-13,540; Kekaha Sugar Co., Ltd, Kekaha, HI

TA-W-13,541; The Lihue Plantation Co., Lihue, HI

TA-W-13,545; Oahu Sugar Co., Ltd, Waipahu, HI

TA-W-13,547; Pioneer Mill Co., Ltd, Lahaina, HI

TA-W-13,089; KMC Stampings, Port Washington, WI

TA-W-13,178; U.S. Steel Corp., Gary Works, Gary, IN

TA-W-13,523; Cameron Manufacturing Co., Emporium, PA

TA-W-13,551; Waialua Sugar Co., Inc., Waialua, HI

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-13,513; Molded Acoustical Products of Michigan, Inc., Marshall, MI

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-13,554; Bluestone Coal Corp., Keystone Strip Mine, McDowell County, WV

Aggregate U.S. imports of bituminous metallurgical coal and coke did not increase as required for certification.

TA-W-13,582; Holly Sugar Corp., Hamilton City, CA

Aggregate U.S. imports of refined sugar did not increase as required for certification.

TA-W-13,514; National Torch Tip Co., Inc., Aspinwall, PA

Aggregate U.S. imports of welding tips and torches are negligible.

TA-W-13,508; Honey Bunch Handbags, Inc., Brooklyn, NY

The investigation revealed that all production workers were separated prior to the earliest possible impact date of May 22, 1981.

Affirmative Determinations

TA-W-13,014; Carmen Athletic Industries, Inc., Aguadilla, PR

A certification was issued in response to a petition received on February 4, 1982 covering all workers separated on or after February 1, 1981 and before July 3, 1982.

TA-W-13,022; Turner Shoe Manufacturing Co., Inc., Aguadilla, PR

A certification was issued in response to a petition received on February 4, 1982 covering all workers separated on or after February 1, 1981 and before July 3, 1982.

TA-W-13,207; Brooks Shoe Manufacturing Co., Inc., Hanover, PA

A certification was issued in response to a petition received on February 4, 1982 covering all workers separated on or after February 1, 1981 and before July 3, 1982.

TA-W-13,580; Hinsdale Manufacturing Co., Inc., Brooklyn, NY

A certification was issued in response to a petition received on June 8, 1982 covering all workers separated on or after June 4, 1982 and before March 1, 1982.

TA-W-13, 431; Mount Vernon Mills, Inc., Tallassee, Alabama Industrial Mill, Tallassee Div., Tallassee, AL

A certification was issued in response to a petition received on April 9, 1982 covering all workers at the Tallassee, Alabama Industrial Mill who became totally or partially separated on or after July 1, 1981 and before October 1, 1982.

TA-W-13,462; Mount Vernon Mills, Inc., Tallassee Div., Greenville, SC

A certification was issued in response to a petition received on May 11, 1982 covering all workers engaged in employment related to the production of light industrial fabric at the Greenville, South Carolina administrative office of Mount Vernon Mills who became totally or partially separated from employment on or after March 1, 1982 and before July 1, 1982.

TA-W-13,463; Mount Vernon Mills, Inc., Tallassee Div., New York, NY

A certification was issued in response to a petition received on May 11, 1982

covering all workers engaged in employment related to the production of light industrial fabric at the New York, New York sales and administrative office of Mount Vernon Mills who became totally or partially separated from employment on or after March 1, 1982 and before July 1, 1982.

I hereby certify that the aforementioned determinations were issued during the period November 22, 1982–November 26, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW, Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 30, 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-33076 Filed 12-2-82; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act; Meeting

Notice is hereby given that a meeting of representatives of interested groups will be held on December 15, from 9:00 a.m. to 4:30 p.m., at the U. S. Department of Labor, Frances Perkings Building, Room N-5437, 200 Constitutiion Avenue, N.W., Washington, D.C. The major item to be discussed will be the status of implementation of the Job Training Partnership Act.

The public is invited to attend.

FOR ADDITIONAL INFORMATION CONTACT: Patrick J. O'Keefe, Director, Transition Task Force, Office of the Assistant Secretary, Employment and Training Administration, Room 8400, Patrick Henry Building, Washington, D.C. 20213, Telephone: (202) 376-8444.

Official records of the meeting will be available for public inspection at Room 8400, Patrick Henry Building.

Signed at Washington, D.C., this 29th day of November, 1982.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 82-33075 Filed 12-2-82; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-82-99-C]

Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, Powhatan Point, Ohio 43942 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Powhatan No. 4. Mine (I.D. No. 33-01157) and Powhatan No. 7 Mine (I.D. No. 33-02624), both located in Monroe County, Ohio. 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 entries used as intake and return aircourses be separated from belt haulage entries.

2. As an alternative method, petitioner proposes to use intake air from belt haulage entries to ventilate active working places on longwall sections. In support of this request, petitioner states that:

a. The additional air will help carry away methane and the air is needed at the face of the longwall panel to reduce the amount of respirable dust across the working face and maintain ventilation requirements;

b. Due to the difference in air pressure at the tailpiece and at other locations along the belt line, it is very difficult to direct some of the intake air at the longwall section to flow down the belt line and into the return air courses;

c. Low level carbon monoxide monitoring devices will be installed in all betl entries utilized as intake air courses for longwall panels. The carbon monoxide monitoring devices will be located so that the air is monitored at each belt drive and tailpiece, and will provide audible and visual alarms underground and on the surface;

d. Provisions will be made for hand held monitoring of carbon monoxide should any sensor malfunction;

e. Appropriate maintenance and calibration schedules will be followed and recorded;

f. All workers who normally work in by the carbon monoxide detection system will be instructed as to the operation of the system and the procedures to be followed if an alarm is activated; and

g. The details for fire detection including the types of monitors and sensors; their location; the alarm system; and the maintenance and calibration schedule will be included as part of the ventilation system—methane and dust control plan.

3. Petitioner states that the proposed alternative method will provide the same degree of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These 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. All comments must be postmarked or received in that office on or before January 3, 1983. Copies of the petition are available for inspection at that address.

Dated: November 12, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-33074 Filed 12-2-82; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 82-205; Exemption Application No. D-3299]

Exemption From the Prohibitions for Certain Transactions Involving Lear Siegler, Inc., Pension Plan Located in Santa Monica, Calif.

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits: (1) The contribution to the Lear Siegler, Inc. Pension Plan (the Plan) by Lear Siegler, Inc. (LSI), the sponsor of the Plan, and by LSI's wholly-owned subsidiary, Lear Siegler Properties, Inc. (collectively, LSI) of LSI's interest in certain master leases (Master Leases) and subleases (Subleases) of real property; (2) the guarantee by LSI, under certain conditions, of the rental due under the Subleases; and (3) certain Subleases wherein the sublessee is a party in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 6, 1982, notice was published in the **Federal Register** (47 FR 34228) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transactions. The notice set forth a summary of facts and representations

contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was distributed in accordance with the requirements set forth in the proposed exemption. No requests for a hearing were received by the Department. The Department received one public comment from the applicant's representative. The commentator stated that the $98,059,556 in assets attributed in the proposed exemption to the Plan, was actually the amount of assets in the Lear Siegler, Inc. Master Trust. The Plan had assets of $27,268,573 as of June 30, 1981.

The commentator also expressed concern that because the appraised value of the Master Leases and Subleases as of March 31, 1982 is cited in the proposed exemption, it may be inferred that this value will be utilized and not updated at the time of the contribution to the Plan. The commentator states that the applicant intends to have the Master Leases and Subleases reappraised at the time of their contribution to the Plan. The Department hereby notes and incorporates in the exemption the above-described changes and comments. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1.

Section I. The restrictions of section 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (A) the contribution to the Plan by LSI of its interest in the Master Leases and Subleases, and (B) the guarantee by LSI under certain conditions of the rental due under the Subleases.

Section II. The restrictions of section 406(a) Of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any Sublease in which the sublessee is a party in interest other than LSI or any of its affiliates, provided that the terms and conditions of each of the transactions described in Sections I and II are at least as favorable to the Plan as those it could obtain from an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 30th day of November, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-33103 Filed 12-2-82; 8:45 am]

BILLING CODE 4510-29-M

Grant of Individual Exemptions

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act and/or the Internal Revenue Code of 1954 (the Code.)

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

[Prohibited Transaction Exemption 82-206; Exemption Application No. D-3253] Emjay Corporation Master Profit Sharing Plan for Kurek Amusements, Inc. (the Plan) Located in Milwaukee, Wisconsin

Exemption

The restrictions of section 406(a), 406(b)(1) and 406 (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of certain real property (the Property) by the Plan to Mr. George Kurek, a party in interest with respect to the Plan, provided that the sales price is at least the fair market value of the Property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 24, 1982 at 47 FR 42203.

For further information contact: Louis Campagna of the Department, telephone (202) 525-8883. (This is not a toll-fee number.)

[Prohibited Transaction Exemption 82-207; Exemption Application Nos. D-3511 and D-3512] Harry L. Ryburn, D.D.S., P.A. Money Purchase Plan (the Plan) Located in Pine Bluff, Arkansas

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase of land by the Plan from the Bayou Ridge Partnership for $210,000 cash payable at closing, provided such amount does not exceed the fair market value of such land on that date.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 15, 1982, at 47 FR 46169.

For further information contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82-208; Exemption Application No. D-3598]

The MCD Enterprises, Inc. Profit Sharing Plan (the Plan) Located in Seabrook, Maryland

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a parcel of real property (the Property) by the Plan to Mr. Albert Turner, a party in interest with respect to the Plan, provided that the sales price is at least the fair market value of the property at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 8, 1982 at 47 FR 44639.

For further information contact: Louis Campagna of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each applicaiton accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 30th day of November, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-33102 Filed 12-2-82; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-1366 and D-1382]

Proposed Class Exemption Relating to the Recapture of Brokerage Commissions on Behalf of Insurance Company Pooled Separate Accounts

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed class exemption would permit an insurance company to utilize its affiliates to effect or execute securities transactions in order to recapture brokerage commissions for the benefit of employee benefit plans whose assets are maintained in pooled separate accounts managed by the insurance company. If granted, the proposed exemption would affect participants and beneficiaries of, and fiduciaries with respect to, employee benefit plans that invest in pooled separate accounts, insurance companies which manage the assets of such plans through the mechanism of

pooled separate accounts, and other persons who engage in the described transactions.

DATES: Written comments and requests for a hearing on the matter must be received by the Department on or before January 31, 1983.

EFFECTIVE DATE: If the proposed exemption is granted, it is proposed to be effective as of the date of publication of the final exemption in the **Federal Register**.

ADDRESS: All written comments and requests for a hearing (preferably at least 3 copies) should be sent to: Office of Fiduciary Standards, Pension & Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, Washington, D.C. 20216, Attention: "Recapture of Brokerage Commissions." The applications for exemption which form the basis for this proposed class exemption and all comments and requests for a hearing relating to the proposed exemption will be available for public inspection in the Public Documents Room of Pension & Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Shelby J. Hoover, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-8658. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed class exemption from the restrictions of section 406 of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) of the Code.

The relief proposed herein is designed to respond to requests made in two applications for exemption—one (D-1366) filed by the Equitable Life Assurance Society of the United States (Equitable), and the other (D-1382) filed by the American Council of Life Insurance (ACLI) on behalf of its member companies. The applications were filed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).[1]

[1] Effective December 31, 1978, the authority of the Secretary of the Treasury to grant exemptions of the type proposed herein was transferred to the Secretary of Labor by section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), as implemented by Executive Order 12108 (44 FR 1065, January 3, 1979). Therefore, this notice of pendency is issued solely by the Department.

Background

On January 30, 1979, there was published in the **Federal Register** (44 FR 5963) a document granting Prohibited Transaction Exemption 79-1 (PTE 79-1). PTE 79-1 allows persons who serve as fiduciaries for employee benefit plans to effect securities transactions as agent for those plans upon complying with a number of specific requirements contained in the exemption, which are designed to protect the interests of plan participants and beneficiaries. The exemption is available to fiduciaries except, generally, to a person who is a fiduciary with respect to a plan by reason of being a plan trustee or plan administrator, or who is an employer of any employee covered by the plan. In order to engage in brokerage transactions on behalf of the plan, the broker/fiduciary must receive written authorization expressly permitting such activities from a plan fiduciary who is independent of the broker/fiduciary. The written authorization cannot be effective for more than one year unless the independent fiduciary approves its continuance in writing annually.

The exemption places on the broker/fiduciary a duty to provide any information which it reasonably believes to be necessary, and which is reasonably available, to enable the independent plan fiduciary to determine whether to grant or renew an authorization to provide both advisory and brokerage services. Moreover, the broker/fiduciary has the obligation to supply any additional information concerning the matter reasonably requeted by the independent fiduciary.

The exemption also requires the broker/fiduciary to disclose periodically certain additional information to the authorizing plan fiduciary. Specifically, the broker/fiduciary must supply a report not less frequently than every three months disclosing the total of all transactions-related charges it has retained and the portion it has paid to other persons for execution or other services. The report must also contain a statement that makes clear that brokerage commissions in the United States are not fixed by any stock exchange or by any authority and are subject to negotiation. In addition, the independent plan fiduciary must be furnished with information concerning transaction-related commission rates which the broker/fiduciary anticipates assessing in the coming three months for transactions of the type normally entered into by the plan.

In any case where the broker/fiduciary returns or credits to the plan all profits earned by it in connection with such transactions—a practice referred to herein as the "recapture" of such profits by the plan—PTE 79-1 further provides that two of the requirements described above do not apply: (1) The constraint that the exemption is not available in the case of a fiduciary who is a plan trustee or administrator, or is an employer of any employee covered under the plan, and (2) the requirement that continuance of the arrangement be approved annually.

Discussion of the Applications

The applications contain facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

The ACLI represents that the pooled separate account has become an increasingly attractive funding mechanism for pension plans, enabling plans: (1) To place greater emphasis on equity investments than was previously possible through an insurer's general account; (2) to diversify more fully their portfolios; and (3) to realize significant savings in management expenses owing to economies of pooling. Consequently, the ACLI states that pooled separate accounts are widely used as a vehicle for the funding of qualified pension plans.

The applicants request exemptions that would permit insurance companies to utilize securities broker/dealer affiliates to effect or execute securities transactions in order to recapture commissions for the benefit of employee benefit plans whose assets are maintained in pooled separate accounts. The applicants assert that compliance with the conditions contained in PTE 79-1 is difficulty, if not impossible, for managers of pooled separate accounts in which employee benefit plans participate. The applicants state that, as a consequence: (1) Insurance companies utilizing pooled separate accounts in connection with their pension business will be disadvantaged in competition with other financial institutions for the management of plan assets, and (2) the participants and beneficiaries of plans currently participating in such accounts will be denied the benefits attributable to brokerage commission recapture.

A primary concern of the applicants is the requirement of PTE 79-1 that an independent plan fiduciary expressly authorize in writing the provision of brokerage services whether or not the profits from the services are recaptured on behalf of the plan. Due to the large number of plans in many pooled

separate accounts, that requirement would, according to the applicants, prevent an entire pooled separate account from utilizing PTE 79-1 if one plan participating in the account rejected, objected to, or merely failed to respond to, a request for authorization.[2] The applicants also expressed concern with the power of a single plan invested in a pooled separate account to terminate indefinitely, if not permanently, an already implemented recapture arrangement by withdrawing its authorization.

In its submission, the ACLI has suggested that these difficulties would be alleviated by amending the condition contained in PTE 79-1 relating to recapture arrangements. Under that suggestion, in the case of pooled accounts in which fewer than 100 plans participate (and unless facts or circumstances indicate to the contrary), authorization may be presumed as to a plan provided that the person effecting the brokerage transactions has received written authorization from at least 80 percent of the participating plans and the authorizing fiduciary for such plan permits the arrangement to proceed after having been supplied with the information concerning the arrangement in accordance with PTE 79-1. For pooled accounts in which 100 or more plans participate, the ACLI proposal would require that each independent fiduciary be supplied with the required information and advised that, unless the fidicuary objected to the proposed arrangement, he would be presumed to have approved the arrangement.

Equitable suggests, in the case of a pooled separate account, that it should be sufficient if a fiduciary with respect to each plan participating in the account receives full disclosure about the brokerage arrangements and has an opportunity to withdraw that plan from the account, without penalty to the plan, on sixty days' notice (or such additional time as may be necessary to accomplish the withdrawal in an orderly fashion so as not to disadvantage the interests of any plan participating in the account).

Description of the Proposed Exemption

The exemption proposed herein would provide relief, in addition to that provided by PTE 79-1, from the restrictions of section 406 of the Act and section 4975 (a) and (b) of the Code, for insurance companies maintaining pooled separate accounts in which employee benefit plans are invested and which recapture, on behalf of the accounts, profits made through the use of an affiliated broker-dealer to effect securities transactions for the accounts.

The Department has tentatively concluded that the authorization requirements of PTE 79-1, as they apply to the situation described above, should be relaxed. The Department has also tentatively concluded that the issues presented in these applications are sufficiently similar to issues that were resolved in Prohibited Transaction Exemption 82-63 (PTE 82-63) that similar treatment of the authorization requirements is warranted.[3] In PTE 82-63, the Department developed a "special rule", in the case of pooled investment funds, that would permit approval to be given on a compensation arrangement for the pool manager in connection with the provision by the manager of securities lending services, without requiring that explicit written authorization be obtained by the manager from every plan invested in the pool. That rule was developed in response to comments made on the proposal that became PTE 82-63, which contained authorization requirements similar, as here relevant, to those contained in PTE 79-1. The objection of the commentators to that proposal were substantially similar to the objections described above to the authorization requirements of PTE 79-1.

Accordingly, this proposal would require, as in the case of the "special rule" for pooled investment funds developed in PTE 82-63, that an insurance company desiring to recapture brokerage profits on behalf of a pooled separate account, through the utilization on an affiliated broker-dealer, must provide an authorizing fiduciary with respect to each plan invested in the account, not less than 30 days in advance of implementation of, or any material modification to, the arrangement, with all relevant information concerning the arrangement or modification. If any such plan objects in writing to the implementation of, material change in, or continuation of the arrangement, that plan must be given an opportunity to withdraw from the account, without penalty, as soon as it is practicable to effect such withdrawal in a manner that is equitable to both the withdrawing plan and the plans retaining their investment in the account. In the case of implementing an arrangement, or materially modifying an existing arrangement, it is proposed that such withdrawals be accomplished prior to the implementation or modification. In the case of a plan that objects to the continuation of an existing arrangement, the proposal would allow the arrangement to be continued while the plan's withdrawal from the account is being effected.

As in the case of PTE 82-63, this proposal attempts to balance the interests of both the individual plan and the other plans invested in the account. Therefore, the proposal would provide each authorizing fiduciary with an opportunity to consider the proposed arrangement (or modification), and to withdraw from the account, if he determines that such a course of action is appropriate, before its implementation. However, if a plan fiduciary approves, acquiesces in, or fails to tender timely written objection to, the proposed arrangement or modification, that fiduciary would not be in a position later to interrupt the provision of services to the entire account.

The Department recognizes that a plan may propose to invest its assets in an account subsequent to the implementation of the recapture arrangement. For such plans, the Department proposes that authorization of the plan's investment in the account shall be in the form of a prior written authorization of an authorizing fiduciary.

Another concern of the applicants centers upon the requirement of PTE 79-1 that the approving fiduciary be independent of the fiduciary seeking approval of the arrangement. The applicants represent that it is comon practice for insurance companies to allocate the assets of plans covering their own employees ("in-house" plans) to one of their pooled separate accounts. According to the applicants, this not only enables such a plan to enjoy economies of size through participation in a pooled separate account, but also serves as notice to unaffiliated clients that the fiduciary's in-house plan participates in the same account and on the same basis as the client. However, in the case of an in-house plan, the fiduciaries of such plan are, in most cases, officers, directors, and/or employees of the insurance company. Although the applicants do not concede

[2] Equitable states that on one occasion it sought contractholder approval for the use of its broker-dealer affiliate, Equico, on behalf of one of Equitable's pooled separate accounts that is registered under the Investment Company Act of 1940 and is not subject to Title I of ERISA. According to Equitable, it encountered great difficulty in obtaining votes—favorable or unfavorable—from 50 percent of the account's contractholders, although approval by a majority of 50 percent of the contractholders was eventually obtained.

[3] PTE 82-63, Class Exemption to Permit Payment of Compensation to Plan Fiduciaries for the Provisions of Securities Lending Services, was published in the Federal Register on April 6, 1982 (47 FR 14804).

that such persons are not "independent" of the insurance company, they assert that, under a narrow reading of that term, it would be impossible or impracticable for in-house plans to comply with the conditions of the exemption. Under such circumstances, the applicants state, only two alternatives, both undesirable, remain: (1) The removal of the in-house plans from participation in the pooled accounts; or (2) the denial to the entire membership of the account the opportunity to recapture brokerage commissions from an affiliated broker-dealer.

The Department proposes to maintain, as a general matter, the requirement that a fiduciary independent of the insurance company authorize the arrangement. In the case of an insurance company's in-house plans, however, authorizing fiduciaries are not required to be independent of the insurance company. In this regard also, the proposal parallels the "special rule" for pooled investment vehicles contained in PTE 82-63, discussed above.

The remaining conditions of the proposal are identical to those contained in PTE 79-1 for those persons who effect or execute securities transactions and return or credit to the plan all profits earned by such person in connection with such transactions. For purposes of this proposed class exemption, the term "profit" is defined to include all charges relating to the effecting or executing of securities transactions subject to this exemption, less reasonable and necessary expenses—including reasonable indirect expenses (such as over head costs) properly allocated to such transactions under generally accepted accounting principles—incurred by the insurance company.

General Information: The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of the participants and beneficiaries;

(3) If granted, the proposed class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments: All interested persons are invited to submit written comments and requests for a hearing on the pending exemption to the address and within the time period set forth above. All comments and requests will be made a part of the record, and should state the reasons for the writer's interest in the proposed exemption. Comments and requests for a hearing received by the Department will be available for public inspection with the applications for exemption at the address set forth above.

Proposed Exemption: Pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), the Department proposes to grant the following class exemption:

I. Transactions

The restrictions of section 406 of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the effecting or executing by an insurance company of any securities transactions on behalf of, and as agent for, a pooled separate account maintained by the insurance company or to the performance by such insurance company of clearance, settlement, custodial or other functions incidental to such transactions, provided that the insurance company returns or credits to the account all profits earned by the insurance company in connection with such transactions and that the following conditions are met:

(a) The arrangement under which such securities transactions are to be effected or executed is subject to the prior and continuing approval, in the manner described in paragraphs (b), (c), and (d) below, of a plan fiduciary (the "authorizing fiduciary") with respect to each plan whose assets are invested in the account, who is (other than in the case of a plan covering only employees of the insurance company) independent of the insurance company;

(b) The insurance company shall furnish the authorizing fiduciary with any reasonably available information which the insurance company reasonably believes to be necessary to determine whether such approval should be given or continued, not less than 30 days prior to implementation of the arrangement or material change thereto, and, where requested, upon the reasonable request of the authorizing fiduciary at any time;

(c) In the event any such authorizing fiduciary submits a notice in writing to the insurance company objecting to the implementation of, material change in, or continuation of the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account, without penalty to the plan, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing plans and to the nonwithdrawing plans. In the case of a plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw;

(d) In the case of a plan whose assets are proposed to be invested in the account subsequent to the implementation of the arrangement and which has not authorized the arrangement in the manner described in paragraphs (b) and (c) above, the plan's investment in the account or fund is subject to the prior written authorization of an authorizing fiduciary;

(e) The insurance company furnishes the authorizing fiduciary with a report containing the information described in this paragraph, not less frequently than every three months and not later than 45 days following the end of the period to which the report relates. Such report shall disclose:

(i) The total of all transaction-related charges incurred by the account during the preceding three months in connection with transactions in which the insurance company performed any of the functions permitted by this exemption;

(ii) The amount of the transaction-related charges retained by the insurance company and the amount of such charges paid to other persons for execution or other services; and

(iii) Rates for transaction-related charges anticipated to be charged in the coming three months for transactions of the type normally entered into by the account; and

(f) The report described in paragraph (e) of this exemption contains a statement to the effect that brokerage commissions in the United States are not fixed by any stock exchange or other authority and are subject to negotiation.

II. Definitions

For purposes of this exemption:

(a) The term "insurance company" means an insurance company that has been appointed as an investment manager (as defined in section 3(38) of the Act) with respect to the account by each employee benefit plan whose assets are invested in the account, and any affiliate of such company;

(b) The term, "affiliate" of another person includes:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(ii) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), brother, a sister, or a spouse of a brother or sister, of such other person; and

(iii) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term "profit" shall include all charges relating to the effecting or executing of securities transactions subject to this exemption, less reasonable and necessary expenses—including reasonable indirect expenses (such as overhead costs) properly allocated to such transactions under generally accepted accounting principles—incurred by the insurance company.

Signed at Washington, D.C., this 23rd day of November, 1982.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-33101 Filed 12-2-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3430]

Proposed Exemption for Certain Transactions Involving First Equities Institutional Realty Investors-1, Ltd., Located in Atlanta, Georgia

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would allow First Equities Institutional Realty Investors-1, Ltd. (the Partnership), in which employee benefit plans participate, to engage in certain prohibited transactions provided specified conditions are met. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans investing in the Partnership and other persons engaging in the described transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before January 3, 1983.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-3430. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by legal counsel for the Partnership, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Partnership is set up as a real estate investment vehicle for pension plans. Limited partnership units in the Partnership will be offered to plans which represent in writing (i) that they are acquiring this interest for investment purposes only and not with a view to resale, and (ii) who have at least $10 million in assets for each $1 million invested in the Partnership.[1] The initial capitalization of the Partnership will be between $30 and $50 million and will have between 5 and 30 plan investors. The general partner of the Partnership will itself be a general partnership consisting of several individuals and a corporation. Included among the individuals will be Joseph H. Harman, II, president and sole shareholder of First Equities Corporation (FEC). The other individuals will include only officers or employees of FEC. The corporation will be a Georgia corporation to be organized by officers, directors, employees and shareholders of FEC. For purposes of simplicity, the general partner of the Partnership will be referred to as FEC. FEC and its affiliates are in the real estate management and development business and manage over $650 million in assets.

2. Partnership interests will be offered pursuant to section 4(2) of the Securities Act of 1933.[2] Each offeree will receive a

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[1] Based on the required capitalization formula, no more than 10% of a plan's assets may be invested in the Partnership.

[2] Section 4(2) of the Securities Act of 1933 provides that the provisions of section 5

Confidential Private Placement Memorandum (the Memorandum) which will outline in detail the plan of offering, capitalization of the Partnership, the estimated use of proceeds of the offering, the investment objectives and policies of the Partnership, the risk factors involved in making an investment in the Partnership, the profits and cash flow distributions to be made to partners, the compensation of FEC, the federal tax consequences of an investment in the Partnership, a summary of the limited partnership agreement, and any additional material information deemed necessary or appropriate to fulfill the requirements for full and fair disclosure under the federal and state securities laws applicable to such an offering. In addition, plan fiduciaries will be provided with a copy of the limited partnership agreement (the Agreement), which delineates the fees to be paid to FEC and the manner in which cash flow and sales proceeds are to be allocated and distributed among and to the partners. A complete narrative description of these provisions of the Agreement will be included in the Memorandum. After the plan fiduciaries have been given an opportunity to evaluate and to review completely the Memorandum and the Agreement, the plan fiduciaries may make their investment decision to invest in the Partnership by entering into a subscription agreement and tendering the $1,000,000 per unit offering price.[3]

3. The Partnership will acquire income producing real estate to provide current cash flow to investors with the potential for capital appreciation. The Partnership proposes to acquire a portfolio of completed office buildings, shopping centers, apartment complexes and similar properties. The properties to be acquired will not be identified at the time the plans acquire their interest, however, the Partnership will be operated in accordance with written investment objectives and policies described in the Memorandum given to each plan fiduciary.

4. FEC will be responsible for monitoring the performance of the partnership's real estate acquisitions, the performance of services by independent real property managers selected by FEC and for making periodic financial and operational reports to the limited partners. FEC will be authorized under the Agreement to take immediate remedial action in the event there is a lapse in the performance of any independent contractor or if the real estate asset is not performing up to its anticipated potential.

5. The Partnership will be formed under the Georgia Limited Partnership Act and will have an initial term of 35 years. Each plan's liability for Partnership liabilities will be limited to its capital contribution.

6. Upon the completion of the offering of limited partnership interests in the partnership, FEC shall receive a one-time acquisition fee equal to 3¾% of the aggregate capital contributions made to the Partnership. For this fee, FEC will absorb all costs of acquisition of income-producing properties. During the term of the Partnership, FEC will also receive a monthly partnership management fee equal to ½ of 1% (1% per annum) of the initial capital contributions made by the limited partners.

7. Real property management fees, leasing services fees and financing fees shall be paid to independent third parties which contract directly with the Partnership to perform such services. These parties shall be independent of FEC, unless a suitable entity for the provision of such services is unavailable in the area. In such event, FEC is authorized to perform such services on a temporary basis and be reimbursed by the Partnership for the costs incurred in performing such services.

8. Distributable cash[4] shall be distributed 99% pro rata to the limited partners and 1% to FEC until the limited partners receive an annual cumulative non-compounded distribution equal to 10% of their net capital contributions to the Partnership (distribution preference). Thereafter, the limited partners will receive 80% of any excess distributable cash and FEC will receive the remaining 20% of such excess.

9. The net proceeds from the disposition or refinancing of any Partnership real property is to be returned 100% to the limited partners until their initial capital contribution is recouped together with any unpaid distributable cash due and, thereafter shall be distributed 80% to the limited partners and 20% to FEC. Upon such sale or other disposition of Partnership property, FEC will be reimbursed for out-of-pocket expenses. Further, any sale, refinancing or other disposition of real property by the Partnership which would give rise to a pay-out to FEC is subject to prior approval by the holders of 60% of the Partnership units and 60% of the limited partners on a per capita basis.

10. The applicants believe that under the circumstances described in this case the Department might well conclude that the assets of the Partnership would be considered assets of the plans participating in the Partnership. Therefore, in exercising discretion over the management of Partnership assets, FEC would be deemed a fiduciary with respect to each plan participating in the Partnership under section 3(21) of the Act and a party-in-interest to such plan under section 3(14)(A) of the Act.[5] Accordingly, the provision of multiple services to the Partnership would be prohibited in the absence of statutory or administrative relief.

The provision of services by a party-in-interest to a plan is generally exempt from the prohibitions of section 406(a) of the Act by operation of the exemption provided in section 408(b)(2) of the Act. The Department's regulation section 2550.408(b)-2 notes that the exemption, however, does not exempt acts described in section 406(b) of the Act. Thus, a fiduciary may not use the authority, control or responsibility which makes such person a fiduciary to cause a plan to pay an additional fee to such fiduciary (or to a person in which such fiduciary has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary) for the provision of services to the plan. The Department is not prepared to issue an opinion that transactions involving the disposition or refinancing of Partnership real property under circumstances where FEC makes recommendations to plan investors

(registration statement) shall not apply to transactions by an issuer not involving any public offering.

[3] FEC represents that except to the extent that an investment in the Partnership by a plan creates any such relationship:

(a) FEC is not currently a fiduciary with respect to any pension plan nor will it be a fiduciary with respect to any plan investing in the Partnership;

(b) Neither FEC nor any of its shareholders, partners, or employees will be officers, directors or general partners of any plan sponsor nor will such parties be parties in interest with respect to any plan investing in the Partnerhip; and

(c) Neither FEC nor any of its shareholders, partners, or employees will render investment advice (to any participating plan) nor will such parties receive any fees in connection with the decision of a plan fiduciary to invest in the Partnership.

[4] Distributable cash shall mean profits from operations less cash held by the Partnership as reasonable reserves. Section 2.06 of the Agreement defines profits and losses from operations to mean, in pertinent part, the difference between: (a) Gross revenues; and (b) the sum of all expenses (including fees paid and reimbursements made to FEC pursuant to this Agreement) except depreciation, amortization or the amount calculated under the accelerated cost recovery system for the assets of the Partnership.

[5] In the discussion of the exemption, references to the various provisions of section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

which are agreed to by fiduciaries of those plans in reliance on the advice of FEC would not, under all circumstances, constitute acts in violation of section 406 (b)(1) and (b)(2) of the Act. Similarly, decisions made and implemented at the direction of FEC which will necessarily impact on the compensation paid to FEC may also raise concerns with regard to section 406 (b)(1) and (b)(2) of the Act.

Although the Department does not entertain requests for exemption relating to transactions covered by section 408(b)(2) of the Act, the Department is proposing this administrative exemption in consideration of those aspects of the proposed Agreement which may not be covered by the statutory exemption. Under the Agreement, the incentive compensation arrangement will provide a return to FEC which exceeds pre-established fixed fees only to the extent (1) that cash flow is generated in excess of the distribution preference in favor of the limited partners and (2) appreciation is realized upon the disposition of any Partnership property. Under either circumstance, the limited partners will receive 80% of any excess distributable cash and 80% of any sales proceeds in excess of their initial capital contribution.

The Department is not proposing an exemption for certain services provided by FEC that appear to be covered by the statutory exemption and that do not appear to involve acts described in section 406(b) of the Act. An administrative exemption is herein proposed by the Department for the provision of investment management services to the Partnership by FEC and to the receipt of compensation for such services where the compensation to be paid FEC is determined under an incentive compensation arrangement (see representations 8 and 9 of this proposal). Other services that are provided by FEC which are exempted by the statutory exemption must comply with the conditions of that exemption.[6]

11. The applicant represents that the Agreement provides that FEC may during the offering period,[7] in order to facilitate acquisition of a property, contract for or acquire a property in its own name for purposes of later transfer to the Partnership provided, however, that the price paid by the Partnership is no greater than the price paid by FEC. The applicant further represents that in the event the Partnership is not organized for lack of minimum capital, or for any other reason, FEC will not sell properties purchased during the offering period to any plan which has subscribed for units in the Partnership as of the date of expiration of the offering. The Memorandum made available to plan fiduciaries will provide that, if at any time during the offering period it appears that a parcel of property will be acquired, the Memorandum will be supplemented to describe the property to be acquired and the proposed terms. Plan fiduciaries, therefore, will be able to review proposed acquisitions from FEC prior to consummation of the acquisition. Under section 406 of the Act, the acquisition of property by the Partnership from FEC would constitute a prohibited transaction since FEC is a party in interest (see representation 10).

12. The applicant notes that the classification of Partnership assets as plan assets would cause certain transactions involving the Partnership and parties in interest with respect to investing plans to be viewed as prohibited transactions. Parties providing real estate or other services to the Partnership may be service providers to investing plans or affiliates of such service providers within the meaning of section 3(14)(F), (G), (H) or (I) of the Act unbeknownst to FEC at the time their services are contracted. The Partnership, in the absence of a prohibited transaction exemption, would not be able to acquire commercial properties and contract for real estate services without fear of committing unintentional prohibited transactions and without incurring the additional administrative costs of surveying current leases of such commercial properties and investigating the affiliation of each lessee prior to making an acquisition. The same costs would be incurred in determining whether any service provider is a party in interest to a plan investor. However, the applicant represents that, in the case of a lease, the situation is non-abusive because the acquisition of a shopping center or office building would, in the normal course of business, be accomplished after the terms and conditions of such a lease have been negotiated between the party in interest and the previous owner of the shopping center or office building and the terms would, therefore, be arm's-length in nature. Further, any renewal would be negotiated by independent third parties providing leasing services to the Partnership on terms and conditions not less favorable to the Partnership than the terms generally available in arm's-length transactions between unrelated parties.

13. The applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because independent plan fiduciaries will have reviewed the compensation structure for FEC prior to making their decision to invest in the Partnership and each fee to be received by FEC is specified in the Agreement. Moreover, FEC is required under the Agreement to provide quarterly reports of Partnership operations, disclosing any services provided by FEC requiring the payment of a fee or reimbursement for expenses incurred.

14. The applicant further represents that the structuring of the transactions is protective of the rights of participants and beneficiaries of affected plans in that to the extent that income is available for distribution, the limited partners are guaranteed a 10% cumulative annual return on their investments prior to FEC's receipt of any cash flow. In addition, the amount of cash available for distribution is determined under the Agreement primarily from the real estate operations of Partnership assets which will be controlled by independent third party managers. With respect to distributions of sales proceeds, there is a 100% liquidation preference in favor of the limited partners, whereby the plan investors are guaranteed to receive their net capital contribution prior to any distribution being made to FEC. In this regard, the Agreed provides that any transaction giving rise to a distribution of sale proceeds to FEC is subject to prior approval of holders of 60% of the Partnership units and 60% of the limited partners on a per capita basis. This latter provision mandates that each transaction having the potential for benefiting FEC be subjected to the scrutiny of plan fiduciaries prior to its consummation which, the applicant represents, should effectively preclude churning by FEC. Therefore, there can be no diversion of distributions in favor of FEC at the expense of plan investors. The cost of sales or other dispositions of real estate assets of the Partnership will be reimbursable to FEC only for its out-of-pocket expenditures with no profit factor built in. Since only plans that are qualified under the Code may invest in the Partnership, there is no conflict in investment objectives and policies which could be present by reason of the sale of Partnership interests to non-qualified, non-tax exempt investors. FEC will not receive a fee based on annual appraisals, but only its actual

[6] Under section 408(b)(2) of the Act and regulation § 2550.408b-2(e)(3), a fiduciary may, without special exemption, perform services for a plan and be reimbursed for certain direct expenses incurred in connection with those services.

[7] The applicant represents that due to the magnitude of the capital needed to meet the minimum subscription price, an offering period of twelve months is contemplated.

performance will be taken into account in determining the ultimate benefit it will receive under the Agreement. This provides an incentive for FEC to carry through with its management services because its subordinated equity interest is not realizable until the Partnership's real property assets are completely disposed of.

Notice to Interested Persons

Because the plans who will invest in the Partnership are not presently ascertainable, the Department has determined that the only practical form of notice is publication in the **Federal Register.**

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Section I—Exemption for Certain Transactions Involving the Provision of Services by FEC

If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the provision of investment management services to the Partnership by FEC and to the receipt of compensation for such services which is determined in accordance with an incentive compensation arrangement if the following conditions are met:

(a) The investment of plan assets in the Partnership is authorized by a fiduciary independent of FEC and the Partnership;

(b) No such authorization is made unless the authorizing fiduciary receives a copy of the Private Placement Memorandum and the Partnership Agreement which describe the respective rights of FEC and the limited partners to cash flow and capital appreciation as well as all other material rights and obligations of the partners, the services to be performed by FEC and the compensation to be received therefor;

(c) The Partnership furnishes the authorizing fiduciary a quarterly report which discloses that portion of the cash flow and sales proceeds retained by FEC, the amount of fees paid to FEC for services rendered, the amount of reimbursements received by FEC and the total of any other fees paid to third parties by FEC for services rendered.

(d) The conditions set forth in section IV of this exemption are met.

Section II—Certain Acquisitions of Real Property

If the exemption is granted, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code shall not apply to any sale of real property acquired by FEC during the offering period to the Partnership if the following conditions are met:

(a) The price paid by the Partnership for the property does not exceed the amount paid by FEC;

(b) The Memorandum is supplemented during the offering period with a description of the proposed investment;

(c) All such transfers are completed within 60 days of purchase by FEC; and

(d) The conditions set forth in section IV of this exemption are met.

Section III—Exemption for Certain Transactions Involving the Partnership

If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions set forth in section IV of this exemption are met.

(a) *Transactions with Persons Who are Parties In Interest With Respect to a Participating Plan Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers.*

Any transaction between the Partnership and a person who is a party in interest with respect to a participating plan if—

(1) the person is a party in interest (including a fiduciary) solely by reason of providing services to the participating plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both, and the person neither exercises nor has any discretionary authority, control, responsibility or influence with respect to the investment of the participating plan's assets in, or held by, the Partnership, and

(2) the person is not an affiliate of FEC.

(b) *Certain Leases and Goods.*

The leasing of real property owned by the Partnership to a party in interest with respect to a participating plan and the incidental furnishing of goods to such party in interest by the Partnership, if—

(1) In the case of goods, they are furnished by the Partnership in connection with real property owned by the Partnership,

(2) The party in interest is not FEC, and

(3) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Partnership with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5% of the fair market value of the assets of the Partnership on the most recent valuation date of the Partnership prior to the transaction.

(c) *Transactions Involving Places of Public Accommodation*

The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Partnership to a party in interest with respect to a participating plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

Section IV—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of the Partnership, the terms of the transaction are not less favorable to the limited partners than the terms generally available in arm's-length transactions between unrelated parties.

(b) The Partnership maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Partnership, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a participating plan who has authority to acquire or dispose of the interests in the Partnership of the participating plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any participating plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any participating plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of the Partnership, or commercial or financial information which is privileged or confidential.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 29th day of November, 1982.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-33100 Filed 12-2-82; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in. Each entry will contain the following information:

- The Agency of the Department issuing this form.
- The title of the form.
- The Agency form number, if applicable.
- How often the form must be filled out.
- Who will be required to or asked to report.
- Whether small business or organizations are affected.
- The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.
- An estimate of the number of responses.
- An estimate of the total number of hours needed to fill out the form.
- The number of forms in the request for approval.
- An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Norman Frumkin, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

- Bureau of Labor Statistics
ES-202 Industrial Classification Forms
BLS-3023 A1-A11, B1-B10
Once every three years
Businesses or other institutions
Small business or organization
SIC: All
1,500,000 responses; 195,000 hours, 21 forms

Accurate industrial coding of the Employment and Wage data from the ES-202 program developed from the 3023 form, is essential to: The sampling frame and employment benchmarks for

all BLS Federal/State programs; inputs into GNP and Personal Income estimates; economic analysis, fund allocation and program administration dependent upon them.

Reinstatements

- Employment Standards Administration

Request for Employment Information
CA 1027
On occasion
Businesses or institutions
Small business or organization
SIC: All
1000 responses; 250 burden hours; 1 form

The form is used to collect information regarding injured Federal employee's wage-earning capacity. Information is necessary for determination of continued eligibility for compensation payments under the FECA of for information concerning previous exposure to harmful substances 5 US 8101 et seq.

- Employment and Training Administration

Experimental Downriver Economic Readjustment Project
MT-321
One-time survey
Individuals or households
3,330 responses; 2,178 hours; one form

This study will be used to evaluate the effectiveness of a unique program for training, placement and relocation of unemployed, experienced workers. This information will provide critical guidance in the development of future policy and programs for displaced workers.

Signed at Washington, D.C., this 26th day of November, 1982.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 82-33073 Filed 12-2-82; 8:45 am]

BILLING CODE 4510-24-M, 4510-27-M, 4510-30-M

NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF LABOR

Wage and Hour Division

Memorandum of Understanding Between NRC and Department of Labor; Employee Protection

I. Purpose

The U.S. Nuclear Regulatory Commission (NRC) and the Department of Labor (DOL) enter into this agreement to facilitate coordination and cooperation concerning the employee protection provisions of Section 210 of the Energy Reorganization Act of 1974 (Reorganization Act), as amended, 42 U.S.C. 5851.

2. Background

Section 210 of the Reorganization Act prohibits any employer, including a Nuclear Regulatory Commission licensee, applicant or a contractor or subcontractor of a Commission licensee or applicant, from discriminating against any employee with respect to his or her compensation, terms, conditions or privileges of employment because the employee assisted or participated, or is about to assist or participate, in any manner in any action to carry out the purposes of either the Reorganization Act or the Atomic Energy Act of 1954 (Atomic Energy Act), as amended, 42 U.S.C. 2011 *et seq.*

The NRC and DOL have complementary responsibilities in the area of employee protection. DOL has the responsibility under section 210 of the Reorganization Act to investigate employee complaints of discrimination and may, after an investigation and hearing, order a violator to take affirmative action to abate the violation, reinstate the complainant to his or her former position with backpay, and award compensatory damages, including attorney fees. NRC, though without direct authority to provide a remedy to an employee, has independent authority under the Atomic Energy Act to take appropriate enforcement action against Commission licensees that violate the Atomic Energy Act, the Reorganization Act, or Commission requirements. Enforcement action may include license denial, suspension or revocation or the imposition of civil penalties.

Although each agency will carry out its statutory responsibilities independently, the agencies agree that administrative efficiency and sound enforcement policies will be maximized by cooperation and the timely exchange of information in areas of mutual interest.

3. Areas of Cooperation

a. DOL agrees to promptly notify NRC of any complaint filed with DOL alleging discrimination within the meaning of Section 210 of the Energy Reorganization Act. DOL will promptly provide NRC a copy of the complaint, decisions and orders associated with the investigation and any hearing on the complaint.

DOL will also keep NRC currently informed on the status of any judicial proceedings seeking review of an order of the Secretary of Labor issued pursuant to Section 210 of the Reorganization Act.

b. NRC and DOL agree to cooperate with each other to the fullest extent possible in every case of alleged discrimination involving employees of Commission licensees, applicants, or contractors or subcontractors of Commission licensees or applicants. NRC will take all reasonable steps to assist DOL in obtaining access to licensed facilities and any necessary security clearances. Each agency agrees to share and promote access to all information it obtains concerning a particular allegation and, to the extent permitted by law, will protect the confidentiality of information identified as sensitive that has been supplied to it by the other agency.

4. Implementation

The NRC official responsible for implementation of this agreement is the Executive Director for Operations; the DOL official responsible for implementation of this agreement is the Administrator, Wage and Hour Division. Working level point of contacts shall be established and identified within 10 days after the effective date of this agreement for both headquarters and field operations.

5. Amendment and Termination

This Agreement may be amended or modified upon written agreement by both parties to the Agreement. The Agreement may be terminated upon ninety (90) days written notice by either party.

6. Effective Date

This agreement is effective when signed by both parties.

Dated: July 29, 1982.

William J. Dircks,

Executive Director for Operations, Nuclear Regulatory Commission.

Dated: October 25, 1982.

William M. Otter,

Administrator, Wage and Hour Division, Department of Labor.

[FR Doc. 82-32971 Filed 12-2-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

[CM—8/578]

Study Group CMTT of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group CMTT of the U.S. Organization for the International Radio Consultative Committee (CCIR) will

meet on December 21, 1982, in Conference Room F, 10th Floor, AT&T Building, 1120 20th Street, N.W, Washington, D.C. The meeting will begin at 9:30 a.m.

Study Group CMTT deals with the specifications to be satisfied by telecommunication systems for transmission of radio and television programs over long distances. The purpose of the meeting will be the establishment of a program of work in preparation for the international meeting of CMTT in August-September 1983.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520, telephone (202) 632-2592.

Dated: November 22, 1982.

Gordan L. Huffcutt,

Chairman, U.S. CCIR National Committee.

[FR Doc. 82-33058 Filed 12-2-82; 8:45 am]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Proposed Revisions to Procedures Implementing the National Environmental Policy Act (NEPA) and Executive Order Nos. 11988 (Floodplain Management) and 11990 (Protection of Wetlands)

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice.

SUMMARY: TVA is proposing to amend its procedures implementing NEPA to, among other things, incorporate special review requirements relating to floodplain management and protection of wetlands. TVA's separate Floodplain Management and Protection of Wetlands procedures would then be eliminated except for a modified form of the policy statement presently contained in the procedures.

DATE: To be considered, comments must be received on or before January 3, 1983.

ADDRESS: Comments should be sent to Mohamed T. El-Ashry, Director of Environmental Quality, Office of Natural Resources, Tennessee Valley Authority, TVA Mailroom, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: John R. Thurman, Tennessee Valley Authority, TVA Mailroom, Knoxville, Tennessee 37902; (615) 632-2004 or FTS 856-2004.

SUPPLEMENTARY INFORMATION: On August 2, 1979, TVA issued procedures implementing Executive Order Nos. 11988 (Floodplain Management) and 11990 (Protection of Wetlands) at 44 FR 45513-17 (1979). On August 15, 1980, TVA amended its procedures implementing NEPA at 45 FR 54511-15 (1980) in response to a request made by the Council on Environmental Quality (CEQ) to all Federal agencies to issue procedures supplementing CEQ's NEPA regulations (40 CFR, parts 1500 et seq. (1980)).

Subsequently, TVA received a memorandum from CEQ, dated August 6, 1981, encouraging TVA to evaluate its existing procedures with the objective of making changes which would improve the environmental review process; specifically, to make better decisions and reduce paperwork and delay. A copy of this memorandum, addressed to all Federal agencies, was published by CEQ at 46 FR 41131-32 (1981). In response TVA evaluated its environmental review process and identified certain changes which would improve the overall effectiveness and efficiency of TVA's environmental review process while fully complying with NEPA and TVA environmental policies.

The most significant proposed revision is the incorporation of TVA's floodplain and wetlands review process into the NEPA procedures. TVA's experience with floodplain and wetlands reviews indicated that such reviews are a specialized form of environmental reviews and can easily be accommodated in the general NEPA procedures thereby eliminating a substantially duplicative review process. This would not only decrease review costs in some instances but would also decrease delays in the decisionmaking process. TVA's policy on floodplain management and protection of wetlands (44 FR 45514-15 (1979)), however, would be retained separate from TVA's NEPA procedures and overall environmental policy. Minor modifications to this policy statement are proposed and the statement, with the proposed modifications incorporated, is included in this notice for comment.

Numerous other changes to TVA's NEPA procedures, primarily of a housekeeping nature, are also proposed and are incorporated in the version of TVA's NEPA procedures published here for comment. All of the proposed revisions have been reviewed and informally concurred in by CEQ.

Frank R. Holland,

Assistant General Manager, Tennessee Valley Authority.

IX. Floodplain Management and Protection of Wetlands

Floodplain Management and Protection of Wetlands

The Board of Directors approved the following policy on August 13, 1982. It supersedes the policy adopted by the Board on July 12, 1979. It provides guidance for implementing the policies contained in Executive Order Nos. 11988 (Floodplain Management) and 11990 (Protection of Wetlands). The procedures to implement this policy are contained in TVA Instruction IX ENVIRONMENTAL REVIEW.

Policy

TVA provides leadership and takes actions to reduce the risk of flood loss; to minimize the impacts of floods on human safety, health, and welfare; and to restore and preserve the natural and beneficial values served by floodplains.

TVA provides leadership and takes actions to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands. It works closely with States and local organizations to provide information and guidance to promote sound floodplain and wetland management practices at the non-Federal level. In its own activities, TVA applies this commitment to broad Agency program reviews, as well as direct or indirect support or approval of individual project or program actions, from their initial planning stages through postimplementation monitoring and evaluation.

To that end, TVA establishes procedures to avoid to the extent practical the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and with the destruction or modification of wetlands, and to avoid to the extent practical the direct or indirect support of floodplain development or wetland alteration. These procedures are implemented as part of the environmental review for a TVA action under the National Environmental Policy Act (NEPA) and TVA Instruction IX ENVIRONMENTAL REVIEW. Consistent with TVA's NEPA procedures, TVA provides early public review of plans or proposals for action in floodplains and wetlands as set forth in those procedures (see TVA

Instruction IX ENVIRONMENTAL REVIEW).

Flood hazards, floodplain management, and wetlands protection will be taken into account when formulating proposals for actions. The use of resources and the construction of TVA facilities and structures will be consistent with the flood hazard involved; the standards and criteria promulgated under the National Flood Insurance Program of the Federal Insurance Administration, unless the standards of the program are demonstrably inappropriate for the given type of structure or facility; the Unified National Program for Floodplain Management of the Water Resources Council; and Executive Order No. 11988. For activities for which even a 1 percent chance of flooding would be too great, a lesser degree of flood hazard should be considered, e.g., location outside the 0.2 percent chance floodplain or elevation or protection of the use to a level at or above this level of flooding. For those actions for which even a slight degree of flooding would be too great, consideration should be given to a much higher level of flood protection by elevating or protecting the site, or by location in a flood-free site. Use of land in the floodplain for other than open space, or use of land for new construction in wetlands will be avoided to the extent practicable. Where new structures or facilities are to be located in a floodplain, floodproofing and other flood protection measures will be utilized as necessary. Raising such structures above the base flood levels will, when practicable, be preferred to filling.

If TVA property used by the general public has suffered flood damage or is located in an identified flood hazard area, TVA will provide on such structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

Reservations

The *General Manager* approves guidelines for general application within TVA issued under the policy. The General Manager approves, or refers to the Board of Directors as appropriate, the determination to take an action resulting in siting in a floodplain or construction in a wetland if the Environmental Quality Staff, after consulting with the Office of the General Counsel, does not concur with the determination to do so by the initiating office or division.

Delegations

Offices and divisions initiating actions or proposals covered by the policy use all practical means to avoid actions impacting floodplains and wetlands and carefully evaluate alternative sites or actions. In order to accomplish this objective, offices and divisions initiating actions or proposals covered by this policy:

1. Seek flood hazard or wetland information at the earliest feasible stage of planning when alternative sites are being identified and evaluated.
2. Obtain assistance as necessary from other offices and divisions in accordance with their interests and expertise to evaluate the proposed action and to recommend and evaluate alternatives to siting in a floodplain or wetland.
3. Identify and evaluate impacts of alternative sites or alternative actions, obtaining assistance as necessary.
4. Determine, obtaining assistance as necessary through an environmental assessment or an environmental impact statement where appropriate, if an action which affects floodplain or wetland values is the only practicable one and seek the concurrence of the Environmental Quality Staff.
5. Refer to the General Manager such determinations if the Environmental Quality Staff does not concur.

The *Office of Natural Resources* determines whether a proposed action or any part of it will occur in the base floodplain or, where exposure to a lesser degree of flood hazard is desired, a great floodplain; assists in the evaluation of alternatives and measures to minimize adverse impacts on floodplains; and assists in the final determination of what action should be taken. It marks flood height information on TVA property used by the general public as provided in this policy.

It also determines whether a proposed action will affect or support new construction in a wetland, assists in the evaluation of alternatives and measures to minimize adverse impacts on wetlands, and assists in the final determination of what action should be taken.

The *Office of Natural Resources, Environmental Quality Staff,* reviews and evaluates, in consultation with the Office of the General Counsel, the determination of the initiating office or division that location in a floodplain or wetland is the only practicable alternative; and approves monitoring plans, if any, for such actions. It is generally responsible for overseeing implementation of the policy within TVA, relying on the technical expertise of the Divisions of Air and Water Resources and Land and Forest Resources. It assists offices and divisions in determining whether more detailed guidelines are necessary.

The *Office of Economic and Community Development* assists offices in determining whether a proposed action is consistent with local floodplain regulations and in determining what action should be taken if the proposed action is inconsistent with those regulations.

The *Office of the General Counsel* advises on the legal aspects of the evaluation of impacts and determination of the final action to be taken. It assists in the preparation and review of guidelines to this code.

Procedures for Compliance With the National Environmental Policy Act

Title

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Environmental Review Procedures

1.0 Purpose

These procedures provide guidance for compliance by the Tennessee Valley Authority (TVA) with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq. (1976) and other applicable guidelines, regulations, and Executive orders implementing NEPA. It is intended to incorporate concepts and implement policies in the regulations promulgated by the Council on Environmental Quality at 40 CFR, parts 1500–1508 (1981).

2.0 Policy

TVA, to the fullest extent possible, incorporates environmental considerations into its decisionmaking processes. In carrying out this policy, these procedures assure that actions are viewed in a manner to encourage productive and enjoyable harmony between man and the environment. Commencing at the earliest possible point and continuing through implementation, appropriate and careful consideration of the environmental aspects of proposed actions is built into the decisionmaking process in order that

adverse environmental effects may be avoided or minimized, consistent with the requirements of NEPA.

3.0 Abbreviations

3.1 CEQ—Council on Environmental Quality
3.2 EA—Environmental Assessment
3.3 EIS—Environmental Impact Statement—D, Draft; F, Final
3.4 NEPA—National Environmental Policy Act
3.5 TVA—Tennessee Valley Authority

4.0 Definitions

The following definitions shall apply throughout these procedures. All other applicable terms shall be given the same meaning as set forth in CEQ's currently effective regulations (see 40 CFR regulations, Part 1508) unless otherwise inconsistent with the context in which they appear.

4.1 "Floodplain" refers to the lowland and relatively flat areas adjoining flowing inland waters and reservoirs or to those areas inundated by the unusual or rapid accumulation or runoff of surface waters from any source. Floodplain generally refers to the base floodplain, i.e., that area subject to a 1 percent or greater chance of flooding in any given year. A flood having a 1 percent chance of occurring in any given year is usually referred to as a 100-year flood.

4.2 "Natural and beneficial floodplain and wetland values" refer to such attributes as the capability of floodplains and wetlands to provide natural moderation of floodwaters, water quality maintenance, fish and wildlife habitat, plant habitat, open space, natural beauty, scientific and educational study areas, and recreation.

4.3 "Practicable" refers to the capability of an action being done within existing constraints. The test of what is practicable depends on the situation involved and should include an evaluation of all pertinent factors, such as environmental impact, economic costs, technological achievability, and public benefit.

4.4 "Wetlands" are those areas inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances do or would support, a prevalence of vegetation or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, mud flats, and natural ponds. Wetlands do not include *temporary* human-made ponds, sloughs, etc., resulting from construction activities.

4.5 "Important farmland" includes prime farmland, unique farmland, and farmland of State-wide importance as defined in 7 CFR Part 657 (1981).

5.0 Procedures

5.1 Action Formulation and NEPA Determination

Each office within TVA is responsible for integrating environmental considerations into its planning and decisionmaking process at the earliest possible time to ensure that potential environmental effects are appropriately considered to avoid potential delays and to minimize potential conflicts. Environmental analyses are to be included in or circulated with and reviewed at the same time as other planning documents. This responsibility is to be carried out in accordance with the environmental review procedures contained herein.

The General Manager and Board of Directors are the major decision points within the Agency for TVA's principal programs that are likely to have a significant effect on the quality of the human environment. Alternatives considered by the General Manager and Board of Directors shall be encompassed by the range of alternatives discussed in relevant environmental documents, and the General Manager and Board of Directors shall consider the alternatives described in relevant EISs.

At the earliest possible time the office proposing to initiate an action will initially determine the level of environmental review required for a specific action. The level of review will be in one of the following categories:

	Procedure
Categorical Exclusions	5.2
Environmental Assessments	5.3
Environmental Impact Statements	5.4

5.2 Categorical Exclusions

Categories of actions listed in this section are those which do not normally have, either individually or cumulatively, a significant impact on the quality of the human environment and require neither the preparation of an EA nor an EIS. The office proposing to initiate an action shall determine, in consultation with the Environmental Quality Staff as appropriate, whether or not the proposed action is categorically excluded. An action which would normally qualify as a categorical exclusion shall not be so classified if: (1) the proposed action could have a potentially significant impact on a threatened or endangered species, wetland or floodplain, cultural or historical resource, important farmland, or other environmentally significant resource; or (2) substantial controversy over the significance of the environmental impacts associated with the proposed action has developed or is likely to develop. Categorical exclusion action are:

1. Routine operation, maintenance, and minor upgrading of existing TVA facilities.
2. Technical and planning assistance to State and local organizations.
3. Personnel actions.
4. Procurement activities.
5. Accounting, auditing, financial reports, and disbursement of funds.
6. Contracts or agreements for the sale, purchase, or interchange of electricity.
7. Activities related to the promotion and maintenance of employee health.
8. Activities of TBA's Equal Employment Opportunity staff.
9. Administrative actions consisting solely of paperwork.
10. Communication, transportation, computer service, and other office services.
11. Property protection, law enforcement, and other legal activities.
12. Emergency preparedness.
13. Preliminary planning, studies, or reviews consisting of only paperwork.
14. Exploration for uranium, including hydrologic investigations.
15. Preliminary onsite engineering and environmental studies for future power generating plants and other energy-related facilities.
16. Establishment of environmental quality monitoring programs and field monitoring stations.
17. Transmission line relocation, tap ins, or modifications or substation alterations fue to conflicts such as new highway projects and projects requiring acquisition of minor amounts of additional substation property or transmission line right-of-way easements.
18. Construction and operation of communication facilities (i.e., powerline carrier, insulated overhead ground wire, VHF radio, and microwave).
19. Backslope agreements involving properties on which TVA holds an interest between operators and other adjacent mining companies.
20. Purchase, exchange, lease or sale, or lease purchase of stepdown facilities, transmission lines, and transmission line rights of way by distributors or customers directly served by TVA.
21. Minor research, development, and joint demonstration projects.

22. Construction of visitor reception centers.

23. Development of minor TVA public use areas and stream access points.

24. Minor non-TVA activities on TVA property authorized under contract or license, permit and covenant agreements, including utility crossings, encroachments, agricultural uses, rental of structures, and sale of miscellaneous structures and materials from TVA land.

25. Purchase, sale, abandonment or exchange of minor tracts of land, mineral rights, or landrights.

26. Approvals under Section 26a of the TVA Act of minor structures, boat docks, and shoreline facilities.

27. Any action which does not have a primary impact on the physical environment.

28. Actions which were the subject of an EA which concluded that the category of such actions should be treated as a categorical exclusion.

5.3 Environmental Assessments

5.3.1 Purpose and Scope

An EA will be prepared for any appropriate action not qualifying as a categorical exclusion to determine whether an EIS is necessary or a Finding of No Significant Impact should be reached. An EA is not necessary if it has been determined that an EIS will be prepared.

5.3.2 Public Participation in EA Preparation

The Environmental Quality Staff or the initiating office, in consultation with the Environmental Quality Staff, Citizen Action Office, and other interested offices, may request public involvement in the preparation of the EA or a revision or supplement thereof. The type of and format for public involvement would be selected as appropriate to best facilitate timely and meaningful public input to the EA process.

5.3.3 EA Preparation

The initiating office is responsible for the preparation of the EA. As soon as practical after the decision to prepare an EA is made, the initiation office in consultation with the Environmental Quality Staff shall determine the need for a coordination meeting to define (1) reasonable alternatives, (2) permit requirements, (3) coordination with other agencies, (4) environmental issues, and (5) a schedule for EA preparation.

The EA will include the identification and, as appropriate, discussion of questions and concerns raised during the public input period, if any. The EA will describe the proposed action and will include brief discussions of the need for the proposed action, reasonable alternatives, the environmental impacts of the proposed action and alternatives, measures (if any) to minimize or mitigate such impacts, and a listing of the agencies and persons consulted. A list of required permits and environmental commitments will be circulated with the EA.

The EA will briefly provide sufficient data and analysis for determining whether to prepare an EIS or Finding of No Significant Impact. The EA will be reviewed by the Environmental Quality Staff and other interested offices. After completion of the review, the Environmental Quality Staff will, in consultation with the Office of the General Counsel, make one of the following determinations: (1) The action does not require the preparation of an EIS, (2) the action will require the preparation of an EIS, or (3) the EA is incomplete or the decision will be deferred until a later stage in the planning process. Measures (if any) to minimize or mitigate impacts committed to in the EA will be implemented as described in section 5.5 (Mitigation Commitment Identification, Auditing, and Reporting).

5.3.4 Finding of No Significant Impact

If it is concluded, based on an EA, that a proposed action does not require the preparation of an EIS, the Environmental Quality Staff, in consultation with the Office of the General Counsel and the initiating office, will prepare a Finding of No Significant Impact.

Appropriate notice of Findings of No Significant Impact shall be made available to the public by the Environmental Quality Staff.

In the following circumstances, the Environmental Quality Staff, in consultation with the Office of the General Counsel and the initiating office, will make a Finding of No Significant Impact available for public review and comment (including, if appropriate, State and regional A-95 clearinghouses or other designated State/local coordination points) for a period of time (normally 30 days) before a final determination is made as to whether or not to prepare an EIS and before the proposed action may begin:

1. The proposed acttion is, or is closely similar to, an action listed in section 5.4.1.

2. TVA has previously announced that the proposed action would be the subject of an EIS.

3. The nature of the proposed action is one without precedent.

5.3.5 Generic EAs

For any category of actions not described in section 5.2 (Categorical Exclusions), the initiating office may prepare a generic EA. The generic EA will be prepared, reviewed, and approved as would any other EA. Upon completion of review, the Environmental Quality Staff, in consultation with the Office of the General Counsel, will determine whether or not the category of actions may normally be treated as if listed in section 5.2 as a categorical exclusion.

5.3.6 Revisions and Supplements

If new information concerning action modifications, alternatives, or probable environmental effects becomes available, the initiating office, in consultation with the Environmental Quality Staff and the Office of the General Counsel, will consider preparing a revision or supplement to the EA based on the significance of the new information.

5.4 Environmental Impact Statements

5.4.1 Purpose and Scope

The following actions normally will require an environmental impact statement:

1. Large water resource development and water control projects.

2. Major power generating facilities.

3. Uranium mining and milling complexes.

4. Any major action, the environmental impact of which is expected to be highly controversial.

5. Any other major action which will have a significant effect on the quality of the human environment.

An EIS should include a description and an analysis of the proposed action; alternatives to the proposed action, including the no-action alternative; probable environmental impacts associated with the proposed action and measures (if any) to minimize impacts; and a list of the major preparers of the EIS. The scope and detail of the EIS should be reasonably related to the scope and the probable environmental impacts of the proposed action and alternative actions (see 40 CFR Parts 1502.10–1502.18).

5.4.2 Lead and Cooperating Agency Determinations

As soon as possible after the decison is made to prepare an EIS, the Environmental Quality Staff, in consultation with the initiating office and the Office of the General Counsel, shall consider requesting other Federal, State, or local agencies to participate in

the preparation of the EIS as lead, joint lead (see 40 CFR 1501.5), or cooperating agencies (see 40 CFR 1501.6). If TVA is requested to participate in the preparation of another Federal agency's EIS, the General Manager will determine if TVA will become a cooperating agency.

5.4.3 Scoping Process

As soon as possible after the decision to prepare an EIS is made, the initiating office will organize a scoping committee to tentatively identify action alternatives, probable environmental issues and environmental permits, and a schedule for EIS preparation. The scoping committee will consist of representatives of the Environmental Quality Staff, the initiating office, the Office of the General Counsel, Citizen Action Office, and other interested or affected offices.

The scoping process may include interagency scoping sessions to coordinate an action with and obtain inputs from other interested agencies, and public scoping sessions to obtain input from interested members of the general public. The scoping committee will determine the need, nature, and format for the various scoping sessions. Session type and format will be selected to facilitate timely and meaningful input into the EIS process.

As soon as practicable in the scoping process, the initiating office will prepare and the Environmental Quality Staff, in consultation with the Ofice of the General Counsel, will review and make available a Notice of Intent to Prepare an EIS. This notice will briefly describe the action, reasonable alternatives thereto, and potential environmental impacts associated with the action. In addition, those issues which have tentatively been determined to be insignificant and which will not be discussed in detail in the EIS may be identified. The scoping process will be described and, if a scoping meeting will be held, the notice should state where and when the meeting is to occur. The notice will identify the person in TVA who can supply additional information about the action and to whom comments should be sent. There will normally be a public input period of 30 days from the date of publication of the Notice of Intent in the **Federal Register** to allow other interested agencies and the public an opportunity to review the action alternatives and probable environmental issues identified by the scoping committee. On the basis of input received, the Environmental Quality Staff, in consultation with the scoping committee, may determine what, if any, additions or modifications in the scoping process of schedule are required and establish the scope in the EIS.

At the close of the scoping process, the Environmental Quality Staff, in consultation with the scoping committee, will identify in writing the following EIS components:

1. Key action alternatives.
2. Significant environmental issues to be addressed in detail.
3. Probable nonsignificant environmental issues that should be mentioned but not addressed in detail.
4. Lead and cooperating agency assignments, if any.
5. Related environmental documents.
6. Other environmental review and consultation requirements.
7. Delegation of DEIS work assignments to interested offices.

5.4.4. DEIS Preparation

Based on information obtained and decisions made during the scoping process, the initiating office, in consultation with the Environmental Quality Staff and other interested offices, will prepare the preliminary DEIS using an appropriate format (see 40 CFR 1502.10). In addition, a list of required permits and an environmental commitment list will be prepared and circulated with the DEIS. The preliminary DEIS will be circulated by the initiating office to th Environmental Quality Staff, the Office of the General Counsel, and other interested offices for review and comment. All reviewing offices will, as soon as practical and normally within 30 days, supply comments on the preliminary DEIS to the initiating office, the Environmental Quality Staff, and the Office of the General Counsel. These comments will include lists of agencies, A-95 contacts or other State/local coordination points, and groups and individuals (both proponents and opponents, if any, of the proposed action) who should receive a copy of the DEIS. After the preliminary DEIS is revised, the initiating office will transmit it to other interested offices for their final approval. The Environmental Quality Staff will, in consultation with the Office of the General Counsel, review the document and transmit it and the commitment list to the General Manager for approval.

5.4.5 DEIS Transmittal and Review

Upon notification of approval from the General Manager, TVA will transmit the DEIS and appropriate notices to the Environmental Protection Agency (EPA) and other interested Federal, State, and local agencies (including State and regional A-95 clearinghouses or other State/local coordination points). The Citizen Action Office will coordinate overall DEIS distribution and will maintain a master list of those to whom the DEIS is sent. The length of the DEIS public comment period, normally no less than 45 days from publication of the notice of availability in the **Federal Register**, will be determined by the scoping committee. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including CEQ.

At any time in the DEIS process the initiating office, in consultation with Environmental Quality Staff, the Citizen Action Office, and other interested offices, may provide for additional public involvement to supplement EIS preparation. The type of and format for public involvement will be selected as appropriate to best facilitate timely and meaningful public input into the EIS process.

5.4.6 FEIS Preparation

At the close of the DEIS public review period, the Environmental Quality Staff will, in consultation with the initiating office and other interested offices, determine what is needed for the preparation of an FEIS. If the requisite changes in the DEIS are limited to making minor factual corrections and explaining why the comments received do not warrant further response, an errata sheet containing only DEIS comments, responses, and factual corrections in the DEIS may be prepared by the initiating office. If other more extensive modifications are required, the initiating office will, in consultation with the Environmental Quality Staff and other interested offices, prepare a preliminary FEIS utilizing an appropriate format (see 40 CFR 1502.10). The errata sheet or preliminary FEIS will be prepared and circulated by the initiating office to the Environmental Quality Staff, Office of the General Counsel, and other interested offices for review and comment. All reviewing offices will supply written comments concerning the errata sheet or preliminary FEIS to the initiating office with copies to the Environmental Quality Staff and Office of the General Counsel.

The initiating office, with the assistance of the Environmental Quality Staff, will review all comments received and modify, as appropriate, the errata sheet or the preliminary FEIS. After the errata sheet or preliminary FEIS is revised, the initiating office will transmit it to other interested offices for their

final approval. The Environmental Quality Staff will, in consultation with the Office of the General Counsel, review the document and transmit it to the General Manager for approval along with a list of environmental commitments made in the EIS. Measures (if any) to minimize or mitigate impacts committed to in the FEIS will be identified and implemented as described in section 5.5 (Mitigation Commitment Identification, Auditing, and Reporting).

5.4.7 FEIS Transmittal

Upon notification of approval from the General Manager, TVA will transmit the FEIS and appropriate notices to EPA and other Federal, State, and local agencies (including State and regional A-95 clearinghouses or other State/local coordination points) to whom copies of the DEIS were sent. The FEIS will also be sent to every person and organization to whom copies of the DEIS were sent or from whom comments were received.

5.4.8 Commencement of Action

Except in emergency circumstances, an action for which an EIS has been approved will not commence until 30 days after notice of availablity of the final statement has been published in the **Federal Register** or 90 days after a notice of availability of the DEIS has been published in the **Federal Register**, whichever is later.

5.4.9 Record of Decision

After release of the FEIS, a Record of Decision shall be prepared for the General Manager by the Environmental Quality Staff, in consultation with the Office of the General Counsel and the initiating office. The record will normally include the following: (1) What the decision was; (2) what alternatives were considered; (3) which alternative(s) was considered to be environmentally preferable; (4) the alternatives' associated environmental considerations (which may include a discussion of measures to be taken to mitigate or minimize adverse environmental impacts (see 40 CFR 1505.2); and (5) what monitoring, reporting, and administrative arrangements have been made (see 40 CFR 1505.2). Records of decision will be made available to the public.

5.4.10 Revisions and Supplements

If significant new information concerning action modifications, alternatives, or probable environmental effects becomes available, TVA will make such information available to the public. The initiating office shall consider preparing a revision or a supplement to the EIS. The Enviornmental Quality Staff will, in consultation with the initiating office, Office of the General Counsel, Citizen Action Office, and other interested offices, determine the method of making such information available to the public.

5.4.11 EIS Adoption

TVA may adopt as its final EIS another EIS or any portion thereof whether or not TVA participated in its preparation. The Environmental Quality Staff and the Office of the General Counsel, in consultation with the initiating office, will determine if the EIS proposed for adoption adequately assesses the TVA action and is still generally available to the public.

If it is determined that the EIS proposed for adoption or the relevant portion thereof is adequate and still available, TVA will circulate its written finding of this determination and advise that copies of the EIS will be sent to any person or agency requesting it. If the EIS is not available, TVA will then circulate, along with its written finding, the adopted EIS (or relevant portion) or a summary thereof (see 40 CFR 1502.12).

If the EIS is generally available and TVA determines that significant supplementary information is needed, TVA will prepare and circulate a supplement to the EIS and advise that copies of the adopted EIS will be sent to any person or agency requesting it. If the EIS is not generally available, TVA will circulate its supplement along with either the adopted EIS or a summary thereof (see 40 CFR 1502.12). The above findings or documents shall be approved and circulated in accordance with section 5.4.5. or 5.4.7, as appropriate.

5.5 Mitigation Commitment Identification, Auditing and Reporting

All significant measures planned to minimize or mitigate expected environmental impacts shall be identified in the EA or EIS (or, as appropriate, in a memorandum documenting the Environmental Quality Staff's determination or concurrence that a proposed action is a categorical exclusion) and compiled in a commitment list. The commitment list will include, to the extent parcticable, the estimated cost of each commitment. The commitment list is prepared for both the draft and final EA or EIS and should be developed in cooperation with the Environmental Quality Staff and all interested offices.

Each such commitment in the commitment list will be tentatively assigned by the initiating office of the appropriate responsible office and such assignments shall be transmitted to the Environmental Quality Staff and affected offices at the time the draft EA or EIS is sent out for review. The initiating office should consult with the assigned offices to resolve assignment conflicts, indentify supporting offices, and determine commitment schedules. Prior to finalization of the commitment list, the initiating office shall obtain Environmental Quality Staff concurrence that commitments can be monitored for compliance. At the time of finalizing the EA or EIS, the initiating office shall submit to the Environmental Quality Staff a finalized commitment list.

The initiating office shall report, periodically and upon request to the Environmental Quality Staff the status of a commitment. The Environmental Quality Staff will ensure that commitments are met and will, as it deems appropriate, audit commitment progress. Circumstances may arise which warrant modifying or deleting previously made commitments. When such circumstances occur, the office desiring the change shall submit to the Environmental Quality Staff and the initiating office a request which shall include the basis for changing or deleting the commitment and an evaluation of the environmental significance of the requested change. The decision to modify or delete the commitment will be made by the Environmental Quality Staff in consultation with the Office of the General Counsel and the initiating office.

5.6 Emergency Action

Because of unforeseen situations or emergencies, or through inadvertence, or for other reasons, some of the steps outlined in these procedures may be consolidated, modified, or omitted. The Environmental Quality Staff and the Office of the General Counsel shall be promptly notified and asked to approve any such consolidation, modification, or omission, and may do so if such change would conform to legal requirements and substantially comply with the intent of these procedures. The Environmental Quality Staff, in consultation with the Office of the General Counsel, will consult with CEQ when appropriate before such changes are approved.

5.7 Floodplains and Wetlands

5.7.1 Purpose and Scope

Consistent with Executive Order Nos. 11988 (Floodplain Management) and 11990 (Protection of Wetlands), andTVA Code IX Floodplain Management and Protection of Wetlands, the review of a proposed action undertaken in

accordance with sections 5.2, 5.3, or 5.4 of these procedures that potentially may affect floodplains or wetlands shall include a floodplain or wetlands evaluation as required by this section. A wetland evaluation is not required for (1) the issuance of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal lands; (2) projects or programs under construction or in operation as of May 24, 1977; (3) projects for which all funds were appropriated through June 1977; or (4) projects for which a draft or final EIS was filed before October 1, 1977. Moreover, no reevaluation of floodplain or wetland impacts is required for projects, programs, and policies approved by TVA before July 23, 1979.

5.7.2 Evaluation Process

5.7.2.1 Area of Impact

If a proposed action will potentially occur in or affect wetlands or floodplains, the initiating office, as soon as practicable in the planning process, will request the Office of Natural Resources to determine whether the proposed action will occur in or affect a wetland or floodplain and the level of impact, if any, on the wetland or floodplain. If the Office of Natural Resources determines that the proposed action (1) is outside the floodplain or wetland, (2) has no identifiable impacts on a floodplain or wetland, *and* (3) does not directly or indirectly support floodplain development or wetland alteration, further floodplain or wetland evaluation shall be unnecessary.

5.7.2.2 Actions That Will Affect Floodplains or Wetlands

When a proposed action can otherwise be categorically excluded under section 5.2, no additional floodplain or wetland evaluation is required if (1) the initiating office determines that there is no practicable alternative that will avoid affecting floodplains or wetlands and that all practical measures to minimize impacts to floodplains or wetlands are incorporated, *and* (2) the Office of Natural Resources determines that impacts on the floodplain or wetland would be minor.

If the action requires an EA or an EIS, the ensuing evaluation shall consider (1) the effect of the proposed action on natural and beneficial floodplain and wetland values, and (2) alternatives that would eliminate or minimize such effects. The initiating office shall determine if there is no practicable alternative to siting in a floodplain or constructing in a wetland. If the Environmental Quality Staff in consultation with the Office of the General Counsel concurs, this determination shall be final. If a determination of no practicable alternative is made, all practical measures to minimize impacts on the floodplain or wetland shall be implemented.

If at any time prior to commencement of the action it is determined that there is a practicable alternative that will avoid affecting floodplains or wetlands, the proposed action shall not proceed.

5.7.2.3 Public Notice

Public notice of actions affecting floodplains or wetlands is not required if the action is categorically excluded under section 5.2. If an EA or EIS is prepared and a determination of no practicable alternative is made in accordance with section 5.7.2.2, the initiating office shall notify the public of a proposed action's potential impact on the floodplain or wetland.

Public notice of actions affecting floodplains or wetlands may be combined with any notice published by TVA or another Federal agency if such a notice generally meets the minimum requirements set forth in this section. Issuance of a draft or final EA or EIS for public review and comment will satisfy this notice requirement.

Public notices shall at a minimum (1) briefly descrie the proposed action and the potential impact on the floodplain or wetland; (2) birefly identify alternative actions considered and explain why a determination of no practicable alternative has been proposed; (3) briefly discuss measures that would be taken to minimize or mitigate floodplain or wetland impacts; (4) state when appropriate whether the action conforms to applicable State or local floodplain protection standards; (5) specify a reasonable period of time within which the public can comment on the proposal; and (6) identify the TVA official who can provide additional information on the proposed action and to whom comments should be sent.

Such notices shall be issued in a manner designed to bring the proposed action to the attention of those members of the public likely to be interested in or affected by the action's potential impact on the floodplain or wetland. The initiating office, in consultation with the Environmental Quality Staff and the Citizen Action Office, shall determine the manner in which the notice will be made available to the public. Typical ways of providing public notice include direct mailing, posting in appropriate places in the vicinity of the proposed action, publication in the **Federal Register**, or publication in newspapers of general circulation in the area of the proposed action. If a floodplain public notice is required, a copy of such notice shall be included in information sent to State and regional clearinghouses for those actions subject to Office of Management and Budget Circular A-95 or other State/local coordination points.

TVA shall consider all relevant comments recived in response to a notice and shall reevaluate the action as appropriate to take such comments into consideration. The Environmental Quality Staff, in consultation with the initiating office, shall determine if response is necessary and the initiating office, in coordination with other interested offices, shall prepare comment responses. The Environmental Quality Staff, in consultation with the Office of the General Counsel, shall approve all comment responses before release.

A proposed action may not be implemented before publication of any required public notice and appropriate consideration of any relevant comments received in a timely manner.

5.7.2.4. Disposition of Real Property

When TVA property in a floodplain or wetland is proposed for lease, easement, license, right of way, or disposal to non-Federal public or private parties and the action will not result in distrubance of the floodplain or wetland, floodplain or wetland evaluation is not required. The conveyance document, howelver, shal specify:

1. Appliclable restricted uses under Federal, State, or local floodplain and wetland regulations.

2. Other appropriate restrictions to minimize destruction, loss, or degradation of floodplains and wetlands and to preserve and enhance their natural and beneficial values, except when prohibited by low or uneforceable by TVA or, otherwise, the property shall otherwise be witheld from conveyance or use.

If the disposition of TVA property rights in a floodplain or wetland potentially will result in disturbance to the floodplain or wetland, the proposed action shall be reviewed in accordance with sections 5.7.2.1.–5.7.2.3.

5.8 Miscellaneous Procedures

5.8.1. Proposals for Legisaltion

Proposals for congressional legislation significantly affecting the quality of the human environment will require the preparation of an EIS (see 40 CFR 1506.8).

5.8.2. Private Applicants

In those cases when private applicants or other non-Federal entities propose to undertake an action that will require TVA's approval or involvement and fall within the scope of these procedures, the contacted office will as soon as possible notify the Environmental Quality Staff. Each office will maintain information to advise potential applicants of studies or other data that may be required in connection with applications and will take reasonable steps to publicize accessibility of such informatin. The office charged with initiating action, upon the applicant's request, will in consultation with the Environmental Quality Staff when practicable advise the applicant of the information or studies (including the preparation of environmental documents, if necessary) that will be required in order to fulfill its responsibilities hereunder. The appliciant must provide TVA sufficient information to allow an accurate determination of the environmental impacts of the poposed action. TVA may require that this information be submitted in the form of a written environmental report. If TVA is required to make investigations or otherwise incur additional expenses, the applicant may be charged for TVA's service. The Environmental Quality Staff, in consultation with the Office of the General Counsel, will also determine the need to consult early with appropriate Federal, State, and local agencies (including State and regional A-95 clearinghouses or other State/local coordination points);Indian tribes; and other interested persons regarding TVA's involvement in or approval of the applicant's proposed action and, where appropriate, should commence such consultation at the earliest practicable time.

5.8.3. Non-TVA EISs

The Environmental Quality Staff, in consultation with other interested offices, will coordinate the review of EISs provided to TVA for review by other Federal agencies. The Environmental Quality Staff, in consultation with the Office of the General Counsel, will prepare comments on such EISs and transmit any TVA comments to the initiating agency (see 40 CFR 1503.2-1503.3).

5.8.4 Supplemental Instruction

The Environmental Quality Staff, in consultation with interested offices and with concurrence of the Office of the General Counsel, may issue supplemental or explanatory instructions to these procedures.

5.8.5 Modifications of These Procedures

The assignments to offices in these procedures can be modified by agreement of the offices involved or by instructions from the General Manager.

5.8.6 Tiering

An initiating office may consider tiering the environmental review of a proposed action. Tiering involves coverage of general matters in broader environmental documents and subsequent narrower analyses need only incorporate by reference the broader analyses (see 40 CFR 1508.28).

5.8.7 Combining Documents

Any environmental document may be combined with any other document to reduce duplication and paperwork.

5.8.8 Applicability to Ongoing Actions

These procedures shall not apply to those actions which have been approved under applicable procedures prior to the effective date of these procedures or for which an EA or a DEIS has already been prepared. No environmental documents need be redone by reason of the adoption of these revised procedures.

5.8.9 Consolidation of Reviews

Review of proposed actions under these procedures may be consolidated with other reviews where such consolidation would reduce duplication or increase efficiency.

5.8.10 Documents

The Environmental Quality Staff shall keep on file all final and approved environmental documents.

5.8.11 Substantial Compliance

Minor deviations from these procedures will be permitted, but in all respects substantial compliance must be achieved. Flexibility is the key to implementing these procedures and reviewing proposed actions.

5.8.12 Reducing Paperwork and Delay

These procedures are to be interpreted and applied with the aim of reducing paperwork and the delay associated with both assessment and implementation of a proposed action. In this regard, data and analyses shall be commensurate with the importance of associated impacts. Less important material should be summarized, consolidated, or referenced.

5.8.13 Office Responsible for NEPA Compliance Efforts

The Director of the Environmental Quality Staff is designated as that person responsible for overall NEPA compliance.

5.8.14 Status Reports

Information or status reports on EISs and other related NEPA compliance activities and doucments may be obtained by writing to the Director of Environmental Quality, Tennessee Valley Authority, Knoxville, Tennessee 37902.

5.8.15 Public Participation

TVA's policy is to encourage public participation in all of its decisionmaking. This policy is implemented through various mechanisms. TVA has open meetings of the Board of Directors. These Board meetings are widely publicized and include a question and answer session between the public and Board of Directors. TVA has established a Citizen Action Office whose responsibility is to maximize to the extent practicable the interchange of ideas between TVA and the public in the full range of TVA activities. In addition, TVA has set up a "Citizen Action Line" which allows members of the public to call in on toll-free lines to ask questions and make suggestions or comments to TVA. In line with TVA's broad policies, TVA intends to encourage and actively seek public participation in its NEPA review process. The type of and format for public participation will be selected as appropriate to best facilitate timely and meaningful public input into the review process.

[FR Doc. 82-33051 Filed 12-2-82; 8:45 am]
BILLING CODE 8120-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 233
Friday, December 3, 1982

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

DATE AND TIME: Tuesday, December 7, 1982, 9:30 a.m. (eastern time).

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:

1. Ratification of Notation Vote/s.
2. Report on Commission Operations (Optional).
3. Proposed Contract for Computer Communications Services.
4. Freedom of Information Act Appeal No. 82-9-FOIA-178, concerning a request for comments submitted by federal agencies on federal sector discrimination complaint process.
5. Freedom of Information Act Appeal No. 82-10-FOIA-90-ME, concerning a request for information from an open Title VII investigative file.
6. Freedom of Information Act Appeal No. 82-08-FOIA-66-CH, concerning a request for documents contained in a closed Title VII case file.
7. Freedom of Information Act Appeal No. 82-10-FOIA-135-MK, concerning a request for investigator's memorandum contained in a case file.
8. Freedom of Information Act Appeal No. 82-7-FOIA-105-NY, concerning a request for documents from an age discrimination case file.
9. Freedom of Information Act Appeal No. 82-9-FOIA-201, concerning a request for Sears Personnel Manual.
10. Freedom of Information Act Appeal No. 82-10-FOIA-203, regarding a request for documents denied on a proposed DOL regulation.
11. Joint Department of Justice-EEOC Regulation, "Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance." (Title VI/Title VII Rule)
12. Annual Report on Coordination of Federal Agency Equal Employment Opportunity Programs, July 1, through June 30, 1982.

Note.—In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

This Notice Issued November 30, 1982.

[S-1750-82 Filed 12-1-82; 10:45 am]

BILLING CODE 6570-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, November 29, 1982, the corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. William E. Martin, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a request by the Comptroller of the Currency for a report on the competitive factors involved in a proposed merger of The National Bank and Trust Company of Norwich, Norwich, New York, and The National Bank of Oxford, Oxford, New York.

By the same majority vote, the Board further determined that Corporation business required, on less than seven days' notice to the public, the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the closed meeting held at 2:30 p.m. the same day, of the following matter:

Application of United Mutual Savings Bank, Tacoma, Washington, for consent to transfer certain assets to Island Savings and Loan Association, Oak Harbor, Washington, a non-FDIC-insured institution, in consideration of the assumption of liabilities for the deposits made in the Port Angeles Branch of United Mutual Savings Bank.

In voting to move this matter from open session to closed session, the Board further determined, by the same majority vote, that the public interest did not require consideration of the matter in a meeting open to public observation and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552 b(c)(6), (c)(8) and (c)(9)(A)(ii)).

By the same majority vote, the Board further determined that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of The Bank of Tallassee, Tallassee, Alabama, an insured State nonmember bank, for consent to merge, under its charter and title, with Bank of Eclectic, Eclectic, Alabama, and to establish the sole office of Bank of Eclectic as a branch of the resultant bank.

Application of People's Savings Bank—Bridgeport, Bridgeport, Connecticut, an insured mutual savings bank, for consent to merge, under its charter and title, with National Savings Bank, New Haven, Connecticut, and to establish the five offices of National Savings Bank as branches of the resultant bank.

Application of Florida Coast Bank, Pompano Beach, Florida, an insured State nonmember bank, for consent to merge, under its charter and title, with Deer Creek Bank, Deerfield Beach, Florida, and to establish the two offices of Deer Creek Bank as branches of the resultant bank.

Application of South Norwalk Savings Bank, South Norwalk, Connecticut, for consent to purchase the assets of and assume the liability to pay deposits made in two branch offices of The Connecticut Bank and Trust Company, Hartford, Connecticut, and in three branch offices of The State National Bank of Connecticut, Bridgeport, Connecticut, and to establish those five offices as branches of South Norwalk Savings Bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,502-L (Amended)—Banco Economias, San German, Puerto Rico

Case No. 45,507-L—Aquia Bank and Trust Company, Stafford, Virginia
Memorandum re: Purchase of additional space in the Ecker Square Office Condominium, San Francisco, California.
Memorandum re: Division of Liquidation regional office space in Atlanta.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: November 30, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1751-82 Filed 12-1-82; 11:22 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, November 29, 1982, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. William E. Martin, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of United Central Bank & Trust Company of Algona, Algona, Iowa, for consent to purchase the assets of and assume the liability to pay deposits made in Bode State Bank, Bode, Iowa, and Exchange State Bank, Wesley, Iowa, and for consent to establish the sole offices of Bode State Bank and Exchange State Bank as branches of United Central Bank & Trust Company of Algona.
Notices of acquisition of control of three insured State nonmember banks (names and locations of banks and names of acquiring parties authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).
Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:
Case No. 45,508-L—Security Bank and Trust Company, Cairo, Illinois

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 30, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1752-82 Filed 12-1-82; 11:22 am]

BILLING CODE 6714-01-M

4

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 52844, Tuesday, November 23, 1982.

PLACE: Board Room, Sixth floor, 1700 G Street, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

CHANGES IN THE MEETING: The following item has been withdrawn from the open portion of the Bank Board meeting scheduled Wednesday, December 1, 1982:

Supervisory Merger of—Guaranty Trust Savings and Loan Association, Memphis, Tennessee, INTO Home Federal Savings and Loan Association, of Memphis, Memphis, Tennessee

[No. 83, December 1, 1982]

[S-1748-82 Filed 12-1-82; 10:32 am]

BILLING CODE 6720-01-M

5

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 52844, Tuesday, November 23, 1982.

PLACE: Board Room, Sixth floor, 1700 G Street, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

CHANGES IN THE MEETING: The Bank Board meeting previously scheduled Wednesday, December 1, 1982, has been cancelled.

[No. 84, December 1, 1982]

[S-1749-82 Filed 12-1-82; 10:33 am]

BILLING CODE 6720-01-M

6

INTERNATIONAL TRADE COMMISSION

[USITC SE-82-53]

TIME AND DATE: 2:30 p.m., Wednesday, December 15, 1982.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigations 701-TA-176/178 (Stainless Steel Bar and Wire Rod from Spain)—briefing and vote.
6. Investigation 337-TA-112 (Certain Cube Puzzles)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1753-82 Filed 12-1-82; 2:31 pm]

BILLING CODE 7020-02-M

federal register

Friday
December 3, 1982

Part II

Environmental Protection Agency

Ore Mining and Dressing Point Source Category Effluent Limitations Guidelines and New Source Performance Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 440

[WH-FRL 2232-1]

Ore Mining and Dressing Point Source Category Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation limits the discharge of pollutants into navigable waters of the United States from exisitng and new sources in the ore mining and dressing industry. The Clean Water Act and a Consent Decree require EPA to issue this regulation.

The purpose of this regulation is to establish "best available technology" limitations (BAT) and "new source performance standards" (NSPS) for direct dischargers. Pretreatment standards for both existing and new sources are not being issued since no known indirect dischargers exist nor are any known to be planned. Effluent limitations for "best conventional technology" (BCT) are reserved pending application of the new BCT cost methodology.

DATES: In accordance with 40 CFR 100.01 (45 FR 26048), this regulation will be considered issued for purposes of judicial review at 1:00 P.M. Eastern time on December 17, 1982. It will become effective January 17, 1983 publication date, except § 440.104(b)(2)(ii) which contains information collection requirements which are under review at OMB.

Under Section 509(b)(1) of the Clean Water Act, any petition for judicial review of this regulation must be filed in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under Section 509(b)(2) of the Clean Water Act, the regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce its requirements.

ADDRESS. Technical information may be obtained from Mr. B. Matthew Jarrett, at the address listed below, or by calling (202) 382-7164. The economic information may be obtained from Mr. John Kukulka, Office of Analysis and Evaluation (WH-586), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, or by calling (202) 382-5388.

On December 24, 1982, copies of the development document and the NSPS economic analysis will be available for public review in EPA's Public Information Reference Unit, Room 2404 (Rear) (EPA Library), 401 M Street SW., Washington, D.C. On February 7, 1983, the complete Record, including the Agency's responses to comments on the proposed regulation will be available for review at the Public Information Reference Unit. The EPA information regulation (40 CFR Part 2) allows the Agency to charge a reasonable fee for copying. Copies of the development document and the economic analysis may also be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703) 487-6000. A notice will be published in the **Federal Register** announcing the availability of these documents from NTIS. (This should occur within 60 days of today's date.)

SUPPLEMENTARY INFORMATION:

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B. Prior EPA Regulations
C. Description of This Regulation
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2. Best Available Technology Economically Achievable (BAT)
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G. Pollutants Excluded by Subcategory and Subpart
H. Subcategories Excluded From Development of BAT or NSPS

I. Legal Authority

The regulations described in this notice are promulgated under authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 et seq., as amended by the Clean Water Act of 1977, P.L. 95-217) (the "Act"). These regulations are also promulgated in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.*, v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979).

II. Scope of This Rulemaking

A. *Overview.* This regulation applies to facilities engaged in mining and processing of metal ores. The industry includes facilities which mine or process the ores of 23 separate metals and is segregated by the U.S. Bureau of the Census Standard Industrial Classification (SIC) into nine major codes: SIC 1011, Iron Ore; SIC 1021, Copper Ores; SIC 1031, Lead and Zinc Ores; SIC 1041, Gold Ores; SIC 1044, Silver Ores; SIC 1051, Aluminum Ore; SIC 1061, Ferroalloy Ores including Tungsten, Nickle, and Molybdenum; SIC 1092 Mercury Ores; SIC 1094 Uranium, Radium, and Vanadium Ores; and SIC 1099 Metal Ores, Not Elsewhere Classified including Titanium and Antimony.

Over 500 active mining and over 150 milling operations are located in the United States and most are in remote areas.

The industry includes facilities that mine ores to produce metallic products and all ore dressing and beneficiating operations at mills operated either in conjunction with a mine operation or at a separate location. A detailed overview of the ore mining industry can be found in the proposed regulation (47 FR 25682).

B. *Prior EPA Regulations.* On November 6, 1975, EPA published interim final regulations establishing BPT requirements for existing sources in the ore mining and dressing industry (see 40 FR 51722). These regulations became effective upon publication. However, concurrent with their publication, EPA solicited public comments with a view to possible revisions. On the same date, EPA published proposed BAT, NSPS, and pretreatment standards for this industry (see 40 FR 51738). Comments were also solicited on these proposals.

On May 24, 1976, as a result of the public comments received, EPA suspended certain portions of the interim final BPT regulations and solicited additional comments (see 41 FR 21191). EPA promulgated revised, final BPT regulations for the ore mining and dressing industry on July 11, 1978, (see 43 FR 29711, 40 CFR Part 440). On February 8, 1979, EPA published a clarification of the BPT regulations as they apply to storm runoff (see 44 FR 7953). On March 1, 1979, the Agency amended the final BPT regulations by deleting the requirements for cyanide applicable to froth flotation mills in the base and precious metals subcategory (see 44 FR 11546).

On December 10, 1979, the United States Court of Appeals for the Tenth Circuit upheld the BPT regulations, rejecting challenges brought by five industrial petitioners. *Kennecott Copper Corp.* v. *EPA,* 612 F. 2d 1232 (10th Cir. 1979).

The Agency withdrew the proposed BAT, NSPS, and pretreatment standards on March 19, 1981 (see 46 FR 17567). On June 14, 1982 the Agency proposed the BAT, BCT, and NSPS limitations and standards which are the subject of this rulemaking.

C. *Description of This Regulation.* As a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a list of toxic substances. Therefore, in this rulemaking, EPA efforts are primarily directed toward ensuring the achievement of limitations based upon the best available technology economically achievable (BAT) by July 1, 1984.

The BPT effluent limitations are included as part of this regulation for the convenience of the reader. Since there are no substantive changes in the BPT effluent limitations as sustained by the 10th Circuit, the BPT effluent limitations are not subject to further judicial review.

BAT limitations are established for seven subcategories in the ore mining and dressing point source category. The BAT effluent limitations are being promulgated as they were proposed on June 14, 1982 (47 FR 25682). The technology basis for BAT is discussed in the proposed regulation and is discussed in greater detail in the development document supporting the proposed regulation and in the development document supporting this final regulation.

BCT effluent limitations are not being promulgated in this rulemaking. As discussed further in Section V, Changes from Proposal, BCT for this point source category is instead being included as part of the proposed regulation on the new BCT cost methodology. (47 FR 49176, October 29, 1982).

NSPS are established for seven subcategories. A NSPS for froth flotation mills extracting copper, lead, zinc, gold, silver, or molybdenum was proposed as zero discharge, but the standard is being amended to allow for a bleed in the mill circuit. Also, the upset and bypass storm provision for new sources requiring zero discharge is being changed and made identical to the provision for existing sources. All other standards of performance and general provisions are established essentially as proposed. This is discussed further in Section V, Changes from Proposal.

Finally, this regulation does not establish pretreatment standards because, as discussed in the proposed regulation, the Agency knows of no existing facilities which discharge to publicly owned treatment works and does not expect that any new sources will do so.

III. Summary of Legal Background

A. *The Clean Water Act.* The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical and biological integrity of the Nation's waters" (Section 101(a)). To implement the Act, EPA was required to issue effluent limitations guidelines, pretreatment standards and new source performance standards for industrial dischargers.

The Act included a timeable for issuing these standards. However, EPA was unable to meet many of the deadlines and, as a result, in 1976, it was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a court-approved "Settlement Agreement." This Agreement required EPA to develop a program and adhere to a schedule in promulgating effluent limitations guidelines and pretreatment standards for 65 "priority" pollutants and classes of pollutants, for 21 major industries. [*See Natural Resources Defense Council, Inc.* v. *Train,* 8 ERC 2120 (D.D.C. 1976), *modified,* 12 ERC 1833 (D.D.C. 1979)].

Many of the basic elements of this Settlement Agreement were incorporated into the Clean Air Water Act of 1977 ("the Act"). Like the Settlement Agreement, the Act stressed control of the 65 classes of toxic pollutants. In addition, to strengthen the toxic control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMP) to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal and drainage from raw material storage associated with, or ancillary to, the manufacturing of treatment process.

Under the Act, the EPA program is to set a number of different kinds of effluent limitations. These are discussed in detail in the proposed regulation and development document. The following is a brief summary:

1. Best Practicable Control Technology Currently Available (BPT). BPT limitations generally are based on the average of the best existing performance at plants of various sizes, ages and unit processes within the industry or subcategory. In establishing BPT limitations, we consider the total control of applying the technology in relation to the effluent reduction derived, the age of equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes and the nonwater-quality environmental impacts (including energy requirements). We balance the total cost of applying the technology against the effluent reduction.

2. Best Available Technology Economically Achievable (BAT). BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters. In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction and nonwater-quality environmental impacts. The Administrator retains considerable discretion in assigning the weight to be accorded these factors.

3. Best Conventional Pollutant Control Technology (BCT). The 1977 Amendments added Section 301(b)(2)(E) to the Act establishing "best

conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(a)(4) [biological oxygen demanding pollutants (e.g., BOD5) total suspended solids (TSS), fecal coliform and pH] and any additional pollutants defined by the Administrator as "conventional," i.e., oil and grease. (See 44 FR 44551: July 30, 1979.)

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two part "cost-reasonableness" test. *American Paper Institute* v. *EPA*, 660 F. 2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the cost of publicly owned treatment works (POTWs) for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50732). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.)

EPA recently proposed a new methodology on October 29, 1982 and simultaneously proposed BCT limitations for ore mining and dressing. (47 FR 49176).

4. New Source Performance Standards (NSPS). NSPS are based on the best available demonstrated technology. New plants have the opportunity to install the best and most efficient production processess and wastewater treatment technologies.

5. *Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS).* Pretreatment standards (PSES and PSNS) are designed to control the discharge of pollutants into publicly owned treatment works. Pretreatment standards were not proposed for the ore mining and dressing category since no known indirect dischargers exist nor are any known to be planned. Ore mines are located in rural areas, generally far from a POTW. EPA expects that the cost of pumping mine and mill wastewater to a POTW would be prohibitive in most cases, and on-site treatment is more cost effective in virtually every instance.

IV. Methodology and Data Gathering Efforts.

The methodology and data gathering efforts used in developing the proposed regulation were discussed in the preamble to the proposal, 47 FR 25682 (June 14, 1982). In summary, before publishing the proposed regulation the Agency conducted a data collection, analytical screening, and analytical verification program for the ore mining and dressing industry. This program stressed the acquisition of data on the presence and treatability of the 65 toxic pollutants and classes of toxic pollutants discussed previously. The 65 toxic pollutants and classes of pollutants potentially include thousands of specific pollutants. EPA selected 129 specific toxic pollutants for study in this rulemaking and other industry rulemakings. (Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants* (U.S. E.P.A., April 1977)). Based on the results of that program, EPA identified several distinct treatment technologies, including both end-of-pipe and in-plant technologies, that are or can be used to treat ore mining and dressing industry wastewaters.

For each of these technologies, the Agency (i) compiled and analyzed historical and newly-generated data on effluent quality, (ii) identified its reliabilities and constraints, (iii) considered the nonwater quality impacts (including impacts on air quality, solid waste generation and energy requirements), and (iv) estimated the costs and economic impacts of applying it as a treatment and control system. Costs and economic impacts of the technology options considered are discussed in detail in two separate documents, *The Economic Impact Analysis of Promulgated New Source Performance Standards for the Ore Mining and Dressing Industry* and *The Economic Impact Analysis of Promulgated BAT Effluent Limitations and Standards for the Ore Mining and Dressing Industry.* A more complete description of the Agency's study methodology, data gathering efforts and analytical procedures supporting the regulation can be found in the *Final Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Ore Mining and Dressing Point Source Category* (U.S. EPA, November 1982).

V. Summary of Promulgated Regulation and Changes From Proposal

The final regulation does not change the proposed BAT regulations but does change the standards for new sources. The changes are the result of the Agency's consideration of public comments provided in response to the proposal and further evaluation of the information upon which the proposal was based.

A. *Subcategorization.* The proposed subcategorization scheme was similar to the subcategorization scheme found in the 1978 BPT regulations. That scheme subcategorizes the industry primarily on the basis of ore type. Each subcategory is further subdivided on the basis of whether the discharge is from a mine or a mill and, in some cases, according to the type of beneficiation process employed. In these final regulations the Agency is retaining the proposed subcategorization scheme with a few modifications resulting from comments received on the proposed regulation.

The 1978 BPT regulations contained a Ferroalloy Ores subcategory that addressed discharges from facilities mining or milling chromium, cobalt, columbium, tantalum, manganese, molybdenum, nickel, tungsten, and vanadium (recovered alone, rather than as a by-product of uranium mining or milling). The BPT regulations also contained a Base and Precious Metal Ores subcategory that addressed the discharges from facilities mining or milling copper, lead, zinc, gold, or silver. Prior to proposing the BAT and NSPS regulations, EPA found that the wastewater discharges from molybdenum mines and mills were more like the discharges from facilities in the Base and Precious Metals Ores subcategory than the discharges from the Ferroalloy subcategory. Consequently the proposed BAT and NSPS regulations placed molybdenum mines and mills into the Base and Precious metals subcategory, which was renamed the Copper, Lead, Zinc, Gold, Silver, Platinum and Molybdenum Ores subcategory. The proposal also eliminated the Ferroalloy subcategory and replaced it with the Nickle Ores subcategory, the Tungsten Ores subcategory, and the Vanadium Ores subcategory (recovered alone, not as a by-product of uranium mining and milling). For clarification, however, the proposal retained the old subcategorization scheme for the BPT limitations.

From the comments received, it is apparent that retention of the old BPT subcategorization scheme for the BPT

limitations has only confused, rather than clarified matters. The commenters suggested that, to eliminate this confusion, the Agency should use an identical subcategorization scheme for all the limitations and standards. Accordingly, in this final regulation, the Agency is eliminating a separate subcategorization scheme for the BPT limitations, and is, instead, using the same scheme for all the BPT, BAT, and NSPS limitations. This change is solely for the purpose of clarification and will not alter in any way the actual numerical limitations which apply to facilities covered by the BPT regulations.

One additional modification to the subcategorization scheme is being made. The Agency is taking platinum ore out of the new Copper, Lead, Zinc, Gold, Silver, and Molybdenum Ores subcategory and establishing a new subcategory for these mines and mills. The Agency received comments that a new platinum mine and mill is being considered that will be substantially different than the existing mines and mills upon which the Agency based best demonstrated technology. The Agency is, therefore, establishing a new subcategory addressing platinum ore mines and mills and is reserving the new source performance standard.

B. Applicability. As discussed in the proposal, the Ore Mining and Dressing effluent guidelines limitations and standards are applicable to facilities discharging wastewater from ore mining and milling operations. They do not, however, provide a complete basis for calculating the limitations of operations known as "complex facilities," which combine wastestreams from processes such as refining and smelting with ore mining and milling wastestreams and then treat this combined stream before discharge. Each facility will be given effluent limitations that are derived from the BAT mine and mill guidelines and the smelter and refining guidelines and other applicable guidelines.

The Agency received voluminous comments from developers of a molybdenum mine and mill in southeastern Alaska. The developers argued that the mill differs substantially from the existing molybdenum mills upon which the Agency based the proposed NSPS. Specifically, they argue that precipitation is greater than at other facilities and that the terrain is unusually steep, necessitating the construction of a dam much larger than tailings impoundments at existing facilities. They further argue that since the mine and mill are located in the environmentally sensitive Misty Fjords National Monument, construction of a massive tailings impoundment may result in greater long term environmental degradation than at existing facilities. In a related vein, they point out that the mine and mill are being developed in accordance with the dictates of the Alaska National Interest Lands Conservation Act (ANILC), which requires an intensive study of the overall environmental impact of the mine and mill before construction begins. Finally, they note that the mine and mill are in an earthquake area, and that construction of a large tailings dam raises concerns for safety of the population below the dam.

The Agency disagrees with the commenter's assertions that the proposed molybdenum mine and mill differ significantly in topography and climate from existing mines and mills. Nevertheless, given the possibility that compliance with the zero discharge NSPS would result in substantial non-water quality environmental impacts, and given the fact these impacts are being subjected to an intense environmental scrutiny, the Agency believes it would be premature to subject the mine and mill to regulation at this time, before the environmental review process is fully completed.

Also, as the Agency stated in the preamble to the BPT regulations and in the proposed regulation for BAT and NSPS, under no circumstances will an owner or operator be required to violate applicable safety standards to meet the requirements of BPT, BAT, or NSPS. As discussed in these regulations, the Agency is confident that the national applicable effluent limitations guidelines and standards of performance do not pose a concern for the overall safety related to the water impoundments that may be required by the regulations. However, it would be premature to regulate this mine and mill before the potential for earthquake and avalanches in a deep mountain terrain has been completely evaluated by Federal and State agencies and others responsible for conducting a thorough study of the impacts of this proposed new mine and mill. Accordingly, the Agency is excluding this mine and mill from the regulations applicable to molybdenum mines and mills, thereby postponing consideration of the appropriate limitations for this facility until the permit proceedings.

The BPT limitations established a subpart for gold placer mines, but reserved effluent limitations because the Agency did not have sufficient technical or economic data. The proposal similarly reserved effluent limitations and standards for the gold placer mine subpart because the data generated prior to proposal were not sufficiently comprehensive.

EPA still has no data upon which to base an economic assessment of gold placer mines and does not have sufficient technical data to promulgate or propose limitations for gold placer mines. The Agency is, therefore, continuing to reserve the subpart for gold placer mines in the promulgated regulation.

C. Best Practicable Technology Limitations. The BPT limitations for the ore mining industry were promulgated in 1978, were completely upheld in the Courts, and are repeated in this regulation solely for clarity. EPA received a few comments which recommended that the Agency relax the current BPT regulations. These comments are discussed in the response to public comments document.

D. Best Available Technology Limitations. EPA proposed BAT limitations equal to the BPT regulations currently applicable to this industry.

The rationale for setting BAT effluent limitations equivalent to BPT effluent limitations is discussed in the proposal (47 FR 25682), the development document supporting the proposed rule, and the development document supporting this final rule. In summary, the Agency established BAT equal to BPT either because BPT already specified zero discharge of process wastewater, or because application of candidate BAT did not reduce the level of the toxic or nonconventional pollutants, or because BPT removed a very high percentage of the relevant pollutants. Almost all the commenters agreed with EPA's decision to propose BAT equal to BPT. Accordingly, the Agency is finalizing the BAT limitations as proposed. The comments addressing the BAT limitation are discussed in the response to public comments document.

E. *Best Conventional Technology Limitations.* The Agency proposed BCT limitations equal to the BPT limitations for conventional pollutants. This was done even though the Agency had not established a new cost effectiveness test for conventional pollutant removal as directed by the Fourth Circuit Court of Appeals decision in *American Paper Institute* v. *EPA*, F. 2d (4th Cir. 1981). In the proposal the Agency reasoned that since BPT is the minimum level of control required by law, no possible reassessment of BCT pursuant to the Court's remand could result in BCT limitations for conventional pollutants less stringent than the BPT limitations.

A number of commenters took issue with the Agency's decision to propose BCT limitations in the absence of a new BCT methodology. The Agency agrees with these criticisms and has accordingly decided to withdraw the BCT limitations proposed on June 14, 1982. Instead, BCT Limitations for the ore mining and dressing point source category are being included as part of the proposed regulation on the new BCT methodology. This proposed regulation was published in the **Federal Register** on October 29, 1982. (47 FR 49176). Comments on the proposed BCT limitations must be submitted during the comment period for the BCT rulemaking.

F. New Source Performance Standards. EPA proposed new source performance standards (NSPS) equal to the BAT limitations for all elements of the ore mining and dressing industry with the exception of froth flotation mills in the copper, lead, zinc, gold, silver, platinum and molybdenum subcategory and the uranium mill subcategory. The Agency proposed NSPS requiring zero discharge for these latter two segments as discussed below.

1. Froth Flotation Mills. The proposed zero discharge requirement for new froth flotation mills was based on the fact that 46 out of 90 existing facilities for which we have data achieve zero discharge through total recycle and evaporation of process wastewater.

Industry commenters raised a number of objections to this proposal. First, they argued that most of the mills achieving zero discharge are in net evaporation areas with flat topography and that it was inappropriate to extrapolate from the treatment performance of mills in these areas to mills located in rainy or mountainous areas. They contended that in rainy or mountainous areas, the costs of constructing the tailings impoundment necessary to achieve zero discharge and the costs of transporting recycle water back to the mill could be prohibitive. They implied that this problem was greatly exacerbated by the proposed storm exemption for new sources, which granted relief to a facility only upon the occurrence of a ten year, twenty-four hour storm.

Second, they argued that EPA improperly assumed that new sources, unlike existing sources, would not experience extensive retrofit costs. They pointed out that the Agency's proposed definition of new source embraces both virgin or "greenfield" facilities and facilities constructed in conjunction with existing sources. These latter facilities, they stated, will incur substantial retrofit costs to achieve zero discharge.

Finally, they asserted that the Agency neglected to take into account the buildup of reagents and other contaminants in the recycle water of a total recycle system. They claimed that these contaminants would interfere with the froth flotation process and cause severe loss of product, necessitating either the addition of fresh make up water or the treatment of the recycle water. They added that treating the recycle water may not always prove to be an effective solution because of the buildup of contaminants from the treatment of the recycle water. They pointed out the Agency had not calculated the costs of treating the recycle water or building the bigger impoundment to hold and recycle the wastewater.

The Agency disagrees with the commenters' first criticism that EPA failed to adequately take into account topographical and climatic constraints in proposing a zero discharge requirement for new sources. Mills currently achieving zero discharge are located in areas ranging from flat to extremely steep and mountainous. Zero discharge is thus demonstrated for a wide spectrum of topographical constraints. Similarly, although the majority of mills achieving zero discharge are located in dry areas, 15 are located in relatively wet areas. Zero discharge is thus demonstrated for wet areas as well as dry areas. Moreover, the standards promulgated for new source froth flotation mills allow a discharge of wastewater equivalent to the net precipitation (precipitation less evaporation) subject to the discharge limitations for mine drainage, e.g. 440.104(2)(i). By permitting the discharge of excess rainwater and runoff, this provision substantially minimizes the effect of climate on a facility's ability to meet zero discharge.

An assumption of the commenters' arguments is that the zero discharge requirement imposes significantly greater costs than the BPT requirement under the same set of topographical, climatic and land availability constraints. Many commenters implied that constructing a tailings pond necessary to achieve zero discharge in mountainous or rainy areas would be much more expensive than constructing a similarly situated pond to meet BPT requirements. Although there might have been some merit to this argument under the Agency's proposed storm exemption for new sources, this is no longer the case. Now that the Agency has amended the proposed storm provision to make it identical to the provision for existing sources, the pond required to meet BPT requirements will be approximately the same size as the pond required to meet zero discharge. (See Development Document for further discussion).

One commenter, whose existing tailings pond is located several miles from the mill and several thousand feet below it, argued that, if this mill were a new source, the costs of recycling water to the mill to achieve zero discharge would prove much more expensive than meeting the BPT requirements. The Agency, however, considers such situations to be extremely rare. If a new source had to operate under similar constraints, the Agency would entertain a petition to modify the new source standard or create a new subcategory for this type of facility.

With respect to industry commenters' second criticism, EPA agrees with their claim that there would be retrofit costs associated with meeting zero discharge where a new source is constructed at the site of an existing source. It is not clear, however, whether this problem is anything but theoretical. EPA specifically asked industry to provide it with examples of construction at the site of an existing source which might constitute a new source under EPA's proposed criteria for "new source" (45 FR 59343, September 9, 1980). After evaluating these examples, EPA has concluded that only one of the examples provided by industry would constitute a "new source" under the proposed criteria—and this example involved construction at a "green field" site. (These examples are specifically discussed in the Response to Comments document). Nevertheless, EPA has redone its economic analysis to embrace situations where construction at the site of an existing source would clearly create a new source (i.e. total replacement of a mill). EPA has concluded that in such situations, the costs of achieving zero discharge will not cause an adverse economic impact.

EPA agrees with the commenters' third contention that we did not adequately consider the buildup of contaminants in the recycle water. Commenters have come forward with data demonstrating that the buildup of reagents and other contaminants can in fact interfere with the extractive process, causing severe loss of product. They have also demonstrated that treatment of the recycle water may not always be an economically viable option for dealing with this interference problem. Unfortunately, this interference is a complex phenomenon, which appears to be related to the characteristics of the ore at particular sites, making it impossible to carve out a subcategory of facilities afflicted with this problem. Accordingly, to

accommodate the problem, the final NSPS contains a special "bleed" provision which will allow facilities to discharge wastewater (subject to the NSPS mine drainage standards) if they can demonstrate to the permitting authority that total recycle would cause a major interference in the extractive metallurgical process and that appropriate treatment of recycle water is not adequate to remedy this interference. This provision will allow such facilities to substitute some fresh water for recycle water as industry stated and their data indicated was necessary, thereby avoiding the losses associated with buildup of contaminants in the recycle water. Specification of the exact amounts of water discharged and the appropriate treatment of recycle water will, of course, be left to the permitting authority. The Agency has, however, evaluated the costs and economic impact of at least two forms of treatment of recycle water. The first is pH adjustment (lime addition) and settling. Assuming a 24-hour retention time and a 10 percent safety factor, the Agency has concluded that the costs of such treatment of recycle water would not be significant enough to deter investment for a new mill with a tailings pond used for primary settling. The Agency has further determined that additional treatment consisting of a mixed media filter would not constitute a barrier to entry for such mills. The development document and economic document supporting this regulation discuss in more detail the Agency's considerations in creating the bleed provision and what treatment was considered as appropriate treatment of recyle water.

2. Uranium Mills. The Agency proposed zero discharge for new uranium mills based on data demonstrating that 18 of 19 existing mills do not discharge wastewater. The single existing mill which discharges, recycles over 80 percent of the requirement for its intake water. Zero discharge for new uranium mills is based on recycle, evaporation, and a combination of recycle and evaporation.

Industry commented that our data represented mills in arid areas and that we did not consider new mills that may locate in areas of high rainfall. They also requested that flexibility should be allowed to accommodate changes in the extractive processes currently used to recover uranium. Finally they commented that we should allow an effluent discharge because such a discharge is considered a valuable commodity in water short areas.

The ability of uranium mills to achieve zero discharge is well demonstrated and is recognized by Federal and State regulating authorities dealing with the uranium industry. It is true that existing uranium mills are located in arid areas. However, we know of no plans for construction of new mills in non-arid areas, although some firms have conducted exploration in such areas. Should any new mills locate in areas of high net precipitation, they can take advantage of the net precipitation provision and the storm exemption. If, despite these provisions, a uranium mill locates in an area where it is impossible to achieve zero discharge the facility can petition the Agency to change NSPS or create a separate subcategory for that type of facility.

The Agency does not believe that it needs to provide any additional flexibility to accommodate changes in the extractive processes used to recover uranium. Industry commenters failed to provide EPA with any information concerning new or different extractive processes. Furthermore, the current regulations only apply to certain identified extractive processes and thus would not apply to processes unrelated to processes used today.

Nor does the Agency believe that the zero discharge requirement will adversely affect water conservation. Even if there were a slight increase in water consumption attributable to compliance with zero discharge, that increase would not be significant when compared to the benefits derived from the use of recycle and evaporation systems. Accordingly, the zero discharge requirement for new uranium mills is promulgated as proposed.

3. *Storm Exemption.* The Agency proposed a storm exemption for new sources subject to zero discharge which would allow a discharge of excess wastewater upon the occurrence of a 10-year 24-hour precipitation event. Industry stated that the provision of the exemption imposed an impossible design requirement on them and should be changed to the requirement for existing sources.

After reviewing the industry comments, and data developed by the Agency, EPA has concluded that the industry comments are valid. Conditioning the storm exemption on the actual occurrence of a 10-year, 24-hour storm is inappropriate because overflows can occur from facilities designed, maintained, and operated to handle a 10-year, 24-hour precipitation event as a result of recurring storms or excessive snowmelt even though no individual event were equivalent to a 10-year, 24-hour precipitation event. The proposal would have required facilities to engage in the extremely difficult task of anticipating all such combinations of precipitation events. Accordingly, we have modified the storm exemption for new sources subject to zero discharge so that it is identical to the exemption for existing sources.

The Agency received requests for further explanation of the considerations to be taken into account in the design and construction of a facility which may be granted relief under the storm exemption. As a result of these requests we have made some clarifying changes in the language of the exemption. The first change is designed to clarify the nature of the operator's responsibilities during an upset or bypass overflow event. The storm exemption is designed to provide a limited exception to the requirements applicable to mines and mills under normal operating conditions. It grants relief from excess discharges which occur during and immediately after any precipitation or snowmelt—the intensity of the event is not specified. The storm exemption was not intended to grant the operator the option of ceasing or reducing efforts to contain or treat the runoff resulting from a rainfall or snowmelt, i.e., the operator does not have the option of turning off the lime feed to a facility at the start of or during a precipitation event, regardless of the design and construction of the facility. The operator must, instead, take all reasonable steps during and after the precipitation event to treat or contain the wastewater discharge and to limit the amount of overflow or excess discharge.

The second change is intended to clarify the nature of the design requirement for sources subject to a zero discharge limitation and to emphasize the fundamental differences between that requirement and the requirement for sources not subject to zero discharge. The storm exemption applicable to sources which are allowed to discharge requires the facility to be able to contain the maximum volume of wastewater which would be generated by the facility during a 24-hour period plus the volume of water which would result from a 10-year, 24-hour rainfall or treat the flows associated with these volumes. The rationale behind the containment requirement is that a facility with such capacity, even if full at the beginning of the storm, would be able to treat the storm runoff and normal plant discharge by providing at least a 24-hour retention time for settling

of the wastewaters before the water is discharged.

The design concept for the storm exemption applicable to sources subject to zero discharge requirements must, however, be different, because such sources are not permitted to discharge. Such sources must, therefore, be able to contain the amount of water equal to the volume of water in the pond under normal operating conditions (which includes water which is recycled or will be evaporated) plus the volume generated from a 10-year, 24-hour rainfall. In other words, the source must provide a freeboard over and above normal pond levels which can accommodate the water generated by a 10-year, 24-hour rainfall. Simply being able to hold the normal volume of wastewater from the mill process without discharge plus the 10-year, 24-hour rainfall will not suffice, unless the normal process wastewater is a fair measure of the volume of water in the pond under normal operating conditions.

The third change is designed to clarify the relationship between the storm exemption and the general upset and bypass provisions set in the consolidated permit regulations [See, 40 CFR 122.60]. The relationship between them should be set out more clearly. In the preamble to the proposal, we said that the storm exemption supersedes the general upset and bypass provisions with respect to precipitation events; that is, an operator wishing to obtain an excursion from the BAT or NSPS requirements during precipitation events must comply with the the prerequisites of the storm exemption. We did not, however, state whether an operator also had to comply with any of the upset and bypass provisions contained in the consolidated permit regulations as well. To clarify this, the storm exemption is being changed to specifically require compliance with the notice provisions of the general upset and bypass provisions, in accordance with the Agency's original intent. In addition, we have added a sentence to clarify that the storm exemption, like the general upset and bypass provision, simply provides an affirmative defense to an enforcement action. Consequently, the burden of proving compliance with the conditions of the storm provision rests with the operator, just as in the case of the general upset and bypass exemptions.

Additional explanation of the storm exemption is offered in the development document supporting this rulemaking.

G. *General Provisions and Definitions.* As the result of the comments received on the proposed BAT and NSPS, the Agency is adding a definition for "in situ leach methods" applicable to the Uranium, Radium and Vanadium Ores subcategory. This definition makes it clear that the no discharge standard of performance for in situ leach methods is applicable to the process wastewater used in and resulting from the actual in situ operation itself. In situ mine and mill process wastewater does not include discharges from wells from within or surrounding in situ mines used to restore aquifers after all actual mining activity (extraction of the ore, or pregnant liquor from the in situ process) has been completed. Such discharge would be from an inactive mine area and effluent limitations guidelines and standards of performance would not be directly applicable. Effluent limitations and standards are directly applicable to "active mining areas." During the actual working of the mine, if the discharge originates from an area outside of the in situ process area but directly associated with the "active mine area" such discharges are considered "mine drainage" and are subject to the effluent limitations or standards of performance for mine drainage from uranium mines. Mine drainage from areas outside of the areas used for the in situ process area include: drainage from development areas of a deep mines, and surface mine and runoff from mine and mill areas that are not directly involved in in situ leaching. Additional explanation is offered in the development document supporting this rulemaking.

The Agency received comments requesting that the Agency further explain the general provision having to do with waste streams which are combined for treatment from various subparts and segments of Part 440. We stated in the original provision that the quantity and quality of each pollutant or pollutant property in the combined discharge shall not exceed the quality and quantity of each pollutant or pollutant property that would have been discharged had each waste stream been treated separately. Further, the flow from the combined discharge shall not exceed the volume that would have been discharged had each wastestream been treated separately. An example that industry wished clarified is whether mine drainage commingled with the discharge from a new froth flotation mill is subject to the zero discharge requirements for new froth flotation mills. Such combined waste streams may be discharged subject to the limitations on mine drainage but the volume of the discharge cannot exceed the volume of mine drainage that would have been discharged had the mine drainage and the mill discharge been treated separately. It is immaterial whether the mine drainage is introduced to the treatment system simultaneously with the discharge from the mill, e.g. two separate pipes leading to the tailings pond, or whether the mine drainage is introduced as part of the feed water and intake to the mill itself. Further explanation and guidance is provided in the development document supporting this final regulation.

One commenter suggested that EPA provide a special allowance, similar to the net precipitation provision, for underground water which seeps into the tailings impoundment, this commenter asserted that such seepage constituted a large portion of the water collecting in its impoundment. The Agency knows of only this one example of underground seepage at existing facilities subject to zero discharge and believes that the fundamentally different factors variance provision provides an avenue of relief for existing sources. To accommodate new sources, however, the Agency is adding a provision which will allow the permit writer to grant an additional discharge allowance in the case of significant groundwater infiltration, subject to the limitations on mine drainage.

There were requests from industry that a separate definition for "new source" applicable to ore mines and mills be included in the final regulation. The Agency feels that there is no reason to do so. As part of the consolidated permit regulations, Paragraph 122.66(b), the Agency promulgated criteria for determining what is a new source. On September 9, 1980, these criteria were withdrawn and new criteria were proposed. When finalized, these criteria will apply to the mining industry.

VI. Costs and Economic Impact

Executive Order 12291 requires EPA and other agencies to provide regulatory impact analyses for rules that result in an annual cost to the economy of $100 million dollars or more, cause major price increases to the consumer and cause significant adverse effects on competition, employment, investment, productivity and the balance of trade. In addition, the Clean Water Act specifies that best available technology limitations must be economically achievable. The Regulatory Flexibility Act requires EPA to consider the effects of this rule on small entities, and if they are significant and affect a substantial number of small entities, to prepare a Regulatory Flexibility Analysis. The Agency has concluded that this is not a major rule and will not have a significant impact on a substantial number of small entities and, therefore,

a Regulatory Impact Analyses and a Regulatory Flexibility Analysis are not required.

The BAT limitations promulgated today do not reflect any treatment requirements beyond the treatment required for existing direct dischargers under the BPT rule promulgated July 11, 1978 (43 FR 29711). Additionally, EPA is not establishing pretreatment standards because no known indirect dischargers exist nor are any known to be in the planning stage. Accordingly, EPA expects no incremental costs or impacts for existing plants from this rulemaking. The costs for New Source standards are not expected to be a deterrent to investment and are not expected to change the rate of entry into the industry or slow the industry growth rate.

In developing this rule, the Agency considered various technology options and analyzed their economic impacts. This economic analysis is presented in two documents. One is the *Economic Impact Analysis of Promulgated New Source Performance Standards for the Ore Mining and Dressing Industry* which addresses new sources. The second document is *The Economic Impact Analysis of Promulgated BAT Effluent Limitations Guidelines for the Ore Mining and Dressing Industry* which addresses existing sources and is presently subject to a confidentiality requirement discussed previously. For each of the options considered during rulemaking, these analyses detail the investment and annual costs for the industry as a whole and for typical plants; assesses the impact of effluent control in terms of price and production changes, plant closures and employment effects; and assesses the potential impacts on the small plants in this industry.

VII. Nonwater Quality Environmental Impacts

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations.

In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, land requirements, water consumption and energy requirements.

Because this regulation does not impose any additional pollution control requirements on existing sources, implementation will not result in any substantial increase in air pollution, energy use, solid waste generation, land requirements or water consumption.

The Agency similarly, determined that the pollution control requirements for new sources, where they differ from existing sources requirements, will not result in adverse non-water quality impacts which would require alteration of the requirements.

In those subparts for which NSPS is more stringent than BAT, the increase in solid waste generated should not be greater than one percent.

In addition, section 7 of the Solid Waste Disposal Act Amendments of 1980 has exempted under Subtitle C of RCRA solid waste from the extraction, beneficiation, and processing of ores and minerals. This exemption will remain in effect until at least six months after the Administrator submits a study on the adverse environmental effects of solid waste from mining. The study is required to be submitted by October 21, 1983 (see 42 U.S.C. 6982).

Imposition of NSPS is not expected to create any significant adverse impacts on land requirements beyond those associated with BAT effluent limitations.

Achievement of NSPS will not result in a significant net increase in energy requirements. The main use of energy is for pumping, mixing, and control instrumentation. Wherever feasible, gravity flow is used in treatment facilities for mine drainage and mill process wastewater. Recycle at new froth flotation mills and new uranium mills will require electric power for pumps, but the Agency concludes that the impact of the energy consumed from compliance with the standards is justified by the benefits derived from the standards.

There should be no net water loss attributable to compliance with zero discharge of process wastewater from froth flotation mills and uranium mills. Moreover, even if there were a slight loss, it would not be significant when compared to the benefits derived from the use of recycle and evaporation systems.

VIII. Pollutants and Subcategories Not Regulated

Paragraph 8 of the modified Settlement Agreement, approved by the District Court for the District of Columbia on March 9, 1979 (12 ERC 1833), contains provisions authorizing the exclusion from regulation, in certain circumstances, of toxic pollutants and industry categories and subcategories.

A. Exclusion of Pollutants. As discussed in greater detail in the proposal June 14, 1982 and in the development document supporting the rule, paragraph 8[a][iii] of the Revised Settlement agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods. This provision includes pollutants below EPA's nominal detection limit. In addition, Paragraph 8[a][iii] allows the exclusion of pollutants that were detected in amounts too small to be effectively reduced by technologies known to the Administrator. Pollutants excluded under these provisions are listed in Appendices B, C and D. One hundred and thirteen toxic organics, cyanide and six toxic metals are excluded from regulation under these provisions.

Paragraph 8[a][iii] also allows the Administrator to exclude from regulation pollutants detected in the effluent of only a small number of sources within the category and uniquely related to those sources. The toxic organic pollutant, 2,4-dimethylphenol, was detected in the effluent at only one facility and 2,4-dimethylphenol is excluded under this provision.

Paragraph 8[a][iii] also allows the Administrator to exclude from regulation pollutants that are effectively controlled by the technology upon which other effluent limitations and guidelines are based. Effluent limitations for TSS will effectively control the toxic pollutant asbestos (chrysotile). Arsenic and nickel found in discharges from ore mining and dressing are adequately controlled by the incidental removal associated with the control and removal of other metals found in the discharges from this industry, e.g., copper, lead, mercury, and zinc.

In addition to the toxic pollutants excluded for all subcategories, EPA is excluding certain toxic pollutants from particular subcategories and subparts because they were either not detected or detected in amounts too small to be effectively reduced by technologies known to the Administrator. See Appendix G for pollutants excluded by subcategory and subpart.

B. Exclusion of Subcategories. Paragraph 8(a)(iv) of the revised settlement Agreement allows the Administrator to exclude a category or subcategory from regulation if the amount and toxicity of each pollutant in the discharge does not justify developing national requirements in accordance with the schedule contained in the agreement. EPA is excluding the mill subpart in the Uranium, Radium and Vanadium subcategory from development of BAT regulations

because there is only one existing discharger and development of national regulations are not warranted for this single plant. EPA is excluding the Nickel subcategory, the Vanadium subcategory (mined alone and not as a byproduct) and, the Antimony subcategory from development of BAT and NSPS because there is only one known discharger in each of these subcategories and no new sources are expected. EPA is excluding the Platinum subcategory from development of NSPS because the one identified new source must use an entirely different treatment system than what was identified as best demonstrated technology and EPA lacks data on the system. EPA is differing regulations of the gold placer mine subpart of the Copper, Lead, Zinc, Gold, Silver, and Molybdenum subcategory until it completes data gathering efforts for this subpart.

Paragraph 8(b) of the Settlement Agreement allows the Administrator to exclude from regulation pretreatment standards for all point sources within a point source category. Pretreatment standards for both existing and new sources in this point source category are not justified because no indirect dischargers exist nor are any known to be planned.

IX. Best Management Practices

Section 304(e) of the Clean Water Act gives the Administrator authority to prescribe "best management practices" (BMPs). BMPs are not addressed in this regulation.

X. Upset and Bypass Provisions

A recurring issue is whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations is necessary because such upsets will inevitably occur even in properly operated control equipment. Because technology-based limitations require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F. 2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle*, 590 F. 2d 1011 (D.C. Cir. 1978) and *Corn Refiners Assn., et al.* v. *Costle*, 594 F. 2d 1223 (8th Cir. 1979). [See also *American Petroleum Institute* v. *EPA*, 540 F. 2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F. 2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train*, 539 F. 2d 973 (4th Cir. 1976).]

An upset is an unintentional episode during which effluent limits are exceeded; a bypass, however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. We have, in the past, included bypass provisions in NPDES permits.

We determined that both upset and bypass provisions should be included in NPDES permits and have promulgated Consolidated Permit Regulations that include upset and bypass provisions. [See 40 CFR 122.60, 45 FR 33290 (May 19, 1980).] The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage.

The Agency has received several inquiries on the relationship between the general upset and bypass provisions set forth in the consolidated permit regulations and the storm exemption contained in the regulations for ore mining and dressing. This relationship is discussed in Section V of this preamble.

XI. Variances and Modifications

Upon the issuance of this regulation, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits thereafter issued to direct dischargers in the ore mining and dressing industry. For the BPT effluent limitations promulgated on July 11, 1978, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. [See *E.I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle*, *supra*.] This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973–1976 industry regulations, it is now included in the NPDES regulations and will not be included in the ore mining and dressing industry BAT regulation. (See the NPDES regulations at 40 CFR Part 125, Subpart D.)

The BAT limitations in this regulation are also subject to EPA's "fundamentally different factors" variance. BAT limitations for nonconventional pollutants are subject to modifications under Sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. To apply for these modifications a discharger must be in compliance with BPT. Because this rule will make BAT equal to BPT, EPA does not expect any applications for Section 301(c) or 301(g) modifications. [See 43 FR 40895 (September 13, 1978).] NSPS are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. (See *E. I. du Pont de Nemours and Co* v. *Train*, supra.)

XII. Relationship to NPDES Permits

The BAT limitations and NSPS in this regulation will be applied to individual ore mines and mills through NPDES permits issued by EPA or approved state agencies, under Section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. The promulgation of this regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines or policy. For example, even if this regulation does not control a particular pollutant, the permit-issuer may still limit such pollutant on a case-by-case basis when limitations are necessary to carry out the purposes of the Act. Where manufacturing practices or treatment circumstances warrant additional controls, such limitations may be technology-based in conformance with the legislative history of the Act. However, such limitations are subject to administrative and judicial review as part of the permit issuance process. In addition, to the extent that State water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. We emphasize that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. We have exercised

and intend to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts.

XIII. Public Participation

The Agency solicited public comment on the proposed rules published in the **Federal Register** on June 14, 1982, (47 FR 25682). In addition, the Agency accepted public comment on the development document and economic analysis supporting the proposed rules. The Agency received over fifty comment submittals.

Individual public comments received on the proposed regulation, and our responses, are presented in a report, "Responses to Public Comments, Proposed Ore Mining and Dressing Industry Effluent Guidelines and Standards," November 1982, which is part of the public record for this regulation.

Most of the major comments and the Agency's response are discussed in Section V of this preamble, Summary of Promulgated Regulation and Changes from Proposal.

XIV. Small Business Administration (SBA) Financial Assistance

The Agency is continuing to encourage small manufacturers to use Small Business Administration (SBA) financing as needed for pollution control equipment. Three basic programs are in effect: the Guaranteed Pollution Control Program, the Section 503 Program, and the Regular Guarantee Program. All the SBA loan programs are only open to businesses with net assets less than $6 million, with an average annual after-tax income of less than $2 million and with fewer than 250 employees.

The guaranteed pollution control program authorizes the SBA to guarantee the payments on qualified contracts entered into by eligible small businesses to acquire needed pollution control facilities when the financing is provided through pollution control bonds, bank loans and debentures. Financing with SBA's guarantee of payment makes available long-term financing comparable with market rates. The program applies to projects that cost from $150,000 to $200,000.

The Section 503 Program, as amended in July 1980, allows for long-term loans to small and medium-sized businesses. These loans are made by SBA-approved local development companies, which for the first time are authorized to issue Government-backed debentures that are bought by the Federal Financing Bank, an arm of the U.S. Treasury.

Through SBA's Regular Guarantee Program, loans are made available by commercial banks and are guaranteed by the SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Guarantee and Section 503 Programs contract your district or local SBA Office. The SBA coordinator at EPA headquarters is Ms. Frances Desselle who may be reached at (202) 382-5373.

For further information and specifics on the Guaranteed Pollution Control Program contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203, (703) 235-2902.

XV. List of Subjects in 40 CFR Part 440

Metals, Mines, Water pollution control, Waste treatment and disposal.

XVI. Availability of Technical Assistance

The justification for the proposed regulation is detailed in four major documents available from EPA. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants.* EPA's technical conclusions are detailed in the *Development Document for Final Effluent Limitations Guidelines and New Source Performance Standards for the Ore Mining and Dressing Point Source Category.* The economic analysis for new sources is detailed in *Economic Analysis of New Source Performance Standards for the Ore Mining and Dressing Industry.* The economic analysis for existing sources is detailed in the *Economic Impact Analysis of Promulgated BAT Effluent Limitations Guidelines for the Ore Mining and Dressing Point Source Category.* The data contained in the analysis is covered by a third party agreement between the Agency and industry members who supplied the data. These data are confidential and can not be released until cleared by a confidentiality review panel. The Agency anticipates the BAT economic analysis will be made available to the general public shortly after this rule is promulgated.

A summary of the public comments received on the proposal and EPA's responses is presented in "Summary of Comments and Responses on the June 1982 Proposed Regulations for the Ore Mining and Dressing Industry," which is part of the public record for this regulation.

XVII. OMB Review

The regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96-511), the reporting or recordkeeping provisions that are included in this regulation will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

Dated: November 5, 1982.

Anne M. Gorsuch,

Administrator.

APPENDIX A

Abbreviations, Acronyms and Units Used in This Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BADT—Best available demonstrated technology under sections 304(c) and 306.

BAT—The best available technology economically achievable, under section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology, under section 304(b)(4) of the Act.

BMP's—Best management practices under section 304(e) of the act.

BPT—The best practicable control technology currently available, under section 304(b)(1) of the Act.

CWA—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) as amended by the Clean Water Act of 1977 (P.L. 95-217).

FWPCA—Federal Water Pollution Control Act.

MSHA—The Department of Labor, Mine Safety and Health Administration.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act.

NSPS—New source performance standards under section 306 of the Act.

POTW—Publicly owned treatment works.

RCRA— Resource Conservation and Recovery Act (PL 94-580) of 1976, Amendments to Solid Waste Disposal Act.

UNITS

gpd—gallons per day.
mgd—million gallons per day.
mg/l—milligram(s) per liter.
μg/l—microgram(s) per liter.

APPENDIX B

Toxic Organic Compounds Not Detected During Sampling

1. Acenaphthene.

2. Acrolein.
3. Acrylonitrite.
4. Benzidene.
5. Carbon Tetrachloride.
6. 1,2,4-Trichlorobenzene.
7. Hexachlorobenzene.
8. 1,2-Dichloroethane.
9. Hexachloroethane.
10. 1,1-Dichloroethane.
11. 1,1,2-Trichloroethane.
12. 1,1,2,2-Tetrachloroethane.
13. C hloroethane.
14. Bis(Chloromethyl) Ether.
15. Bis(2-Chloroethyl) Ether.
16. 2-Chloroethyl Vinyl Ether.
17. 2-Chloronaphthalene.
18. 2,4,6-Trichlorophenol.
19. Parachlorometa Cresol.
20. 2-Chlorophenol.
21. 1,2-Dichlorobenzene.
22. 1,3-Dichlorobenzene.
23. 1,4-Dichlorobenzene.
24. 3,3-Dichlorobenzidene.
25. 1,1-Dichloroethylene.
26. 2,4-Dichloro-phenol.
27. 1,2-Dichloropropane.
28. 1,3-Dichloropropylene.
29. 2,4-Dinitrotoluene.
30. 2,6-Dinitrotoluene.
31. 1,2-Diphenylhydrazine.
32. Fluoranthene.
33. 4-Chlorophenyl Phenyl Ether.
34. 4-Bromophenyl Phenyl Ether.
35. Bis(2-Chloroisopropyl) Ether.
36. Bis(2-Chloroethoxy) Methane.
37. Methyl Chloride.
38. Methyl Bromide.
39. Bromoform.
40. Dichlorodifluoromethane.
41. Chlorodibromomethane.
42. Hexachlorobutadiene.
43. Hexachlorocyclopentadien.
44. Isophorone.
45. Naphthalene.
46. Nitrobenzene.
47. 2-Nitrophenol.
48. 4-Nitrophenol.
49. 2,4-Dinitrophenol.
50. 4,6-Dinitro-O-Cresol.
51. N-Nitrosodimethylamine.
52. N-Nitrosodiphenylamine.
53. N-Nitrosodi-N-Propylamine.
54. Benzo(A)Anthracene.
55. Benzo(A)Pyrene.
56. 3,4-Benzofluoranthene.
57. Benzo(K)Fluoranthene.
58. Chrysene.
59. Acenaphthylene.
60. Anthracene.
61. Benzo(G,H,I)Perylene.
62. Phenathrene.
63. Dibenzo(A,H)Anthracene.
64. Indeno(1,2,3-C,D)Pyrene.
65. Pyrene.
66. Trichloroethylene.
67. Vinyl chloride.
68. Chlordane.
69. 4,4-DDT.
70. 4,4-DDE.
71. 4,4-DDD.
72. Endosulfan-Alpha.
73. Endosulfan-Beta.
74. Endosulfan Sulfate.
75. Endrin Aldehyde.
76. Heptachlor Epoxide.
77. γBHC(Lindane)-Gamma.
78. PCB-1242 (AROCHLOR 1242).
79. PCB-1254 (AROCHLOR 1254).
80. PCB-1221 (AROCHLOR 1221).
81. PCB-1232 (AROCHLOR 1232).
82. PCB-1248 (AROCHLOR 1248).
83. PCB-1260 (AROCHLOR 1260).
84. PCB-1016 (AROCHLOR 1016).
85. Toxaphene.
86. 2,3,7,8-Tetrachlorodibenzo-p-Dioxin.

APPENDIX C

Toxic Organic Compounds Detected at Least One Facility but Always 10 μg/l or Less

1. Chlorobenzene.
2. Dichlorobromoethane.
3. Fluorene.
4. Aldrin.
5. Dieldrin.
6. Endrin.
7. Heptachlor.
8. 1,1,1-Trichloroethane.
9. Chloroform.
10. Ethylbenzene.
11. Trichlorofluoromethane.
12. Diethyl Phthalate.
13. Tetrachloroethylene.
14. Toluene.
15. αBHC-Alpha.
16. βBHC-Beta.
17. ΔBHC-Delta.

APPENDIX D

Toxics Detected at Levels Too Small To Be Effectively Reduced by Technologies Known to the Administrator

1. Antimony.
2. Beryllium.
3. Silver.
4. Thallium.
5. Selenium.
6. Chromium.
7. Cyanide.
8. Benzene.
9. 1,2-Trans-Dichloroethylene.
10. Phenol.
11. Bis(2-Ethylhexyl) Phthalate.
12. Butyl Benzyl Phthalate.
13. Di-N-Butyl Phthalate.
14. Di-n-Octyl Phthalate.
15. Dimethyl Phthalate.
16. Methylene Chloride.
17. Pentachlorophenol.

APPENDIX E

Toxic Organic Compounds Detected From a Small Number of Sources and Uniquely Related to These Sources

2,4-dimentylphenol.

APPENDIX F

Pollutants Effectively Controlled by the Technology Upon Which Other Effluent Limitations and Guidelines Are Based

1. Asbestos.
2. Arsenic.
3. Nickel.

APPENDIX G

Pollutants Excluded by Subcategory and Subpart

Uranium Ore Subcategory—Mine Drainage

Cadmium (not detected).
Copper (present in amounts too small to treat).
Lead (present in amounts too small to treat).
Mercury (present in amounts too small to treat).

Tungsten Ore Subcategory—Mine Drainage

Lead (not detected).
Mercury (present in amounts too small to treat).

Tungsten Ore Subcategory—Mill Process Water

Mercury (not detected).

Mercury Ore Subcategory)—Mine Drainage.

Cadmium (not detected).
Copper (not detected).
Lead (not detected).
Zinc (not detected).

Titanium Ore Subcategory—Mine Drainage

Cadmium (not detected).
Copper (present in amounts too small to treat).
Lead (present in amounts too small to treat).
Mercury (not detected).
Zinc (present in amounts too small to treat).

Titanium Ore Subcategory—Mine Drainage

Cadmium (not detected).
Copper (present in amounts too small to treat).
Lead (present in amounts too small to treat).
Mercury (not detected).

Titanium Ore Subcategory—Mill with Dredges

Cadmium (present in amounts too small to treat).
Copper (present in amounts too small to treat).
Lead (present in amounts too small to treat).
Zinc (present in amounts too small to treat).

Mercury (present in amounts too small to treat).

APPENDIX H

Subcategories Excluded From Development of BAT or NSPS

Nickel Ore Subcategory.

Vanadium Ore Subcategory (Mined alone and not as a byproduct).

Antimony Ore Subcategory.

Platinum Ore Subcategory.

Uranium, Radium, and Vanadium Ores Subcategory.

Mills using the acid and alkaline leach process for the extraction of uranium.

For the purpose of clarity, the BPT effluent limitations guidelines are being published as part of today's regulation. However, the BPT limitations remain unaffected by today's regulation and are not subject to review. For the reasons discussed above, EPA is revising 40 CFR Part 440 to read as follows:

PART 440—ORE MINING AND DRESSING POINT SOURCE CATEGORY

Subpart A—Iron Ore Subcategory

Sec.

440.10 Applicability: description of the iron ore subcategory.

440.11 [Reserved]

440.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

440.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

440.14 New Source Performance Standards (NSPS).

440.15 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart B—Aluminum Ore Subcategory

440.20 Applicability: description of the aluminum ore subcategory.

440.21 [Reserved]

440.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

440.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

440.24 New Source Performance Standards (NSPS).

440.25 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart C—Uranium, Radium, and Vanadium Ores Subcategory

Sec.

440.30 Applicability: description of the uranium, radium and vanadium ores subcategory.

440.31 [Reserved]

440.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

440.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

440.34 New Source Performance Standards (NSPS).

440.35 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart D—Mercury Ore Subcategory

440.40 Applicability: description of the mercury ore subcategory.

440.41 [Reserved]

440.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

440.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

440.44 New Source Performance Standards (NSPS).

440.45 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart E—Titanium Ore Subcategory

440.50 Applicability: description of the titanium ore subcategory.

440.51 [Reserved]

440.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

440.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

440.54 New Source Performance Standards (NSPS).

440.55 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart F—Tungsten Ore Subcategory

440.60 Applicability: description of the tungsten ore subcategory.

440.61 [Reserved]

440.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Sec.

440.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

440.64 New Source Performance Standards (NSPS).

440.65 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart G—Nickel Ore Subcategory

440.70 Applicability: description of the nickel ore subcategory.

440.71 [Reserved]

440.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

440.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

440.74 New Source Performance Standards (NSPS). [Reserved]

440.75 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart H—Vanadium Ore Subcategory (Mined Alone and Not as a Byproduct)

440.80 Applicability: description of the vanadium ore subcategory.

440.81 [Reserved]

440.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

440.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

440.84 New Source Performance Standards (NSPS) [Reseved]

440.85 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart I—Antimony Ore Subcategory

440.90 Applicability: description of the antimony ore subcategory.

440.91 [Reserved]

440.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). [Reserved]

440.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

440.94 New Source Performance Standards (NSPS). [Reserved]

440.95 Effluent limitations representing the degree of effluent reduction attainable by

Sec.
the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart J—Copper, Lead, Zinc, Gold, Silver, and Molybdenum Ores Subcategory

440.100 Applicability: description of the copper, lead, zinc, gold, silver, and molybdenum ores subcategory.
440.101 [Reserved]
440.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
440.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
440.104 New Source Performance Standards (NSPS).
440.105 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart K—Platinum Ores Subcategory

440.110 Applicability: description of the platinum ore subcategory.
440.111 [Reserved]
440.112 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). [Reserved]
440.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
440.114 New Source Performance Standards (NSPS) [Reserved]
440.115 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart L—General Provisions and Definitions

440.120 Applicability.
440.121 General Provisions.
440.122 General Definitions.

Authority: Sections 301, 304 (b) and (c), 306, and 501 of the Clean Water Act [The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 (the Act)] as amended 33 U.S.C. 1311, 1314 (b) and (c), 1316, and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

Subpart A—Iron Ore Subcategory

§ 440.10 Applicability: description of the iron ore subcategory.

The provisions of this Subpart A are applicable to discharges from (a) mines operated to obtain iron ore, regardless of the type of ore or its mode of occurrence; (b) mills beneficiating iron ores by physical (magnetic and nonmagnetic) and/or chemical separation and (c) mills beneficiating iron ores by magnetic and physical separation in the Mesabi Range.

§ 440.11 [Reserved]

§ 440.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable after application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines operated to obtain iron ore shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Fe (dissolved)	2.0	1.0
pH	[1]	[1]

[1] Within the range 6.0 to 9.0.

(b) Except as provided in paragraph (c) of this section, the concentration of pollutants discharged from mills that employ physical (magnetic and nonmagnetic) and/or chemical methods to beneficiate iron ore shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS	30	20
Fe (dissolved)	2.0	1.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(c)(1) Except as provided in paragraph (c) of this section, there shall be no discharge of process wastewater to navigable waters from mills that employ magnetic and physical methods to beneficiate iron ore in the Mesabi Range. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equivalent to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

§ 440.131 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The concentration of pollutants discharged in mine drainage from mines operated to obtain iron ore shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Fe (dissolved)	2.0	1.0

(b) Except as provided in paragraph (c) of this section the concentration of pollutants discharged from mills that employ physical (magnetic and nonmagnetic) and/or chemical methods to beneficiate iron ore shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Fe (dissolved)	2.0	1.0

(c)(1) Except as provided in paragraph (c) of this section, there shall be no discharge of process wastewater to navigable waters from mills that employ magnetic and physical methods to

beneficiate iron ore in the Mesabi Range. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

§ 440.14 New Source Performance Standards (NSPS).

Except as provided in Subpart L of this Part, any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by applying the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged in mine drainage from mines operated to obtain iron ore shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Fe (dissolved)	2.0	1.0
pH	(1)	(1)
TSS	30.0	20.0

[1] Within the range of 6.0, to 9.0.

(b) Except as provided in paragraph (c) of this section, the concentration of pollutants discharged from mills that employ physical (magnetic and nonmagnetic) and/or chemical methods to beneficiate iron ore shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Fe (dissolved)	2.0	1.0
pH	(1)	(1)
TSS	30.0	20.0

[1] Within the range of 6.0 to 9.0.

(c)(1) Except as provided in paragraph (c) of this section, there shall be no discharge of process wastewater to navigable waters from mills that employ magnetic and physical methods to beneficiate iron ore in the Mesabi Range. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

§ 440.15 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart B—Aluminum Ore Subcategory

§ 440.20 Applicability: Description of the aluminum ore subcategory.

The provisions of this Subpart B are applicable to discharges from facilities engaged in the mining of bauxite as an aluminum ore.

§ 440.21 [Reserved]

§ 440.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). The concentration of pollutants discharged in mine drainage from mines producing bauxite ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Fe	10	.5
A1	20	1.0
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

§ 440.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). The concentration of pollutants discharged in mine drainage from mines producing bauxite ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Fe (total)	1.0	0.5
Al	2.0	1.0

§ 440.24 New Source Performance Standards (NSPS).

Except as provided in Subpart L of this Part, any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by the application of the best available demonstrated technology (BADT). The concentration of pollutants discharged in mine drainage from mines producing bauxite ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Fe (total)	1.0	0.5
Al	2.0	1.0
pH	(1)	(1)
TSS	30.0	20.0

[1] Within the range of 6.0 to 9.0.

§ 440.25 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart C—Uranium, Radium and Vanadium Ores Subcategory

§ 440.30 Applicability: description of the uranium, radium and vanadium ores subcategory.

The provisions of this Subpart C are applicable to discharges from (a) mines either open-pit or underground, from which uranium, radium and vanadium ores are produced; and (b) mills using the acid leach, alkaline leach, or combined acid and alkaline leach process for the extraction of uranium, radium and vanadium. Only vanadium byproduct production from uranium ores is covered under this subpart.

§ 440.31 [Reserved]

§ 440.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable after application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines, either open-pit or underground, from which uranium, radium and vanadium ores are produced excluding mines using in-situ leach methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
COD	200	100
Zn	1.0	0.5
Ra226 [1] (dissolved)	10	3
Ra226 [1] (total)	30	10
U	4	2
pH	(2)	(2)

[1] Values in picocuries per liter (pCi/l).
[2] Within the range 6.0 to 9.0.

(b) The concentrations of pollutants discharged from mills using the acid leach, alkaline leach or combined acid and alkaline leach process for the extraction of uranium, radium and vanadium including mill-mine facilities and mines using in-situ leach methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
COD		500
As	1.0	.5
Zn	1.00	.5
Ra226 [1] (dissolved)	10	3
Ra226 [1] (total)	30	10
NH [3]		100
pH	(2)	(2)

[1] Values in picocuries per liter (pCi/l).
[2] Within the range 6.0 to 9.0.

§ 440.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR §§ 125.30–125.32, any existing point source subject to this subpart must achieve the following limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The concentration of pollutants discharged in mine drainage from mines, either open-pit or underground, that produce uranium ore, including mines using in-situ leach methods, shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
COD	200	100
Zn	1.00	.5
Ra226 [1] (dissolved)	10.0	3.0
Ra226 [1] (total)	30.0	10.0
U	4.0	2.0

[1] Values in picocuries per liter (pCi/l).

(b) [Reserved]

§ 440.34 New Source Performance Standards (NSPS).

Except as provided in Subpart L of this Part any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by the application of the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged in mine drainage from mines, either open-pit or underground, that produce uranium ore, excluding mines using in situ leach methods, shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
COD	200	100
Zn	1.0	0.5
Ra 226 (dissolved)	10.0	3.0
Ra 226 (total)	30.0	10.0
U	4.0	2.0
pH	(2)	(2)
TSS	30.0	20.0

[1] Values in picocuries per liter (pCi/l).
[2] Within the range 6.0 to 9.0.

(b)(1) Except as provided in paragraph (b) of this section, there shall be no discharge of process wastewater to navigable waters from mills using the acid leach, alkaline leach or combined acid and alkaline leach process for the extraction of uranium or from mines and mills using in situ leach methods. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has

addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equivalent to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

§ 440.35 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart D—Mercury Ore Subcategory

§ 440.40 Applicability: description of the mercury ore subcategory.

The provisions of Subpart D are applicable to discharges from (a) mines, either open-pit or underground, that produce mercury ores; and (b) mills beneficiating mercury ores by gravity separation methods or by froth-flotation methods.

§ 440.41 [Reserved]

§ 440.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable after application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines, either open-pit or underground, operated for the production of mercury ores shall not exceed the following limitations:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Hg	.002	.001
Ni	.2	.1
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b)(1) Except as provided in paragraph (b) of this section, there shall be no discharge of process wastewater to navigable waters from mills beneficiating mercury ores by gravity separation methods or by froth flotation methods. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equivalent to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a)(1) of this section.

§ 440.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) The concentration of pollutants discharged in mine drainage from mines, either open pit or underground, that produce mercury ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Hg	0.002	0.001

(b)(1) Except as provided in paragraph (b) of this section, there shall be no discharge of process wastewater to navigable waters from mills beneficiating mercury ores by gravity separation methods or by froth-flotation methods. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

§ 440.44 New Source Performance Standards (NSPS).

Except as provided in Subpart L of this Part any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by the application of the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged in mine drainage from mines, either open pit or underground, that produce mercury ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Hg	0.002	0.001
pH	(1)	(1)
TSS	30.0	20.0

[1] Within the range of 6.0 to 9.0.

(b)(1) Except as provided in paragraph (6) of this section, there shall be no discharge of process wastewater to navigable waters from mills beneficiating mercury ores by gravity separation methods or by froth-flotation methods. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

§440.45 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart E—Titanium Ore Subcategory

§ 440.50 Applicability: description of the titanium ore subcategory.

The provisions of this Subpart E are applicable to discharges from (a) mines obtaining titanium ores from lode deposits; (b) mills beneficiating titanium ores by electrostatic methods, magnetic and physical methods, or flotation methods; and (c) mines engaged in the dredge mining of placer deposits of sands containing rutile, ilmenite, leucoxene, monazite, zircon, and other heavy metals, and the milling techniques employed in conjunction with the dredge mining activity (milling techniques employed include the use of wet gravity methods in conjunction with electrostatic or magnetic methods).

§ 440.51 [Reserved]

§440.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable after application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines obtaining titanium ores from lode deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Fe	2.0	1.0
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) The concentration of pollutants discharged from mills beneficiating titanium ores by electrostatic methods, magnetic and physical methods, or flotation methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Zn	1.0	.5
Ni	.2	.1
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(c) The concentration of pollutants discharged in mine drainage from mines engaged in the dredge mining of placer deposits of sands containing rutile, ilmenite, leucoxene, monazite, zircon, or other heavy metals, and the milling techniques employed in conjunction with the dredge mining activity (milling techniques employed include the use of wet gravity methods in conjunction with electrostatic or magnetic methods) shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Fe	2	1
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 440.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR §§ 125.30–125.32, any existing point source subject to this subpart must achieve the following limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The concentration of pollutants discharged in mine drainage from mines obtaining titanium ores from lode deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Fe	2.0	1.0

(b) The concentration of pollutants discharged from mills beneficiating titanium ores by electrostatic methods, magnetic and physical methods, or flotation methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Zn	1.0	0.5

(c) The concentration of pollutants discharged in mine drainage from mines engaged in the dredge mining of placer deposits of sands containing rutile, ilmenite, leucoxene, monazite, or zircon and the milling techniques employed in conjunction with the dredge mining activity (milling techniques employed include the use of wet gravity methods in conjunction with electrostatic or magnetic methods) shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Fe	2.0	1.0

§ 440.54 New source performance standards (NSPS).

Except as provided in Subpart L of this Part any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by the applications of the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged in mine drainage from mines obtaining titanium ores from lode deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Fe	2.0	1.0
pH	(1)	(1)
TSS	30.0	20.0

[1] Within the range of 6.0 to 9.1.

(b) The concentration of pollutants discharged from mills beneficiating titanium ores by electrostatic methods, magnetic and physical methods, or flotation methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Zn	1.0	0.5
pH	(1)	(1)
TSS	30.0	20.0

[1] Within the range of 6.0 to 9.1.

(c) The concentration of pollutants discharged in mine drainage from mines engaged in the dredge mining of placer deposits of sands containing rutile, ilmenite, leucoxene, monazite, zircon and the milling techniques employed in conjunction with the dredge mining activity (milling techniques employed include the use of wet gravity methods in conjunction wth electrostatic or magnetic methods) shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Fe	2.0	1.0
pH	(1)	(1)
TSS	30.0	20.0

[1] Within the range of 6.0 to 9.1.

§ 440.55 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart F—Tungsten Ore Subcategory

§ 440.60 Applicability: description of the tungsten ore subcategory.

The provisions of this Subpart F are applicable to discharges from (a) mines that produce tungsten ore and (b) mills that process tungsten ore by either the gravity separation or froth-flotation methods.

§ 440.61 [Reserved]

§ 440.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines producing 5000 metric tons (5512 short tons) or more of tungsten bearing ores per year shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cd	.10	.05
Cu	.3	.15
Zn	1.0	.5
Pb	.6	.3
As	1.0	.5
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) The concentration of pollutants discharged in mine drainage from mines producing less than 5000 metric tons (5512 short tons) or discharged from mills processing less than 5000 metric tons (5512 short tons) of tungsten ores per year by methods other than ore leaching shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	50	30
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(c) The concentration of pollutants discharged from mills processing 5000 metric tons (5512 short tons) or more of tungsten ores per year by purely physical methods including ore crushing, washing, jigging, heavy media separation, and magnetic and electrostatic separation shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cd	.10	.05
Cu	.30	.15
Zn	1.0	.5
As	1.0	.5
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(d) The concentration of pollutants discharged from mills processing 5000 metric tons (5512 short tons) or more of tungsten ores per year by froth flotation methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cd	.10	.05
Cu	.30	.15
Zn	1.0	.5
As	1.0	.5
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 440.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The concentration of pollutants discharged in mine drainage from tungsten mines shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Cd	0.10	0.05
Cu	0.30	0.15
Zn	1.0	0.5

(b) The concentration of pollutants discharged from mills shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Cd	0.10	0.05
Cu	0.3	0.15
Zn	1.0	0.5

§ 440.64 New source performance standards (NSPS).

Except as provided in Subpart L of this Part any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by the application of the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged in mine drainage from tungsten mines shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Cd	0.10	0.05
Cu	0.30	0.15
Zn	1.0	0.5
pH	(1)	(1)
TSS	30.0	20.0

1 Within the range of 6.0 to 9.0.

(b) The concentration of pollutants discharged from mills shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Cd	0.10	0.05
Cu	0.3	0.15
Zn	1.0	0.5
pH	(1)	(1)
TSS	30.0	20.0

1 Within the range of 6.0 to 9.0.

§ 440.65 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart G—Nickel Ore Subcategory

§ 440.70 Applicability: description of the nickel ore subcategory.

The provisions of this Subpart G are applicable to discharges from (a) mines that produce nickel ore and (b) mills that process nickel ore.

§ 440.71 [Reserved]

§ 440.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR §§ 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines producing 5000 metric tons (5512 short tons) or more of nickel bearing ores per year shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cd	.10	.05
Cu	.3	.15
Zn	1.0	.5
Pb	.6	.3
As	1.0	.5
pH	(1)	(1)

1 Within the range 6.0 to 9.0.

(b) The concentration of pollutants discharged in mine drainage from mines producing less than 5,000 metric tons (5,512 short tons) or discharged from mills processing less than 5,000 metric tons (5,512 short tons) of nickel ores per year by methods other than ore leaching shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	50	30
pH	(1)	(1)

1 Within the range 6.0 to 9.0.

(c) The concentration of pollutants discharged from mills processing 5,000 metric tons (5,512 short tons) or more of nickel ores per year by purely physical methods including ore crushing, washing, jigging, heavy media separation and magnetic and electrostatic separation shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cd	.10	.05
Cu	.30	.15
Zn	1.0	.5
As	1.0	.5
pH	(1)	(1)

1 Within the range 6.0 to 9.0

(d) The concentration of pollutants discharged from mills processing 5,000 metric tons (5,512 short tons) or more of nickel ore per year by froth flotation methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cd	.10	.05
Cu	.30	.15
Zn	1.0	.5
As	1.0	.5
pH	(1)	(1)

1 Within the range 6.0 to 9.0.

§ 440.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 440.74 New source performance standards (NSPS). [Reserved]

§ 440.75 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart H—Vanadium Ore Subcategory (Mined Alone and Not as a Byproduct)

§ 440.80 Applicability: description of the vanadium ore subcategory.

The provisions of this Subpart H are applicable to discharges from (a) mines that produce vanadium ore (recovered alone and not as a by-product of uranium mining and mills) and (b) mills that process vanadium ore (recovered alone, not as a byproduct of uranium mining and mills).

§ 440.81 [Reserved]

§ 440.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines producing 5,000 metric tons (5,512 short tons) or more of vanadium bearing ores per year shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cd	.10	.05
Cu	.3	.15
Zn	1.0	.5
Pb	.6	.3
As	1.0	.5
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) The concentration of pollutants discharged in mine drainage from mines producing less than 5,000 metric tons (5,512 short tons) or discharged from mills processing less than 5,000 metric tons (5,512 short tons) of vanadium ore per year by methods other than ore leaching shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	50	30
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(c) The concentration of pollutants discharged from mills processing 5,000 metric tons (5,512 short tons) or more of vanadium ores per year by purely physical methods including ore crushing, washing, jigging, heavy media separation, and magnetic and electrostatic separation shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cd	.10	.05
Cu	.30	.15
Zn	1.0	.5
As	1.0	.5
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(d) The concentration of pollutants discharged from mills processing 5,000 metric tons (5,512 short tons) or more of vanadium ores per year by froth flotation methods shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cd	.10	.05
Cu	.30	.15
Zn	1.0	.5
As	1.0	.5
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 440.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 440.84 New source performance standards (NSPS). [Reserved]

§ 440.85 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart I—Antimony Ore Subcategory

§ 440.90 Applicability: description of the antimony ore subcategory.

The provisions of this Subpart I are applicable to discharges from (a) mines that produce antimony ore and (b) mills that process antimony ore.

§ 440.91 [Reserved]

§ 440.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). [Reserved]

§ 440.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT). [Reserved]

§ 440.94 New source performance standards (NSPS). [Reserved]

§ 440.95 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart J—Copper, Lead, Zinc, Gold, Silver, and Molybdenum Ores Subcategory

§ 440.100 Applicability: description of the copper, lead, zinc, gold, silver, and molybdenum ores subcategory.

(a) The provisions of this Subpart J are applicable to discharges from (1) mines that produce copper, lead, zinc, gold, silver, or molybdenum bearing ores, or any combination of these ores from open-pit or underground operations other than placer deposits; (2) mills that use the froth-flotation process alone or in conjunction with other processes, for the beneficiation of copper, lead, zinc, gold, silver, or molybdenum ores, or any combination of these ores; (3) mines and mills that use dump, heap, in-situ leach or vat-leach processes to extract copper from ores or ore waste materials; (4) mills that use the cyanidation process to extract gold or silver; and (5) mines or mines and mills that use gravity separation methods (including placer or dredge mining or concentrating operations, and hydraulic mining operations) to extract gold ores or silver ores.

(b) The provisions of this subpart shall not apply to discharges from the Quartz Hill Molybdenum Project in the Tongass National Forest, Alaska.

§ 440.101 [Reserved]

§ 440.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology (BPT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the

degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged in mine drainage from mines operated to obtain copper bearing ores, lead bearing ores, zinc bearing ores, gold bearing ores, or silver bearing ores, or any combination of these ores open-pit or underground operations other than placer deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cu	.30	.15
Zn	1.5	.75
Pb	.6	.3
Hg	.002	.001
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) The concentration of pollutants discharged from mills which employ the froth flotation process alone or in conjunction with other processes, for the beneficiation of copper ores, lead ores, zinc ores, gold ores, or silver ores, or any combination of these ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cu	.30	.15
Zn	1.0	.5
Pb	.6	.3
Hg	.002	.001
Cd	.10	.05
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(c)(1) Except as provided in paragraph (c) of this section, there shall be no discharge of process wastewater to navigable water from mines and mills which employ dump, heap, in situ leach or vat leach processes for the extraction of copper from ores or ore waste materials. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equivalent to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(d)(1) Except as provided in paragraph (d) of this section, there shall be no discharge of process wastewater to navigable waters from mills which extract gold or silver by use of the cyanidation process. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equivalent to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(e) The concentration of pollutants discharged in mine drainage from mines or discharged from mine and mill complexes beneficiating gold ores or silver ores by gravity separation methods including mining of placer deposits, dredge mining and hydraulic mining operations will be proposed and promulgated at a later date.

(f) The concentration of pollutants discharged in mine drainage from mines producing 5,000 metric tons (5,512 short tons) or more of molybdenum bearing ores per year shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cd	.10	.05
Cu	.3	.15
Zn	1.0	.5
Pb	.6	.3
As	1.0	.5
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0

(g) The concentration of pollutants discharged in mine drainage from mines producing less than 5,000 metric tons (5,512 short tons) or discharged from mills processing less thant 5,000 metric tons (5,512 short tons) of molybdenum ores per year by methods other than ore leaching shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	50	30
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(h) The concentration of pollutants discharged from mills processing 5,000 metric tons (5,512 short tons) or more of molybdenum ores per year by purely physical methods including ore crushing, washing, jigging, heavy media separation shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily value for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cd	.10	.05
Cu	.30	.15
Zn	1.0	.5
As	1.0	.5
pH	(1)	(1)

[1] Within the range 6.0 to 9.0

(i) The concentration of pollutants discharged from mills processing 5,000 metric tons (5,512 short tons) or more of molybdenum ores per year by froth flotation methods shall not exceed:

Effluent characteristics	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
TSS	30	20
Cd	.10	.05
Cu	.30	.15
Zn	1.0	.5
As	1.0	.5
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 440.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The concentration of pollutants discharged in mine drainage from mines that produce copper, lead, zinc, gold, silver, or molybdenum bearing ores or any combination of these ores from open-pit or underground operations other than placer deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Cu	0.30	0.15
Zn	1.5	0.75
Pb	0.6	0.3
Hg	0.002	0.001
Cd	0.10	0.05

(b) The concentration of pollutants discharged from mills that use the froth-flotation process alone, or in conjunction with other processes, for the beneficiation of copper, lead, zinc, gold, silver, or molybdenum ores or any combination of these ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Cu	0.30	0.15
Zn	1.0	0.5
Pb	0.6	0.3
Hg	0.002	0.001
Cd	0.10	0.05

(c)(1) Except as provided in paragraph (c) of this section, there shall be no discharge of process wastewater to navigable waters from mine areas and mills processes and areas that use dump, heap, in situ leach or vat-leach processes to extract copper from ores or ore waste materials. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(d)(1) Except as provided in paragraph (d) of this section, there shall be no discharge of process wastewater to navigable waters from mills that use the cyanidation process to extract gold or silver. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(e) The concentration of pollutants discharged in mine drainage or discharged from mines and mills beneficiating gold or silver ores by gravity separation methods including mining of placer deposits, dredge mining and hydraulic mining operations will be proposed and promulgated at a later date.

§ 440.104 New source performance standards (NSPS).

Except as provided in Subpart L of this Part any new source subject to this subsection must achieve the following NSPS representing the degree of effluent reduction attainable by the application of the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged in mine drainage from mines that produce copper, lead, zinc, gold, silver, or molybdenum bearing ores or any combination of these ores from open-pit or underground operations other than placer deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Cu	0.30	0.15
Zn	1.5	0.75
Pb	0.6	0.3
Hg	0.002	0.001
Cd	0.10	0.05
pH	(1)	(1)
TSS	30.0	20.0

[1] Within the range 6.0 to 9.0.

(b)(1) Except as provided in paragraph (b) of this section, there shall be no discharge of process wastewater to navigable waters from mills that use the froth-flotation process alone, or in conjunction with other processes, for the beneficiation of copper, lead, zinc, gold, silver, or molybdenum ores or any combination of these ores. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2)(i) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(ii) In the event there is a build up of contaminants in the recycle water which significantly interferes with the ore recovery process and this interference can not be eliminated through appropriate treatment of the recycle water, the permitting authority may allow a discharge of process wastewater in an amount necessary to correct the interference problem after installation of appropriate treatment. This discharge shall be subject to the limitations of paragraph (a) of this section. The facility shall have the burden of demonstrating to the permitting authority that the

discharge is necessary to eliminate interference in the ore recovery process and that the interference could not be eliminated through appropriate treatment of the recycle water.

(c)(1) Except as provided in paragraph (c) of this section, there shall be no discharge of process wastewater to navigable waters from mine areas and mills processes and areas that use dump, heap, in-situ leach or vat-leach processes to extract copper from ores or ore waste materials. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(d)(1) Except as provided in paragraph (d) of this section, there shall be no discharge of process wastewater to navigable waters from mills that use the cyanidation process to extract gold or silver. The Agency recognizes that the elimination of the discharge of pollutants to navigable waters may result in an increase in discharges of some pollutants to other media. The Agency has considered these impacts and has addressed them in the preamble published on December 3, 1982.

(2) In the event that the annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility exceeds the annual evaporation, a volume of water equal to the difference between annual precipitation falling on the treatment facility and the drainage area contributing surface runoff to the treatment facility and annual evaporation may be discharged subject to the limitations set forth in paragraph (a) of this section.

(e) The concentration of pollutants discharged in mine drainage or discharged from mines and mills beneficiating gold or silver ores by gravity separation methods including mining of placer deposits, dredge mining and hydraulic mining operations will be proposed and promulgated at a later date.

§ 440.105 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart K—Platinum Ores Subcategory

§ 440.110 Applicability: Description of the platinum ore subcategory.

The provisions of this Subpart K are applicable to discharges from (a) mines that produce platinum ore and (b) mills that process platinum ore.

§ 440.110 [Reserved]

§ 440.112 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). [Reserved]

§ 440.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in Subpart L of this Part and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The concentration of pollutants discharged in mine drainage from mines that produce platinum bearing ores from open-pit or underground operations other than placer deposits shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Cu	0.30	0.15
Zn	1.5	0.75
Pb	0.6	0.3
Hg	0.002	0.001
Cd	0.10	0.05

(b) The concentration of pollutants discharged from mills that use the froth-flotation process alone, or in conjunction with other processes, for the beneficiation of platinum ores shall not exceed:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter	
Cu	0.30	0.15
Zn	1.0	0.5
Pb	0.6	0.3
Hg	0.002	0.001
Cd	0.10	0.05

§ 440.114 New source performance standards (NSPS). [Reserved]

§ 440.115 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BTC). [Reserved]

Subpart L—General Provisions and Definitions

§ 440.130 Applicability

Abbreviations and methods of analysis set forth in 40 CFR 401 shall apply to Part 440 except as provided in these general provisions and definitions. The general provisions and definitions in this subpart apply to all subparts of Part 440 unless otherwise noted.

§ 440.131 General provisions.

(a) *Combined Waste Streams:* In the event that waste streams from various subparts or segments of subparts in Part 440 are combined for treatment and discharge, the quantity and concentration of each pollutant or pollutant property in the combined discharge that is subject to effluent limitations shall not exceed the quantity and concentration of each pollutant or pollutant property that could have been discharged had each waste stream been treated separately. In addition, the discharge flow from the combined discharge shall not exceed the volume that could have been discharged had each waste stream been treated separately.

(b) *Storm Exemption for Facilities Permitted to Discharge:* If, as a result of precipitation or snowmelt, a source with an allowable discharge under 40 CFR 440 has an overflow or excess discharge of effluent which does not meet the limitations of 40 CFR 440, the source may qualify for an exemption from such limitations with respect to such discharge if the following conditions are met:

(1) The facility is designed, constructed and maintained to contain the maximum volume of wastewater which would be generated by the facility during a 24-hour period without an increase in volume from precipitation

and the maximum volume of wastewater resulting from a 10-year, 24-hour precipitation event or treat the maximum flow associated with these volumes. In computing the maximum volume of wastewater which would result from a 10-year, 24-hour precipitation event, the facility must include the volume which would result from all areas contributing runoff to the individual treatment facility, i.e., all runoff that is not diverted from the active mining area and runoff which is not diverted from the mill area.

(2) The facility takes all reasonable steps to maintain treatment of the wastewater and minimize the amount of overflow.

(3) The facility complies with the notification requirements of § 122.60 (g) and (h). The storm exemption is designed to provide an affirmative defense to an enforcement action. Therefore, the operator has the burden of demonstrating to the appropriate authority that the above conditions have been met.

(c) *Storm Exemption for Facilities Not Permitted to Discharge:* If, as a result of precipitation (rainfall or snowmelt), a source which is not permitted to discharge under 40 CFR 440, has an overflow or discharge which violates the limitations of 40 CFR 440, the source may qualify for an exemption from such limitations with respect to such discharge if the following conditions are met:

(1) The facility is designed, constructed, and maintained to contain the maximum volume of wastewater stored and contained by the facility during normal operating conditions without an increase in volume from precipitation and the maximum volume of wastewater resulting from a 10-year, 24-hour precipitation event. In computing the maximum volume of wastewater which would result from a 10-year, 24-hour precipitation event, the facility must include the volume which would result from all areas contributing runoff to the individual treatment facility, i.e., all runoff that is not diverted from the area or process subject to zero discharge, and other runoff that is allowed to commingle with the influent to the treatment system.

(2) The facility takes all reasonable steps to minimize the overflow or excess discharge.

(3) The facility complies with the notification requirements of § 122.60(g) and (h). The storm exemption is designed to provide an affirmative defense to an enforcement action. Therefore, the operator has the burden of demonstrating to the appropriate authority that the above conditions have been met.

(d) *pH Adjustment:* (1) Where the application of neutralization and sedimentation technology to comply with relevant metal limitations results in an inability to comply with the pH range of 6 to 9, the permit issuer may allow the pH level in the final effluent to slightly exceed 9.0 so that the copper, lead, zinc, mercury, and cadmium limitations will be achieved.

(2) In the case of a discharge into natural receiving waters for which the pH, if unaltered by human activities, is or would be less than 6.0 and approved water quality standards authorize such lower pH, the pH limitations for the discharge may be adjusted downward to the pH water quality criterion for the receiving waters provided the other effluent limitations for the discharge are met. In no case shall a pH limitation below 5.0 be permitted.

(e) *Groundwater infiltration provision:* In the event a new source subject to a no discharge requirement can demonstrate that groundwater infiltration contributes a substantial amount of water to the tailing impoundment or wastewater holding facility, the permitting authority may allow the discharge of a volume of water equivalent to the amount of groundwater infiltration. This discharge shall be subject to the limitations for mine drainage applicable to the new source subcategory.

§440.132 General definitions.

(a) "Active mining area" is a place where work or other activity related to the extraction, removal, or recovery of metal ore is being conducted, except, with respect to surface mines, any area of land on or in which grading has been completed to return the earth to desired contour and reclamation work has begun.

(b) "Annual precipitation" and "annual evaporation" are the mean annual precipitation and mean annual lake evaporation, respectively, as established by the U.S. Department of Commerce, Environmental Science Services Administration, Environmental Data Services, or equivalent regional rainfall and evaporation data.

(c) "Appropriate treatment of the recycle water" in Subpart J, § 440.104 includes, but is not limited to pH adjustment, settling and pH adjustment, settling, and mixed media filtration.

(d) "Groundwater infiltration" in § 440.131 means that water which enters the treatment facility as a result of the interception of natural springs, aquifers, or run-off which percolates into the ground and seeps into the treatment facility's tailings pond or wastewater holding facility and that cannot be diverted by ditching or grouting the tailings pond or wastewater holding facility.

(e) "In-situ leach methods" means the processes involving the purposeful introduction of suitable leaching solutions into a uranium ore body to dissolve the valuable minerals in place and the purposeful leaching of uranium ore in a static or semistatic condition either by gravity through an open pile, or by flooding a confined ore pile. It does not include the natural dissolution of uranium by ground waters, the incidental leaching of uranium by mine drainage, nor the rehabilitation of aquifiers and the monitoring of these aquifiers.

(f) "Mill" is a preparation facility within which the metal ore is cleaned, concentrated, or otherwise processed before it is shipped to the customer, refiner, smelter, or manufacturer. A mill includes all ancillary operations and structures necessary to clean, concentrate, or otherwise process metal ore, such as ore and gangue storage areas and loading facilities.

(g) "Mine" is an active mining area, including all land and property placed under, or above the surface of such land, used in or resulting from the work of extracting metal ore or minerals from their natural deposits by any means or method, including secondary recovery of metal ore from refuse or other storage piles, wastes, or rock dumps and mill tailings derived from the mining, cleaning, or concentration of metal ores.

(h) "Mine drainage" means any water drained, pumped, or siphoned from a mine.

(i) "Ten (10)-year, 24-hour precipitation event" is the maximum 24-hour precipitation event with a probable recurrence interval of once in 10 years as established by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, or equivalent regional or rainfall probability information.

(j) "U" (Uranium) is measured by the procedure discussed in 40 CFR 141.25(b)(2), or an equivalent method.

[FR Doc. 82-31394 Filed 12-2-82; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
December 3, 1982

Part III

Environmental Protection Agency

Toxic Substances Control Act; Health and Safety Data Reporting; Final Rule and Eleventh Report of the Interagency Testing Committee

ENVIRONMENTAL PROTECTION AGENCY

40 CFR CFR Part 716

[OPTS-84003C; TSH-FRL 2250-8]

Toxic Substances Control Act; Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule.

SUMMARY: This amendment adds chemicals to the list of chemical substances and mixtures for which lists and copies of unpublished health and safety studies must be submitted under 40 CFR Part 716 Subpart A, the regulation implementing section 8(d) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(d). The chemical substances added were recommended for testing by the Interagency Testing Committee (ITC) in their Eleventh Report to EPA and designated for priority consideration by EPA within one year. The ITC was established under section 4(e) of TSCA. 40 CFR 716.18(b) provides that chemical substances and designated mixtures that have been recommended for testing by the ITC may be made subject to the rule by the publication of a notice to that effect in the **Federal Register.** Thirty days after publication of the notice, the chemicals will become subject to 40 CFR Part 716 Subpart A. Therefore, these substances designated by the ITC will become subject to 40 CFR Part 716 Subpart A on January 3, 1983.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St. SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the U.S.A.: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 2, 1982 (47 FR 38780), EPA issued regulations under section 8(d) of TSCA (40 CFR Part 716 Subpart A) to require submission by chemical manufacturers and processors of unpublished health and safety studies on specifically listed chemicals. Other persons in possession of such studies may also be asked to submit them. That rule established standardized reporting requirements and provided for amending the list of chemicals subject to the rule.

Elsewhere in today's **Federal Register,** EPA is issuing a notice announcing the receipt of the Eleventh Report of the Interagency Testing Committee, which was transmitted to the Administrator of EPA on November 3, 1982. The Eleventh Report, which revises and updates the Committee's priority list of chemicals, adds 11 chemicals to the list for priority consideration by EPA in the promulgation of test rules under section 4(a) of TSCA and designates each for response by EPA within 12 months. 40 CFR 716.18(b) provides that ITC-recommended chemicals may be made subject to the rule by the publication of a notice to that effect in the **Federal Register.** Therefore, this amendment to 40 CFR 716.17 constitutes the notice required by 40 CFR 716.18(b). On January 3, 1983, the chemical substances listed below will become subject to 40 CFR 716.17(a)(2).

CHEMICALS TO BE ADDED

Chemical substances	CAS No.
Alkyltin Compounds:	
Dibutyltin dilaurate	77-58-7
Dimethyltin S,S'-bis(isooctyl mercaptoacetate)	26636-01-1
Dibutyltin S,S'-bis(isooctyl mercaptoacetate)	25168-24-5
Dibutyltin bis(isooctyl maleate)	25168-21-2
Diutyltin bis(lauryl mercaptide)	1185-81-5
Monobutyltin tris(isooctyl mercaptoacetate)	54849-38-6
Bis(2-ethylhexyl) terephthalate	6422-86-2
1,3-Dioxolane	646-06-0
4-(1,1,3,3-Tetramethylbutyl)phenol	140-66-9
Tris(2-ethylhexyl) trimellitate	3319-31-1

The ITC's Eleventh Report also recommended, but did not designate for response within 12 months, a group of three carbofuran intermediates: methallyl 2-nitrophenyl ether, 7-nitro-2,2-dimethyl-2,3-dihyrdrobenzofuran, and 7-amino-2,2-dimethyl-2,3-dihydrobenzofuran. The carbofuran intermediates will be added to 40 CFR 716.17 after publication in the **Federal Register** of a notice of proposed amendment of this subpart as provided by 40 CFR 716.18(a).

Economic Impact

EPA estimates that submitting the required data on these additional chemicals will cost industry $46,500. This consists of the following.

Corporate Rule Review	$81,000
Corporate Review (site identification)	6,000
File Search	11,000
Title Listing	500
Photocopying (materials)	1,000
Photocopying (labor)	2,000
Managerial Review	16,000
Ongoing Reporting	2,000
Total	46,500

If we assume ±30 percent margin of error in these estimates, the range of probable cost varies from $33,000 to $60,000. These costs are minimal compared to the importance of obtaining information in time to evaluate ITC-designated chemicals within statutory deadlines.

Public Record

EPA has established a public record (docket number OPTS-84003C) for this rulemaking document which, along with a complete index, is available for inspection in Rm. E-108 from 8:00 a.m. to 4:00 p.m. on working days (401 M St., SW., Washington, D.C. 20460). This record includes information considered by the Agency in adding the ITC chemicals to this rule. The record includes the following categories of information:

(1) Health and Safety Study Reporting Regulations (40 CFR Part 716), Public Record, Docket No. 084003.

(2) Information Impact Analysis for 40 CFR Part 716 and this rulemaking.

(3) 11th Report of the Interagency Testing Committee (ITC).

Regulatory Assessment Requirements Paperwork Reduction Act, Executive Order 12291, and Regulatory Flexibility Act

The reporting provisions of the final section 8(d) rule (40 CFR Part 716) have been approved by the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The OMB control number is 2070-0004.

List of Subject in 40 CFR 716

Chemicals, Health and safety, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements.

Dated: November 15, 1982.

Edwin L. Johnson,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, Title 40, Chapter I, is amended by adding § 716.17(a)(2) to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) * * *

(2) As of January 3, 1983, the following chemical substances are subject to this subpart.

Chemical substances	CAS No.
Alkyltin Compounds:	
Dibutyltin dilaurate	77-58-7
Dimethyltin S,S'-bis (isooctyl mercaptoacetate)	26636-01-1

Chemical substances	CAS No.
Dibutyltin S,S'-bis (isooctyl mercaptoacetate)	25168-24-5
Dibutyltin bis (isooctyl maleate)	25168-21-2
Dibutyltin bis (lauryl mercaptide)	1185-81-5
Monobutyltin tris (isooctyl mercaptoacetate)	-25852-70-4
Monomethyltin tris (isooctyl) mercaptoacetate)	54849-38-6
Bis(2-ethylhexyl) terephthalate	6422-86-2
1,3-Dioxolane	646-06-0
4-(1,1,3,3-Tetramethylbutyl) phenol	140-66-9
Tris (2-ethylhexyl) trimellitate	3319-31-1

* * * * *

[FR Doc. 82-32843 Filed 12-2-82; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41010; TSH-FRL 2254-7]

Eleventh Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Eleventh Report to the Administrator of EPA on November 3, 1982. This report, which revises and updates the Committee's priority list of chemicals, adds eleven designated chemicals and one recommended group of chemicals to the list for priority consideration by EPA in the promulgation of test rules under section 4(a) of the Act. The new chemicals are seven alkyltin compounds; bis(2-ethylhexyl)terephthalate; 1,3-dioxolane; 4-(1,1,3,3-tetramethylbutyl)phenol; tris(2-ethylhexyl) trimellitate; and a group of three carbofuran intermediates. The Eleventh Report is included in this notice. The Agency invites interested persons to submit written comments on the Report, and to attend Focus Meetings to help narrow and focus the issues raised by the ITC's recommendations. Members of the public are also invited to inform EPA if they wish to be notified of subsequent public meeting on these chemicals. EPA also notes the removal of three chemicals from the priority list because EPA has responded to the ITC's prior recommendations for testing of the chemicals.

DATES: Written comments should be submitted by January 3, 1983. Focus meetings will be held on January 11, 12, and 13, 1983.

ADDRESSES: Send written submissions to; Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460.

Submissions should bear the Document Control Number OPTS-41010. The public record supporting this action, including comments, is available for public inspection in Rm. E-107 at the address noted above from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays. Focus meetings will be held at Waterside Mall, in Rm. 3906, 401 M St., SW., Washington, DC. If you plan to attend one of the Focus Meetings and/or wish to be informed of subsequent public meetings on these chemicals, please notify the Industry Assistance Office at the address listed below.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Toll Free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Sec. 4(a) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risk that such substances and mixtures may present to health and the environment.

Sec. 4(e) of TSCA established an Interagency Testing Committee to make recommendations to the Administrator of EPA of chemical substances and mixtures to be given priority consideration for the promulgation of test rules under sec. 4(a). Sec. 4(e) directs the Committee to revise its list of recommendations at least every six months as it determines to be necessary. The ITC may "designate" up to 50 substances and mixtures an any one time for special consideration by the Agency. For such designations, the Agency must within 12 months either initiate rulemaking under sec. 4(a) or issue in the **Federal Register** its reasons for not initiating rulemaking. The ITC's Eleventh Report was received by the Administrator on November 3, 1982, and follows this Notice. The report designates 11 substances for consideration and response by EPA within 12 months and recommends one group of substances for consideration which is not subject to the 12 month requirement.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals. A notice is published elsewhere in today's **Federal Register** adding the 11 substances designated in the ITC's Eleventh Report to the TSCA section 8(d) rule. The section 8(d) rule requires the reporting of unpublished health and safety studies on the listed chemicals. The nondesignated carbofuran intermediates will be separately proposed for addition to the section 8(d) rule.

Focus Meetings will be held to discuss relevant issues pertaining to the chemicals and to narrow the range of issues/effects which will be the focus of the Agency's subsequent activities in responding to the ITC recommendations. The Focus Meetings will be held January 11, 12, and 13, 1983, at Waterside Mall, 401 M St., SW., Washington, DC, Room 3906. These meetings are intended to supplement and expand upon written comments submitted in response to this notice. In addition to discussing concerns and data, the Focus Meetings will explore the issues of negotiated testing versus issuance of a test rule. The schedule for the Focus meetings is the following: January 11, 9:00 a.m.—alkyltin compounds, 1:00 p.m.—bis(2-ethylhexyl) terephthalate and tris(2-ethylhexyl) trimellitate; January 12, 9:00 a.m.—1,3-dioxolane, 1:00 p.m.—4-(1,1,3,3,-tetramethylbutyl) phenol; January 13, 9:00 a.m.—carbofuran intermediates. Persons wishing to attend one or more of these meetings should call the Industry Assistance Office at the toll free number listed above.

After consideration of the data pertaining to each chemical, and any additional information provided in the written comments and the Focus Meetings, EPA will hold public meetings on each chemical after preliminary decisions have been made on the types of testing that are needed. These meetings will be several months in the future, but separate notices of these meetings will not be published later. Therefore, anyone wishing to attend these later meetings should contact EPA now at the address given for the Industry Assistance Office in order to be notified in advance of the public meetings.

All written submissions should bear the identifying Docket No. OPTS-41010.

III. Status of List

In addition to adding the 11 designations and one recommendation to the priority list, the ITC's Eleventh Report notes the removal of one chemical, chlorendic acid, from the list since the last ITC report because EPA has responded to the Committee's prior recommendation for testing of the chemical. Subsequent to the ITC's preparation of its Eleventh Report, EPA responded to the ITC's

recommendations for two additional chemicals. The three chemicals removed and the dates of publication of EPA's responses in the **Federal Register** are: chlorendic acid, October 12, 1982 (47 FR 44878); 4-chlorobenzotrifluoride, November 8, 1982 (47 FR 50555); and tris(2-chloroethyl)phosphite, November 1, 1982 (47 FR 49466). The current list contains 42 designated substances or categories of substances and two recommended categories of substances.

Dated: November 15, 1982.

Edwin L. Johnson,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Eleventh Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Public Law 94–469) provides for the testing of chemicals in commerce that may present an unreasonable risk of injury to health or the environment. It also provides for the establishment of a Committee, composed of representatives from eight designated Federal agencies, to recommend chemical substances and mixtures (chemicals) to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules.

Section 4(e)(1)(A) of TSCA directs the Committee to recommend to the EPA Administrator chemicals to which the Administrator should give priority consideration for the promulgation of testing rules pursuant to section 4(a). The Committee is required to designate those chemicals, from among its recommendations, to which the Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. Every 6 months, the Committee makes those revisions in the TSCA section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of 11 chemicals and 1 group, and the removal of 1 chemical. In this report, for the first time, the Priority List is being divided into two parts: part A contains those recommended chemicals and groups designated for response by the EPA Administrator within 12 months, and part B contains chemicals and groups that have been recommended to be considered by EPA for testing-rules promulgation, without being designated for response within 12 months. Although TSCA does not establish a deadline for EPA response to nondesignated chemicals and groups (part B of the Priority List), the Committee anticipates that the EPA Administrator will respond in a timely manner.

The entries being added to the Priority List are presented, together with the types of testing recommended, in the following Table 1.

TABLE 1.—ADDITIONS TO THE SECTION 4(E) PRIORITY LIST

Chemical/group	Recommended studies
A. Designated for response within 12 months:	
Monomethyltin tris(isooctyl mercaptoacetate).	Chemical Fate: Mobility of the compounds from manufacturing and disposal sites; hydrolysis and biodegradation; identification of persistent degradation products.
Dimethyltin bis-(isooctyl mercaptoacetate).	
Monobutyltin tris-(isooctyl mercaptoacetate).	Environmental Effects: Acute and chronic toxicity to fish and aquatic invertebrates; toxicity to aquatic plants; bioconcentration.
Dibutyltin bis-(isooctyl mercaptoacetate).	
Dibutyltin bis-(lauryl mercaptide).	
Dibutyltin dilaurate	
Dibutyltin bis-(isooctyl maleate).	
Bis(2-ethylhexyl)terephthalate	Health Effects: Mutagenicity; chemical disposition and metabolism; subchronic effects.
	Environmental Effects and Chemical Fate: Acute and chronic toxicity to fish and aquatic invertebrates; toxicity to plants; bioconcentration; chemical fate.
1,3-Dioxolane	Health Effects: Mutagenicity; chemical disposition and metabolism; 90-day inhalation toxicity.
4-(1,1,3,3-Tetramethylbutyl)phenol.	Health Effects: Short-term tests including mutagenicity.
	Environmental Effects and Chemical Fate: Acute and chronic toxicity to fish and aquatic invertebrates; toxicity to plants; bioconcentration; chemical fate.
Tris(2-ethylhexyl)trimellitate	Health Effects: Chemical disposition and metabolism.
	Environmental Effects and Chemical Fate: Acute and chronic toxicity to fish and aquatic invertebrates; toxicity to plants; bioconcentration; chemical fate.
B. Recommended, but not designated for response within 12 months:	
Carbofuran intermediates	Environmental Effects and Chemical Fate: Acute toxicity to fish and aquatic invertebrates; chemical fate with particular emphasis on monitoring studies.

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives

Council on Environmental Quality
- Gordon F. Snow, Member

Department of Commerce
- Bernard Greifer, Member

Environmental Protection Agency
- Joseph Seifter, Member (Deceased)
- Carl R. Morris, Member[1]
- Arthur M. Stern, Alternate[2]

National Cancer Institute
- Elizabeth K. Weisburger, Member and Chairperson
- Richard Adamson, Alternate
- Jerrold Ward, Alternate

National Institute of Environmental Health Sciences
- Dorothy Canter, Memnber

National Institute for Occupational Safety and Health
- Vera W. Hudson, Member
- Herbert E. Christensen, Alternate

National Science Foundation
- Winston C. Nottingham, Member

Occupational Safety and Health Administration
- Patricia Marlow, Member

Liaison Agencies and Their Representatives

Consumer Product Safety Commission
- Arthur Gregory
- Lakshmi Mishra

Department of Agriculture
- Fred W. Clayton
- Homer E. Fairchild

Department of Defense
- Arthur H. McCreesh

Department of the Interior
- None

Food and Drug Administration
- Winston deMonsabert, Vice Chairperson
- Allen H. Heim

National Toxcology Program
- Dorothy Canter

Committee Staff

Martin Greif, Executive Secretary
Norma Williams, ITC Coordinator

Support Staff

Alan Carpien—Office of the General Counsel, EPA
Jon Cooper—Office of Toxic Substances, EPA
Joan Lefler[3]—Office of Toxic Substances, EPA

Notes

(1) Dr. Morris had previously served as an Alternate and was appointed to full-Member status on August 12, 1982, replacing Dr. Joseph Seifter.

(2) Dr. Stern was appointed as an Alternate on August 12, 1982.

(3) Ms. Lefler was appointed on June 14, 1982.

The Committee acknowledges and is grateful for the assistance and support given to it by the staff of Dynamac Corporation (technical support contractor) and numerous personnel of the EPA Office of Toxic Substances.

Chapter 1—Introduction

1.1 *Background.* The TSCA Interagency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances

Control Act of 1976 (TSCA, Public Law 94–469). The specific mandate of the Committee is to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority consideration for the promulgation of testing rules to determine their potential hazard to human health and/or the environment. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List, which is to be published in the **Federal Register.** The Committee is directed by section 4(e)(1)(A) of TSCA to designate those chemicals on the Priority List to which the EPA Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding.

Every 6 months, the Committee makes those revisions in the section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

The Committee is comprised of representatives from eight statutory member agencies, five liaison agencies, and one national program. The specific representatives and their affiliations are named in the front of this report. The Committees chemical review procedures and prior recommendations are described in previous reports (Refs. 1 through 11).

1.2 *Committee's previous reports.* Ten previous reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register** (Refs. 2 through 11). Fifty-three entries (chemicals and groups of chemicals) were designated by the Committee for priority consideration by the EPA Administrator. Eighteen entries were removed after EPA responded to the Committee's recommendations for testing, and one was removed by the Committee for further consideration (Ref. 10).

1.3 *Committee's activities during this reporting period.* This report covers activities of the Committee between April 1, 1982, and September 30, 1982.

The Committee has continued to review chemicals from its third scoring exercise (see Ref. 2 for methodology) and began reviewing chemicals selected in its fourth scoring exercise. The alkyltin compounds group, which was removed from the Priority List in its ninth report (Ref. 10) for additional consideration by the Committee, has been studied further. Recommendations for the testing of seven designated alkyltin compounds are included in this report.

The Committee made direct contact with approximately 100 manufacturers of the chemicals being reviewed to request information that would be of value in its deliberations. Response by the industry continues to be excellent.

During this reporting period, the Committee has evaluated data on 50 chemicals for priority consideration. Eleven chemicals and one group have been added to the section 4(e) Priority List; 16 were deferred from further consideration at this time. The remaining chemicals are still under study.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: ". . . make such revisions in the [priority] list as it determines to be necessary and . . . transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List by adding 11 chemicals and 1 group: monomethyltin tris(isooctyl mercaptoacetate), dimethyltin bis(isooctyl mercaptoacetate), monobutyltin tris(isooctyl mercaptoacetate), dibutyltin bis(isooctyl mercaptoacetate), dibutyltin bis(lauryl mercaptide), dibutyltin dilaurate, dibutyltin bis(isooctyl maleate), bis(2-ethylhexyl) terephthalate, 1,3-dioxolane, 4-(1,1,3,3-tetramethylbutyl)phenol, tris(2-ethylhexyl) trimellitate, and carbofuran intermediates. The testing recommended for these chemicals and the rationales for the recommendations are presented in Chapter 2 of this report.

One chemical, chlorendic acid, has been removed from the Priority List because the EPA Administrator has responded to the Committee's prior recommendation for testing of the chemical.

With the 12 recommendations and 1 removal noted in this report, 46 entries now appear on the section 4(e) Priority List (Table 2).

TABLE 2.—THE TSCA SECTION 4(E) PRIORITY LIST OCTOBER 1982

1A. Chemicals and Groups Designated for Response Within 12 Months

Entry	Date of designation
1. Acetonitrile	Apr. 1979.
2. Acrylamide	Apr. 1978.
3. Alkyl epoxides	Oct. 1977.
4. Aniline and bromo-, chloro-, and/or nitroanilines.	Apr. 1979.
5. Antimony (metal)	Do.
6. Antimony (sulfide)	Do.
7. Antimony trioxide	Do.
8. Aryl phosphates	Apr. 1978.
9. Biphenyl	Apr. 1982.
10. Bis(2-ethylhexyl) terephthalate	Oct. 1982.
11. Chlorinated benzenes, mono- and di-	Oct. 1977.
12. Chlorinated benzenes, tri-, tetra-, and penta-.	Oct. 1978.
13. 4-Chlorobenzotrifluoride	Oct. 1981.
14. Cresols	Oct. 1977.
15. Cyclohexanone	Apr. 1979.
16. Dibutyltin bis(isooctyl maleate)	Oct. 1982.
17. Dibutyltin bis(isooctyl mercaptoacetate).	Do.
18. Dibutyltin bis(lauryl mercaptide)	Do.
19. Dibutyltin dilaurate	Do.
20. 1,2-Dichloropropane	Do.
21. Dimethyltin bis(isooctyl mercaptoacetate).	Do.
22. 1,3-Dioxolane	Do.
23. Ethyltoluene	Apr. 1982.
24. Formamide	Do.
25. Glycidol and its derivatives	Oct. 1978.
26. Halogenated alkyl epoxides	Apr. 1978.
27. Hexachloro-1,3-butadiene	Oct. 1977.
28. Hexachlorocyclopentadiene	Apr. 1979.
29. Hydroquinone	Nov. 1979.
30. Isophorone	Apr. 1979.
31. Mesityl oxide	Do.
32. 4,4'-Methylenedianiline	Do.
33. Methyl ethyl ketone	Do.
34. Methyl isobutyl ketone	Do.
35. Monobutyltin tris(isooctyl mercaptoacetate).	Oct. 1982.
36. Monomethyltin tris(isooctyl mercaptoacetate).	Do.
37. Pyridine	Apr. 1978.
38. Quinone	Nov. 1979.
39. 4-(1,1,3,3-Tetramethylbutyl)phenol	Oct. 1982.
40. Toluene	Oct. 1977.
41. 1,2,4-Trimethylbenzene	Apr. 1982.
42. Tris(2-chloroethyl) phosphite	Oct. 1981.
43. Tris(2-ethylhexyl) trimellitate	Oct. 1982.
44. Xylenes	Oct. 1977.

1B. Other Recommended Chemicals and Groups

Entry	Date of recommendation
1. Carbofuran intermediates	Oct. 1982.
2. Trimethylbenzenes	Apr. 1982.

The Committee has divided its section 4(e) Priority List into two parts; namely, Table 1A, Chemicals and Groups Designated for Response Within 12 Months, and Table 1B, Other Recommended Chemicals and Groups. The cumulative list of entries removed from the Priority List is presented in Table 3.

Table 3.—Cumulative Removals From the TSCA Section 4 (e) Priority List October 1982

Chemical/group	EPA responses to committee recommendations	
	Federal Register citation	Publication date
1. Alkyl phthalates	46 FR 53775-53777	Oct. 30, 1981.
2. Alkyltin compounds	46 FR 5456-5463	Feb. 5, 1982.[1]
3. Benzidine-based dyes	46 FR 55005-55006	Nov. 5, 1981.
4. Benzyl butyl phthalate	46 FR 53775-53777	Oct. 30, 1981.
5. Butyl glycolyl butyl phthalate	46 FR 54487	Nov. 2, 1981.
6. Chlorendic acid	47 FR 44878-44879	Oct 12, 1982.
7. Chlorinated naphthalenes	46 FR 54491	Nov. 2, 1981.
8. Chlorinated paraffins	47 FR 1017-1019	Jan. 8, 1982.
9. Chloromethane	45 FR 48524-48564	July 18, 1980.
10. 2-Chlorotoluene	47 FR 18172-18175	Apr. 28, 1982.
11. o-Dianisidine-based dyes	46 FR 55005-55006	Nov. 5, 1981.
12. Dichloromethane	46 FR 30300-30320	June 5, 1981.
13. Diethylenetriamine	47 FR 18386-18391	Apr. 29, 1982.
14. Fluoroalkenes	46 FR 53704-53708	Oct. 30, 1981.
15. Hexachloroethane	47 FR 18175-18176	Apr. 28, 1982.
16. Nitrobenzene	46 FR 30300-30320	June 5, 1981.
17. Phenylenediamines	47 FR 973-983	Jan. 8, 1982.
18. Polychlorinated terphenyls	46 FR 54482-54483	Nov. 2, 1981.
19. o-Tolidine-based dyes	46 FR 55005-55006	Nov. 5, 1981.
20. 1,1,1-Trichloroethane	46 FR 30300-30320	June 5, 1981.

[1] Removed by the committee for reconsideration.

References

(1) Preliminary List of Chemical Substances for Further Evaluation. Toxic Substances Control Act Interagency Testing Committee, July 1977.

(2) Initial Report to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, October 1, 1977. Published in the **Federal Register** of Wednesday, October 12, 1977, 42 FR 55026-55080. Corrections published in the **Federal Register** of November 11, 1977, 42 FR 58777-58778. The report and supporting dossiers were also published by the Environmental Protection Agency, EPA 560-10-78/001, January 1978.

(3) Second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1978. Published in the **Federal Register** of Wednesday, April 19, 1978, 43 FR 16684-16688. The report and supporting dossiers were also published by the Environmental Protection Agency, EPA 560-10-78/002, July 1978.

(4) Third Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, October 1978. Published in the **Federal Register** of Monday, October 10, 1978, 43 FR 50630-50635. The report and supporting dossiers were also published by the Environmental Protection Agency, EPA 560-10-79/001, January 1979.

(5) Fourth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1979. Published in the **Federal Register** of Friday, June 1, 1979, 44 FR 31866-31889.

(6) Fifth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 1979. Published in the **Federal Register** of Friday, December 7, 1979, 43 FR 70664-70674.

(7) Sixth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1980. Published in the **Federal Register** of Wednesday, May 28, 1980, 45 FR 35897-35910.

(8) Seventh Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, October 1980. Published in the **Federal Register** of Tuesday, November 25, 1980, 45 FR 78432-78446.

(9) Eighth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1981. Published in the **Federal Register** of Friday, May 22, 1981, 46 FR 28138-28144.

(10) Ninth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, October 1981. Published in the **Federal Register** of Friday, February 5, 1947, FR 5456-5463.

(11) Tenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1982. Published in the **Federal Register** of Tuesday, May 25, 1982, 47 FR 22585-22596.

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding the following 11 chemicals and 1 group of chemicals to the section 4(e) Priority List: monomethyltin tris (isooctyl mercaptoacetate), dimethyltin bis(isooctyl mercaptoacetate), monobutyltin tris(isooctyl mercaptoacetate) dibutyltin bis(isooctyl mercaptoacetate), dibutyltin bis(lauryl mercaptide), dibutyltin dilaurate, dibutyltin bis(isooctyl maleate), bis(2-ethylhexyl) terephthalate, 1,3-dioxolane, 4-(1,1,3,3,-tetramethylbutyl)phenol, tris(2-ethylhexyl) trimellitate, and carbofuran intermediates. The recommendation of these chemicals is being made after considering the factors identified in section 4(e)(1)(A) and other available relevant information, as well as the professional judgment of Committee members.

The 11 recommendations designated for response within 12 months are presented in section 2.2 of this report. Section 2.3 contains one recommendation with no designated time limit for response by the EPA Administrator.

2.2 *Chemicals designated for response within 12 months with supporting retaionales.*

2.2.a *Alkyltin Compounds.*

Summary of recommended studies. It is recommended that seven specific alkyltin compounds,

Monomethyltin tris(isooctyl mercaptoacetate),
dimethyltin bis(isooctyl mercaptoacetate),
monobutyltin tris(isooctyl mercaptoacetate),
dibutyltin bis(isooctyl mercaptoacetate),
dibutyltin bis(lauryl mercaptide),
dibutyltin dilautate, and
dibutyltin bis(isooctyl maleate),

be tested for the following:

A. Chemical Fate:

Mobility of the compounds from manufacturing and disposal sites.

Hydrolysis and biodegradation.

Identification of persistent degradation products.

B. Environmental Effects:

Acute and chronic toxicity to fish and aquatic invertebrates.

Toxicity to aquatic plants.

Bioconcentration

Background

In the Seventh ITC Report (EPA, 1980), it was recommended to the EPA Administrator that the alkyltin compounds category be given priority

consideration for the promulgation of testing rules.

The category was defined in terms of the following generic formula:

R_nSnY_{4-n}

where:

R represents an alkyl group containing one to eight carbon atoms covalently bonded to the tin atom.

n represents the number of alkyl groups covalently bonded to the tin atom; n can have a value between 1 and 4.

Y represents a singly charged anion or anionic organic group bonded to the tin atom,

Sn is the chemical sysmbol for the element tin.

Thirty-three category members were identified in the ITC report as being either commercially important or of possible commercial significance.

Based on information that EPA gathered, analyzed, and presented to the Committee subsequent to the ITC recommendation, the Committee concluded that the alkyltin compounds category, as defined in the Seventh ITC Report, was too broad to be considered as a single category from the standpoint of chemistry, exposure, or effects. As a result, in the Ninth ITC Report (EPA, 1982a), the Committee removed the alkyltin compounds category from the Priority List and committed itself to submitting a revised recommendation within 12 months.

The Committee has reexamined the 33 alkyltin compounds identified in the Seventh ITC Report plus additional alkyltins in commerce identified by EPA (EPA, 1981) and industry (ORTEP, 1982). Based on a review of all available information on these compounds, particularly the level of production and type of use, the Committee is designating seven alkyltin compounds for priority consideration and deferring the remainder.

Physical and Chemical Information

Available physical and chemical information on the seven designated alkyltin compounds is given in Table 4.

TABLE 4—PHYSICAL AND CHEMICAL PROPERTIES OF SEVEN ALKYLTIN COMPOUNDS

Chemical	CAS No.	Structural formula	Solubility	Vapor pressure [1]	Description
Monomethyltin tris(isooctyl) mercaptoacetate).	54849-38-6	$CH_3Sn(SCH_2C(O)OC_8H_{17})_3$		1.0×10^{-6} mmHg	Liquid.
Dimethyltin bis(isooctyl mercaptoacetate)	[2]26636-01-1	$(CH_3)_2Sn(SCH_2C(O)OC_8H_{17})_2$	Insoluble in water; soluble in organic	2.3×10^{-6} mmHg	Clear liquid.
Monobutyltin tris(isoocytyl mercaptoacetate).	25852-70-4	$C_4H_9Sn(SCH_2C(O)OC_8H_{17})_3$			Liquid.
Dibutyltin bis(osooctyl mercaptoacetate)	[2]25168-24-5	$(C_4H_9)_2Sn(SCH_2C(O)OC_8H_{17})_2$	Insoluble in water; soluble in organic		Yellow liquid.
Dibutyltin bis(lauryl mercaptide)	1185-81-5	$(C_4H_9)_2Sn(SC_{12}H_{25})_2$			Clear, pale liquid.
Dibytyltin dilaurate	[3]77-58-7	$(C_4H_9)_2Sn(OC(O)C_{11}H_{23})_2$	Insoluble in water	Melting solid [4]	Liquid or low.
Dibultyltin bis(isooctyl maleate)	[5]25168-21-2	$(C_4H_9)_2Sn(OC(O)CHCHC(O)OC_8H_{17})_2$	Insoluble in water; soluble in polar		White powder.

[1] Carstab Corp. (1982). [2] Solvents. [3] Soluble in benzene and acetone. [4] Melting point at 27° C. [5] Organic solvents.

NOTE.—The log P octanol/water partition coefficient is > 6 for all of the above chemicals (estimated by the method of Leo et al., 1971).

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/disposal information.* The designated alkyltin compounds are each produced in excess of 500,000 pounds per year. Table 5 presents the production data on the recommended compounds assembled from three separate sources:

- Public portion of TSCA Inventory, reporting 1977 production levels (EPA, 1982b).
- Midwest Research Institute report on organotins (MRI, 1979).
- Recent Organotin Environmental Program (ORTEP) submissions, reporting current production levels (ORTEP, 1982).

The seven compounds are among the principal alkyltins used as stabilizers in polyvinyl chloride (PVC) and chlorinated polyvinyl chloride (CPVC), and together they constitute 59 percent of the total alkyltin stabilizer production in the United States (ORTEP, 1982). Some of the compounds are also used as catalysts and sitelimited intermediates. A major use of the PVC and CPVC that is stabilized by these alkyltins is for water pipe, including pipe used to transport potable water (ORTEP, 1982).

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Table 5--Production Data on Designated Alkyltins

Chemical	Production (millions of pounds) TSCA Inventory[a]	MRI (1979)	ORTEP (1982)	Percentage Used As Stabilizer (%)	Comments
Monomethyltin tris(isooctyl mercaptoacetate)	0.1-1	5	1.5	100	Always sold as a mixture with dimethyltin bis(isooctyl mercaptoacetate); 1 part monomethyltin to 3 parts dimethyltin
Dimethyltin bis(isooctyl mercaptoacetate)	0.1-1		4.6	100	"
Monobutyltin tris(isooctyl mercaptoacetate)	0.1-1	10	0.5	57[b]	Always sold as a mixture with dibutyltin bis(isooctyl mercaptoacetate)
Dibutyltin bis(isooctyl mercaptoacetate)	0.1-1		6.6	68[b]	Sold in purified form and as a mixture with monobutyltin tris (isooctyl mercaptoacetate)
Dibutyltin bis(lauryl mercaptide)	0.02-0.2	1.2	0.62	97	3% used as catalyst (ORTEP, 1982)
Dibutyltin dilaurate	0.02-0.2	5	0.5	14	28% used as catalyst[b] (ORTEP,1982)
Dibutyltin bis(isooctyl maleate)	0.1-1	---	0.53	97	3% used as catalyst (ORTEP, 1982)

[a]Public portion (EPA, 1982b).
[b]Remainder is used as site-limited intermediates or in unspecified uses.

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B. *Chemical fate information.* There is evidence that alkyltin species released to the environment will be transformed by abiotic and biotic processes. The transformation products may include oxides, hydroxides, methylated species, and complexes with sulfur-containing ligands (Hallas et al., 1982; Guard et al., 1981; MRI, 1979). The mixtures of tin species present in a given environment may change with environmental conditions. Some products may be volatile like tetramethyltin. Other species may adsorb to clay and sediments in a manner analogous to trialkyltins (Hallas et al., 1982; Guard et al., 1981; MRI, 1979). Still others, which may be charged or neutral, are likely to be soluble (Heron and Sproule, 1958). The specific environmental behavior of the seven designated compounds is not known.

The major types of abiotic transformation of alkyltins are ligand exchange with other metals and nonmetals (Abel, 1973; Parker and Carman, 1977) and hydrolysis to form hydrous oxides; i.e., hydrated oxides (Cotton and Wilkinson, 1980; Mazaev et al., 1976). The nature of the "hydrous oxides" depends mainly on pH (Tobias, 1978).

Of these abiotic processes, the formation of hydrous oxides is of greater concern. Alkyltin hydrous oxides may behave in a manner analogous to tributyltin oxide, which has been shown to persist for months in soil environments (M&T Chemicals, as cited in MRI, 1979). The seven designated alkyltin compounds are expected to form hydrous oxides.

C. *Evidence for environmental exposure.* The seven chemicals can be released to the environment through three possible routes. They may leach from pipes and other plastic materials both in use and at disposal sites, may be dishcarged incidental to their use as catalysts, and may be discharged in waste streams from manufacturing (Boettner et al., 1982; ORTEP, 1982). In one plant studied, it has been found that about 10–20 pounds per day of total tin (80 percent as "organotin") leaves its treatment ponds and is discharged to the environment (M&T Chemicals, 1982).

Alkyltins have been detected at various concentrations in diverse areas of aquatic and terrestrial environments (Table 6). The largest concentrations of alkyltins, at 0.3–22. ppm, have been detected in soil and plants near one manufacturing facility. Nearby bodies of water were found to contain total tin at concentrations up to 0.01 mg/L (MRI, 1979).

TABLE 6—ALKYLTINS IN THE ENVIRONMENT

Sample source	Location	Chemical species	Concentration	Reference
Water	Chesapeake Bay	Total organotin	0–900 mg/L	Jackson et al. (1982).
Water	Carollton, KY	Total tin	0–0.01 ppm	M&T Chemicals (1974).[a]
Water	Tampa, FL	Methyltins	0.22–7.4 ppt	Braman & Tompkins (1979).[a]
Water	Lake Michigan; CA coast and bays	Methyltins and butyltins	0–1600 ppt for dichlorodibutyltin	Hodge et al. (1979).
Water	Great Lakes area	Butyltins	0–18.69 ppm	Maguire et al. (1982).
Subsurface water	Great Lakes area	Methyltins	0.40 ppb for dimethyltin	Maguire et al. (1982).
Water	Reading, OH	Total tin	<1.0–4.4 ppb	Battelle Labs (1977[a]).
Water	Avondale, LA	Total tin	<1.0 ppb	Battelle Labs (1977[a]).
Water	Bavaria, W. Germany	Total tin	16.6–69 ppm	Schramel et al. (1973[a]).
Chemical plant effluent	Taft, LA	Total organotin	4–250 ppm	Argus Chemical (1977).
Surface microlayer	Great Lakes area	Butytins	0–2600 ppb for dibutyltin	Maguire et al. (1982).
Soil	Reading, OH	Total tin	15–120 ppb	Battelle Labs (1977).[a]
Soil	Avondale, LA	Total tin	<10 ppb	Battelle Labs (1977).[a]
Sediment	Bavaria, W. Germany	Total tin	8–580 ppm	Schramel et al. (1973).[a]
Air	Reading, OH	Total tin	<0.1 μg/m³	Battelle Labs (1977).[a]
Air	Avondale, LA	Total tin	<0.1 ᵐg/m³	Battelle Labs (1977).[a]
Water plants	Bavaria, W. Germany	Total tin	13–3,100 ppm	Schramel et al. (1973).[a]
Plants	Carrollton, KY	Total organotin	1.4–27.3 ppm	M&T Chemicals (1974).[a]
Fish, meat, and liver	Bavaria, W. Germany	Total tin	<1 ppm	Schramel et al. (1973).[a]
Human urine	Unspecified	Methyltin	<0.02–0.32 ppb	Braman & Tompkins (1979).[a]
Coral, seashells	Unspecified	Methyltins	~1 ppb	Braman & Tompkins (1979).[a]
Water, soil, plants, fish, invertebrates	St. Lucia Island, Caribbean	Total tin	0–44 ppb	Sherman & Carlson (1980).

[a]As cited in MRI (1979).

II. *Health considerations.* A review of recently available human exposure information has revealed that worker and general population exposure to alkyltin compounds is low in nonpesticide uses. Industry reports that closed systems are used for alkyltin manufacturing and processing (CTET, 1972; MRI, 1979; ORTEP, 1982). Although the general population is exposed to alkyltin leachate from potable water pipe that has been stabilized with alkyltins, recent leaching studies indicates that the concentrations of alkyltins in drinking water leachates are low (Boettner, 1982; MRI, 1979; Park and Van Hoang, 1980; Parris and Perry, 1982). Consequently, because of the apparent lack of human exposure to the alkyltin compounds in commerce, including the seven designated alkyltins, the Committee is deferring the alkyltin compounds from recommendations for health effects testing at this rule.

III. *Environmental considerations*—A. *Short-term (acute) effects.* No studies on the short-term effects of the seven designated alkyltin compounds have been found for either aquatic animals or plants. A review of the literature indicates that there is a diversity of toxicity data on related alkyltin compounds. Alkyltin compounds have been found to be toxic to fish at concentrations under 1 μg/L and to invertebrates at 100 μg/L (MRI, 1979). These data indicate that the biological activity of a number of the organotins studied is high. The seven designated alkyltins compounds (including their degradation products) are expected to exhibit similar biological activity.

B. *Subchronic/chronic effects.* No studies on the long-term effects of the seven designated alkyltin have been found for either aquatic animals or plants.

C. *Other effects (physiological/behavioral/ecosystem processes).* No studies on the physiological, behavioral, or ecosystem effects of the seven designated alkyltins have been found. In studies of tributyltin oxide with yearling rainbow trout (*Salmo gairdneri*) and with *Tilapia rendalli*, loss of positive rheotaxis and other behavioral changes were observed. At 1.17 mg/L, agitation,

air gulping, etc., followed by convulsions and death, were observed. At a lower concentration (11.7 μg/L), the fish showed signs of weakness and loss of positive rheotaxis (Chliamovitch and Kuhn, 1977).

D. *Bioconcentration.* No measurements of the bioconcentration of the seven designated alkyltin compounds have been found. The logarithms of the octanol/water partition coefficent (estimated by the method of Leo et al., 1971) were greater than 6 for these compounds. By the method of Veith et al. (1980), the bioconcentration factors were calculated to be in excess of 300 for each of these chemicals.

White coral and seashells taken from ocean waters containing 4.2–12 ng/L (as total tin) were found to accumulate tin at concentrations on the order of 1 ppb, indicating bioaccumulation factors between 100 and 200. Analysis of the coral revealed that 30 percent of the accumulated tin was organotin (Braman and Tompkins, 1979).

In addition to bioconcentration through lipid materials as predicted by octanol/water partition coefficients, bioconcentration through complexation by biological ligands has also been proposed for alkyltins (Carty, 1978).

E. *Reasons for specific environmental recommendations.* Organotins have been found in diverse areas of the aquatic and terrestrial environments. The seven designated alkyltin compounds constitute a substantial portion of the alkyltin production for uses subject to TSCA, and may enter the environment through leaching in their use as stabilizers in plastic materials, as catalysts, and through manufacturing wastes. The highest concentrations of organotins occur near manufacturing sites. Based on a simple dilution model, the 10–20 pounds per day of tin released as organotins from one manufacturing site would be sufficient to exceed predicted environmental effects levels of approximately 1 μg/L if stream flows are less than 500 ft^3/second. Depending on the precise chemical species formed under local environmental conditions, these materials or their degradation products are expected to be presistent.

Chemical fate testing for these compounds is recommended to better characterize their transport, transformation, and persistence in aquatic and soil environments under relevant redox and pH conditions. The recommended testing includes: studies to evaluate mobility from manufacturing and disposal sites, hydrolysis and biodegradation studies, and studies to identify the major persistent degradation products.

The seven designated alkyltin compounds have not been tested for environmental effects. Some alkyltin compounds have been shown to be toxic at concentrations near 1 μg/L. Acute and chronic toxicity testing in fish and aquatic invertebrates and toxicity testing in aquatic plants are recommended for the seven designated alkyltin compounds and their degradation products because of their exposure potential and insufficient toxicity data.

Because of high calculated octanol/water partition coefficients, the seven alkyltin compounds are expected to bioconcentrate in the fatty tissues of aquatic organisms. Furthermore, the alkyltin compounds may bioconcentrate through additional mechanisms. The potential for bioconcentration also raises concern for possible food-chain transport. Therefore, it is recommended that testing be conducted to determine the chemical fate and the bioconcentration of the seven alkyltin compounds and their identified, persistent degradation products.

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2.2.b *Bis(2-Ethylhexyl) Terephthalate*

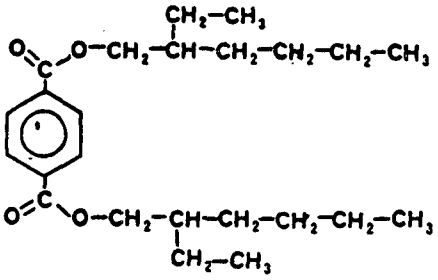
Summary of recommended studies. It is recommended that bis(2-ethylhexyl) terephthalate be tested for the following:

A. *Health Effect.*
- Mutagenicity.
- Chemical disposition and metabolism.
- Subchronic effects.

B. Environmental Effects and Chemical Fate:
- Acute and chronic toxicity to fish and aquatic invertebrates.
- Toxicity to plants.
- Bioconcentration.
- Chemical fate.

Physical and Chemical Information.

CAS Number: 6422-86-2.
Structural Formula:



Empirical Formula: $C_{24}H_{38}O_4$.
Molecular Weight: 390.56.
Melting Point: −48° C.
Boiling Point: 400° C at 760 mmHg.
Specific Gravity: 0.9835 at 20° C.
Solubility: Water, 0.004 g/l at 20° C.
Log Octanol/Water Partition Coefficient: >6 (estimated; Leo et al., 1971).

Description of Chemical: Clear, odorless liquid of low volatility.

Rationale for Recommendations

I. *Exposure information*—A. *Production and use information.* U.S. production of bis(2-ethylehexyl) terephthalate (EHT) was reported in the TSCA Inventory to be between 1 million and 10 million pounds in 1977 (EPA, 1982). The compound is used as a plasticizer with polyvinyl chloride (PVC) resins, but is is also compatible for use with acrylics, cellulose acetate, butyrates, cellulose nitrate, polyvinyl butyral, styrene polymers, oxidizing alkyds, and nitrile rubber (Eastman Kodak Co., 1982). It is often used when phthalate plasticizers are in short supply (CEH, 1977). The terephthalate would probably migrate out of PVC, similar to the situation with phthalate plasticizers. For bis(2-ethylhexyl) phyhalate (DEHP, di-sec-octyl phthalate), the isomer of EHT, the ACGIH (1981) has set the TLV-TWA at 5 mg/m³ and the TLV-STEL at 10 mg/m³.

B. *Chemical fate information.* No studies on environmental transport or persistence of EHT were found. However, the chemical is expected to behave in a manner similar to its isomer, DEHP, and thus to enter and persist in the aquatic environment.

No data were found on the quantity of EHT that is likely to be released to the environment. However, data do exist concerning potential sources of release and environmental occurrences of the structurally analogous dialkyl phthalates, which are believed to have plasticizer use patterns similar to those anticipated for EHT. It has been estimated that about 1.4-2.6 percent of the total volume of plasticizers used during processing operations is released in water effluents (A.D. Little, Inc., 1979). Other data show that the phthalates also may be released from end-use plastic articles as a result of their use and disposal (Mathur, 1974; Versar, Inc., 1979). Regardless of the stage of their life cycles at which dialkyl phthalates enter the environment, their environmental distribution appears to be ubiquitous; i.e., they have been found in the air, bodies of water, biota (Peakall, 1975; Mayer et al., 1972; Giam et al., 1979a), and in soils and sediments (Jungclaus et al., 1978; Brownlee and Strachan, 1977; Giam et al., 1978b; Schwartz et al., 1979).

EHT is predicted to have a low water solubility based on its structural relationship to the dialkyl phthalates and its octanol/water partition coefficient, which is estimated to be greater than 6. This suggest that it will strongly sorb to sediments and soils. The fact that the dialkyl phthalates are readily sequestered in aquatic systems by organic residues and solid surfaces (Jungclaus et al., 1978; Brownlee and Strachan, 1977; Giam et al., 1978b; Morita et al., 1974; Schwartz et al., 1979) provides support for such sorption when EHT is released to frash or marine water.

Significant portions of these soils and sediments are expected to be anaerobic. In anaerobic systems, EHT biodegrades at a rate similar to that of long-chain dislkyl phthalates, which is over 30 days (Syracuse Research Corp., 1979; Johnson and Lulves, 1975; Saeger and Tucker, 1976). The 20-day BOD reported for EHT is 0.16 g/g. This indicates that a significant portion of this chemical is expected to persist in the environment. Further evidence for slow biodegradation rates of dialkyl phthalates is provided by monitoring studies that show that phthalates accumulate in sediments (Schwartz et al., 1979; Jungclaus et al., 1978).

II. *Biological effects of concern to human health*—A. *Biochemical information.* No biochemical data on EHT have been found. However, its isomer DEHP may undergo some hydrolysis to the monoester in the mammalian gastrointestinal tract (Lake et al., 1976 and 1977; Rowland et al., 1977). This monoester and the 2-ethylhexanol can undergo further transformation in the organism.

B. *Carcinogenicity.* No data on the carcinogenic activity of EHT have been found, although the phthalate isomer DEHP caused hepatocellular carcinomas in both sexes of Fischer rats and B6C3F1 mice (NTP, 1982).

C. *Mutagenicity.* No data on the mutagenic activity of EHT have been found, although DEHP and terephthalic acid (TPA), a possible metabolite of EHT, were negative in the Salmonella assay (NTP, 1980 and 1982).

D. *Teratogenicity, Embryotoxicity, and Fetotoxicity.* No data on the teratogenic, embryotoxic, and fetotoxic activity of EHT have been found.

E. *Toxicity.* Direct contact of undiluted EHT with the skin of guinea pigs for 24 hours produced slight irritation but without absorption. Repeated application for 10 days caused a moderate effect on guinea pig skin, but it did not sensitize guinea pigs. The compound was slightly irritating to the eyes of rabbits. The oral LD_{50} in both rats and mice was found to be greater than 3,200 mg/kg. Feeding EHT to rats at 1 percent of the diet for 10 days did not affect food intake, weight gain, behavior, hematology, serum chemistry, liver and kidney weights, or

histopathologic findings (Eastman Kodak Co., 1982).

TPA led to bladder stones in male Fischer-344 rats after they were fed 3, 4, or 5 percent TPA in the diet for 2 weeks; however, bladder stones were not observed at the 1.5 percent level. The effect was much lower in female rats (Chin et al., 1981). Physicochemical factors were apparently involved (Heck, 1981). However, no tumors or toxic effects were noted in rats fed TPA for 2 years at levels below 1 percent (Gross, 1974).

F. *Reasons for health effects recommendations.* Analogous to its isomer DEHP, EHT would be expected initially to hydrolyze to 2-ethylhexyl alcohol during metabolism. The latter compound caused hepatic peroxisome proliferation (Moody and Reddy, 1978). TPA, a possible metabolite of EHT, caused bladder stones at levels of 3 percent or more in the diet. Thus, studies on the metabolic disposition of EHT are needed to determine the relative levels of these toxic metabolites that are formed. Subchronic experiments to determine whether EHT causes peroxisomal proliferation are also needed.

III. *Environmental considerations.*—A. *Acute toxicity.* EHT was acutely toxic (96-hour LC_{50}) to *Daphnia* at <100 mg/L (Brokaw, 1982). DEHP has shown acute toxicity at 2 mg/L to *Daphnia* (Hirzy et al., 1978; Sugawara, 1974), so its isomer EHT may be toxic at concentrations very much lower than 100 mg/L.

EHT was acutely toxic (LC_{50}) to the fathead minnow at a concentration greater than 1,000 mg/L (Brokaw, 1982). This is similar to the toxicity seen for DEHP to the fathead minnow and other species. It appears that dialkyl phthalates are metabolized by vertebrates (including fish) to monoalkyl phthalates (Mayer and Sanders, 1973; Stalling et al., 1973; Mayer, 1976; Melancon and Lech, 1976).

B. *Subchronic/chronic effects.* No studies on the long-term effects of EHT have been found. However, dialkyl phthalates were found to be hazardous to aquatic invertebrates and juvenile fish at concentrations as low as μg/L (Johnson et al., 1977; Mayer and Sanders, 1973; Mayer et al., 1977; Mehrle and Mayer, 1976).

C. *Other effects (physiological, behavioral, ecosystem processes).* No studies on the physiological, behavioral, or ecosystem effects of EHT have been found.

D. *Bioconcentration and food-chain transport.* EHT is expected to have a large bioconcentration potential because of its estimated octanol/water partition coefficient and its structural similarity to dialkyl phthalates. Significant amounts of DEHP were accumulated by aquatic plants and invertebrates confined in a model ecosystem and exposed for time periods ranging from 4 to 13 days. Bioconcentration factors of 21,000–100,000 have been measured (Metcalf et al., 1973). In other studies, bioconcentration factors of 350–28,000 were measured (Mayer and Sanders, 1973; General Electric Co., 1978; Streufert, 1978; Sanborn et al., 1975).

E. *Reasons for environmental effects recommendations.* EHT is expected to be released and persist in the aquatic environment, especially in sediments. The potential problems that could result from accumulation of the chemical in sediments include: (1) toxic effects on benthic invertebrates (e.g., shellfish) that live on or in sediments; (2) bioaccumulation of the substances and, possibly, resultant toxic effects in fish (e.g., catfish) that feed off the sediments and the benthic invertebrates; and (3) resuspension of the sediments through natural (e.g., storms, changing currents) or human (e.g., dredging) activities, which would result in redistribution of EHT in the aquatic environment. In addition to the above factors, sediments close to the surface (e.g., near coastal areas) are breeding grounds for commercial and game fish (Odum, 1971). This situation creates additional opportunities for contamination of the food chain and for manifestation of toxic effects in juvenile fish growing in such areas.

Chemical fate testing is recommended to better characterize the transformation and persistence of EHT in the aquatic environment.

Studies of its acute and chronic toxicity to fish and aquatic invertebrates and its toxicity to plants are recommended because of the potential for exposure to the chemical and insufficient toxicity data. Available acute toxicity data do not appear to be adequate. Because of its relatively high estimated octanol/water partition coefficient, EHT is expected to bioconcentrate in the fatty tissues of living organisms. This potential for bioconcentration also increases concern as to the effects of food-chain transport of the chemical. For these reasons and the expected environmental entry routes, it is recommended that testing be conducted to determine the bioconcentration of EHT.

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2.2.c *1,3-Dioxolane*

Summary of recommended studies. It is recommended that 1,3-dioxolane be tested for the following:

A. Health Effects:

Mutagenicity.

Chemical disposition and metabolism.

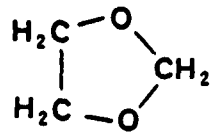
90–Day inhalation toxicity.

Physical and Chemical Information

CAS Number: 646–06–0.

Synonym: Glycol methylene ether.

Structural Formula:



Empirical Formula: $C_3H_6O_2$.

Molecular Weight: 74.09.

Melting Point: −93° C (Rosso and Carbonnel, 1971).

Boiling Point: 74° C at 760 mmHg.

Vapor Pressure: 70 mmHg at 20° C.

Specific Gravity: 1.065.

Log Octanol/Water Partition Coefficient: −0.31 (estimated; Leo et al., 1971)

Description of Chemical: Volatile, colorless liquid that is soluble in water and polar organic solvents. Like most acetals, it is stable in neutral or slightly basic solution but can be hydrolyzed in strong acid (Hawley, 1977; Salomaa and Kankaanpera, 1961; Kankaanpera, 1969).

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/disposal information.* U.S. production of 1,3-dioxolane was reported to be between 1 and 10 million pounds in 1977 (EPA, 1982). The chemical is manufactured by the reaction of formaldehyde with ethylene glycol (Hawley, 1977). Approximately 90 percent of 1,3-dioxolane is used as a stabilizer for 1,1,1,-trichloroethane, at a concentration of 0.5 percent. The remainder of 1,3-dioxolane is used as a reaction solvent in the production of several pharmaceuticals (Ferro Corp., 1982).

According to the National Occupational Hazard Survey, approximately 10,600 workers are potentially exposed to 1,3-dioxolane (NOHS, 1982). Persons exposed to 1,1,1-trichloroethane would also be exposed to 1,3-dioxolane, but at a much lower level. 1,1,1-Trichloroethane is used as a solvent for cleaning precision instruments and for metal degreasing; it is also used as a pesticide (Hawley, 1977). Although no information is available on the environmental release of 1,3-dioxolane, release would occur through the same routes as those for 1,1,1-trichloroethane; i.e., it is likely to be in wastewater discharges and atmospheric emissions where 1,3-dioxolane-stabilized 1,1,1-trichloroethane is found. The chemical was identified in the water at the junction of the San Jacinto and Trinity Rivers in Texas at a concentration of 1 μg/L (STORET, 1982).

B. *Chemical fate information.* No studies on the environmental transport

or persistence of 1,3-dioxolane were found. However, since the compound has a high vapor pressure and is water soluble, it will probably partition mainly into the atmosphere and in bodies of water. In the atmosphere, free radical oxidation is expected to be rapid. The time for the disappearance of 50 percent of the structural analog 1,4-dioxane by photodecomposition under simulated atmospheric conditions was found to be 3.4 hours, while that of the analog 1,3,5-trioxane was 4.7 hours (Dilling et al., 1976). In water, 1,3-dioxolane should not hydrolyze under environmental conditions. However, the chemical has the potential for photo-oxidation in natural waters where humic matter acts as a photosensitizer (Zepp and Baughman, 1978). 1,3-Dioxolane will also react with chlorine to form 2-chloroethyl formate (Jonas et al., 1968). The compound is not expected to bioconcentrate because of its water solubility and estimated low partition coefficient (Veith et al., 1980).

II. *Biological effectsof concern to human health*—A. *Short-term (acute) effects.* It has been reported that the oral LD_{50} of 1,3-dioxolane in rats is 3 g/k (Smyth et al., 1949); the dermal LD_{50} in rabbits is 8,480 mg/kg (RTECS, 1981); and the inhalational LC_{50} in mice is 34,320 ppm (Lomonova and Vinogradova, 1975). The chemical is an eye irritant to guinea pigs and rabbits (Sanderson, 1959; Smyth et al., 1949).

B. *Other effects.* Although inhalation studies with exposures of up to 50 days or 5 months have been conducted, insufficient data have been provided to enable an evaluation of the results (Lomonova and Vinogradova, 1975). No information was found on the carcinogenicity, mutagenicity, teratogenicity, embryotoxicity, or fetotoxicity of 1,3-dioxolane.

C. *Health effects recommendations.* Concern exists as to the possible human health effects of 1,3-dioxolane because of its potential for widespread exposure. Aside from acute effects data, insufficient information was found in the published literature on its toxicologic potential. A battery of short-term mutagenicity tests is recommended to ascertain the chemical's genotoxic potential. Chemical disposition and metabolism studies, preferably by the inhalation route, are recommended to determine the uptake, distribution, and excretion of the chemical and to identify its potential metabolites. Finally, a 90-day inhalation toxicity study with histopathology is recommended to evaluate the toxicologic potential of 1,3-dioxolane, particularly with respect to target organs. Upon completion of the recommended studies, all generated data should be evaluated along with other relevant information to determine whether additional testing should be performed.

III. *Environmental considerations.* 1,3-Dioxolane is not expected to persist, bioconcentrate, or present an acute hazard to the environment. Therefore, no environmental effects testing is recommended.

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2.2.d *4-(1,1,3,3-TETRAMETHYLBUTYL)PHENOL*

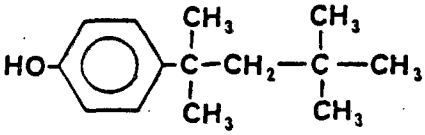
Summary of recommended studies. It is recommended that 4-(1,1,3,3-tetramethylbutyl)phenol be tested for the following:

A. Health Effects:
Short-term tests including mutagenicity.

B. Environmental Effects and Chemical Fate:
Acute and chronic toxicity to fish and aquatic invertebrates.
Toxicity to plants.
Bioconcentration.
Chemical fate.

Physical and Chemical Information

CAS Number: 140–66–9
Synonyms: 4-(Diisobutylphenol)
DIBP
p-tert-Octylphenol
Structural Formula:



Empirical Formula: $C_{14}H_{22}O$.
Molecular Weight: 206.
Melting Point: 81–84° C.
Boiling Point: 290° C.
Specific Gravity: 0.940 at 25° C.
Solubility: In water, slightly soluble; in organic solvents, soluble in tetrahydrofuran.
Log Octanol/Water.
Partition Coefficient: 3.7 (estimated; McLese et al., 1981).
Description of Chemical: White to light tan flakes, depending on purity.

Rationale for Recommendations

I. *Exposure information*—A. *Production and use information.* U.S. production of DIBP in 1977 was reported in the TSCA Inventory to be in excess of 12 million pounds (EPA, 1982). Based on the consumption of 30 million pounds of diisobutylene (CEH, 1980), a chemical feedstock for the production of DIBP, the 1978 production of DIBP has been estimated to be 55 million pounds.

The principal use of DIBP is in the manufacture of an oil-soluble, phenolic resin that goes into the production of varnishes, drying oils, and paints. This resin is also used in brake and clutch linings and special printing inks.

Another use of DIBP is in the production of a nonionic surfactant (detergents, wetting agents, oil emulsifiers, and textile scouring agents), and a sulfide of DIBP is used in vulcanized rubber, antiflex cracking agents, fungistats, and plasticizers.

DIBP has a potential for limited release from several processes. It can be released in aqueous waste streams during its manufacture or in the production of phenolic resins. DIBP can also be released in fugitive, gaseous emissions from condensers, vacuum lines, sample ports, and vents during manufacture (EPA, 1977). Finally, DIBP can be present as an impurity in manufactured oils, paints, varnishes, etc. For instance, the phenolic resin products can contain 1 percent unreacted phenol (NIOSH, 1978); based on similarities in chemical processes, DIBP would be expected to be present at similar concentrations in resins. The nonionic surfactants are also expected to contain small amounts of unreacted DIBP as an impurity (CTET, 1972a and 1972b).

Human exposure to DIBP by inhalation and skin absorption has been identified in the workplace of factories producing this substance (Hara and Nakajima, 1969; Malten et al., 1971).

B. *Chemical fate information.* DIBP is a relatively nonreactive, nonvolatile, and nonwater-soluble chemical (Schenectady Chemicals, Inc., 1981). It is expected to resist biodegradation because of its highly branched alkyl chain (Webley et al., 1959). DIBP apparently undergoes little degradation or sorption at sewage treatment plants or at drinking water treatment plants. For example, it was reported that water initially containing 400 μg/L DIBP was discharged after sewage treatment with a concentration of 200 μg/L (Sheldon and Hites, 1979), and water entering a water treatment plant in Philadelphia, Pennsylvania, was found to contain 0.4 μg/L DIBP, which was distributed in drinking water at 0.01 μg/L (Sheldon and Hites, 1978).

C. *Evidence for environmental exposure.* DIBP has been identified at a concentration of 5 mg/L in the wastewater of an industrial plant at River Mile 104 of the Delaware River (Sheldon and Hites, 1979).

NIOSH (1978) reported that concentrations of DIBP in the workplace air of a phenol resin plant were found to be less than 1 ppm. However, it was believed that workers were exposed to DIBP principally through the skin, which occurred in the plant's belt transport and bagging areas. This finding by NIOSH was corroborated by Ikeda et al. (1978).

II. *Biological effects of concern to human health*—A. *Acute toxicity.* In acute oral toxicity studies of DIBP, the estimated LD_{50} for mice was found to be 3,210 mg/kg (Kel'man et al., 1967) and, for rats, 2,160 mg/kg (Marhold, 1972) and 4,600 mg/kg (Kel'man et al., 1967). In rabbits, DIBP was found to be moderately irritating to the skin and severely irritating to the eyes (Marhold, 1972).

B. *Subchronic and chronic toxicity.* No studies on the subchronic and chronic effects of DIBP have been found.

C. *Mutagenicity, teratogenicity, and reproductive effects.* No studies on the mutagenicity, teratogenicity, or reproductive effects of DIBP have been found.

D. *Metabolism.* Williams (1959) reported that, in general, alkylated phenols were conjugated by sulfuric acid and glucuronic acid. Ikeda et al. (1978) found that these conjugates were excreted rapidly with a biologic half-life of about 4 hours. Since conjugation if DIBP would not appreciably increase its water solubility, the excretion of DIBP would be expected to be slower than that of simple alkylated phenols.

E. *Observations in humans.* Leukoderma (a depigmentation effect) has been reported following exposure to DIBP (Hara and Nakajima, 1969; Malten et al., 1971; Ikeda et al., 1970). However, the observations were somewhat obscured by the fact that DIBP was not the only alkylphenol that could have produced the effect. Whether or not the effects observed were due to DIBP or other alkylphenol compounds is not as important as the observed effects produced by other, more thoroughly studied substances of this family such as p-tert-butylphenol. Babanov and Chumakov (1966) reported that p-tert-butylphenol caused occupational vitiligo in nearly 15 percent of the workers employed for 2 years and in 40 percent of the workers employed for 2–13 years in resin production. Furthermore, Rodermund et al. (1975) reported that this butyl compound had produced liver and thyroid effects as well as general malaise in three workers. The systemic nature of the activity of p-tert-butylphenol suggests that the other members of the alkylphenol family that produce leukoderma would also produce systemic effects that have not been well defined in the worker population exposed to them.

F. *Other effects.* Skin papillomas were induced in mice receiving a single application of 9,10-dimethyl-1,2-benzanthracene (initiator) solution followed by twice-weekly applications of DIBP for 12 weeks (Boutwell and Bosch, 1959). In studies designed to elicit a depigmentation effect (leukoderma), mice were exposed to DIBP by oral, subcutaneous, and dermal routes of administration for periods of 2–7 months (Hara and Nakajima, 1969; Gellin et al., 1979); rabbits were exposed dermally for 20 weeks (Hara and Okumura, 1962 (unpublished), as cited in Malten et al., 1971); and guinea pigs were exposed orally and dermally for up to 10 months (Malten et al., 1971; Gellin et al., 1979). The leukodermal effect was observed, but no papillomas were produced. Neither the dose nor the length of time of administration was adequate to determine whether the substance could produce tumors or other toxic effects.

G. *Reasons for health effects recommendations.* The leukodermal action of DIBP indicates a profound effect on the biochemical and physiological processes in the dermal cells of several species. Thus, short-term tests, including mutagenicity, are recommended to investigate the toxicologic mechanisms of DIBP. The need for further testing will be determined by the results of these recommended studies.

III. *Environmental considerations*—A. *Short-term (acute) effects.* In acute toxicity studies, the 96-hour LC_{50} and the lethal threshold concentration of DIBP in the shrimp *Crangon septemspinosa* were found to be 1.1 and 1.0 mg/L, respectively (McLeese et al., 1981).

B. *Long-term subchronic/chronic effects.* No studies on the long-term effects of DIBP have been found for either aquatic animals or plants.

C. *Other effects (physiological/behavioral/ecosystem processes).* No studies on the physiological, behavioral, or ecosystem effects of DIBP have been found.

D. *Bioconcentration and food-chain transport.* Based on its estimated log P of 3.7 (McLeese et al., 1981), the bioconcentration factor for DIBP is calculated to be 331, which indicates a potential for bioconcentration.

E. *Reasons for environmental effects recommendations.* DIBP may enter aquatic systems through its uses in the production of resins and as an impurity in oils, paints, varnishes, etc. DIBP is expected to persist in the aquatic environment. It has been detected in the environment at 5 mg/L. This concentration exceeds the LC_{50} value of 1.1 mg/L for shrimp. Therefore, DIBP may present a risk to the aquatic environment. Studies of its acute and chronic toxicity to fish and aquatic invertebrates and its toxicity to plants are recommended because of the potential for exposure to the chemical and insufficient toxicity data.

Furthermore, DIBP is expected to bioconcentrate in aquatic organisms and may be transported through the food chain because of its relatively high estimated log octanol/water partition coefficient. For these reasons and the expected environmental exposure, it is recommended that DIBP be tested for bioconcentration.

Chemical fate testing is recommended to better characterize the transport, transformation, and persistence of DIBP in the aquatic environment.

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2.2.e *TRIS(2-Ethylhexyl) Trimellitate.*

Summary of recommended studies. It is recommended that tris(2-ethylhexyl) trimellitate be tested for the following:

A. Health Effects: Chemical disposition and metabolism.

B. Environmental Effects and Chemical Fate:

Acute and chronic toxicity to fish and aquatic invertebrates

Toxicity to plants

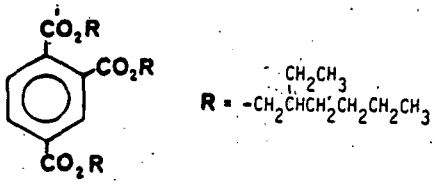
Bioconcentration

Chemical fate

Physical and Chemical Information

CAS Number: 3319-31-1.

Structural Formula:



Empirical Formula: $C_{33}H_{54}O_6$.

Molecular Weight: 546

Melting Point: −35° C

Boiling Point: 278–284° C at 3 mmHg

Specific Gravity: 0.992

Log Octanol/Water Partition Coefficient: >6 (estimated; Leo et al., 1971)

Description of Chemical: Clear liquid with a mild odor

Rational for Recommendations

I. *Exposure information*—A. *Production/use/disposal information*

U.S. production of tris(2-ethylhexyl) trimellitate was reported to be more than 2.2 million pounds in 1977 (EPA, 1982). The current annual U.S. production is estimated to be less than 15 million pounds (U.S. Steel Corp., 1982). The chemical is manufactured by reacting 2-ethylhexanol with trimellitic anhydride. The predominant use of tris(2-ethylhexyl) trimellitate is as a plasticizer for polyvinyl chloride (PVC) used to coat wire and cable for electrical applications. This use is based on the fact that the chemical does not bake out of PVC (Bell Laboratories, 1982). Tris(2-ethylhexyl) trimellitate has also been reported to have applications in pool liners, furniture, shower curtains, outerwear, infant pants, garden hose, vehicle seats, and weatherstripping (A.D. Little, Inc., 1982; Union Camp Corp., 1976). Like the phthalate esters, tris(2-ethylhexyl) trimellitate is extractable from PVC resins with oil and soapy water (Bell Laboratories, 1982).

The entire class of trimellitate ester plasticizers, which had a U.S. production volume of 26 million pounds in 1977 (CEH, 1979), accounts for 1 percent of the market of plasticizers for PVC. The trimellitates combine the processibility, compatibility, and water extraction resistance that are normally associated with the phthalate plasticizers. In addition, they provide the lower volatility typical of many of the lower weight polymeric plasticizers (Finney, 1981). It is expected that the applications of trimellitate esters will increase in the future because of their low volatility (Finney, 1981; Battelle, 1980).

No estimates of the number of workers exposed to tris(2-ethylhexyl) trimellitate were found. One manufacturer reports that the tris(2-ethylhexyl) trimellitate it manufactures is produced in a closed system with minimal exposure to employees and that three to four workers are required to operate the batch process (Ralston, 1982).

The same manufacturer reports that release of the chemical to the environment during production is minimal. Because of the chemical's low vapor pressure, no release to the atomsphere is expected. A small amount of product is disposed of in a filter cake sent to a landfill. Plant effluents are treated in an alkaline medium prior to

release. Since tris(2-ethylhexyl) trimellitate is degradable, it is expected that very little of the chemical is released in the plant effluent (Ralston, 1982). No additional information was found regarding the release of tris(2-ethylhexyl) trimellitate during production or use.

B. *Chemical fate information.* No studies on environmental transport or persistence of tris(2-ethylhexyl) trimellitate were found. However, the chemical is expected to behave similarly to the alkyl phthalates and thus to enter and persist in the aquatic environment.

No data were found on the quantity of tris(2-ethylhexyl) trimellitate that is likely to be released to the environment. However, data do exist concerning potential sources of release and environmental occurrences of the structurally analogous dialkyl phthalates, which are believed to have plasticizer use patterns similar to those anticipated for tris(2-ethylhexyl) trimellitate. It has been estimated that about 1.4–2.6 percent of the total volume of plasticizers used during processing operations is released in water effluents (A.D. Little, Inc., 1,979) Other data show that the phthalates also may be released from end-use plastic articles as a result of their use and disposal (Mathur, 1974; Versar, Inc., 1979). Regardless of where, in their manufacture, use, and disposal cycles at which dialkyl phthalates enter the environment, their environmental distribution appears to be ubiquitous; i.e., they have been found in air, bodies of water, biota (Peakall, 1975; Mayer et al., 1972; Giam et al., 1978a), and in soils and sediments (Jungclaus et al., 1978; Brownlee and Strachan, 1977; Giam et al., 1978b; Shartz et al. 1979).

Tris(2-ethylhexyl) trimellitate is predicted to have a low water solubility based on its structural relationship to the dialkyl phthalates, and its log octanol/water partition coefficient is estimated to be greater than 6 (Leo et al., 1971). This suggests that it will strongly sorb to sediments and soils. The fact that the dialkyl phthalates are readily sequestered in aquatic systems by organic residues and solid surfaces (Jungclaus et al., 1978; Brownlee and Strachan, 1977; Giam et al., 1978b; Morita et al., 1974; Schwartz et al., 1979) provides support for such sorption when tris(2-ethylhexyl) trimellitate is released to fresh or marine water. Significant portions of these soils ans sediments are expected to be anaerobic.

In anaerobic systems, tris(2-ethylhexyl) trimellitate is expected to biodegrade at a rate similar to that of long-chain dialkyl phthalates, which is over 30 days (Syracuse Research Corp., 1979; Johnson and Lulves, 1975; Saeger and Tucker, 1976). Further evidence for slow biodegradation rates of dialkyl phthalates is provided by monitoring studies showing that phthalates accumulate in monitoring showing that phthalates accumulate in sediments (Schwartz et al., 1979; Jungclaus et al., 1978).

II. *Biological effects of concern to human health*—A. *Short-term (acute) effects.* The oral LD_{50} of tris(2-ethylhexyl) trimellitate was found to be greater than 3,200 mg/kg in both rats and mice. The chemical has been shown to be slightly irritating in skin sensitivity tests in guinea pigs; however, there was no evidence of skin absorption in guinea pigs treated with 24 mg/kg of the compound. tris(2-ethylhexyl) trimellitate has also been shown to cause slight eye irritation in rabbits. In inhalation studies with the compound, three groups of rats were exposed for 6 hours to 210, 2,640, and 4,170 mg/m^3, respectively. The two higher doses produced severe irritation and were lethal to all animals, whereas the lowest dose produced only minor irritation and no deaths (Eastman Chemicals. 1982).

B. *Other effects.* No information was found on the mutagenicity, pharmacokinetics, carcinogenicity, or reproductive effects of tris(2-ethylhexyl) trimellitate. However, the structural analog di(2-ethylhexyl) phthalate (DEHP) has been demonstrated to induce hepatocellular carcinomas and adenomas in both sexes of Fischer-344 rats and $B_6C_3F_1$ mice (NTP, 1982b). DEHP, which appears to be rapidly eliminated form the body, is initially metabolized to mono(2-ethylhexyl) phthalate (MEHP) and 2-ethylhexanol (Kluwe, 1981).

Studies conducted to date suggest that DEHP is both teratogenic and fetotoxic in rats and mice (Singh et al., 1972; Nakamura et al., 1979; Shiota et al., 1980). Moreover, exposure of male rodents to DEHP produced testicular atrophy, seminiferous tubular degeneration, and possible infertility (Oishi and Hiraga, 1979; Kluwe, 1981).

DEHP was not found to be mutagenic in a Salmonella microsomal assay (NTP, 1981; Schad, 1981). It was weakly positive for induction of chromosomal aberrations and negative for induction of sister chromatid exchanges in cultured Chinese hamster ovary cells. It was also negative in the Drosophila sex-linked recessive lethal assay (NTP, 1981).

DEHP has been shown to induce hypolipidemia and hepatic peroxisomal proliferation in rats and mice (Reddy et al., 1976), which has led to the suggestion that these effects play a role in the chemical's observed carcinogenicity (Kluwe, 1982). In a chemical class study, DEHP, di(2-ethylhexyl) adipate (DEHA), di(2-ethylhexyl) sebacate, 2-ethylhexanol, 2-ethylhexanoic acid, and, to a lesser extent, 2-ethylhexyl aldehyde induced hypolipidemia and peroxisomal proliferation, whereas adipic acid, diethyl phthalate, hexanol, and hexanoic acid did not (Moody and Reddy, 1978). This suggests that the 2-ethylhexyl moiety may be important in inducing these effects. The toxic potential of the 2-ethylhexyl moiety is further suggested by the observed carcinogenicity of DEHA in mice (NTP, 1982a).

C. *Health effects recommendations.* Concern exists as to the possible human health effects of tris(2-ethylhexyl) trimellitate because of its structural relationship to DEHP, the presence of the 2-ethylhexyl moiety in the molecule, and projections as to its increasing usage.

Analogous to DEHP, tris(2-ethylhexyl) trimellitate would be expected to metabolize initially to 2-ethylhexanol and di(2-ethylhexyl) trimellitate in the intestine following oral administration with the free carboxylic acid, probably occurring in the four position. However, tris(2-ethylhexyl) trimellitate has a molecular weight of 546 as compared with a molecular weight of 390 for DEHP. Therefore, it is possible that the molecule will be too large to enter the bile salt micelles on which the enzyme that is responsible for catalyzing the hydrolysis of the ester linkage acts (Albro and Latimer, 1974). Moreover, because of its size, tris(2-ethylhexyl) trimellitate or its initial metabolite may be poorly absorbed from the intestine. Chemical disposition studies with identification of metabolites are necessary to determine if the compound undergoes metabolism in the intestine and if it or any potential metabolites are absorbed from the intestine. If the above-mentioned studies demonstrate the absorption and/or metabolism of tris(2-ethylhexyl) trimellitate, then additional studies should be undertaken to ascertain its potential for reproductive and subchronic effects including hepatic peroxisomal proliferation and hypolipidemia.

III. *Environmental considerations*—A. *Short-term (acute) effects.* No studies on the short-term effects of tris(2-ethylhexyl) trimellitate have been found. The structurally analogous DEHP is toxic to *Daphnia* and brine shrimp (Hirzy et al., 1978; Sugawara, 1974).

B. *Long-term (subchronic/chronic effects).* No studies on the long-term effects of tris(2-ethylhexyl) trimellitate

have been found. However, dialkyl phthalates have been found to be hazardous to aquatic invertebrates and fish at concentrations as low as 3 ug/L (Johnson et al., 1977; Mayer and Sanders, 1973; Mayer et al., 1977; Mehrle and Mayer, 1976).

C. *Other effects (physiological, behavioral, ecosystem processes).* No studies on the physiological, behavioral, or ecosystem effects of tris(2-ethylhexyl) trimellitate have been found.

D. *Bioconcentration and food-chain transport.* Tris(2-ethylhexyl) trimellitate is expected to have a large bioconcentration potential because of its relatively high estimated octanol/water partition coefficient and its structural similarity to dialkyl phthalates, which have bioconcentration factors as high as 107,000 (Metcalf et al., 1973; Mayer and Sanders, 1973; General Electric Co., 1978; Streufert, 1978; Sanborn et al., 1975).

E. *Reasons for environmental effects recommendations.* Tris(2-ethylhexyl) trimellitate is expected to be released and persist in the aquatic environment, especially in sediments. The potential problems that could result from accumulation of the chemical in sediments include: (1) toxic effects on benthic invertebrates (e.g., shellfish) that live on or in sediments; (2) bioaccumulation of the substances and, possibly, resultant toxic effects in fish (e.g., catfish) that feed off the sediments and the benthic invertebrates; and (3) resuspension of the sediments through natural (e.g., storms, changing currents) or human (e.g., dredging) activities, which would result in redistribution of tris(2-ethylhexyl) trimellitate in the aquatic environment. In addition to the above factors, sediments close to the surface (e.g., near coastal areas) are breeding grounds for commercial and game fish (Odum, 1971). This situation creates additional opportunities for contamination of the food chain and for manifestation of toxic effects in juvenile fish growing in such areas.

Chemical fate testing is recommended to better characterize the transformations and persistance of tris(2-ethylhexyl) trimellitate in the aquatic environment.

Available acute toxicity data do not appear to be adequate. Studies of its acute and chronic toxicity to fish and aquatic invertebrates are recommended because of the potential for exposure to the chemical and insufficient toxicity data.

Because of its relatively high estimated octanol/water partition coefficient, the chemical is expected to bioconcentrate in the fatty tissues of living organisms. This potential for bioconcentration also increases concern as to the effects of foodchain transport of the chemical. For these reasons and the expected environmental entry routes, it is recommended that testing be conducted to determine the bioconcentration of tris(2-ethylhexyl) trimellitate.

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2.3 *Chemical group recommended for priority consideration with supporting rationale.*

2.3a *Carbofuran Intermediates*

Summary of recommended studies. It is recommended that three carbofuran intermediates (identified below and in Table 1) be tested for the following:

A. Environmental Effects and Chemical Fate:

Acute toxicity to fish and aquatic invertebrates

Chemical fate with particular emphasis on monitoring studies.

Physical and Chemical Information

The physical and chemical properties of the following three carbofuran intermediates are shown in Table 7.

- Methallyl 2-nitrophenyl ether
- 7-Nitro-2,2-dimethyl-2,3-dihydrobenzofuran
- 7-Amino-2,2-dimethyl-2,3-dihydrobenzofuran.

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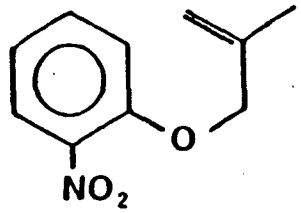
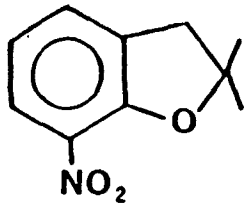
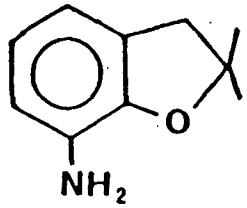
Table 7--Physical and Chemical Properties of Three Carbofuran Intermediates

Parameter	Methallyl 2-nitrophenyl ether	7-Nitro-2,2-dimethyl-2,3-dihydrobenzofuran	7-Amino-2,2-dimethyl-2,3 dihydrobenzofuran
CAS No.:	13414-54-5	13414-55-6	68298-46-4
Structural Formula:			
Synonym:	1-(2-Methyl-2-propenyl)oxy-2-nitrobenzene	N/A[a]	N/A[a]
Empirical Formula:	$C_{10}H_{11}NO_3$	$C_{10}H_{11}NO_3$	$C_{10}H_{13}NO$
Molecular Weight:	193	193	163
Log Octanol/Water Partition Coefficient[b]	2.0	1.9	0.9
Description:	Liquid	Solid melting at 65-67° C	Liquid

[a]No information available.
[b]Estimated according to the method of Leo et al. (1971).

BILLING CODE 6560-50-C

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/disposal information.* U.S. production of each one of the three carbofuran intermediates was between 10 million and 50 million pounds in 1977 (EPA, 1982). These compounds are intermediates consumed onsite in the manufacture of carbofuran, a pesticide. However, these chemicals are released to the aquatic environment in wastewater; average wastewater volume is 1.4 million gallons per day and contains 0.5–1.5 mg/L of each of the three intermediates after treatment (Fekete, 1982a). According to the manufacturer of carbofuran, these wastes are scheduled to be treated by a metropolitan waste treatment plant after a hookup in late 1982 or early 1983. Additional wastes containing the three carbofuran intermediates are present in a sludge that is incinerated or placed in a hazardous waste landfill; as a result, the sludge could also be a source of environmental exposure for the three chemicals.

The sole manufacturer of carbofuran produces these intermediates in a closed system in a single plant; thus, the opportunity for occupational exposure is minimal (FMC, 1981).

B. *Chemical fate information.* No studies on the environmental transport or persistence of the three carbofuran intermediates were found. Although these compounds are expected to biodegrade, no data on biodegradation rates have been found.

II. *Biological effects of concern to human health.* The health effects of the three carbofuran intermediates are not well characterized. However, due to the lack of significant human exposure, no health effects testing is recommended.

III. *Environmental considerations*—A. *Short-term (acute) effects.* In screening experiments with goldfish, the 48- and 96-hour LC_{50} values for the three carbofuran intermediates ranged from 6.5 to 75 mg/L (Fekete, 1982b).

B. *Long-term (subchronic/chronic) effects.* No studies on the long-term effects of the three carbofuran intermediates have been found.

C. *Other effects (physiological/behavioral/ecosystem processes).* No Studies on the physiological, behavioral, or ecosystem effects of the three carbofuran intermediates have been found.

D. *Bioconcentration and food-chain transport.* Based on their estimated octanol/water partition coefficients (see Table 1), little bioconcentration is expected for the three carbofurans.

E. *Reasons for specific environmental recommendations.* The three designated carbofuran intermediates are released at a rate of 1.4 million gallons per day in an effluent containing 0.5–1.5 mg/L of each of these chemicals. LC_{50} values for goldfish are 6.5–75 mg/L. However, goldish are not normally considered a sensitive species, and other species of fish and invertebrates may have LC_{50} values at significantly lower concentrations. Thus, the three carbofuran intermediates are being released to the environment at concentrations that may exceed anticipated environmental effects levels.

Chemical fate testing, principally environmental monitoring, is needed to better characterize the nature of the dispersion, concentration, and persistence of the three carbofuran intermediates in the environment. Acute toxicity testing to fish and invertebrates is recommended to characterize more precisely the toxicity of these carbofuran intermediates.

References

(1) EPA. 1982. Environmental Protection Agency TSCA chemical Substance Inventory (public portion). Washington, DC: Environmental Protection Agency.

(2) Fekete, TM. 1982a. Letter from FMC Corporation to Dynamac Corporation, August 12, 1982.

(3) Fekete, TM. 1982b. Letter from FMC Corporation to Dynamac Corporation, February 26, 1982.

(4) FMC. 1981. Unpublished data provided to ITC by J. Acker, March 27, 1981.

(5) Leo AE, Hansch C, Elkins D. 1971. Partition coefficients and their uses. Chem. Revs. 71(6):525–615.

[FR Doc. 82-32844 Filed 12-2-82; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
December 3, 1982

Part IV

Department of Health and Human Services

Food and Drug Administration

OTC Drug Products for the Control of Dandruff, Seborrheic Dermatitis, and Psoriasis; Establishment of a Monograph

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 82N-0214]

OTC Drug Products for the Control of Dandruff, Seborrheic Dermatitis, and Psoriasis; Establishment of a Monograph

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing an advance notice of proposed rulemaking that would establish conditions under which over-the-counter (OTC) drug products for the control of dandruff, seborrheic dermatitis, and psoriasis are generally recognized as safe and effective and not misbranded. This notice is based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by March 3, 1983, and reply comments by April 4, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on December 15, 1980 a report on OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis from the Advisory Review Panel on OTC Miscellaneous External Drug Products. FDA regulations (21 CFR 330.10(a)(6)) provide that the agency issue in the **Federal Register** a proposed order containing: (1) The monograph recommended by the Panel, which establishes conditions under which OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment of the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. The Panel's findings appear in this document to obtain public comment before the agency reaches any decision on the Panel's recommendations. This document represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it. After reviewing all comments submitted in response to this document, FDA will issue in the **Federal Register** a tentative final monograph for OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis as a notice of proposed rulemaking.

Under the OTC drug review procedures, the agency's position and proposal are first stated in the tentative final monograph, which has the status of a proposed rule. Final agency action occurs in the final monograph, which has the status of a final rule.

The agency's position on OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis will be stated initially when the tentative final monograph is published in the **Federal Register** as a notice of proposed rulemaking. In that notice of proposed rulemaking, the agency also will announce its initial determination whether the proposed rule is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The present notice is referred to as an advance notice of proposed rulemaking to reflect its actual status and to clarify that the requirements of the Executive Order and the Regulatory Flexibility Act will be considered when the tentative final monograph is published. At that time FDA also will consider whether the proposed rule has a significant impact on the human environment under 21 CFR Part 25 (proposed in the **Federal Register** of December 11, 1979; 44 FR 71742).

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis should be accompanied by appropriate documentation.

Originally the Advisory Review Panel on OTC Antimicrobial (II) Drug Products was charged with the review of ingredients for the treatment or prophylaxis (prevention) of dandruff and seborrhea, and the Advisory Review Panel on OTC Miscellaneous External Drug Products was charged with the review of ingredients used as remedies for cradle cap and psoriasis.

In a notice published in the **Federal Register** of December 16, 1972 (37 FR 26842), FRA requested submission of data and information on antimicrobial active ingredients to the Advisory Review Panel on OTC Antimicrobial (II) Drug Products.

The agency subsequently found considerable overlapping between the ingredients submitted to the Antimicrobial (II) Panel for review in response to the December 16, 1972 call for data, and the ingredients submitted to the Miscellaneous External Panel for review in response to calls for data published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179). The agency concluded that a review of all ingredients submitted for the treatment or prophylaxis of dandruff, seborrhea, and psoriasis by one panel would be more efficient and that it would be appropriate for this review to be undertaken by the Miscellaneous External Panel. The members of the Antimicrobial (II) Panel were invited to serve as consultants to the Miscellaneous External Panel when ingredients with known antimicrobial actions were reviewed. In the **Federal Register** of March 6, 1979 (44 FR 12271), a notice was published announcing that the review of ingredients and data pertaining to dandruff and seborrhea was transferred from the Antimicrobial (II) Panel to the Miscellaneous External Panel.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information concerning OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis submitted for consideration by the Panel. All the submitted information will be put on public display in the Dockets Management Branch, Food and

Drug Administration, after January 3, 1983, except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, National Center for Drug and Biologics (HFD-510) (adress above).

FDA published in the **Federal Register** of September 29, 1981 (46 FR 47730) a final rule revising the OTC procedural regulations to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). The Court in *Cutler* held that the OTC drug review regulations (21 CFR 330.10) were unlawful to the extent that they authorize the marketing of Category III drugs after a final monograph had been established. Accordingly, this provision is now deleted from the regulations. The regulations now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process, before the establishment of a final monograph.

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III because that was the framework in which the Panel conducted its evaluation of the data.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. In some advance notices of proposed rulemaking previously published in the OTC drug review, the agency suggested an earlier effective date. However, as explained in the tentative final monograph for OTC topical antimicrobial drug products (published in the **Federal Register** of July 9, 1982; 47 FR 29986), the agency has concluded that it is more reasonable to have a final monograph be effective 12 months after the date of its publication in the **Federal Register**. This period of time should enable manufacturers to reformulate, relabel, or take other steps to comply with a new monograph with a minimum disruption of the marketplace thereby reducing economic loss and ensuring that consumers have continued access to safe and effective drug products.

On or after the effective date of the monograph, no OTC drug products that are subject to the monograph and that contain nonmonograph conditions, i.e., conditions which would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce. Further, any OTC drug products subject to this monograph which are repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date of the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). In accordance with these regulations, a request for data and information on all active ingredients in OTC antimicrobial drug products was issued in the **Federal Register** of December 16, 1972 (37 FR 26842), including active ingredients for the treatment or prevention of dandruff and seborrhea, and a request for data and information on all OTC active ingredients used in miscellaneous external drug products was issued in the **Federal Register** of November 16, 1973 (38 FR 31697). (In making their categorizations with respect to "active" and "inactive" ingredients, the advisory review panels relied on their expertise and understanding of these terms. FDA has defined "active ingredient" in its current good manufacturing practice regulations (§ 210.3(b)(7), (21 CFR 210.3(b)(7))), as "any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect." An "inactive ingredient" is defined in § 210.3(b)(8) as "any component other than an 'active ingredient' "). In the **Federal Register** of August 27, 1975 (40 FR 38179), a notice supplemented the November 16, 1973, notice with a detailed, but not necessarily all-inclusive, list of ingredients in miscellaneous external drug products. This list, which included cradle cap and psoriasis remedies, was provided to give guidance on the kinds of active ingredients for which data should be submitted. The notices of November 16, 1973, and August 27, 1975, informed OTC drug product manufacturers of the opportunity to submit data to the review at that time and of the applicability of the monographs from the OTC drug review to all OTC drug products.

Under § 330.10(a) (1) and (5), the Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report on the safety, effectiveness, and labeling of the active ingredients in these miscellaneous external drug products:

William E. Lotterhos, M.D., Chairman
Rose Dagirmanjian, Ph. D.
Vincent J. Derbes, M.D. (resigned July 1976)
George C. Cypress, M.D. (resigned November 1978)
Yelva L. Lynfield, M.D. (appointed October 1977)
Harry E. Morton, Sc. D.
Marianne N. O'Donoghue, M.D.
Chester L. Rossi, D.P.M.
J. Robert Hewson, M.D. (appointed September 1978)

Representatives of consumer and industry interests served as nonvoting members of the Panel. Marvin M. Lipman, M.D., of Consumers Union, served as the consumer liaison. Gavin Hildick-Smith, M.D., served as industry liaison from January until August 1975, followed by Bruce Semple, M.D., until February 1978. Both were nominated by the Proprietary Association. Saul A. Bell, Pharm. D., nominated by the Cosmetic, Toiletry, and Fragrance Association, also served as an industry liaison since June 1975.

Two nonvoting consultants, Albert A. Belmonte, Ph. D., and Jon J. Tanja, R.Ph., M.S., provided assistance to the Panel since February 1977.

The following FDA employees assisted the Panel: John M. Davitt served as Executive Secretary until August 1977, followed by Arthur Auer until September 1978, followed by John T. McElroy, J.D. Thomas D. DeCillis, R.Ph., served as Panel Administrator until April 1976, followed by Michael D.

Kennedy until January 1978, followed by John T. McElroy, J.D. Joseph Hussion, R.Ph., served as Drug Information Analyst until April 1976, followed by Victor H. Lindmark, Pharm. D., until March 1978, followed by Thomas J. McGinnis, R.Ph.

The Advisory Review Panel on OTC Miscellaneous External Drug Products was charged with the review of many categories of drugs. Due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents its conclusions and recommendations on drug products for the control of dandruff, seborrheic dermatitis, and psoriasis in this document. The Panel's findings on other categories of miscellaneous external drug products are being published periodically in the **Federal Register.**

The Miscellaneous External Panel prefers the term "seborrheic dermatitis" to "seborrhea." The Panel believes that "seborrheic dermatitis" more accurately describes the condition with which the submitted products are intended to deal, and this term is therefore used throughout this document.

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings which dealt with the topics in this document were held on August 3 and 4, September 28 and 29, October 28 and 29, December 9 and 10, 1979; January 27 and 28, March 7 and 8, April 20 and 21, June 22 and 23, August 3 and 4, October 5 and 6, November 7 and 8, and December 14 and 15, 1980.

The minutes of the Panel meetings are on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above).

The following individuals were given an opportunity to appear before the Panel, either at their own request or at the request of the Panel, to express their views on OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis:

Frank Akin
D. Anderson, Ph. D.
Alex Apostolou, Ph. D., D.V.M.
B. Bopp, Ph. D.
John Brickto, M.D.
Richard Brogle, Ph. D.
Sol Gershon, Ph. C., Ph. D.
Marty Garotalo
William Hubregs, Ph. D.
R. Janicki, M.D.
Kenneth Johannes
J. Kesterson, Ph. D., D.V.M.
James J. Leyden, M.D.
Norman Meltzer, Ph. D.
Sigfrid A. Muller, M.D.
Milos Novotny, Ph. D.
Mary Paxton, M.S.
Mark Pittelkow, M.D.
Harold O'Keefe
Stephen Schwartz
Samuel Solomon, M.D.
Arnold Winfield
Gail Zimmerman

No person who so requested was denied an opportunity to appear before the Panel.

The Panel has thoroughly reviewed the literature and data submissions, has listened to additional testimony from interested persons, and has considered all pertinent information submitted through December 15, 1980, in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations in §330.10, the Panel reviewed OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis with respect to the following three categories:

Category I. Conditions under which OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

The Panel reviewed 32 active ingredients for the control of dandruff, seborrheic dermatitis, psoriasis, and cradle cap. The Panel placed 5 ingredients in Category I, 2 ingredients in Category II, and 19 ingredients in Category III for the control of dandruff. The Panel placed three ingredients in Category I (one for scalp and body use and one for scalp use only), one ingredient in Category II, and three ingredients in Category III (one for body use only) for the control of seborrheic dermatitis. The Panel placed two ingredients in Category I, four ingredients in Category II, and nine ingredients in Category III (one for body use only) for the control of psoriasis. For the control of cradle cap, the Panel placed no ingredients in Category I, no ingredients in Category II, and two ingredients in Category III. (The number of ingredient classfications does not equal the number of ingredients reviewed because some ingredients were reviewed for more than one labeled use.)

I. Submission of Data and Information

In the **Federal Register** of November 16, 1973 (38 FR 31697), a notice was published requesting the submission of data and information on product categories to be reviewed by the Miscellaneous External Panel. A subsequent notice, published in the **Federal Register** of August 27, 1975 (40 FR 38179) requested data and information on additional product categories as well as specific ingredients to be reviewed by the Panel, including drug products for psoriasis and cradle cap.

As previously stated, a notice published in the **Federal Register** of March 6, 1979 (44 FR 12271) administratively transferred the review of active ingredients for the treatment and prophylaxis of dandruff and seborrhea (seborrheic dermatitis) and all pertinent data and information from the Antimicrobial (II) Panel to the Miscellaneous External Panel.

A. Submissions

Pursuant to the above notices, the following submissions were received:

Firms	Marketed products
Abbott Laboratories, North Chicago, IL 60064.	Selsun Blue for Normal Hair, Selsun Blue for Dry Hair, Selsun Blue for Oily Hair.
Alberto-Culver Co., Melrose Park, IL 60106.	Rinse Away Dandruff Rinse.
Alcon Laboratories, Inc., Fort Worth, TX 76101.	Ionil, Ionil-T.
Armour-Dial, Inc., Phoenix, AZ 85077.	Dial Conditioning Dandruff Shampoo for Normal Hair, Dial Conditioning Dandruff Shampoo for Dry Hair, Dial Conditioning Shampoo for Oily Hair.
Avon Products, Inc., Suffern, NY 10901.	Keep-Clear Anti-dandruff Shampoo.
Block Drug Co., Inc., Jersey City, NJ 07302.	Tegrin Cream, Tegrin Foam, Tegrin Medicated Shampoo, Tegrin Medicated Soap.
Chester A. Baker Laboratories, Inc., Miami, FL 33169.	Baker's P & S Liquid.
Cooper Laboratories, Inc., Wayne, NJ 07470.	Packer's Pine Tar Liquid Shampoo, Packer's Pine Tar Soap, Sebaveen.
Colgate-Palmolive, New York, NY 10022.	Grenadier Dandruff Control Hair Groom, Look Twice Anti-dandruff Lotion Shampoo, Wildroot Dandruff Treatment Hair Groom.
Denver Chemical Mfg. Co., Stamford, CT 06904.	Siroil.
Emery Uncommon Chemicals, Linden, NJ 07036.	Ogilvie Dandruff Shampoo.
Flow Pharmaceuticals, Palo Alto, CA 94303.	Nu-Flow.
G. S. Herbert Laboratories, Irvine, CA 92664.	Vanseb Dandruff Shampoo, Vanseb-T Tar Shampoo.
H. B. Distributing Co., West Newton, MA 02165.	Hospital Brand Psoriasis Emulsion.
H. Clay Glover Co., Inc., Toms River, NJ 08753.	Glover's Imperial Medicated Ointment, Glover's Imperial Medicated Soap, Glover's Imperial Sarcoptic Mange Medicine, Rewocid SBU 185.
Hask, Inc. Toiletries, Great Neck, NY 10021.	Hask D.S.T. Treatment Shampoo, Hask Hair and Scalp Treatment.

Firms	Marketed products
Helene Curtis Industries, Inc., Chicago, IL 60639.	Enden Lotion Shampoo, Suave Dandruff Shampoo.
Hess Hair Milk Laboratories, Inc., St. Paul, MN 55117.	Hess Hair Milk.
Marion Laboratories, Inc., Kansas City, MO 64137.	Metasep Medicated Shampoo.
Max Factor, Hollywood, CA 90028.	Sebb Lotion.
Mitchum-Thayer, Inc., Tuckahoe, NY 10707.	Mazon Medicated Cream, Mazon Medicated Shampoo, Mitchum Dandruff Shampoo.
Neutrogena Corp., Los Angeles, CA 90045.	T/Gel Shampoo.
Plough, Inc., Memphis, TN 38151.	Sulfur-8 Hair and Scalp Conditioner.
Preston Pharmaceuticals, Inc., Butler, NJ 07405.	Dermakon Dandruff Shampoo.
Procter and Gamble, Cincinnati, OH 45202.	Head and Shoulders.
Purdue Frederick Co., Norwalk, CT 06856.	Betadine Shampoo.
Purex Corp., Ltd., Batavia, IL 60510.	Cuticura Ointment.
R. Schattner Co., Pharmaceuticals, Washington, DC 20016.	Chloraderm.
R. T. Vanderbilt Co., Inc., Norwalk, CT 06855.	Vancide 89 RE.
Reed and Carnrick, Kenilworth, NJ 07033.	Alphosyl Lotion Sebical Anti-dandruff Shampoo, Tarbonis.
Smith, Kline, and French Laboratories, Philadelphia, PA 19101.	Pragmatar.
Sterling Drug, Inc., New York, NY 10016.	Cradol, Double Danderine, Phisodan.
Stiefel Laboratories, Inc., Oak Hill, NY 12460.	Polytar Bath, Polytar Shampoo.
Syntex Laboratories, Inc., Palo Alto, CA 94304.	Methakote.
Texas Pharmacal Co., San Antonio, TX 78296.	Meted Cream Shampoo, Meted Lotion Shampoo, Meted-2 Cream Shampoo, Meted-2 Lotion Shampoo, Pentrax Tar Shampoo.
Warner-Lambert Co., Morris Plains, NJ 07950.	Listerine Antiseptic.
Westwood Pharmaceuticals, Inc., Buffalo, NY 14213.	Balnetar, Estar Therapeutic Tar Gel, Fostex Cream, Sebucare Scalp Lotion, Sebulex Conditioning Shampoo, Sebutone Antiseborrheic Tar Shampoo.
Whitehall Laboratories, New York, NY 10017.	Denorex Medicated Liquid Shampoo, Oxipor VHC Lotion.

The following submissions were also reviewed:

Source	Submission
American Cyanamid Co., Princeton, NJ 08540.	Bibliography of omadines.
Beecham Products, Inc., Clifton, NJ 07012.	Zinc pyrithione anti-dandruff hair groom.
Block Drug Co., Inc., Jersey City, NJ 07302.	Hydrocortisone alcohol and coal tar extract.
National Cancer Institute, Bethesda, MD 20205.	Bioassay of Selsun for Posssible Carcinogenicity.
Olin Corp., New Haven, CT 06511.	Zinc omadine.
Pennwalt Corporation, Rochester, NY 14623.	Hydrocortisone acetate and calcium undecylenate.
The Proprietary Association, Washington, DC 20006.	Coal tar products.
Whitehall Laboratories, New York, NY 10017.	Coal tar lotions.

B. Ingredients Reviewed by the Panel

1. *Ingredients contained in marketed products submitted to the Panel.*

Alcohol
Alkyl isoquinolinium bromide
Allantoin
Amino acid mix "B"
Beeswax
Benzalkonium chloride
Benzethonium chloride
Benzocaine
Benzoic acid
Boric acid
Captan (*N*-trichloromethylthio-4-cyclohexene-1, 2-dicarboximide)
Cetyl alcohol
Cetyl alcohol-coal tar distillates [1]
Cholesterol
Coal tar
Coal tar extract
Coal tar solution
Colloidal oatmeal
Colloidal sulfur
Cresol
Crude coal tar extract
Crude tar extract
L-cysteine hydrochloride
Entsufon
Eucalyptol
Extract of coal tar
Extract of coal tar solution
Glycerin
Isopropyl palmitate
Juniper tar
Lanolin
Lanolin cholesterols
Lauryl isoquinolinium bromide
Liquid paraffin oil
Liquor carbonis detergens
Menthol
Mercuric oleate
D,L-Methionine
Methylbenzethonium chloride
Methyl salicylate
Micropulverized sulfur
Mineral oil
Mineral wax
N-trichloromethylmercapto-4-cyclohexene-1,2-dicarboximide
Oil of violet
One, three-dihydroxy, two-ethyl hexane
Oxyquinoline
Parachlorometaxylenol
Petrolatum
Phenol
Pine oil
Pine tar
Polyoxyethylene ethers
Povidone iodine
Precipitated sulfur
Rectified tar oil
Refined extract of coal tar
Resorcinol
Rose geranium oil
Salicylic acid
Selenium sulfide
Sodium borate
Sodium chloride
Sodium phenolate
Sodium salicylate
Solubilized coal tar extract
Solubilized crude coal tar
Standardized extract of coal tar
Standardized tar extract
Sublimed sulfur
Sugar of lead
Sulfur
Thymol
Vegetable oil
Zinc pyrithione
Zinc 2-pyridinethiol 1-oxide

[1] For the purpose of this document, these ingredients will be considered separately as cetyl alcohol and coal tar distillate.

2. *Other ingredients reviewed by the Panel.*

Benzyl benzoate
Calcium undecylenate
Hexachlorophene
Hydrocortisone acetate
Hydrocortisone alcohol
Lanolin oil
Polyethylene glycol derivatives
Undecylenic acid monoethanolamide sulfosuccinate, sodium salt
White petrolatum

C. Classification of Ingredients

1. *Active ingredients.*

Alkyl isoquinolinium bromide
Allantoin
Benzalkonium chloride
Benzethonium chloride
Benzocaine
Borate preparations (boric acid and sodium borate)
Captan (*N*-trichloromethylmercapto-4-cyclohexene-1, 2-dicarboximide)
Chloroxylenol (parachlorometaxylenol)
Coal tar preparations (coal tar, coal tar distillate, coal tar extract, coal tar solution) (crude coal tar extract, crude tar extract, extract of coal tax, extract of coal tar solution, liquor carbonis detergens, refined extract of coal tar, solubilized coal tar extract, solubilized crude coal tar, standardized extract of coal tar, and standarized tar extract).
Colloidal oatmeal
Cresol
Ethohexadiol (2-ethyl-3-propyl-1, 3-propanediol)
Eucalyptol
Hydrocortisone preparations (hydrocortisone acetate and hydrocortisone alcohol)
Juniper tar
Lauryl isoquinolinium bromide
Menthol
Mercury oleate (mercuric oleate)
Methylbenzethonium chloride

Methyl salicylate
Phenol
Phenolate sodium (sodium phenolate)
Pine tar preparations (pine tar and rectified tar oil)
Povidone-iodine (providone iodine)
Resorcinol
Salicylic acid
Selenium sulfide
Sodium salicylate
Sulfur (colloidal sulfur, micropulverized sulfur, precipitated sulfur, and sublimed sulfur)
Thymol
Undecylenate preparations (calcium undecylenate and undecylenic acid monoethanolamide sulfosuccinate, sodium salt)
Zinc pyrithione (zinc 2-pyridinethiol 1-oxide)

2. *Inactive ingredients.*
Alcohol
Beeswax
Benzoic acid
Cetyl alcohol
Cholesterol
Entsufon sodium (entsufon)
Clycerin
Isopropyl palmitate
Lanolin
Lanolin cholesterols
Lanolin oil
Lead acetate (sugar of lead)
Mineral oil (liquid paraffin oil)
Mineral wax
Oil of violet
Oxyquinoline
Petrolatum
Pine oil
Polyethylene glycol derivatives
Polyoxyethylene ethers
Rose geranium oil
Sodium chloride
Vegetable oil
White petrolatum

3. *Other ingredients.* Amino acid mix "B," *D,L*-methionine, and cysteine hydrochloride (*L*-cysteine) are contained in a combination product submitted to this Panel for review as a result of the calls for data published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) that requested information on products to be reviewed as miscellaneous external drug products. The labeling of this product contained indications for "the treatment of, and as an aid in the prevention of diaper rash, cradle cap, and chafing of the infant skin."

The Panel is unaware of any evidence to demonstrate effectiveness of these ingredients in preventing or treating cradle cap. Therefore, the Panel concludes that these ingredients are Category II for this use and has not further discussed them in this document. The Panel's conclusions on these ingredients for use in diaper rash are included in a statement on OTC diaper rash drug products published in the **Federal Register** of September 7, 1982 (47 FR 39406, 39412, 39436, and 39464).

Benzyl benzoate and hexachlorophene were included in the call-for-data notice published on August 27, 1975 (40 FR 38179) as ingredients used in the treatment of cradle cap. The agency is aware of no data to demonstrate safety and effectiveness of benzyl benzoate for this use. Although hexachlorophene has been used in treatment of cradle cap in the past, present FDA regulations at 21 CFR 250.250 limit this ingredient to preservative use in concentrations no higher than 0.1 percent in OTC products because of safety considerations. Benzyl benzoate and hexachlorophene are placed in Category II by the Panel and will not be discussed further in this document.

D. Referenced OTC Volumes

The "OTC Volumes" cited throughout this document include submissions made by interested persons in response to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179). All the submitted information included in these volumes, except for those deletions which are made in accordance with confidentiality provisions as set forth in § 330.10(a)(2), will be put on public display after January 3, 1983, in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

II. General Discussion

A. Anatomy and Physiology of the Skin and Scalp

The skin accounts for approximately 16 percent of the body weight of the average adult. It acts as a barrier, protecting against invasion of the body by outside organisms and preventing the escape of essential body fluids and electrolytes. It protects against damaging corrosives, cushions the effect of external injury, and resists the passage of electrical currents. The skin is composed of two mutually dependent layers, the epidermis and the dermis, which are cushioned on fat-containing subcutaneous tissue.

The conditions dealt with in this document involve the epidermis or outer skin layer—in particular epidermal cellular development and the shedding rate of dead epidermal cells. It is therefore important to examine the structure of the epidermis and the development of epidermal cells.

Epidermal cells are continuously formed in the basal layer (stratum germinativum) of the epidermis. From the stratum germinativum the columnar basal cell reproduces by mitotic division to form daughter cells, one or both of which begin an outward migration to the skin surface. The next layer of cells makes up the bulk of the epidermis and is called the prickle cell layer (stratum spinosum) because when a section of skin is prepared for viewing under a microscope, the cells shrink, but the intercellular attachments persist so that they appear to have prickles or spines. In the course of about 14 days, the mature epidermal cell flattens and acquires granules of keratohyalin that justify the name of the next layer, the granular layer (stratum granulosum) (Ref. 1). As the cell approaches the surface, it slowly dies. Its keratohyalin granules change to keratin, and it loses its nucleus to become part of the horny layer (stratum corneum), the outermost layer of the epidermis. As a result of wear and replacement from underneath, the dead epidermal cell is finally shed. Normally, this slough of skin is continuous and imperceptible. However, in dandruff, seborrheic dermatitis, and psoriasis, the rate of epidermal cell development is accelerated, and the shedding rate of these cells is excessive. The Panel's standard of effectiveness for OTC medications to control these conditions is the ability to permeate the skin barrier and control this excessive shedding or flaking.

The stratum corneum is not a completely unbroken surface, but is marked at intervals with openings to the pilosebaceous units and the eccrine glands (Ref. 1). Sweat is secreted through the eccrine glands located in the dermis, while the sebaceous glands, which along with hair follicles make up the pilosebaceous units, secrete sebum onto the skin. Sebum is a fatty substance that lubricates the skin and is thought to enhance the skin's function as a protective barrier.

Although the skin's function as a barrier has been stressed, it is not an impenetrable barrier. It is possible for external substances to be absorbed through the skin.

Several factors affect the absorption of substances through the skin:

1. *Skin thickness.* The skin on the scalp, the palms, and soles is thicker than that on other parts of the body and therefore less permeable. Eyelid and scrotal skin is generally the thinnest and most permeable (Ref. 2).

2. *Blood circulation to the skin.* The amount of blood circulating directly under the skin surface affects absorption. A person can absorb more of a chemical through cheek skin with its bed of underlying blood vessels than from the skin on the tips of the fingers or toes which have a smaller vascular bed.

3. *Temperature of the skin.* The higher the skin temperature, the greater the absorption through the skin.

4. *Hydration of the skin.* Accumulation of moisture on the skin seems to "open" the compactness of the stratum corneum, facilitating penetration of the barrier (Ref. 3).

The Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products, hereinafter referred to as the Topical Analgesic Panel, concluded in its report published in the **Federal Register** of December 4, 1979 (44 FR 69773) that the skin of a child older than 6 months of age is similar to that of an adult with respect to absorptive properties. That Panel also stated that it was unaware of any data demonstrating differences between geriatric skin and the skin of younger adults, but concluded that the skin of a geriatric patient may warrant special considerations. The Advisory Review Panel on Miscellaneous External Drug Products concludes that, to provide a margin of safety, the ingredients it reviewed—with the exception of those proven safe for use in treating cradle cap—are not to be used on children under the age of 2 years except under the advice and supervision of a doctor. This is because in very young children the amount of skin surface in proportion to body weight is greater than in older children and adults. Also, children under the age of 2 do not have fully developed hepatic enzyme systems for handling toxic substances that might be absorbed.

The scalp is the covering of the cranial part of the head. It is a five-layer structure consisting of the skin, connective tissue, aponeurotic layer (expanded tendon), loose connective tissue, and periosteal layer (fibrous membrane covering the entire surface of the bone). The skin is the outermost layer, with the connective tissue located immediately underneath.

The skin of the scalp is among the thickest found on the body. It contains numerous sweat and sebaceous glands and is held firmly to the layer beneath it by fibrous bands. The hair follicles extend deeply into the second layer of the scalp and are set close together (Refs. 4 and 5).

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B. Skin Disorders Involving Excessive or Abnormal Shedding of Dead Epidermal Cells From the Scalp and Body

The Panel provides the following table to summarize the basic similarities and differences between the four skin conditions discussed in this section:

DISTINGUISHING FEATURES OF DANDRUFF, SEBORRHEIC DERMATITIS, PSORIASIS, AND CRADLE CAP

Characteristic	Dandruff	Cradle cap	Seborrheic dermatitis	Psoriasis
Site	Scalp	Scalp	Scalp, face, and body (especially hairy areas, body folds, and behind ears.	Scalp and body (especially knees, elbows, low back, nails).
Borders	Indistinct	Indistinct	Indistinct	Very sharp.
Inflammation (Redness)	No	Yes	Yes	Yes.
Appearance of scales	Dry, grayish-white	Yellowish-brown, greasy	Greasy	Silvery scales which flake off in layers like mica.
Age of onset	Puberty	1 to 2 weeks after birth, up to termination of infancy.	Puberty	Young adulthood, as a rule, but can occur at any age.
Itching	Variable	Not known	Usual	Variable.
External factors that worsen condition.	Cold weather	Improper cleansing	Stress, poor health	Stress, mechanical irritation.
Rate of epidermal turnover.	2X above the norm [1]	Not demonstrated	More than 2X above the norm [1]	Greatly increased above the norm (10-20X).[2]
Duration	Can persist for life—diminishing in middle and old age.	Usually clears in 3–4 weeks; can last up to 2 months.	Can persist for life—frequent exacerbations and remissions.	Can persist for life—exacerbations and remissions.

[1] Ackerman, A. B., and A. M. Kligman, "Some Observations on Dandruff", *Journal of the Society of Cosmetic Chemists*, 20:81–101, 1969.
[2] Goldschmidt, H., and A. M. Kligman, "Quantitative Estimation of Keratin Production by the Epidermis", *Archives of Dermatology*, 88:709–712, 1963.

1. *Dandruff.* The entire surface of the human skin sheds dead cells continuously at a rate which varies from site to site. Dandruff is a condition involving an increased rate of shedding from the scalp of dead epidermal cells. The scales are shed in large clumps. Normally the stratum corneum on the scalp consists of fully keratinized, closely packed cells, which have lost their nuclei, arranged in a orderly pattern. In dandruff, the increased shedding of skin causes this layer to have fewer cells, some of which still have nuclei, and these are in a disordered pattern. The scales appear dry, white, or grayish and are usually seen in small round patches especially on the crown of the head (Ref. 1). In some cases, these round patches may extend to cover the entire scalp. Occasionally itching is felt, but usually a person with dandruff complains only of unsightly scales (Refs. 2, 3, and 4).

The one visible manifestation of dandruff is scaling. Dandruff appears to be seasonal, being milder in the summer months and most severe from October through December. Cleaning the hair and scalp on a regular basis is often sufficient to control the symptoms of mild cases of dandruff.

Few cases of dandruff are seen betweeen the ages of 2 and 10 years, but the condition is common with the onset of puberty. The shedding of cornfied scales increases rapidly, peaking in the early twenties. Thereafter, the occurrence of dandruff diminishes in middle and old age. Dandruff occurs with the same frequency in both sexes (Refs. 3 and 5).

The cause of dandruff has not been clearly defined, but it is known to involve an increase in the rate of epidermal turnover. This rapid transit of cells to the surface does not allow for complete keratinization of new cells (Ref. 1). Older theories attribute the cause of dandruff to improper diet, hormone imbalance, or a vitamin B-complex deficiency (Ref. 5). One theory frequently discussed in the literature is that dandruff is caused by *Pityrosporum ovale*, a yeast-like fungus resident to the scalp (Refs. 5 through 9). Proponents of this theory support the use of

antimicrobials in controlling dandruff, but the Panel has concluded that there is not a definite correlation between the presence of *Pityrosporum ovale* and the development of dandruff. (See part II. paragraph C.1. below—*Antiseptics (antimicrobials).*)

Dandruff usually responds to treatment, but tends to relapse if treatment is discontinued. If dandruff is left untreated, the resulting problems are problems of appearance; no medical disability will result.

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2. *Seborrheic dermatitis.* In seborrheic dermatitis there is a greater increase in the turnover rate of skin cells than is seen with dandruff. This condition is also marked by inflammation and retention of nuclei in the skin cells (Ref. 1). While dandruff is strictly a disease of the scalp, seborrheic dermatitis occurs in other hairy areas of the body and inskin folds. This condition can be found on the scalp, eyebrows and eyelashes, in the external ear canal, behid the ears, in the nasal folds, midchest, armpits, between the shoulder blades, and in the pubic area and groin (Refs. 2, 3, and 4). These areas have the largest concentrations of sebaceous glands and the largest concentrations of bacteria and yeasts.

One theory is that excessive secretion of sebum (seborrhea) causes seborrheic dermatitis, possibly by providing a substrate of oil which bacteria and yeasts can metabolize into irritating substances such as free fatty acids. It has not been demonstrated, however, that seborrheic dermatitis is always accompanied by increased sebum production. In fact, according to Leyden, seborrheic dermatitis patients do not produce more sebum than age-matched controls (Ref. 5).

Cradle cap may be a form of infantile seborrheic dermatitis, which can involve the scalp, the skin behind the ears, the nasolabial fold, neck, armpits, unbilicus, and especially the diaper area (Refs. 6 and 7). It may also represent an accumulation of vernix caseosa (fatty substance covering the fetus) and scales that result from the mother's fear of washing the head over the fontanels. Cradle cap is a scaly inflammation of the scalp which is very common in the first week or two of life, but can occur any time during infancy. Cradle cap usually clears in a month and does not recur (Ref. 7). Some cases evolve into atopic dermatitis with itching, papulovesicles, and oozing, which spreads to the cheeks, forehead, and extensor surfaces of the extremities, as well as the scalp (Ref. 8). Obviously, conditions of this severity are not amenable to OTC therapy and require prompt treatment by a doctor.

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3. *Psoriasis.* Psoriasis is a chronic inflammatory disease of the skin characterized by well-defined pink or dull red lesions that are covered with silvery scales. The lesions may remain indefinitely, or the patient may experience frequent exacerbations and remissions (Refs. 1 through 8).

Approximately 1 to 3 million Americans are afflicted with psoriasis. The disease occurs more commonly in Caucasians than in Blacks.

Psoriasis is characterized by alterations in the epidermis which shows accelerated cellular turnover and swelling of the capillaries underneath. These alterations include an increase in thickness of the epidermis, retention of nuclei of the epidermal cells, and the absence of a granular layer (stratum granulosum). The rate of turnover of the cells in the epidermis is increased; that is, a basal cell may take only 3 to 4 days to keratinize and reach the stratum corneum instead of the normal 25 to 30 days.

Like seborreheic dermatitis, psoriasis occurs on the scalp and the body. A large amount of research has been devoted to this disease, but its cause is still unknown. It is a condition which may be genetically transmitted (Ref. 9). This condition is more apt to appear in both members of a set of identical twins than in both members of a set of fraternal twins. However, not everyone who inherits the genetic predisposition for psoriasis will develop the disease. If the disease does develop, it may manifest itself in a single lesion on the scalp, stubborn lesions on the elbows and knees, or redness and scaling of the entire body.

Environmental stimuli can provoke psoriatic eruptions in persons with a predisposition to psoriasis. Spread of a skin disease in response to external trauma is referred to as the Koebner reaction. As a result of a Koebner reaction, a psoriatic lesion will often appear at the site of a cut, burn, sunburn, or pre-existing rash. The lesion appears between 3 and 18 days (usually 10 to 14) after the initial trauma and is preceded or accompanied by changes in the capillaries. Internal streptococcal infections are also known to cause psoriasis, and certain medications taken orally such as antimalarials, lithium, and propranolol may exacerbate psoriasis (Ref. 9). Endocrine factors sometimes appear to play a role; for example, psoriasis often clears or improves during pregnancy, but may recur or appear for the first time after birth of the child. Emotional stress may also provoke psoriasis.

A questionnaire was circulated among individuals suffering from psoriasis to evaluate the factors they perceived as important in the behavior of the disease (Ref. 10). Of 1,000 persons, 77 percent

said that hot weather improved their condition, while 23 percent said that hot weather worsened it. Twelve percent indicated that cold weather made their psoriasis better, while 88 percent said cold weather made their psoriasis worse. In 14 percent, trauma was said to initiate the disease.

Other skin diseases may coexist or alternate with psoriasis, including seborrheic dermatitis. Lesions resembling psoriasis are not uncommon in seborrheic dermatitis, and differentiation between the two may be difficult (Refs. 11 and 12).

The diagnosis of psoriasis is aided by examining the fingernails and toenails. The hyperproliferation of the nail bed and disordered growth of the nail plate produce a distorted, thick, opaque, and crumbly nail. Pits and ridges of the nail are often found. Separation of the free end of the nail from its bed becomes marked.

Complications are uncommon in patients with psoriasis, but some have been reported. These include infection, sometimes as a result of occlusive corticosteroid therapy; eczematization, as a result of sensitization to topically applied agents; pustulation, including a pustular form of psoriasis associated with high fever and severe systemic symptoms; and arthritis.

There is no cure for psoriasis, but it is possible to reduce its severity. The various stages of the disease are treated by different methods. Because the barrier that normally prevents drug penetration to the skin is disrupted, psoriatic skin is more permeable to many medications than normal skin. In the early stages of treatment, the patient may therefore respond rapidly to topically-applied medications, but the improvement rate will slow as the skin barrier approaches a normal state (Ref. 13).

The Panel recommends that only mild cases of psoriasis be self-treated. Individuals with severe cases involving large areas of the body should seek professional treatment.

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C. Agents Marketed for the Control of Dandruff, Seborrheic Dermatitis, and Psoriasis

There are no definitive cures for dandruff, seborrheic dermatitis, and psoriasis. OTC drugs at best can only control these conditions with regular use. OTC agents submitted to the panel for control of dandruff, seborrheic dermatitis, and psoriasis can be generally classified into the following therapeutic categories: antiseptics (antimicrobials), keratolytics, cytostatics, corticosteroids, antipruritics, and tar preparations. Categorization is made somewhat complex, however, by the fact that two or more therapeutic effects may be attributed to some ingredients.

1. *Antiseptics (antimicrobials).* Since the origin of the germ theory of disease, microorganisms have been proposed frequently as causal factors in various scalp disorders. The hair is an efficient trap for particles, and conditions of the scalp are quite favorable for the growth of microorganisms. There are numerous sweat glands to supply moisture and sebaceous glands to secrete a variety of lipids.

The microbiology of dandruff was reviewed in a 1976 article by Priestley and Savin (Ref. 1), who stated that "Modern investigative techniques * * * have only scratched the surface of our understanding of dandruff, raising a cloud of conflicting ideas and reports." According to these authors, the question of microbial involvement in dandruff is still unsettled. The Panel agrees. Over 100 years ago, Malassez (Ref. 2) identified the yeast *Pityrosporum ovale* as a suspect in the mystery of dandruff etiology. Priestley and Savin pointed out that today there is general agreement that *Pityrosporum ovale* can be recovered from most, if not all scalps, normal or otherwise; thus it would not appear limited to occurrence in scalps with dandruff. They noted that, of the studies they had reviewed, all but one agreed that the aerobic bacterial flora of the scalp is dominated by coagulase negative micrococci (Ref. 1). The dissenting study was by Roia and Vanderwyk (Ref. 3), who found that only 57 percent of those with dandruff had any scalp bacteria at all, compared with 25 percent of those without dandruff. They found that the most prevalent bacterial species was *Bacillus subtilis* and that micrococci were virtually absent. McGinley et al. (Ref. 4) were baffled by these findings because their studies and most other studies with which they were familiar showed that aerobic cocci occur on all scalps, both normal and diseased.

In another 1976 article, Leyden, McGinley, and Kligman (Ref. 5) discussed the role of microorganisms in dandruff. Using quantitiative techniques, they examined the scalps of over 100 subjects, with and without dandruff. The following organisms were consistently found without regard to the presence or absence of dandruff: *Pityrosporum*, mainly *Pityrosporum ovale;* aerobic goagulase negative cocci; and *Propionibacterium acnes*. These comprise the majority of the resident microflora of the scalp. The quantity of *Pityrosporum ovale* in subjects with dandruff was almost twice that found in subjects free of dandruff. These authors also reported that there were no quantitative or qualitative differences in the number of coagulase negative cocci observed in the two groups. However, the anaerobic diphtheroid *Propionibacterium acnes* was significantly decreased in scalps with dandruff.

The authors concluded that to the best of their knowledge "* * * this is the first study in which the relationship between microorganisms and dandruff has been systematically investigated with quantitative techniques. The evidence implicates neither any particular organism nor any combination of organisms in the production of dandruff. In dandruff there was no change in the composition of the microflora; the only noteworthy difference is a greater quantity of *Pityrosporum ovale*." The authors did not find this greater quantity

meaningful. Leyden (Ref. 6) has suggested that the increased numbers of *Pityrosporum ovale* may be related to sebum materials trapped in the dandruff scales on which the microorganisms feed. He concludes that this yeast has no causal relationship to dandruff or seborrheic dermatitis.

The Panel recommends that antimicrobial agents be judged on their own merit with respect to control of dandruff. If such agents are shown in well-controlled double-blind clinical studies to be effective in the control of dandruff, they should be placed in Category I. Such classification should not in itself be taken as proof of any particular causal relationship in dandruff, however, because an ingredient may be capable of acting in more than one therapeutic manner. For example, an antimicrobial might also have keratolytic or cytostatic properties.

2. *Keratolytics.* These agents cause a peeling away of the stratum corneum, thus removing scales. The Panel believes that keratolytics probably act by dissolving the cement that holds the epidermal cells together, rather than dissolving keratin. Their beneficial action in dandruff, seborrheic dermatitis, and psoriasis is to loosen scales, enabling them to be washed off more readily. They do not prevent the scales from being formed.

3. *Cytostatics.* Use of cytostatics offers a direct approach to controlling dandruff. These agents reduce the rate of cell growth and multiplication and thereby increase the time involved in epidermal turnover. The production of dead cells, which in dandruff are shed in large flakes by the scalp, is correspondingly slowed, so that there is a dramatic decline in visible dandruff flakes.

4. *Antipruritics and corticosteroids.* The sensations of pain and itching are carried by the same nerve receptors and filaments. For this reason, a number of topical anesthetics are effective as antipruritics as well, and the Panel notes that ingredients in this class are sometimes used in dandruff, seborrheic dermatitis, and psoriasis products for their action in relieving itching. Corticosteroids also act as antipruritics, but have an additional anti-inflammatory effect and so have been suggested for OTC use for dandruff, seborrheic dermatitis, and psoriasis of the body and scalp. However, additional data are needed on the safety and effectiveness of corticosteroids for use in these conditions. (See part III. paragraph C.1.j. below—*Hydrocortisone preparations.*) The Panel believes that the temporary relief of itching does not amount to effective control of dandruff, seborrheic dermatitis, and psoriasis. Effective control of these conditions should involve control of the excessive shedding of epidermal cells which characterizes them.

5. *Tar preparations.* The mode of action of tar preparations in the treatment of skin disorders is unknown. It may be that tar preparations act as cytostatics, inhibiting cell reproduction. Or they may act as keratolytics, penetrating the epidermis and removing the scales produced in these skin disorders. The most widely used tar preparations for controlling dandruff, seborrheic dermatitis, and psoriasis are those derived from coal tar.

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D. Role of Vehicles in OTC Products Marketed for the Control of Dandruff, Seborrheic Dermatitis, and Psoriasis

Products for controlling dandruff, seborrheic dermatitis, and psoriasis of the scalp are marketed in the form of preshampoo preparations, intended to be applied to the scalp and left on for 5 to 20 minutes before shampooing; medicated shampoos; after-shampoo rinses; and hair dressings. Products for controlling seborrheic dermatitis and psoriasis occurring on the body are available in the form of ointments, creams, and lotions. In all these preparations, the role of the vehicle is extremely important, as the characteristics of the vehicle affect the rate and degree of the therapeutic ingredient's absorption.

Vehicles that damage the stratum corneum, such as detergents and solvents, can increase absorption. Vehicles that simulate the physiological characteristics of the skin can also increase absorption, as can vehicles that hydrate the skin and are the appropriate pH. A change in the pH of an applied solution influences absorption indirectly by altering the ionization of the compound. Ionization decreases the passage of chemicals through the stratum corneum.

Lipids and lipid-soluble substances pass easily through the skin, but small molecules that are both water- and lipid-soluble, are more easily absorbed. Certain nonaqueous vehicles promote absorption by structurally or chemically damaging the stratum corneum. Volatile solvents of low molecular weight such as ether, methanol, ethanol, and acetone, may damage the stratum corneum by extracting lipids.

Ionic and nonionic surface active agents, widely used in shampoos as emulsifiers and detergents, can damage the barrier layer of the skin in concentrations as low as 1 percent (Ref. 1). These surface active substances, known as wetting agents, lower the surface tension of water and promote wetting. By wetting the scalp these agents emulsify the sebum. There are several types of wetting agents: cationics, such as the quaternary ammonium compounds; anionics such as sodium lauryl sulfate and dioctyl sodium sulfosuccinate; and nonionic wetting agents, such as propylene glycol, sorbitan esters of fatty acids, and polyoxyethylene sorbitan esters of fatty acids.

Seborrheic dermatitis and psoriasis are conditions that in themselves damage the skin barrier, permitting increased absorption (Ref. 2). An occlusive ointment used as a vehicle can further increase this skin absorption by preventing the evaporation of perspiration. This moisture then collects under the occlusive substance and hydrates the stratum corneum.

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E. Labeling

1. *General discussion.* In reviewing the labels submitted for the various products, the Panel noted that products containing the same ingredients were often promoted for different conditions, that is, for seborrheic dermatitis and psoriasis of the body and scalp and/or dandruff.

After reviewing and evaluating the available date, the Panel notes that ingredients that are effective in

controlling scalp psoriasis are usually effective in controlling dandruff and seborrheic dermatitis. Ingredients effective in relieving the symptoms of dandruff will also relieve the symptoms of seborrheic dermatitis (Ref. 1), but they may not be effective in treating scalp psoriasis.

Misdiagnosis of seborrheic dermatitis of the scalp as dandruff is not of great consequence because treatment is generally the same for both. However, dandruff is considered a relatively stable condition, whereas seborrheic dermatitis fluctuates in severity, often as a result of stress. Psoriasis calls for different treatment methods, but if the consumer treats psoriasis with an antidandruff preparation, no harm is likely to follow. The psoriasis will not be worsened, but it will probably persist, leading the consumer to seek professional diagnosis and treatment.

The Panel believes that mild cases of body seborrheic dermatitis and psoriasis may be amenable to self-diagnosis and self-treatment by consumers, and products to treat symptoms of these conditions should be available for OTC use. However, severe and unresponsive cases of seborrheic dermatitis and psoriasis should be treated by a doctor.

It is often difficult, however, even for a professional to distinguish between these conditions. The Panel believes that misdiagnosis of a mild case of body psoriasis as seborrheic dermatitis or vice versa is not of great consequence. If the condition does not respond to treatment or worsens, the consumer should seek professional advice and should be so advised in the warnings section of the labeling. Likewise, if the condition covers large areas of the body, the consumer should be advised to consult a doctor.

The Panel concludes that a product may be labeled for use in any one or more of these conditions, so long as the active ingredient or ingredients involved have been proven safe and effective in controlling each condition included in the labeling.

2. *Indications.* The indications for use should be simply and concisely stated. They should enable the consumer to clearly understand the results that can be anticipated from the use of the product and should be restricted to the conditions for which the ingredients of the product are safe and effective. No reference should be made or implied with respect to relief of any symptoms unrelated to these conditions.

a. The Panel recommends the following indications for products for the control of dandruff, seborrheic dermatitis, and psoriasis. One or more may be used, depending on the conditions for which the therapeutic ingredients of the product are proven safe and effective.

(1) *For products used for controlling dandruff.* "Relieves the itching and scalp flaking associated with dandruff."

(2) *For products used for controlling seborrheic dermatitis. "Relieves the itching, irritation, and skin flaking associated with seborrheic dermatitis" (select one or both of the following as appropriate: "of the scalp" and/or "of the body.")*.

(3) *For products used for controlling psoriasis.* "Relieves the itching, redness, and scaling associated with psoriasis" (selected one or both of the following as appropriate: "of the scalp" and/or "of the body.")

b. The Panel recommends the following indication for products intended for controlling cradle cap: "Relieves scaly inflammation of the scalp associated with cradle cap."

3. *Ingredient labeling.* These products should contain only active ingredients plus such inactive ingredients as are needed for formulation. The label should state the concentration of each active ingredient.

The Panel recommends that all inactive ingredients be listed on the label because the consumer may need to know all the ingredients in view of the potential for allergic or idiosyncratic reactions. The label should not, however, imply or claim that the product's inactive ingredients have a therapeutic benefit.

4. *Warnings.* The Panel recommends that labeling of these products include the following warnings in addition to the general warning required by 21 CFR 330.1(g) and the warnings for specific ingredients as discussed in the ingredient write-ups later in this document:

(i) "For external use only."

(ii) "Avoid contact with the eyes—if this happens, rinse thoroughly with water."

(iii) "If condition worsens or does not improve after regular use of this product as directed, consult a doctor."

d. *For products used for controlling seborrheic dermatitis or psoriasis on the body.* "If condition covers a large area of the body, consult your doctor before using this product."

e. *For products other than those used to treat cradle cap.* "Do not use on children under 2 years of age except as directed by a doctor."

5. *Directions for use.* The directions for use should be clearly stated and provide the user with sufficient information to ensure safe and effective use of the product. The Panel believes that the labeling directions for products intended to control seborrheic dermatitis and psoriasis should state whether the product is to be applied to the scalp or to the affected area of the body. (See part III. paragraph A.2. below—*Category I labeling.*)

6. *Labeling describing product performance.* The Panel finds it unacceptable to use any claims related to product performance unless they can be substantiated by scientific data. Any claims such as, "fast," "quick," "long acting," "remarkable," etc. are considered to be misleading and may be confusing to the consumer unless they can be supported by adequate scientific data.

7. *Labeling descriptive of product attributes.* The Panel accepts the use of terms describing certain physical and chemical qualities of OTC products for controlling dandruff, seborrheic dermatitis, and psoriasis, as long as these terms do not imply that any therapeutic effort occurs. These terms should only pertain to product attributes or to the pharmaceutical elegance of the formulation.

The Panel believes that certain labeling claims are reasonable and informative to the consumer when they accurately reflect inherent characteristics of the marketed product. Terms such as "nongreasy," "does not stain," "does not soil clothes," "pleasantly scented," are acceptable.

In addition, the Panel recognizes that, depending on the ingredient, products also have been promoted to control the "oiliness" or "dryness" associated with dandruff, seborrheic dermatitis, and psoriasis. However, the Panel emphasizes that these terms should not be identified as indications for use. They are to be used in addition to the appropriate indications specified above.

Reference

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III. Categorization of Data

For the convenience of the reader, the Panel provides the following summary of the categorization of active ingredients reviewed in this document:

CATEGORIZATION OF INGREDIENTS

Ingredient	Category	Uses [1]
Alkyl isoquinolinium bromide.	III	D
Allantoin	III	D, S, P
Benzalkonium chloride	III	D
Benzethonium chloride	III	D, C
Benzocaine	II	P
Borate preparations	II	D, S
Captan	III	D

CATEGORIZATION OF INGREDIENTS—Continued

Ingredient	Category	Uses [1]
Chloroxylenol	III	D, S
Coal tar preparations	I, III [2]	D, S, P
Colloidal oatmeal	II	D
Cresol	II	P
Ethohexadiol	III	D
Eucalyptol	III	D
Hydrocortisone preparations.	III	D, S, P
Juniper tar	III	D, S, P
Lauryl isoquinolinium bromide.	III	D
Menthol	III	D, S, P
Mercury oleate	II	P
Methylbenzethonium chloride.	III	C
Methyl salicylate	III	D
Phenol and phenolate sodium.	III	S, P
Pine tar preparations	III	D, S, P
Povidone-iodine	III	D; S
Resorcinol	II	P
Salicylic acid	I	D, S, P
Selenium sulfide	I	D
Sodium salicylate	III	D, S
Sulfur	I	D
Thymol	III	D
Undecylenate preparations.	III	D, S, P
Zinc pyrithione	I	D, S

[1] C=Cradle cap, D=Dandruff, S=Seborrheic dermatitis, P=Psoriasis.
[2] Category I for use in a shampoo only. Category III for other uses.

A. Category I Conditions

These are conditions under which active ingredients used for controlling dandruff, seborrheic dermatitis, and psoriasis are generally recognized as safe and effective and not misbranded.

1. *Category I active ingredients.*
   Coal tar preparations (in shampoos)
   Salicylic acid
   Selenium sulfide
   Sulfur
   Zinc pyrithione

a. *Coal tar preparations (coal tar USP, coal tar distillate, coal tar extract, coal tar solution).* The panel concludes that coal tar preparations are safe and effective for OTC use as shampoos for controlling dandruff and seborrheic dermatitis and psoriasis of the scalp.

Although "tars" have been used for thousands of years to treat skin disorders, downing and Bauer (Ref. 1) cite Becher and Serle as being credited with the discovery and description of coal tar in 1681. The United States Pharmacopeia (USP) defines coal tar as "The tar obtained as a by-product during the destructive distillation of bituminous coal" (Ref. 2). A blackish-brown viscous liquid with a characteristic naphthalene odor, it is a mixture of tar acids and hydrocarbons which polymerize at high temperatures to form some 10,000 different compounds (Ref. 3). Coal tar consists generally of 2 to 8 percent light oils (benzene, toluene, and xylene), 8 to 10 percent middle oils (phenols, cresols, and naphtalene), 8 to 10 pecent heavy oils (naphthalene and derivatives), 16 to 20 percent anthracene oils (predominantly anthracene), and about 50 percent pitch (Ref. 4). The physical and chemical composition of coal tar varies depending on the geographical source of the coal and the temperature and efficiency of the coke ovens (Ref. 5).

The specifications for coal tar in the official compendia are not particularly selective in that they permit coal tar to be used in medicine regardless of source. The reason for the omission in the selectivity of the monograph is that it has not yet been shown that there is any difference in the therapeutic activity of the different coal tars that meet the required specifications (Ref 1). The Panel is aware of a Joint Industry Coal Tar Project the objective of which is to develop a standard of quality that will lead to an effective, uniform coal tar product with the smallest quantity of undesirable components. The panel commends the industry's efforts in this regard and urges continued research in this area.

Crude coal tar is often further modified or refined into coal tar extract, coal tar solution, and coal tar distillate. Although differences in therapeutic activity have not been demonstrated when crude coal tars from various sources have been used, it is believed that the degree of refinement of coal tar is responsible for variation in therapeutic effectiveness of the different coal tar products (Ref. 6). Because of the differences in therapeutic activity between the various coal tar preparations, the Panel has reviewed and made recommendations on each specific coal tar preparation.

When crude coal tar, which is of complex and unknown composition, is refined by various methods, with the aim of obtaining a more acceptable esthetic and pharmaceutically practical product, the pharmacologically active components in the final product may be altered qualitatively and quantitatively.

It was pointed out by Obermayer and Becker (Ref. 7) that one should not lose sight of the possibility that none of the constituents of coal tar exist as such in coal and that tar is not, in the true sense, distilled from coal. Tar actually results from condensation of the liquid products of decomposition of coal by heat. These investigators redistilled crude coal tar (that had been previously distilled at 800° F) under vacuum and collected fractions at three different temperatures as well as the pitch that remained after distillation. They also separated crude coal tar by extraction with dibutyl ether into ether-soluble and ether-nonsoluble portions. When tested on psoriasis patients, each of these fractions from crude coal tar had an effect similar to that of crude coal tar, but was less effective than that produced by the whole coal tar. Steam distillation was employed by Nelson and Osterberg (Ref. 8) to fractionate crude coal tar, and the distillate was extracted with ether. When the ether-soluble material was employed in an ointment to treat 12 cases of infantile eczema, it was found to be as effective as the ointment made with the original crude coal tar. In addition, the purified product did not produce folliculitis. On the other hand, Jaffrey (Ref. 9) fractionated crude coal tar by distillation and reported that some fractions seemed to have no therapeutic value.

Coal tar distillate can also be obtained by distilling tar with an aromatic hydrocarbon solvent and consists of all the volatile products of the tar freed from the pitch. It is a dark, brownish-red, fairly mobile liquid with a penetrating odor (Ref. 3).

A coal tar solution is obtained by mixing coal tar with washed sand, polysorbate 80, and alcohol, and macerating the mixture for 7 days, then filtering (Ref. 10). Coal tar solution is often referred to as liquor carbonis detergens.

Coal tar extract is similar to coal tar solution except that other solvents are used to extract the various components from coal tar.

(1) *Safety.* Several acute oral toxicity studies have been conducted in mice using various forms of coal tar (Refs. 11, 12, and 13). For crude coal tar and coal tar extract, the oral LD_{50} was reported to be between 5 to 10 milliliters per kilogram of body weight (mL/kg). The oral LD_{50} of coal tar solution was estimated to be 14.5 mL/kg (Ref. 14).

In an ocular irritation study using 0.1 mL of coal tar in the eyes of rabbits, coal tar was shown to produce only minimal irritation (Ref. 11). The results of a dermal irritation study in rabbits showed that coal tar produced a primary irritation index of 2.8 out of a maximum of 8. The irritation consisted of redness with little or no swelling. These studies are consistent with the reports of Muller and Kierland (Ref. 15) and Sax (Ref. 16) who reported coal tar to be only slightly irritating. Muller and Kierland (Ref. 17) considered 2 percent crude coal tar with 1 percent polysorbate 20 in petrolatum to be only slightly toxic when applied to the body. Long-term use of strong coal tar preparations may produce a painless, chronic folliculitis (tar acne), which is reversible when the coal tar is discontinued (Ref. 18) and may be avoided by leaving the treated area exposed, not using the product on hairy

areas, and avoiding the use of coal tar for extended periods of time.

Adverse reactions to coal tar are more frequently seen with crude coal tar than with its derivatives (extracts, fractionates, distillates, and spirits). The adverse reactions consist mainly of the folliculitis described above and an allergic or irritant contact dermatitis. Coal tar has an odor, frequently stains the skin and hair (especially in patients with blonde, bleached, or gray hair), and should be applied carefully to the affected area only.

Coal tar has also been shown to produce photosensitivity reactions (Refs. 19 and 20). Because of this tendency, it should not be used to treat such disorders as lupus, erythematosis, polymorphous light eruptions, etc., and the patient should be cautioned about sun exposure up to 24 hours after using a coal tar product.

Adverse effects following the application of a crude coal tar ointment to 95 percent or more of the body surface were studied in 12 patients, 9 of whom had severe atopic dermatitis and 3 of whom had psoriasis (Refs. 11 and 17). The age range was 20 to 67 years. Treatment consisted of applications of the ointment twice daily, together with gradually increasing ultraviolet exposure from a quartz lamp. Liver and kidney functions tests were performed before application of the ointment and 2 to 3 weeks after treatment. A urinalysis was done twice a week. Ten patients tolerated the ointment well and had excellent clinical response. There was no evidence of renal or hepatic injury, and no phenolic substances could be found in the urine. Temporary mild diarrhea in one patient on the second and third day of treatment was the only adverse effect noted. Two of the patients did not tolerate the ointment and were dropped from the study.

One of the major concerns regarding the topical use of coal tar is its potential for causing cancer. It is generally accepted that coal tar contains carcinogenic substances. Recent biochemical studies indicate that medicinal coal tars contain different carcinogens but in uneven concentrations. The carcinogens are produced in coking ovens during the heating of the coal which liberates organic free radicals, the cancer-causing entities (Ref. 5). The higher the temperatures in the coking ovens (1,000° C and above), the greater and more varied is the production of free radicals. The smaller free radicals combine to produce polynuclear hydrocarbons, which are generally recognized as the primary carcinogens in coal tar. At least 75 polynuclear hydrocarbons have been identified in coal tar (Ref. 21).

Skin cancer has been linked to chronic exposure to concentrated solutions of topical coal tar in industrial settings. It is important to note that the average exposure time in these cases has been measured to be from 20 to 24 years.

A number of animal studies confirm the carcinogenic potential of coal tar. Horton (Ref. 22) applied 10, 50, or 100 milligrams (mg) of crude coal tar to the skin of mice twice weekly. Almost all of the surviving mice developed skin carconomas in direct proportion to the quanitity of tar applied.

Wallcave et al. (Ref. 23) evaluated coal tars with known polynuclear hydrocarbon content in a study done with ICR Swiss mice. Thirty-one carcinomas and 22 benign tumors developed in the 58 mice studied. Hilfrich and Mohr (Ref. 24) applied two drops of 5 percent crude coal tar in dimethylsulfoxide to mice twice weekly. All animals that survived for 12 months developed carcinomas. Rasmussen (Ref. 5) concluded that the animal studies "suggest that tar contains carcinogens and that these noxae [poisons] are present in commercially used products in sufficient concentrations to cause benign and malignant neoplasia when applied to the skin of test animals in a fashion that parallels human medicinal uses."

Sir Percivall Pott (Ref. 25) is generally credited with the first recorded observation of environmental carcinogenesis. In 1775 he published his findings that chimney sweeps who started working at a very early age and continued working through puberty developed scrotal cancer. The cancer-causing ingredients were attributed to the soot and coal tar that lodged in their clothes. Further discussion in the published literature of cancer induced by occupational exposure to coal tar has been reported by Hoffman (Ref. 21).

In 1966 Greither, Gisbertz, and Ippen (Ref. 26) reviewed the literature for the possible occurrence of cancer in patients treated with coal tar since 1900. Only 13 cases of skin cancer attributable to coal tar use were reported, and, of these 13 patients, 2 had also been treated with arsenic. The majority of these patients developed cancer in the anogenital area, however, and for this reason, in addition to Pott's observations, the Panel believes it important to require a warning against application to this area for coal tar products that may be marketed for control of psoriasis on the body.

Data, reported and included as part of the Third National Cancer Survey on patients using coal tar, indicate that the incidence of skin cancer in patients treated with coal tar ointment is not significantly increased above the expected incidence of skin cancer for the general population (Ref. 27). Farber (Ref. 28) suggests that it is possible that psoriasis selectively protects against cancer of the skin.

After a review of all available data, the Panel concludes that coal tar preparations are safe for topical use when formulated in shampoos for use on the scalp. The Panel recognizes the concern regarding carcinogenic potential of topically-applied coal tar preparations, but believes that the contact time of a shampoo is of such short duration that this concern should not prevent such use of coal tar on the scalp. However, because in the treatment of body seborrheic dermatitis and psoriasis the coal tar preparation is intended to remain on the skin for prolonged periods of time and to be used chronically, the risk of cancer development cannot be dismissed. Although the available information, including followup studies on patients treated with a combination of crude coal tar ointment and ultraviolet light, does not indicate an increased incidence of skin cancer in psoriatic patients treated with coal tar, the Panel concludes that more studies are needed to determine the risk. (See part III. paragraph C.l.g. below—*Coal tar preparations (coal tar USP, coal tar distillate, coal tar extract, coal tar solution).)* The Panel recommends that coal tar preparations remain available for OTC use while these studies are in progress and regular reports are being provided by industry and the scientific community to the agency. The Panel also believes that the pharmaceutical industry should strive to develop safer tars that are still therapeutically active.

(2) *Effectiveness.* Coal tar and coal tar preparations have long been considered rational therapy for many skin disorders, including dandruff, seborrheic dermatitis, and psoriasis, as coal tar reduces the number and size of epidermal cells produced (Ref. 29). However, the actual mechanism by which coal tar exerts this therapeutic effect is still unknown. Several theories have been proposed. It may be that, once applied, coal tar takes oxygen from the skin, thereby inhibiting cell reproduction and resulting in a decrease in size and number of cells. It may also be that coal tars formulated in various soaps and shampoos have value in treating dandruff, seborrheic dermatitis,

and psoriasis, by penetrating the epidermis and removing the scales produced in these skin disorders (Ref. 30). Possibly some of the polyphenolic substances and perioxides in coal tar react with epidermal sulfhydryl groups to produce an effect on the skin similar to that resulting from exposure to the sun (Ref. 31). This theoretically decreases epidermal proliferation and dermal infiltration.

In addition to decreasing the number and size of cells produced, coal tar also has vasoconstrictive, astringent, antibacterial, and antipruritic properties.

Patient acceptance of crude coal tar is very poor because it is extremely messy, smelly, and stains skin and hair. In order to reduce these cosmetically troublesome properties, coal tar was initially compounded into lotions, shampoos, bath oils, and liniments. More recently manufacturers have tried to refine crude coal tar into more cosmetically acceptable fractionates, distillates, liquors, filtrates, or tinctures, which exhibit a wide range of therapeutic activity (Ref. 32). Another modification of crude coal tar is an emulsion colloid of coal tar in an emollient vehicle equivalent to about 5 percent crude coal tar. The tar gel not only appears to deliver the beneficial elements of crude coal tar, but does so in a form that is convenient to apply and that is cosmetically acceptable (Ref. 33).

Another approach to an acceptable product for the treatment of dandruff, seborrheic dermatitis, and psoriasis of the scalp has been the employment of crude coal tar derived from anthracite coal. It was first employed by Combes in 1947 (Ref. 34) for the treatment of a variety of dematoses including seborrheic dermatitis and psoriasis. Satisfactory results in the treatment of seborrheic dermatitis and psoriasis were claimed also by Silver, Bereston, and Scham in 1955 (Ref. 29) with a preparation containing crude coal tar produced from anthracite under standardized conditions. The tar was micronized during the manufacturing process, which permits a stabilized colloidal solution to be prepared. Additional satisfactory results were published in 1980 by Olansky (Ref. 33) who found the preparation cosmetically acceptable for use in shampoos and baths for the treatment of dandruff, seborrheic dermatitis, and psoriasis. This coal tar preparation contains 1 percent micronized whole crude coal tar that is water-dispersible in addition to possessing all of the components of the crude coal tar.

It is generally accepted that the more coal tar is refined, the less effective it is. There are no data in the literature to show that there is a refined coal tar superior to or even equal in clinical effect to crude coal tar (Ref. 32). The diversity of composition of fractions of crude coal tar prepared by official methods and suggested methods for quality assurances were described by Gruber, Klein, and Foxx (Ref. 35).

Although coal tar preparations are widely prescribed and used, there are few well-controlled studies documenting the effectiveness of coal tar in dandruff, seborrheic dermatitis, and psoriasis. Many of the studies that have been done used products containing coal tar in addition to other active ingredients, and most were not placebo-controlled.

One study compared a shampoo containing a 5-percent coal tar solution to an identical shampoo without the coal tar solution for use in dandruff (Ref. 36). One hundred subjects were examined to obtain baseline scores for severity of dandruff. Half of the subjects were then instructed to use the shampoo without coal tar and the other half the coal tar shampoo once a week for 8 weeks. The subjects then returned for a reevaluation of their dandruff conditions. Statistical analysis showed no significant difference between the two shampoos (Ref, 37).

In one study, a 5-percent coal tar extract shampoo was compared to a placebo shampoo vehicle without coal tar for effectiveness (Ref. 38). A pretrial baseline was established by using a detergent shampoo. The products were compared in the treatment of common dandruff and "dandruff associated with seborrheic dermatitis of the scalp." Subjects were chosen because they felt they has a significant amount of dandruff. A detergent shampoo was used for a period of 2 weeks after which subjects were evaluated for adherent and loose dandruff on five scalp areas. A total of 105 subjects with moderate to severe dandruff was examined and assigned to treatment groups. The subjects were instructed to shampoo twice weekly and return for scoring at 2 and 4 weeks after the baseline visit. They received written directions to wet the hair thoroughly, rub the product liberally into hair and scalp, rinse thoroughly, briskly massage a second application of the product into a rich lather, and rinse thoroughly. The actual amount of product used in each shampooing or duration of contact of the scalp with the shampoo, was not specified. Five days after the fourth (2 weeks) shampooing, the subjects were scored for dandruff severity by a technician and after the eighth (4 weeks) shampooing, the subjects were scored by a technician and a dermatologist. The data provided in the report stated that the technician found the placebo preparation caused a decrease in dandruff score of 10.5 percent, whereas the dermatologist rated this figure at 28 percent. The technician found the shampoo containing the coal tar extract caused an average decrease of 32 percent, and the dermatologist found a 47-percent decrease. Statistical analysis of the differences between the median scores was carried out by nonparametric methods. The product containing the coal tar was statistically more effective in reducing total dandruff scores than the placebo preparation at a 99.9-percent confidence level, whether scored by the technician or the dermatologist. During the study, subjects were observed for evidence of primary irritation, allergic contact dermatitis, and phototoxicity. Adverse reactions for both preparations were limited to subjective descriptions of mild stinging of the skin. No objective adverse reactions were noted.

The results of the study were examined by an independent statistician (Ref. 37) who concluded that while the scoring by the technician indicated that the shampoo containing the coal tar extract was significantly better than its vehicle, the scoring of the same results by a dermatologist did not indicate a significant difference.

A randomized, doubler-blind, placebo-controlled study was conducted to evaluate a product containing 7.5 percent coal tar solution and 1.5 percent menthol in the treatment of scalp psoriasis (Ref. 39). Fifty-three subjects were instructed to use an assigned shampoo (25 used a nonmedicated shampoo, and 25 used the coal tar shampoo) every other night for the first 2 weeks and twice a week thereafter for the next 4 weeks. Three subjects did not follow the prescribed course of treatment and were dropped from the evaluation. The results of the study indicated that the coal tar and menthol product provided statistically significant relief of the redness, itching, and scaling associated with the scalp psoriasis. The Panel notes that coal tar was used on the more severe cases of psoriasis. The placebo group demonstrated a worsening of all symptoms except for scaling, which remained stable throughout the course of the study. While this study indicates the combination of coal tar and menthol to be effective in relieving scalp psoriasis, the contribution of the individual ingredients was not assessed.

Submissions containing crude coal tar solution in various concentrations were submitted to the Panel (Refs. 40 through 47). The concentration of coal tar

solution varied from 0.01 to 48.5 percent. In no instance was it shown that the coal tar solution was effective in controlling dandruff or psoriasis of the scalp. It was pointed out by Gruber, Klein, and Foxx (Ref. 35) that the coal tar solution does not contain 20 percent coal tar, as an undetermined amount of insoluble components of the tar are filtered out of the suspension in preparing the solution. It was emphasized that none of the coal tar solution and extract samples actually contained the labeled amount of 20 percent coal tar. The 20-percent figure is based on the amount of crude coal tar initially added to the ethanol, sand, and polysorbate 80, and not the amount of coal tar remaining in the extract after filtration. Approximately 7 percent tar "fractions" are found in coal tar solution after extraction.

Olansky (Ref. 33) conducted a 16-month clinical study to evaluate the effectiveness of a 1-percent colloidal crude coal tar shampoo in the treatment of dandruff, seborrheic dermatitis, and scalp psoriasis.

Forty-nine subjects, men and women aged 10 to 70, were directed to wash their hair and scalp twice weekly for 8 weeks. Examinations by a physician were recorded initially and after 1, 2, 4, and 8 weeks.

The results showed that each dermatosis treated with this coal tar shampoo responded well, with either substantial improvement, control, or complete clearing at the end of 8 weeks.

A tar shampoo containing 8.75 percent special crude coal tar extract was evaluated to determine its effectiveness in the treatment of seborrheic dermatitis (Ref. 48). Fifty-six subjects were used in the uncontrolled study. They were instructed to shampoo three times a week for 2 weeks. The shampoo was rinsed out after the first shampooing, reapplied, lathered in again, and allowed to remain on the scalp for 5 minutes. This was followed by a thorough rinsing. No other topical treatments were used.

The study showed that 51 of the 56 subjects had good to excellent results. Two subjects had fair results; three showed no improvement.

The Panel reviewed four submissions containing extracts of crude coal tar. One product (Ref. 11) contained 5.7 percent crude coal tar extract said to be equivalent to 2.5 percent crude coal tar. No data were presented to show that the tar extract was better than its vehicle in the treatment of psoriasis. Two submissions for the same product (Refs. 12 and 49) contained a tar extract prepared by double extraction of crude coal tar using a nonionic emusifier solvent followed by an aqueous alcohol solvent. The insoluble carbon particles and pitch are filtered out. A concentration of 0.3 percent of these crude coal tar components in the finished products was estimated to be equivalent to at least 5 percent crude coal tar. The effectiveness of these two products in controlling dandruff was not tested and no data were presented to show that these tar components were significantly better than the vehicle for self treatment of psoriasis. A third product (Ref. 13) contained 1.5 percent of a tar extract said to be a polyoxyethylene lauryl ether extract of coal tar equivalent to 0.5 percent crude coal tar. No data were presented to show that this tar extract was more effective than its vehicle in controlling dandruff and psoriasis.

Cetyl alcohol-coal tar distillate represents another attempt to use a more acceptable portion of crude coal tar. It was contained in one submission made to the Panel (Ref. 14) but was in combination with sulfur and salicylic acid. No controlled studies were presented to show that this component of coal tar is effective in the control of dandruff, seborrheic dermatitis, and psoriasis.

Still another attempt to use a more acceptable fraction of crude coal tar was a "refined fraction." One submission (Ref. 47) was received by the Panel but the "refined fraction" in a concentration of 0.3 percent was one of four tar preparations in the shampoo and no evidence was presented to show that this fraction of crude coal tar was effective in controlling dandruff.

It was concluded that this tar preparation was clinically effective in the treatment of seborrheic dermatitis; that is, it reduced the clinical manifestations of seborrheic dermatitis and substantially reduced corneocyte and yeast counts. No adverse reactions were reported, although five patients found the tar odor offensive. No patients reported discoloration or staining of the hair.

Young (Ref. 50) conducted a double-blind, paired-comparison study to evaluate various coal tar preparations in treating body psoriasis. All patients were treated in a hospital for at least 2 weeks, and an evaluation was then made. In 14 patients, a 20-percent coal tar solution in a zinc oxide paste was compared with the zinc oxide paste alone. The results showed that in four patients the coal tar ointment was superior. In 10 patients the effects of the coal tar ointment and the ointment base alone were equal. The author concluded that the 20-percent coal tar in zinc oxide paste was better than zinc oxide paste alone in treating psoriasis.

In the same study, 20 percent coal tar zinc oxide paste was compared with 5 percent coal tar in zinc oxide paste in 17 patients; in 14 patients, 20 percent coal tar in a vehicle of lanolin and soft paraffin was compared with 5 percent coal tar in the same vehicle. It was concluded that the 20-percent coal tar preparations and the 5-percent coal tar preparations were equal in therapeutic effect, regardless of vehicle (Ref. 50).

A comparison in 11 patients of a 5-percent coal tar solution and a 1-percent coal tar solution, both formulated in zinc oxide paste, showed that the 1-percent solution gave superior results in one patient. No difference between the two concentrations was seen in 10 patients. When the same percentages of coal tar were formulated in a lanolin and soft paraffin base and used on seven patients, the test preparations showed equal effects. A final comparison between the 1-percent coal tar solution formulated in zinc oxide, in lanolin and soft paraffin, and the bases alone showed that the 1-percent coal tar in each of these bases was statistically no better than the bases alone (Ref. 50).

The Panel concludes that the coal tar preparations identified below are effective in controlling dandruff, seborrheic dermatitis, and psoriasis. The Panel concludes that these preparations are safe when applied as shampoos for use on the scalp, but data are insufficient to demonstrate safety of coal tar when applied to the scalp for a longer period of time than shampooing requires or when applied on the body. Therefore, the Panel classifies coal tar in Category III for any use other than shampooing the scalp.

(3) *Dosage.* For topical use as a shampoo in the following concentrations: Coal tar distillate, 4 percent; Coal tar extract, 2 to 8.75 percent; Coal tar solution, 2.5 to 5 percent; Coal tar USP 0.5 to 5 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described below. (See part III. paragraph A.2. below—*Category I labeling.)*

In addition, the Panel suggests that manufacturers include in labeling a cautionary statement to the effect that products containing coal tar may stain light-colored hair.

The Panel also recommends the following warnings for coal tar-containing products for use on the body in the event that such products are reclassified in Category I:

(a) "Use caution in exposing skin to sunlight after applying this product. It

may increase your tendency to sunburn for up to 24 hours after application."

(b) "Do not use this product in or around the rectum or in the genital area or groin except on the advice of a doctor."

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b. *Salicylic acid.* The Panel concludes that salicylic acid is safe and effective for OTC topical use for controlling seborrheic dermatitis of the body and scalp, psoriasis of the body and scalp, and dandruff.

Salicylic acid (2-hydroxybenzoic acid) occurs as acicular crystals or as a crystalline powder. It is found principally in wintergreen leaves and in the bark of sweet birch, can be made synthetically, and gradually discolors in sunlight. One gram (g) is soluble in 460 mL water, 3 mL acetone, 2.7 mL alcohol, 42 mL chloroform, 3 mL ether, about 60 mL glycerol, and 52 mL oil of turpentine. The pH of a saturated aqueous solution is 2.4. It is used topically mainly for its keratoplastic activity (correction of abnormal keratinization) in low concentrations, its keratolytic activity (causing peeling of the skin) in higher concentrations, and its antifungal and antibacterial activities (Ref. 1).

(1) *Safety.* Salicylic acid and its derivatives are used as analgesics, antipyretics, fungistatics, keratolytics, rubefacients, and anti-inflammatory agents.

Salicylic acid softens and destroys the stratum corneum by increasing water concentration, probably as a result of lowering the pH, which causes the horny layer of the skin to swell, soften, and then shed. Damage to normal skin has been associated with its overuse.

Systemically, salicylic acid and its compounds produce a variety of reactions in man which are collectively called "salicylism." The early symptoms of salicylism, which may begin when the plasma salicylate level is as low as 12.2 mg/100 mL, are erythema, ringing in the ears, deafness, nausea, and vomiting. The more severe reactions, which may appear when the plasma salicylate levels range from 40 to 50 mg/100 mL, include severe drowsiness, confusion,

euphoria, difficulty in breathing, and hemorrhage (Ref. 2).

The Panel notes that OTC products containing salicylic acid for the control of dandruff, seborrheic dermatitis, and psoriasis are marketed in concentrations varying from 1.8 to 3 percent. The Panel concludes that, because of the relatively weak concentration and the method of use of these products, there is no potential for toxic effects to occur from percutaneous absorption.

(2) *Effectiveness.* Most salicylic acid products on the OTC market for topical use contain this ingredient in combination with other ingredients (Refs. 3 through 21). Consequently, few studies have been conducted on salicylic acid as a single ingredient for topical use.

The Panel is aware of a recent double-blind study in which 2 percent salicylic acid, 2 percent sulfur, and a combination of sulfur and salicylic acid (2 percent each) were tested against a vehicle for controlling dandruff (Ref. 3). Forty-eight subjects were included in the 5-week study. The products were used under supervision twice a week. Clinical grading of dandruff was on a scale from 0 to 10, and weekly corneocyte counts were made. A significant reduction in both the clinical grade of scaling and corneocyte count was reported for salicylic acid as compared to the vehicle control.

The Panel is aware of only one other study in which salicylic acid was evaluated as a single ingredient in the control of dandruff (Ref. 4). Four different preparations were included in the study: 2 percent sulfur in combination with 2 percent salicylic acid, 2 percent sulfur in combination with 2 percent salicylic acid in a protein formulation, 2 percent sulfur combined with 2 percent salicylic acid and 0.5 percent coal tar, and 1.8 percent salicylic acid in a lotion vehicle intended for daily application. Ten subjects with a minimum degree of scaling (score of 5 or greater on a 10-point scale) were assigned to each formulation. Evaluations were made at 3 and 6 weeks. The study demonstrated that the salicylic acid lotion preparation showed statistically significant reductions in both clinical grade and corneocyte counts at both 3 and 6 weeks.

All other studies reviewed by the Panel were conducted using salicylic acid in combination with other ingredients (Refs. 5 through 21). The Panel's evaluations of combination products are discussed elsewhere in this document. (See part III. paragraph D. below—Combination Products.) Although the studies mentioned above were limited to concentrations of 2 percent salicylic acid, the agency recognizes that products submitted to the Panel for review contained from 1.8 to 3 percent salicylic acid. The Panel previously reviewed salicylic acid in its report on OTC corn and callus remover drug products published in the Federal Register of January 5, 1982 (47 FR 522) and concluded that at concentrations above 1 percent this ingredient has keratolytic action on the skin. Because the effect of salicylic acid in dandruff, seborrheic dermatitis, and psoriasis is due to its keratolytic action in removing scales, the Panel concludes that salicylic acid is effective for controlling seborrheic dermatitis and psoriasis of the body and scalp and dandruff.

(3) *Dosage.* For topical use in concentrations of 1.8 to 3 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described below. (See part III. paragraph A.2. below—*Category I labeling.*)

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c. *Selenium sulfide.* The Panel concludes that selenium sulfide is safe and effective for OTC topical use for controlling dandruff.

Selenium sulfide, also referred to as selenium disulfide, is a bright orange powder prepared from selenious acid and hydrogen sulfide (Ref. 1). It is practically insoluble in water and organic solvents, but soluble in carbon disulfide and benzene (Refs. 1 and 2). Selenium is an essential trace element for man and is contained in the enzyme glutathione peroxidase (Ref. 3).

Selenium sulfide is used in OTC detergent suspension shampoos in a 1-percent concentration for controlling dandruff (Ref. 4). Presently this ingredient is marketed for control of seborrheic dermatitis only in a 2.5-percent concentration that is restricted to prescription use. The Panel knows of no studies that have been done to demonstrate the effectiveness of a 1-percent concentration in controlling seborrheic dermatitis, but suggests that manufacturers might wish to consider performing such studies to determine whether the lower concentration is in fact effective for controlling seborrheic dermatitis as well as dandruff.

(1) *Safety.* Because selenium sulfide is practically insoluble in water and organic solvents, its toxicity contrasts sharply with the highly toxic water-soluble selenium compounds and with elemental selenium. The oral LD_{50} for selenium sulfide in rats is 138 mg/kg, as compared to 7 mg/kg for highly soluble sodium selenite. Available evidence indicates that there is little danger of absorbing toxic amounts when selenium sulfide is applied to normal intact skin or hair (Ref. 5). This ingredient has been used in an OTC antidandruff shampoo in a concentration of 1 percent for several years with very few reported incidences of toxicity.

A series of four studies was done to determine whether selenium was absorbed through intact skin on the scalp as a result of shampooing under normal conditions with a 1-percent selenium sulfide shampoo (Ref. 4). The first two studies were designed to determine when peak blood levels would occur if any selenium were absorbed. In the first study, blood samples were drawn from four subjects 12 hours after shampooing, and urinary excretion of selenium was measured over a period of 24 hours following use of the shampoo. In the second study, blood samples were drawn from four subjects 4 hours after shampooing, 8 hours after shampooing, and at intervals in between. Measurements of selenium excreted in urine were made five times over a 24-hour period. Apparently no selenium was absorbed because there appeared to be no change in blood selenium levels other than slight variations that were within the standard deviation of the analytical method.

The third study was conducted on four subjects who shampooed with the 1-percent selenium sulfide preparation twice a week for 8.5 weeks. Simultaneously, a control group of four subjects used a shampoo that did not contain selenium sulfide, and blood and urine selenium levels were measured in both groups. The difference in blood selenium levels and urine selenium levels between control and experimental subjects was neither statistically nor

clinically significant (Ref. 4). In the fourth study, urinalysis of samples collected each month showed no selenium absorption after shampooing weekly with the 1-percent preparation for 6 months (Ref. 4).

When selenium is applied to damaged skin, it can be absorbed, and toxicity may occur (Ref. 5). The Panel therefore recommends that selenium sulfide products be labeled with a warning against use on damaged skin such as open sores. Ransone, Scott, and Knoblock (Ref. 6) described symptoms of selenium intoxication in a woman who had been using a selenium sulfide suspension shampoo two or three times a week for 8 months to treat a scalp eruption and who had developed an open lesion on her scalp. She developed tremors, followed by severe perspiration, garlicky breath, and a pain in the lower abdomen. Over the next 3 days, she became increasingly weak, lethargic, had no appetite, and vomited occasionally. Use of the shampoo was discontinued, and within 10 days after the onset of the symptoms, the patient felt completely well. One month later she was still without symptoms.

It has been noted that preparations containing selenium sting the mucosa of the eyes on contact (Ref. 5). Labeling of selenium sulfide products should include a warning to avoid contact of the products with the eyes and to rinse the eyes immediately with water should this occur.

Because of concern over possible carcinogenicity of selenium sulfide, a bioassay of a shampoo containing this ingredient in a 2.5-percent concentration was recently done under the supervision of the National Cancer Institute (Ref. 7). Under conditions of this bioassay, topical application of the shampoo was not shown to cause cancer in ICR Swiss mice. The official report of the study points out, however, that the study was limited by the relatively short life span of this strain of mice.

In a study using a modified Draize-Shelanski human patch test, a 1-percent concentration of selinium sulfide was shown to cause no photosensitization reactions. The reactions that were seen indicated irritation due to occulsive patching rather than sensitivity. A 2.5-percent selenium sulfide suspension was also reported to cause a contact dermatitis. Investigators believe that prolonged contact with skin, e.g., overnight application, of both 1 and 2.5 percent concentrations may produce irritation (Ref. 4).

Selenium sulfide suspensions can cause rebound oiliness of the scalp. Long-term studies showed increased scalp oiliness in 13 of 104 subjects using a 1-percent selenium sulfide suspension. Short-term studies showed increased scalp oiliness in 5 of 50 of the subjects using a 2.5-percent selenium sulfide suspension, in 1 of 370 subjects using a 1-percent selenium sulfide suspension, and in 2 of 50 subjects using a 0.5-percent suspension (Ref. 4).

Discoloration of various shades of natural and dyed hair by selenium sulfide suspension shampoos has been recorded. However, studies indicate that this is not a common occurrence and is most likely to occur, if at all, when shampooing with a selenium suspension is followed by poor rinsing or no rinsing at all (Ref. 4).

Six cases of diffuse hair loss after using a 2.5-percent selenium sulfide shampoo were reported by Grover (Ref. 8). The hair loss stopped 1 to 2 weeks after use of the product was discontinued. Later studies showed no significant effect on the percentages of growing and resting hairs after both a single application and prolonged use of a selenium sulfide suspension shampoo and use of the same preparation without selenium sulfide (Ref. 9).

The Panel concludes that selenium sulfide is safe for use in a concentration of 1 percent in a shampoo for controlling dandruff.

(2) *Effectiveness.* There are several theories regarding the mechanism of action of selenium sulfide. Spoor (Ref. 10) found a 2.5-percent selenium sulfide suspension to be one of the most active agents tested in inhibiting the growth of *Pityrosporum ovale.* It is possible that selenium sulfide, when absorbed, is converted into selinide and sulfide ions, and the selinide ions block the enzyme systems involved in the growth of epithelial tissue (Ref. 11). In any event, selenium sulfide is a demonstrated cytostatic, slowing the rate of cell turnover, whether the turnover rate is normal or higher than normal (Ref. 12).

Four studies were conducted to demonstrate the effectiveness of 1 percent selenium sulfide in controlling dandruff (Ref. 4). The first study was conducted on 19 adults with moderate to severe dandruff. For the first 4 weeks, the dandruff was treated by continuous use of a 2.5-percent selenium sulfide suspension. At the end of this period, the subjects were given a 1-percent selenium sulfide suspension to use for 4 weeks. The subjects rated the effectiveness of the 1- and 2.5-percent suspensions as equal.

The second study was double-blinded and used 6 comparable groups of 50 to 53 individuals with moderate to very severe dandruff. Each group shampooed with one of the following six test solutions: 2.5 percent selenium sulfide suspension shampoo, 1 percent selenium sulfide suspension shampoo, 0.5 percent selenium sulfide suspension shampoo, the detergent vehicle for the selenium sulfide suspensions, 2 percent zinc pyrithione shampoo, and a combination 2-percent sulfur and 2-percent salicylic acid shampoo. The three selenium sulfide suspension shampoos were found to be more effective than the detergent vehicle in controlling dandruff and attendant itching. The 2.5-percent selenium sulfide suspension shampoo and the 1-percent selenium sulfide suspension shampoo were equal in effectiveness and superior to the 0.5-percent selenium sulfide suspension shampoo, the 2-percent zinc pyrithione shampoo, and the combination 2-percent sulfur and 2-percent salicylic acid shampoo.

A third study conducted over a 3-month period compared a 1-percent selenium sulfide shampoo with its detergent vehicle (Ref. 4). All subjects used the detergent vehicle the first month. During the second month, 47 subjects used a 1-percent selenium sulfide shampoo, while 48 subjects used the detergent. During the third month, all subjects used the 1-percent selenium sulfide shampoo. At the end of the second month of the study, the dandruff severity decreased in 45 of the 47 subjects using the 1-percent selenium sulfide shampoo, remained unchanged in 1 subject, and increased in 1 subject. Of the 48 subjects using the detergent vehicle, dandruff severity decreased in 23, increased in 11, and remained the same in 14.

At the end of the third month, subjects who used the 1-percent selenium sulfide shampoo for that month only showed significant improvement: 43 subjects had a decrease in dandruff severity, while 1 had an increase. Those who used the 1-percent selenium sulfide shampoo for 2 months had less dandruff at the end of the study than those who used it for only 1 month. It was concluded that 1 percent selenium sulfide was effective in controlling dandruff. No effect on oiliness was demonstrated.

The fourth study was conducted on 370 subjects using a 1-percent selenium sulfide suspension and its detergent vehicle (Ref. 4). The study was performed in a double-blind crossover fashion. The selenium sulfide suspension and the detergent vehicle were both labeled as test shampoos. The subjects were instructed to shampoo for 4 weeks with one test shampoo. The following 4 weeks they used the other test shampoo. At the end of the study, both the examining physician and subjects rated the 1-percent selenium

sulfide suspension superior to the vehicle in controlling dandruff. The vehicle, however, still produced significant improvement of the scalp condition when compared with the scalp condition at the beginning of the study.

The Panel concludes that selenium sulfide in a concentration of 1 percent is effective in controlling dandruff.

(3) *Dosage.* For topical use in a concentration of 1 percent.

4. *Labeling.* The Panel recommends the Category I labeling described below. (See part III. paragraph A.2. below—*Category I labeling.*) In addition, the Panel recommends the following warning for labeling of products containing selenium sulfide: "Do not use if you have open sores on your scalp."

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d. *Sulfur.* The Panel concludes that sulfur is safe and effective for OTC topical use for controlling dandruff.

Sulfur has long been used in medicine as a parasiticide, fungicide, and to treat certain cutaneous disorders unassociated with infection (Ref. 1). Elemental sulfur can exist in several different crystalline forms as well as an amorphous or polymeric form. In general, sulfur is insoluble in water, sparingly soluble in alcohol, and soluble in organic solvents (Ref. 2).

Four forms of elemental sulfur are used in dermatology: sublimed sulfur (flowers of sulfur) a fine, yellow, crystalline powder; washed sulfur, made by washing sulfur with ammonia; precipitated sulfur (milk of sulfur), a fine yellowish-white, amorphous, odorless powder with smooth texture; and colloidal sulfur, in which minute particles of elemental sulfur are stabilized in an aqueous medium containing a colloid such as egg albumin or gelatin (Ref. 3). Precipitated sulfur and colloidal sulfur are the forms most commonly used.

(1) *Safety.* Sulfur is an ancient remedy, which is still popular as a treatment for acne, dandruff, and seborrheic dermatitis. Allergic reactions to it are rare. Basch (Ref. 4) reported in 1926 that the application of a 10-percent sulfur ointment for 3 days to infants with scabies resulted in poisoning and death in some cases. He also reported earlier cases of poisoning from the application of precipitated sulfur powder or sulfur ointment to eczematous patients, manifested by headache, vomiting, muscle cramps, dizziness, and collapse, followed by recovery in several hours. Basch applied a 25-percent sulfur ointment to rabbits and guinea pigs and detected symptoms of sulfur poisoning and sulfuric acid in the blood of the animals with abraded skin but not those with intact skin. However, sulfur in 2 to 5 percent concentrations applied topically is well tolerated by humans, and there have been no reports of toxicity from application of these concentrations. Sulfur taken orally may have a laxative or cathartic effect. Sax (Ref. 5) rated the toxicity of sulfur as very low.

Sulfur may cause irritation to the skin, eyes, and respiratory tract (Ref. 6). Labeling of sulfur-containing products should include a warning to avoid contact of the products with the eyes and to rinse the eyes immediately should this occur. In concentrations above 15 percent, it is very irritating to the skin, and concentrations below 15 percent may cause severe topical irritation to some people when applied for prolonged periods. Prolonged local use may result in a characteristic dermatitis venenata (Ref. 7).

Lorenc and Winkelmann (Ref. 8) found only three references in the literature that attempt to describe the histologic effects of sulfur on the skin. These researchers studied the histologic effects of concentrations of 5, 20, and 40 percent sulfur in petrolatum on hairless mouse skin over a 4-week period of exposure. With the 5 percent concentration there was increasing edema of the epidermis during the first week, followed by thickening of the prickle cell layer. This reaction reached a maximum at 2 weeks, resulting in nonadherent cells in the stratum corneum which retained their nuclei. With the 20 percent sulfur, the reactions were the same, but occurred more rapidly and with greater severity. The 40 percent preparation produced a severe epidermal reaction. The stratum corneum was almost completely absent at the end of 4 weeks, and intercellular and intracellular edema were seen to the point of separation of epidermis from dermis. Lorenc and Winkelmann concluded that sulfur injures the epidermis and that the injury is followed by a reparative process when lower concentrations are applied. However, when concentrations of sulfur above 5 percent are used, the injury exceeds the reparative process, and peeling results in severity proportionate to the concentration. Thus, the terms "keratoplastic" (correcting of abnormal keratinization) and "keratolytic" (causing peeling of the skin) describe different phases of the same reaction. Lorenc and Winkelmann also reported that the sequence of events after the application of various concentrations of sulfur to the skin of hairless mice was essentially the same as the sequence reported when sulfur was applied to the skin of the human thigh, abdomen, and scrotum.

Rossoff (Ref. 9) reported that sulfur in 5 to 10 percent concentrations is keratolytic. Rossoff did not suggest that lower concentrations were used primarily to correct abnormal keratinization, although he noted that a 2-percent sulfur concentration in combination with salicylic acid is popular in antiseborrheic preparations.

The Panel concludes that sulfur is safe for topical use in concentrations of 2 to 5 percent.

(2) *Effectiveness.* The majority of the 20 sulfur submissions received for review for controlling dandruff contained this ingredient in combination with other active ingredients (Refs. 10 through 30). Formulated as shampoos, conditioning lotions, and ointments, these preparations contain sulfur in concentrations ranging from 2 to 5 percent. Few studies have evaluated sulfur as a single active ingredient in controlling dandruff. One 6-week double-blind study compared a lotion shampoo containing 2 percent sulfur with its base and a cream shampoo containing 2 percent sulfur with its base in treating dandruff in four groups of 50 men and women (Ref. 25). The subjects

were each assigned to use one of the four preparations twice a week for the first 2 weeks and once weekly thereafter. They were examined at the second, fourth, fifth, and sixth weeks, 5 days after shampooing.

Statistical analysis of the results showed that each sulfur-containing shampoo produced a significant decrease in the amount of dandruff, compared to its vehicle control, at the sixth week examination. The Panel points out that, because the research laboratory that conducted the study has been under a grand jury investigation for mishandling data, these data cannot stand alone.

In another double-blind study, a 2-percent sulfur shampoo was compared to its vehicle in the control of dandruff (Ref. 25). Forty-nine patients used the sulfur shampoo, and 50 used the vehicle for a period of 2 months. Subjects were instructed to shampoo twice weekly for the first 2 weeks and once weekly thereafter until completion of the study. Clinical evaluations of the dandruff condition were made initially and weekly thereafter. Thirty of the 49 subjects using the sulfur shampoo showed improvement in their dandruff conditions as compared to 23 of 50 using the vehicle. This difference is not statistically significant. It was noted by the investigators that 10 of 50 subjects using the vehicle shampoo refused to shampoo only once weekly and were given permission to shampoo twice a week. Seven of these 10 showed improvement. The investigators concluded that these seven subjects could be considered failures under the one-shampoo-a-week terms of the study. If considered failures, the differences between the sulfur and control groups would be significant. These data suggest that sulfur may be effective and are supported by an additional double-blind study that compared the activity of 2 percent sulfur, 2 percent salicylic acid, and a combination of sulfur and salicylic acid (2 percent each) against a vehicle control (Ref. 26). The specifics of this study are discussed under salicylic acid above. (See part III. paragraph A.1.b. above—*Salicylic acid.*) The differences in clinical grading between the sulfur and vehicle groups were statistically significant. However, the differences in corneocyte counts were statistically indistinguishable.

The Panel is aware of one other study in which 2 and 5 percent sulfur shampoos were compared against their shampoo vehicle as a control (Ref. 31). This 8-week study had been completed through the fifth week when the data were presented to the Panel. Beginning at the second week, statistically significant differences in both corneocyte counts and the clinical grade of dandruff were seen between both test shampoos and the vehicle. There was no significant difference between the 2- and 5-percent sulfur shampoos. The Panel concludes that preparations containing 2 to 5 percent sulfur are effective in controlling dandruff.

(3) *Dosage.* For topical use in concentrations of 2 to 5 percent.

(4) *Labeling.* the Panel recommends the Category I labeling described below. (See part III. paragraph A.2. below—*Category I labeling.*)

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(26) OTC Volume 160414.

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(28) OTC Volume 160401.

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(30) OTC Volume 160356.

(31) Meltzer, N., Presentation to Panel, 42nd Meeting of the Advisory Review Panel on Miscellaneous External Drug Products, November 7, 1980.

e. *Zinc pyrithione (pyrithione zinc).* The Panel concludes that zinc pyrithione is safe and effective for OTC topical use for controlling dandruff and seborrheic dermatitis of the scalp.

Zinc pyrithione is also known as zinc pyridine-2-thiol-1-oxide. It has a molecular weight of 318. It is virtually insoluble in water (15 to 20 parts per million (ppm)), but its solubility is increased by complex formation with certain organic amines. For example, in a detergent shampoo base, soluble levels of zinc pyrithione average about 300 ppm.

The compound *N*-hydroxy-2-pyridinethione and its metal salts were synthesized by Shaw et al. (Ref. 1) in 1950 and were subsequently discovered to be potent, broad-spectrum antimicrobial and antifungal agents.

The original work with zinc pyrithione as an antidandruff agent was done using a 2-percent suspension. With careful formulation, selecting the proper surfactant, it was possible to cleanse the hair and scalp of dirt and oil while depositing fine particles of zinc pyrithione on the skin (Ref. 2). Enhancing the solubility of zinc pyrithione in shampoos by adding high molecular weight polyethylenimine polymers at a level of 0.5 percent allowed zinc pyrithione to be decreased to a concentration of 1 percent without loss of antidandruff efficacy (Ref. 3). Rutherford and Black (Ref. 4) found that zinc pyrithione was soluble in sebum, and its presence could be demonstrated in the hair follicles by autoradiography although there was no evidence of epidermal penetration. Follicular residues of zinc pyrithione may be a source of its sustained activity after most of the active material has been rinsed off during shampooing. When zinc pyrithione in varying dilutions was left on the scalp from 1 to 32 minutes, the residual deposits were shown to be approximately 1 percent of the amount applied (Ref. 5): these deposits of zinc pyrithione resist rinsing off with water.

(1) *Safety.* Because zinc pyrithione is relatively insoluble in water, it is not easily absorbed through the skin when topically applied or easily absorbed through the mucous membranes if swallowed.

Animal toxicology data were summarized in several submissions (Refs. 3, 6, 7, and 8), and zinc pyrithione was shown to be minimally toxic to rats and a potent emetic (Ref. 7). Eye irritation from zinc pyrithione powder or shampoo was extreme, but when a shampoo formulation containing 2 percent zinc pyrithione was instilled into the eyes of rabbits or monkeys was rinsed out after 4 seconds, only mild irritation resulted. There was no permanent damage. Zinc pyrithione was not found to be mutagenic in mice or teratogenic in rabbits (Ref. 7). A 2-year exposure of dogs to a 0.25-percent zinc pyrithione hairgroom in doses of 0.05, 1.5, and 2.5 mg/kg a day (representing 1, 30, and 50 times the estimated dosage levels in humans) showed only slight skin thickening at the application site of the 2 higher doses. Otherwise the dogs receiving the zinc pyrithione exhibited no differences from the dogs in the control group.

Human systemic toxicity from zinc pyrithione has not been reported. Accidental poisoning from oral ingestion is apparently prevented by the ingredient's emetic effect.

Human percutaneous absorption of zinc pyrithione formulations has been measured, and safety factors have been calculated (Refs. 5, 8, and 9). Data from these studies indicate that topically applied zinc pyrithione has a high safety margin.

Human skin irritation and sensitization to zinc pyrithione is low (Refs. 5, 10, and 11). A 5-month repeated insult closed-patch test study using a 0.5 percent zinc pyrithione hairgroom on 100 human volunteers gave no evidence of primary skin irritation or sensitization. Draize tests with 1 percent aqueous dilutions of three shampoos formulated with 1 percent zinc pyrithione showed no contact sensitization and no photosensitization. One percent aqueous dilutions of two shampoos formulated with 2 percent zinc pyrithione and their vehicles were used in repeated insult closed-patch tests. No sensitization resulted. More irritation was seen with the zinc pyrithione-containing shampoos than with their vehicles, but the level of irritation was still low. Zinc pyrithione was also shown not to be phototoxic.

A double-blind, placebo-controlled test was conducted to confirm the safety of 0.1 percent zinc pyrithione formulated in a hairgroom. Fifty volunteers, all previous hairgroom users, massaged a small amount of the product into the scalp daily for 2 months, shampooing as needed with a nonmedicated shampoo provided by the researchers. The test results confirmed that scalp irritation did not occur following daily use of the zinc pyrithione preparation for 60 days (Ref. 12).

Shampoos containing zinc pyrithione have been marketed since 1964, but only 3 cased of allergic contact dermatitis resulting from their use have been reported (Refs. 13 and 14). Of 1,223 people participating in 13 clinical trials using a 1-percent zinc pyrithione shampoo, only 4 showed slight cutaneous irritation (Ref. 15). This may be due to the fact that zinc pyrithione has the potential to cross-react with the commonly prescribed drugs ethylenediamine, piperazine, and hydroxyzine hydrochloride.

(2) *Effectiveness.* Shampoos containing 1 percent zinc pyrithione have been shown in many double-blind studies to be effective in controlling the clincially evident scaling of dandruff. Shampoos containing 2 percent zinc pyrithione have also been shown to be effective for treatment of seborrheic dermatitis. Three shampoos containing 1 percent zinc pyrithione were evaluated in 13 clinical trials conducted by 5 investigators at different test sites. One shampoo was formulated for normal hair, one for oily hair, and one for dry hair (Ref. 15). All tests were double-blinded. Following 1 to 3 weeks of shampooing with a nonmedicated commercial shampoo, subjects with at least moderate dandruff were accepted into the study. Subjects were classified as having either excessively oily, normal, or dry scalps and hair and were tested with the appropriate shampoo. Duration of the test period varied from 6 to 10 weeks. Subjects with the same hair type were divided into two groups with an approximately equal distribution of severity of dandruff. One group used the test product and the other vehicle control, shampooing once or twice a week for the entire test period. Subjects were evaluated by a dermatologist 3 to 7 days following each shampooing for severity of dandruff which was rated according to a numerical scoring system. Results showed that all three medicated shampoos were effective in reducing dandruff.

Thirty-one of 33 double-blind clinical studies using a 2-percent zinc pyrithione lotion shampoo and a 2-percent zinc pyrithione cream shampoo showed that both formulations were significantly more effective in controlling dandruff than a placebo shampoo (Ref. 16). One of these studies was published by Orentreich (Ref. 17).

Use of shampoo base alone showed some improvement in scalp scaling in the above studies. Thus frequent shampooing has been suggested as a treatment for dandruff. However, the 2-percent zinc pyrithione shampoo used three times a week was significantly more effective than an unmedicated shampoo, just as it was more effective with once-a-week use.

Two clinical studies were conducted to determine if a 2-percent zinc pyrithione shampoo maintained its antidandruff effectiveness with long-term use (Ref. 5). The results showed that the zinc pyrithione shampoos were significantly more effective than the respective placebo shampoos throughout 3 months of one study and 6 months of the other study.

In a double-blind study of a 2-percent zinc pyrithione shampoo, a sulfur-salicylic acid-hexachlorophene shampoo, and an unmedicated shampoo control in the treatment of seborrheic dermatitis of the scalp, the 2-percent zinc pyrithione shampoo was found to be significantly more effective than the sulfur-salicylic acid-hexachlorophene shampoo, which was significantly more effective than the placebo after both 4 and 8 weeks of use (Ref. 18).

Approximately 5 percent of subjects with dandruff do not respond to zinc pyrithione shampoos (Ref. 16).

Four controlled studies on over 400 men with dandruff, testing a 0.25-percent zinc pyrithione hairgroom against its base, showed significantly greater improvement in "severity of dandruff, condition of scalp, and itching" in subjects using the zinc pyrithione preparation (Ref. 11).

Five double-blind, placebo-controlled studies were conducted to determine the effectiveness of 0.1 percent zinc pyrithione formulated in a hair groom to control dandruff (Ref. 12). The testing prodcedure was the same in all five studies. Volunteers for each study were previous hairgroom users with at least moderate dandruff. Baseline scores were established prior to initiating the studies. In each test, volunteers were instructed to massage a small amount of the test material (hairgroom or placebo) into the scalp daily and shampoo as needed with a nonmedicated shampoo. Tests were conducted for 2 months, with dandruff assessments made by a trained observer after 1 and 2 months' use of the test samples. Assessments were done by dividing the scalp into four sections and parting the hair in each section to observe the amount of adherent dandruff; loose scales were ignored. Scores from each of the four sections were added to give a total score for the scalp.

The results of each of the five studies demonstrated that at no time did the placebo produce a statistically significant reduction in dandruff level. The use of the hairgroom with 0.1

percent zinc pyrithione reduced the dandruff level, clinically and statistically, at the end of the both 1 and 2 months. Additionally, one study evaluated the efficacy of 0.05 percent zinc prithione in a hairgroom. This lower concentration also reduced the dandruff level but not as significantly as the 0.1 percent concentration.

Two additional studies comparing 2 percent zinc pyrithione shampoo against placebo support the effectiveness of this ingredient in controlling dandruff (Ref. 19).

Based on the above data, the Panel concludes that preparations containing 1 to 2 percent zinc pyrithione in a shampoo and 0.1 to 0.25 percent zinc pyrithione in a hairgroom are effective in controlling dandruff and seborrheic dermatitis.

(3) *Dosage.* For topical use in concentrations of 1 to 2 percent in a shampoo and 0.1 to 0.25 percent in a hairgroom.

(4) *Labeling.* The Panel recommends the Category I labeling described below. (See part III. paragraph A.2. below—*Category I labeling.*)

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2. *Category I labeling.* The Panel recommends the following labeling for Category I drug products for controlling dandruff, seborrheic dermatitis, and psoriasis. One or more of these indications may be used so long as the active ingredient or ingredients of a product have been demonstrated safe and effective for each indication used.

a. *Indications*—(1) *For products used for controlling dandruff.* "Relieves the itching and scalp flaking associated with dandruff."

(2) *For products used for controlling seborrheic dermatitis.* "Relieves the itching, irritation, and skin flaking associated with seborrheic dermatitis" (select one or both of the following as appropriate: "of the scalp" and/or "of the body.")

(3) *For products used for controlling psoriasis.* "Relieves the itching, redness, and scaling associated with psoriasis" (select one or both of the following as appropriate: "of the scalp" and/or "of the body.")

(4) *For products used for controlling cradle cap.* "Relieves scaly inflammation of the scalp associated with cradle cap."

b. *Warnings*—(1) *For all products used for controlling dandruff, seborrheic dermatitis, psoriasis, or cradle cap.*

(i) "For external use only."

(ii) "Avoid contact with the eyes—if this happens, rinse thoroughly with water."

(iii) "If condition worsens or does not improve after regular use of this product as directed, consult a doctor."

(2) *For products used for controlling seborrheic dermatitis or psoriasis on the body.* "If condition covers a large area of the body, consult your doctor before using this product."

(3) *For products that contain coal tar.* (i) "Use caution in exposing skin to sunlight after applying this product. It may increase your tendency to sunburn for up to 24 hours after application."

(ii) "Do not use this product in or around the rectum or in the genital area or groin except on the advice of a doctor."

(4) *For all products except those used for controlling cradle cap.* "Do not use on children under 2 years of age except as directed by a doctor."

(5) *For products that contain selenium sulfide.* "Do not use if you have open sores on your scalp."

c. *Directions for use*—(1) *For shampoos.* "For best results use twice a week. Wet hair, apply to scalp and massage vigorously. Rinse and repeat."

(2) *For hairgrooms.* "Apply a small amount to scalp daily. For best results, also shampoo twice a week."

(3) *For preparations to be used on the body.* "Apply a thin layer to the affected area one to two times daily."

B. Category II Conditions

There are conditions under which active ingredients used for controlling dandruff, seborrheic dermatitis, and psoriasis are not generally recognized as safe and effective or are misbranded.

1. *Category II active ingredients:*

Benzocaine
Borate preparations
Colloidal oatmeal
Cresol
Mercury oleate
Resorcinol

a. *Benzocaine.* The Panel concludes that benzocaine is not safe or effective for OTC topical use for controlling psoriasis.

Benzocaine is the ethyl ester of aminobenzoic acid and may be prepared by reducing paranitrobenzoic acid to aminobenzoic acid and esterifying the latter with ethyl alcohol in the presence of sulfuric acid. Benzocaine is a white, crystalline, stable powder that melts at temperatures between 88° to 92° C. It is odorless and has a somewhat bitter taste. It is poorly soluble in water, but is lipid-soluble. Benzocaine has slight antiseptic and bacteriostatic properties, but these actions are not clinically significant in controlling psoriasis (Refs. 1, 2, and 3).

(1) *Safety.* The Topical Analgesic Panel in the **Federal Register** of December 4, 1979 (44 FR 69793) found benzocaine safe and effective for use as a topically-applied analgesic in concentrations of 5 to 20 percent. That Panel noted that the safety of benzocaine is due to the fact that it is poorly soluble in water, and the quantities absorbed through the intact skin, while sufficient to relieve pain and itching, are relatively insignificant in terms of potential toxicity. The Topical Analgesic Panel pointed out, however, that benzocaine therapy is not without hazard, and a review of the literature shows two types of adverse reactions that may occur: those that are allergic or those that may result in methemoglobinemia. In addition, the Miscellaneous External Panel notes that the salts benzocaine forms with acids may be irritating to the mucous membranes and to the skin. On weighing these risks against the fact that there is no evidence to show that benzocaine is effective in controlling psoriasis, the Panel concludes that its use is irrational for this purpose.

(2) *Effectiveness.* Reports in the medical literature attest to the long and

successful use of benzocaine as a topical analgesic, anesthetic, and antipruritic (Refs. 3 through 6). It apparently works by depressing sensory receptors in the skin. The submitted preparation that contains benzocaine (Ref. 7) also contains salicylic acid and coal tar solution, and, although no rationale is given for the inclusion of benzocaine in the product, the Panel assumes that it is included for its analgesic/antipruritic action. Such action does not amount to control of psoriasis, however. Furthermore, the Panel is unaware of any evidence to show that benzocaine is effective in controlling psoriasis, and none was submitted. The Panel therefore concludes that benzocaine is not effective for this use.

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b. *Borate preparations (boric acid and sodium borate).* The Panel concludes that borate preparations are not safe, and data are lacking to permit their final classification as effective for OTC topical use for controlling dandruff or seborrheic dermatitis.

Boric acid occurs as colorless, odorless, transparent crystals or white granules or powder. It is obtained from sodium borate and from other borates by displacement with a stronger acid. One g boric acid dissolves in 18 mL water, 18 mL alcohol, and 4 mL glycerin (Ref. 1).

Sodium borate, also known as borax, occurs as hard, odorless, colorless crystals; granules; or as a white crystalline powder. It is found in several lake waters and brines and also in minerals from which it may be obtained in commercial quantities. One g dissolves in about 16 mL water and 1 mL glycerin; sodium borate is insoluble in alcohol (Ref. 2). This ingredient has been used as a cleansing agent since ancient times (Ref. 3).

(1) *Safety.* Borate preparations are included in two products submitted to the Panel for review (Refs. 4 and 5). The submissions did not provide data on the safety of borate preparations when used as single ingredients. However, one source reports the LD_{50} of subcutaneously administered boric acid in animals as follows: 2 g/kg in mice, 1 g/kg in guinea pigs, and 1 g/kg in dogs. The oral LD_{50} for dogs was reported to be about twice that of the subcutaneous dose (Ref. 6).

The toxicity of borate preparations in humans appears to be unpredictable. For example, a 70-year-old woman died after ingesting 7.5 g boric acid powder, but a 42-year-old woman reportedly survived an intravenous dose of 15 g boric acid (Ref. 6). Locksley and Farr (Ref. 7) reported administering 20 g sodium borate intravenously over a period of 75 seconds in cancer patients receiving neutron capture therapy with no severe adverse effects. However, six infants died after receiving 3 to 6 g of this drug orally (Ref. 8).

Fisher et al. (Ref. 9) found that the blood concentration of boric acid ranged from 52 to 296 mg/100 mL in cases that were "unmistakably intoxication by boric acid." They concluded from their investigations that "there are few reliable data in the literature regarding the concentration of boric acid in the blood that is accompanied by evidence of toxic condition in the patient."

Kingma (Ref. 6) surveyed the literature from 1882 to 1957 and found 37 cases of alleged boric acid poisoning from topical application. Based on his review, Kingma recommended that pure boric acid not be used on raw surfaces and that solutions and ointments be limited to a 3-percent concentration. He concluded that a 3-percent concentration would greatly increase the safety margin of the drug, but pointed out that experiments with 5 percent borated talcum demonstrated the higher concentration in this preparation to be safe. Kingma's conclusions were substantiated by two other review articles (Refs. 9 and 10).

Pfeiffer and Jenney (Ref. 3), in discussing the passage of boric acid through skin and mucous membranes, reported that when a 10-percent boric acid ointment was applied to the torsos of two subjects no boric acid was detected in the urine. These investigators concluded that boric acid is only negligibly absorbed through intact skin. Granulating wounds or abraded surfaces, however, are rich in blood supply and permit the rapid absorption of boric acid applied in a solution, as a powder, or as an ointment. The risk factors for potential toxic absorption appear to be concentration of boric acid or sodium borate in a product, age of the patient, skin condition, and duration of exposure. Pfeiffer and Jenney (Ref. 3) suggested that the very young rank first and the very old rank second in susceptibility to borate poisoning.

Although a list of 81 references submitted to the Panel fairly well substantiates that preparations containing 5 percent borates present no great toxicity problem when applied to intact skin (Ref. 11), the Panel believes that borate preparations are not safe due to the significant amounts of borate that can be absorbed through damaged skin.

(2) *Effectiveness.* Historically boric acid has been used as a treatment for superficial fungal infections and is one of the more common components of OTC topical antifungal drugs. It is also recognized as a very weak local anti-infective and a buffering agent (Ref. 1). Sodium borate has been used as an alkalizing agent, antiseptic, and astringent for mucous membranes (Ref. 12).

The Panel reviewed an antidandruff preparation containing boric acid (Ref. 4) and another preparation containing sodium borate for controlling the itching of seborrheic dermatitis (Ref. 5). Both preparations were combinations of active ingredients, and the intended contribution of the boric acid and the sodium borate to each of the combinations was not explained.

The Panel concludes that additional data are necessary to show that borate preparations are effective for OTC topical use for controlling dandruff or seborrheic dermatitis.

References

(1) Swinyard, E. A., and W. Lowenthal, "Pharmaceutical Necessities," *in* "Remington's Pharmaceutical Sciences," 16th Ed., edited by A. Osol, Mack Publishing Co., Easton, PA, p. 1257, 1980.

(2) Osol, A., and R. Pratt, "The United States Dispensatory,"; 27th Ed., J. B. Lippincott Co., Philadelphia, pp. 199–200 and 1047, 1973.

(3) Pfeiffer, C. C., and E. H. Jenney, "The Pharmacology of Boric Acid and Boron Compounds," *Bulletin of the National Formulary Committee*, 18:57–80, 1950.

(4) OTC Volume 160321.

(5) OTC Volume 160326.

(6) Kingma, H., "The Pharmacology and Toxicology of Boron Compounds," *Canadian Medical Association Journal*, 78:620–622, 1958.

(7) Locksley, H. B., and L. E. Farr, "The Tolerance of Large Doses of Sodium Borate Intravenously by Patients Receiving Neutron Capture Therapy," *Journal of Pharmacology and Experimental Therapeutics*, 114:484–489, 1955.

(8) McNally, W. D., and C. A. Rust, "The Distribution of Boric Acid in Human Organs in Six Deaths Due to Boric Acid Poisoning," *Journal of the American Medical Association*, 90:382–383, 1928.

(9) Fisher, R. S., et al., "Boron Absorption from Borate Talc," *Journal of the American Medical Association*, 157:503–505, 1955.

(10) Anonymous, "Boric Acid and Baby Powders," *Food and Cosmetics Toxicology*, 1:249–250–1963.

(11) OTC Volume 160355.

(12) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Inc., Rahway, NJ, p. 1110, 1976.

c. *Colloidal oatmeal.* The Panel concludes that colloidal oatmeal is safe, but is not effective for OTC topical use for controlling dandruff.

Colloidal oatmeal is included in two preparations submitted to the Panel for use as dandruff shampoos (Refs. 1 and 2). However, there is a lack of information in the current literature regarding the use of this ingredient alone in controlling dandruff.

(1) *Safety.* Colloidal oatmeal is described as "specially processed oat grains" and labeled as a demulcent (Ref. 1). The Panel knows of no potential for toxicity in oat grains in a colloidal state when used topically and concludes that colloidal oatmeal is safe for topical use.

(2) *Effectiveness.* The Panel assumes that because of its nature and the fact that it has been used for some time in bath preparations intended to soothe itching and irritated shin, colloidal oatmeal was included in the dandruff preparations for its antipruritic/anti-irritant properties. Because the Panel knows of no data to show that colloidal oatmeal is effective in controlling dandruff, and none were submitted, it concludes that colloidal oatmeal is Category II for this indication.

References

(1) OTC Volume 160069.

(2) OTC Volume 160070.

d. *Cresol.* The Panel concludes that cresol is safe for topical use in the concentration submitted, but there are no data to show that it is effective for OTC topical use in controlling psoriasis.

Cresol is a mixture of isomeric cresols obtained from coal tar or from petroleum and may contain up to 5 percent phenol. It is soluble in about 50 parts water, and, owing to this relative insolubility in water, it is nearly always employed in combination with alkalies associated with fats or oils or soaps which render it very soluble but less effective (Refs. 1 and 2). The submitted product contained a combination of cresol oleate in a soap solution (saponated cresol solution) with mercury oleate (Ref. 3). It is used for disinfecting and has antimicrobial activity, surpassing phenol in these respects, but compared to modern antiseptics its potency is low.

(1) *Safety.* Cresol in concentrations greater than 2 percent in aqueous solutions is irritating and may cause sloughing and necrosis (Refs. 2 through 5). More highly concentrated solutions are toxic and can cause death if ingested orally (Ref. 2). The symptoms of toxicity usually develop rapidly, and death has occurred within 2 to 3 minutes after ingestion.

Because cresol, like phenol, is lipid-soluble, it is readily absorbed through intact and abraded skin (Ref. 6). The product submitted to the Miscellaneous External Panel for review contained 0.25 percent by weight of saponated cresol solution, and the Miscellaneous External Panel concludes that this concentration is safe for topical use.

(2) *Effectiveness.* The Panel is unaware of any data to show that cresol is effective in controlling psoriasis, and none were submitted. In the absence of such data, the Panel is placing this ingredient in Category II.

References

(1) Harvey, S. C., "Antimicrobial Drugs," *in* "Remington's Pharmaceutical Sciences," 16th Ed., edited by A. Osol, Mack Publishing Co., Easton, PA, p. 1109, 1980.

(2) Osol, A., and R. Pratt, "The United States Dispensatory," 27th Ed., J.B. Lippincott Co., Philadelphia, p. 355, 1973.

(3) OTC Volume 160033.

(4) Harvey, S. C., "Antiseptics and Disinfectants; Fungicides; Ectoparasiticides," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, Macmillan Publishing Co., Inc., New York, p. 991, 1975.

(5) "AMA Drug Evaluations," 4th Ed., John Wiley and Sons, Inc., p. 1023, 1980.

(6) Freeman, M. V., J. H. Draize, and E. Alvarez, "Cutaneous Absorption of Phenol," *Journal of Laboratory and Clinical Medicine*, 38:262–266, 1951.

e. *Mercury oleate.* The Panel concludes that mercury oleate is safe, but is not effective for OTC topical use for controlling psoriasis.

Mercury oleate contains the equivalent of not less than 24 percent and not more than 26 percent of mercuric oxide. It is a yellowish-brown, somewhat transparent substance, ointment-like in consistency, with the odor of oleic acid. It is slightly soluble in alcohol and in ether and is readily soluble in fixed oils (Ref. 1).

(1) *Safety.* All mercury preparations are highly toxic if absorbed in sufficient amounts. However, the absorption of mercury oleate through the skin is little better than that of metallic mercury, the quantity being too small to be significant (Ref. 2). The Panel concludes that mercury oleate is safe for limited topical application.

(2) *Effectiveness.* Mercury oleate is included in a combination product used for controlling psoriasis (Ref. 3). However, no data on the effectiveness of mercury oleate for this use were submitted, nor is the Panel aware of such data. The Panel concludes that mercury oleate is not effective in controlling psoriasis.

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Inc., Rahway, NJ, p. 764, 1976.

(2) Sollman, T., "A Manual of Pharmacology," 8th Ed., W. B. Saunders Co., Philadelphia, p. 1333, 1957.

(3) OTC Volume 160033.

f. *Resorcinol.* The Panel concludes that resorcinol is safe, but there are no effectiveness data available on its topical use for controlling seborrheic dermatitis or psoriasis.

Resorcinol has been used for many years in the treatment of skin diseases because of its keratolytic, bactericidal, fungicidal, exfoliative, and antipruritic properties (Ref. 1). It is used as an adjunct in the management of seborrheic dermatitis of the scalp and body and of acne. It is a white or nearly white crystalline powder of very low specific gravity, very soluble in water and alcohol, and freely soluble in glycerin and ether (Ref. 2).

(1) *Safety.* Resorcinol has been used for many years without severe toxicity, but it does cross-react with many substances and is cited as being both a sensitizer and a primary irritant. It will occasionally produce a severe allergic reaction and should be kept away from the eyes (Refs. 1 and 2). Fisher (Ref. 3) calls resorcinol a strong sensitizer and cautions against its ability to cross-react with phenol, hexylresorcinol, and hydroquinone. Andrews and Domonkos (Ref. 4) and Fisher (Ref. 3) mention it as a possible sensitizer when used in hair tonics and cosmetics. A review of the cross-sensitivity of resorcinol with other dioxybenzols was covered by Keil in 1962 (Ref. 5).

Resorcinol resembles phenol in its physiologic properties and therefore should not be used over large areas of the body. Enough can be absorbed through the skin to cause a rare systemic poisoning characterized by nausea, vomiting, diarrhea, abdominal pain, nervousness, restlessness or

drowsiness, sweating, bradycardia, and slow or labored breathing. Severe renal and cardiovascular toxicity can also result (Ref. 2). This would not present a problem when the only site of application is the scalp because of the limited size of the area and the thickness of the skin. However, the Panel does not recommend resorcinol for application to thinner skin and potentially larger areas of the body.

(2) *Effectiveness.* Use of resorcinol for seborrheic dermatitis is mentioned in textbooks and review articles (Refs. 6, 7, and 8); however, the product containing resorcinol reviewed by the Panel was for a combination of active ingredients intended for relief of the itching and scaling of psoriasis. The submissions for this product included no data or clinical studies on the effectiveness of resorcinol when used either alone or in combination for controlling psoriasis (Refs. 9 and 10).

In a review of the literature, the Panel found that resorcinol was used as an adjunct in controlling seborrheic dermatitis but not as the sole treatment. There was no reference to its use in controlling psoriasis. The Panel concludes that resorcinol has not been shown to be effective in controlling seborrheic dermatitis and psoriasis.

References

(1) Osol, A., and R. Pratt, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, pp. 1017–1018, 1973.

(2) Harvey, S. C., "Antimicrobial Drugs," *in* "Remington's Pharmaceutical Sciences," 16th Ed., A. Osol, editor, Mack Publishing Co., Easton, PA, p. 1107, 1980.

(3) Fisher, A. A., "Contact Dermatitis," 2d Ed., Lea and Febiger, Philadelphia, pp. 225, 299, and 404, 1973.

(4) Andrews, G. C., and A. N. Domonkos, "Diseases of the Skin," 5th Ed., W. B. Saunders Co., Philadelphia, pp. 76 and 87, 1963.

(5) Keil, H., "Group Reactions in Contact Dermatitis Due to Resorcinol," *Archives of Dermatology*, 86:212–216, 1962.

(6) Milne, J. A., "Acne Vulgaris," *in* "Recent advances in Dermatology," edited by A. Rook, Churchill Livingstone, London, pp. 218–244, 1973.

(7) Andrews, G. C., A. N. Domonkos, and C. F. Post, "Treatment of Acne Vulgaris," *Journal of the American Medical Association*, 146:1107–1113, 1951.

(8) Andrews, G. C., "Acne Vulgaris," *The Medical Clinics of North America*, 49:737–746, 1965.

(9) OTC Volume 160237.

(10) OTC Volume 160379.

2. *Category II labeling.* The Panel concludes that certain labeling claims related to safety or effectiveness of an ingredient are unsupported by scientific data or, in some instances, by sound theoretical reasoning and should not be included in the monograph. Many claims from current labels have been placed in Category II because they are vague, too broad, or incomplete. Such labels mislead the consumer.

Many claims that would appear to be acceptable contain certain modifying words that make these claims unclear or imprecise. Modifiers such as "most" or "fast" are not allowed unless they can be substantiated by clinical data. Other examples of vague modifiers are "scientific" as in "scientific treatment" and "persistent" as in "persistent cases."

Other claims classified as Category II include; "* * * proteinized formula time proven to control dandruff," "* * * is an exclusive dandruff control formulation containing a powerful antimicrobial agent," "* * * guaranteed to control dandruff and scalp itch without shampooing."

C. Category III Conditions

1. *Category III active ingredients:*

Alkyl isoquinolinium bromide
Allantoin
Benzalkonium chloride
Benzethonium chloride
Captan
Chloroxylenol
Coal tar preparations (for prolonged application to the skin)
Ethohexadiol
Eucalyptol
Hydrocortisone preparations
Juniper tar
Lauryl isoquinolinium bromide
Menthol
Methylbenzethonium chloride
Methyl salicylate
Phenol and phenolate sodium
Pine tar preparations
Povidone-iodine
Sodium salicylate
Thymol
Undecylenate preparations

a. *Alkyl isoquinolinium bromide.* The Panel concludes that alkyl isoquinolinium bromide is safe, but there are insufficient effectiveness data available to permit its final classification for OTC topical use for controlling dandruff in the dosage specified below.

Alkyl isoquinolinium bromide is a mixture of quaternary ammonium analogs of isoquinolinium containing carbon chains of varying lengths.

(1) *Safety.* Sufficient toxicological testing is available to indicate that alkyl isoquinolinium bromide is safe for use in OTC dandruff products (Ref. 1). Results of eye irritancy and dermal toxicity tests using the Draize method (Ref. 2) indicate that alkyl isoquinolinium bromide has little potential for causing irritation. It is reported that the oral LD_{50} of this ingredient is 230 mg/kg in rats and 200 mg/kg in guinea pigs. An acute oral toxicity test in which 5 g/kg of a 0.15-percent concentration of alkyl isoquinolinium bromide was administered to rats indicated that at this concentration alkyl isoquinolinium bromide would not be considered a toxic substance (Ref. 1).

The Panel is not aware of any reports of irritation of sensitization occurring from the topical application of this ingredient to normal skin.

(2) *Effectiveness.* It has been demonstrated that alkyl isoquinolinium bromide has antimicrobial activity against bacteria, molds, and fungi, including yeasts (Ref. 1).

The antimicrobial effectiveness of alkyl isoquinolinium bromide as an antibacterial agent has been demonstrated, using a standard phenol coefficient test, against *Salmonella typhosa, Staphylococcus aureus, Escherichia coli,* and *Pityrosporum ovale.* In addition, agar plate zone inhibition tests have shown it to be effective in low concentrations against *Candida albicans, Cryptococcus histolytica, Aspergillus niger,* and *Trichophytan interdigitale.*

Because a definitive relationship between microbial reduction and controlling dandruff has not been established, the Panel concludes that additional data are needed to demonstrate the effectiveness of alkyl isoquinolinium bromide for this use.

(3) *Proposed dosage.* For topical use in a concentration of 0.15 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) OTC Volume 160297.

(2) Draize, J. H., and E. A. Kelley, "Toxicity to Eye Mucosa of Certain Cosmetic Preparations Containing Surface-Active Agents," *Proceedings of the Scientific Section of The Toilet Goods Association*, 17:1–4, 1952.

b. *Allantoin.* The Panel concludes that allantoin is safe, but there are insufficient effectiveness data available to permit its final classification for OTC topical use for controlling dandruff, seborrheic dermatitis, and psoriasis in the dosage specified below.

Allantoin is 5-ureidohydantoin, or 2,5-dioxo-4-imidazolidinyl urea. It has a molecular weight of 158 and exists as colorless crystals with a melting point of 226° C (Ref. 1). It is the principal end product of purine metabolism in animals below man and manlike apes, resulting from oxidation of uric acid through the

action of urease (Ref. 2). One g dissolves in 190 mL of water and 500 mL alcohol. It is nearly insoluble in ether. Allantoin has been used since 1912 to stimulate tissue repair in wounds with pus or similar discharges, in skin ulcers, and in similar dermatological conditions (Refs. 1, 2, and 3).

(1) *Safety.* Allantoin appears to be free from toxic effects. No adverse effects resulting from allantoin therapy could be located in the literature, and it is not cited in customary toxicology texts. A patch test on 200 individuals confirmed the safety of allantoin for human use, demonstrating the ingredient to be nontoxic, nonirritating, and nonallergenic. In a repeated insult patch test on 12 individuals, topically applied allantoin was found not to be a primary skin irritant or primary sensitizer (Ref. 4).

One report indicated that allantoin in solution was painless when applied to wounds (Ref. 5). When large doses have been administered orally, intramuscularly, or intravenously to experimental animals and man, the only effect reported to occur is an increase in the number of white blood cells (Refs. 6 and 7).

(2) *Effectiveness.* MacAlister (Ref. 1) found that extracts of comfrey root contained relatively high percentages of allantoin. He therefore substituted solutions of allantoin for solutions of ground comfrey root for topical therapy of chronic ulcers.

The benefits of maggot therapy in healing of wounds have been reported by various investigators (Refs. 8 and 9). Robinson (Ref. 2) showed that allantoin present in the secretions of maggots was responsible for the healing of wounds. Kaplan (Ref. 10) pointed out that allantoin induced healing by stimulating formation of healthy granulations and by removing necrotic material.

Allantoin has been described as a cell proliferant, stimulant of the growth of the epithelial layer of the skin, and chemical debrider. The keratolytic action of allantoin was demonstrated by Flesch (Ref. 11). In this study, allantoin was shown to accelerate the rate of flow of oil through a standardized column of pulverized horny scales, thus indicating its ability to disperse the horny layer.

The Panel received six submissions claiming allantoin as an active ingredient for use in controlling dandruff, seborrheic dermatitis, or psoriasis (Refs. 12 through 17). Two submissions (Refs. 12 and 13) were for a liquid shampoo, and four (Refs. 14 through 17) were for lotions intended for application to psoriatic eruptions.

All the submissions were for products containing allantoin in combination with other ingredients. Of the studies reviewed, only one attempted to demonstrate the contribution of allantoin to the total product (Ref. 14). However, the details of the study were insufficient to evaluate the results conclusively.

The Panel concludes that additional data are needed to show the effectiveness of allantoin in controlling dandruff, seborrheic dermatitis, and psoriasis.

(3) *Proposed dosage.* For topical use in concentrations up to 2 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) MacAlister, C. J., "A New Cell Proliferant: Its Clinical Application in the Treatment of Ulcers," *The British Medical Journal,* 1:10–12, 1912.

(2) Robinson, W., "Stimulation of Healing in Non-healing Wounds by Allantoin Occurring in Maggot Secretations and of Wide Biological Distribution," *The Journal of Bone and Joint Surgery,* 17:267–271, 1935.

(3) Bramwell, W., "The New Cell Proliferant: A Note on the Symphytum Officinale or Common Comfrey," *The British Medical Journal,* 1:12–13, 1912.

(4) Mecca, S. B., "Allantoin and the Newer Aluminum Allantoinates," *Proceedings of the Scientific Section of The Toilet Goods Association,* 31:1–6, 1959.

(5) Robinson, W., "Allantoin, A Constituent of Maggot Excretions, Stimulates Healing of Chronic Discharging Wounds," *Journal of Parasitology,* 21:354–358, 1935.

(6) Greenbaum, F. R., "Allantoin, A Possible Leucocytosis Producing Factor," *Medical Record,* 151:285–288, 1940.

(7) Greenbaum, F. R., "The Story of Allantoin," *American Journal of Pharmacy,* 112:205–216, 1940.

(8) Wilson, E. H., C. A. Doan, and D. F. Miller, "The Baer Maggot Treatment of Osteomyelitis. Preliminary Report of Twenty-six Cases," *Journal of the American Medical Association,* 98:1149–1152, 1932.

(9) Buchman, J., "The Rationale of the Treatment of Chronic Osteomyelitis with Special Reference to Maggot Therapy," *Annals of Surgery,* 99:251–259, 1934.

(10) Kaplan, T., "The Allantoin Treatment of Ulcers," *Journal of the American Medical Association,* 108:968–969, 1937.

(11) Flesch, P., "New Approaches to the Study of Human Horny Layers," *Proceedings of the Scientific Section of the Toilet Goods Association,* 29:27–31, 1958.

(12) OTC Volume 160050.

(13) OTC Volume 160339.

(14) OTC Volume 160047.

(15) OTC Volume 160068.

(16) OTC Volume 160255.

(17) OTC Volume 160408.

c. *Benzalkonium chloride.* The Panel concludes that benzalkonium chloride is safe, but there are insufficient effectiveness data available to permit its final classification for OTC topical use for controlling dandruff in the dosage specified below.

Benzalkonium chloride is a mixture of alkylbenzyldimethylammonium chlorides (Ref. 1). It is often used as a preservative and is described as a white or yellowish-white, thick gel or gelatinous pieces and as usually having a mild, aromatic odor, and a bitter taste. It is very soluble in water and in alcohol. Mixing benzalkonium chloride in solution with ordinary soaps and with other anionic detergents may decrease or destroy the bacteriostatic activity of the solution (Refs. 1 and 2).

Benzalkonium chloride is also described as a cationic wetting agent possessing detergent and emulsifying actions. In dilutions ranging from 1:750 to 1:40,000, benzalkonium chloride has been utilized as a preoperative disinfectant, as an irrigant in the eye, vagina, and urinary bladder, and for sterile storage of metallic instruments and rubber articles (Ref. 1).

(1) *Safety.* Benzalkonium chloride has been widely used as an antimicrobial and a preservative in topically applied products. This Panel recognizes that the Advisory Review Panel on OTC Antimicrobial I Drug Products concluded that this ingredient is safe for OTC topical use in its report published in the **Federal Register** of September 13, 1974 (39 FR 33131). The data in the manufacturers' submissions (Refs. 3 through 6) serve to further support the safety of benzalkonium chloride. Results of both animal and human toxicologic studies indicate that the concentrations used in products for controlling dandruff are not irritating and do not cause allergic sensitization.

This Panel concludes that benzalkonium chloride is safe for OTC use for controlling dandruff.

(2) *Effectiveness.* The Panel recognizes that quaternary ammonium compounds are often included in shampoo formulations as wetting agents. However, several products reviewed by this Panel claimed banzalkonium chloride as an active ingredient because of its antimicrobial activity. Several studies have been conducted demonstrating the antimicrobial effectiveness of benzalkonium chloride against a variety of organisms including *Pityrosporum ovale* and *Staphylococcus aureus* (Refs. 3 and 5). However, because a definitive relationship between microbial reduction and controlling dandruff has not been established, additional data are needed to demonstrate the effectiveness of banzalkonium chloride in controlling dandruff.

None of the antidandruff studies reviewed by the Panel were conducted using benzalkonium chloride as the sole active ingredient, and the contribution of benzalkonium chloride to the activity of these combination products was not demonstrated. Therefore, the Panel concludes that data are lacking to show effectiveness of this ingredient for OTC use for controlling dandruff.

(3) *Proposed dosage.* For topical use in concentrations of 0.05 to 0.2 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) "The National Formulary," 15th Ed., United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 1211–1212, 1980.

(2) Harvey, S. C., "Antimicrobial Drugs," *in* "Remington's Pharmaceutical Sciences," 16th Ed., edited by A. Osol, Mack Publishing Co., Easton, PA, p. 1100, 1980.

(3) OTC Volume 160297.

(4) OTC Volume 160314.

(5) OTC Volume 160321.

(6) OTC Volume 160352.

d. *Benzethonium chloride.* The Panel concludes that benzethonium chloride is safe, but there are insufficient effectiveness data available to permit its final classification for OTC topical use for controlling dandruff and cradle cap in the dosage specified below.

Benzethonium chloride occurs as colorless crystals, with a mild odor and a bitter taste (Ref. 1). One g dissolves in less than 1 mL water, alcohol, and chloroform. The ingredient belongs to a class of compounds identified as quaternary ammonium compounds. It was the most active of a series of related quaternary ammonium compounds studied by Rawlins et al. (Ref. 2), and was found to have antibacterial and antifungal properties.

(1) *Safety.* Benzethonium chloride is a cationic surface-active agent. One submission for a marketed OTC product containing benzethonium chloride in combination with captan was intended for controlling the scaling and itchy scalp associated with dandruff (Ref. 3). The product has been marketed under an approved new drug application since 1954, and in that time more than 5 million units have been sold with few reports of allergic sensitivity, toxicity, or injury.

Another submission was for a combination of benzethonium chloride with amino acids for cradle cap and diaper rash (Ref. 4). No data were submitted on the product's use in the control of cradle cap. However, data were submitted on the combination of ingredients in treating diaper rash. In that study, no irritation or sensitization was observed in any of the infants. As a preliminary to the study the finished product was applied to the arms and forearms of 25 children and 25 infants for up to 4 hours in some cases. No irritation or other side effects were noted.

The Panel concludes that benzethonium chloride is safe for OTC use in controlling dandruff and cradle cap.

(2) *Effectiveness.* Two clinical studies were carried out to evaluate the effectiveness of a product containing a combination of benzethonium chloride and captan in controlling dandruff (Ref. 3). Both studies were placebo-controlled.

Potential subjects were given a container of nonmedicated control shampoo and instructed to shampoo when they got home and again after 1 week and to report for another dandruff evaluation 1 week after the last shampoo. Only those subjects with a high degree of dandruff scaling were accepted in the studies.

Approximately half of those accepted in the studies used a control shampoo initially, and the other half used the test shampoo. All the subjects returned for dandruff evaluations at biweekly intervals for a total of 8 weeks. In both studies it was concluded that the test shampoo was significantly more effective than the control shampoo in controlling the scaling of dandruff.

The Panel is unaware of any data demonstrating the effectiveness of benzethonium chloride as a single active ingredient in controlling dandruff. While the available data support the effectiveness of the combination of benzethonium chloride and captan, they do not indicate the contribution of each ingredient to the combination. Therefore, the Panel concludes that the data are insufficient to permit final classification of benzethonium chloride for OTC use in controlling dandruff.

The submission on the combination of benzethonium chloride with amino acids included data on effectiveness of the product in relieving diaper rash but no data on its use in controlling cradle cap (Ref. 4). The Panel is not aware of any data to support the use of benzethonium chloride in controlling cradle cap. The Panel recognizes, however, that antimicrobials are potentially effective for this use (see part III. paragraph C.1.n. below—*Methylbenzethonium chloride*), but concludes that additional data are needed to establish such effectiveness for benzethonium chloride.

(3) *Proposed dosage.* For topical use in concentrations of 0.065 to 0.2 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) Osol, A., and R. Pratt, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, pp. 185–186, 1973.

(2) Rawlins, A. L., L. A. Sweet, and D. A. Joslyn, "Relationship of Chemical Structure to Germicidal Activity of a Series of Quaternary Ammonium Salts," *Journal of the American Pharmaceutical Association,* 43:11–16, 1943.

(3) OTC Volume 160306.

(4) OTC Volume 160042.

e. *Captan.* The Panel concludes that captan is safe, but there are insufficient effectiveness data available to permit its final classification for OTC topical use for controlling dandruff in the dosage specified below.

Captan is also known chemically as *N*-trichloromethylthio-4-cyclohexene-1,2-dicarboximide or *N*-trichloromethylmercapto-4-cyclohexene-1,2-dicarboximide and is used commercially in makeup, shampoos, face masks, efc. as a preservative, particularly in formulas containing proteins (Refs. 1 and 2). Three submissions included captan in combination products for controlling dandruff (Refs. 3, 4, and 5). It is discussed as a single ingredient in two other submissions (Refs. 1 and 2).

(1) *Safety.* The ability of captan to penetrate the intact skin was studied by using the Draize Sleeve Technique (Ref. 6) on the exposed skin of rabbits (Refs. 1 and 2). Thirty mL of a 20-percent suspension of captan was applied once or twice a week to the rabbits' skin and left in place. After 2 weeks, all the rabbits had survived 100 hours of accumulated exposure with no signs of detectable poisoning. The only adverse reactions seen were redness and scaling of the skin at the site of application.

Chronic toxicity of captan was evaluated by using 2-year diet studies with albino weanling rats weighing 50 g initially (Refs. 1 and 2). The ingredient was incorporated into the diet at levels of 0.025, 0.25, and 1 percent. At the conclusion of the 2-year feeding trials, the following observations were made: (1) Weight gain was impaired only at the 1 percent level; (2) no decisive deviations were seen in the weights of internal organs; (3) the red blood cell count was within the normal range in all groups; (4) white blood cell counts, both total and differential, showed no deviation that could be associated with the treatment; (5) no gross or microscopic pathologic changes were observed.

The ability of captan to irritate the eye was evaluated by instilling 0.1-mL

samples of 0.18 to 25 percent suspensions of captan in water into the conjunctival sacs of the left eyes of each of 12 rabbits (Refs. 1 and 2). Distilled water was instilled into each right eye as a control. The results of the study showed that corneal damage occurred in only one of the treated eyes, and this was from a concentration of 25 percent captan. No injury to the irises of the treated eyes was reported, and only mild conjunctival irritation was observed. This test was repeated using diluted (0.1 percent) captan soap solutions and the soap solutions alone as the control. Mild irritation was caused by the control soap. No increased irritation was seen with the addition of captan to the soap solutions.

Patch tests using a paste containing a concentration of 50 percent captan in water were conducted on humans (Refs. 1 and 2). The paste was applied directly to the skin and occluded. Under these test conditions, no irritation to human skin was observed after 24 hours of continuous contact.

The skin irritation and sensitization potential of captan was evaluated on guinea pigs by the Draize method (Refs. 4 and 5). Ten daily intracutaneous injections of a 0.1-mL solution of 0.1 percent captan in saline served as the sensitizing dose. Challenging tests were performed 22 and 35 days after the sensitizing dose was given. Observations were made 24 and 48 hours after the challenging dose. Mild primary irritation was observed, and it was concluded that captan is a moderate, but not severe, sensitizer.

Subacute skin toxicity tests on intact and abraded skin of rabbits were also conducted, using an anhydrous soap containing 1 percent captan in a hydrophilic ointment base for application to shaved areas on the backs and rumps of the rabbits (Refs. 1 and 2). Three equal areas of the shaved test site were abraded, and 3 g of each ointment were applied. The captan soap preparation was used on one test site on 10 animals and the control soap preparation was used on one test site on the remaining 10 animals, the remaining site was left untreated. The test area was covered with a gauze bandage and sprayed lightly with water at intervals during the 6-hour exposure to keep the area moist. The ointment was washed off at the end of the 6-hour exposure period. This procedure was repeated for a total of 22 applications over a 30-day period. Irritation was scored daily using the Draize system (Ref. 6). The control soap was found capable of inducing a very mild, transient erythema, but this was not intensified by the presence of captan. No cumulative effect was observed. The reactions were no more severe on the abraded areas of the skin than on the intact areas.

Toxicological studies show captan to be safe for antibacterial use by humans (Refs. 1 and 2). Since 1951, it has been safely used in a large number of commercial preparations involving widespread exposure with no significant complaints of toxic reactions. The data also show that captan is not carcinogenic, mutagenic, or teratogenic (Ref. 7).

(2) *Effectiveness.* A double-blind study using 52 men and women with moderate-to-marked dandruff was performed comparing a cream shampoo containing captan with the cream shampoo base (Ref. 1). A baseline score was established by shampooing with a nonmedicated shampoo on the first evening and again 1 week later. The first examination was made 5 days after the second shampoo. Examinations were made again after 2 weeks and after 4 weeks of using the test medications. Both groups improved markedly, but no significant difference in reduction of dandruff scaling was noted between the captan-containing shampoo and the nonmedicated shampoo. The study failed to demonstrate the effectiveness of the single ingredient. Therefore, the Panel concludes that additional data are needed to show the effectiveness of captan in controlling dandruff.

(3) *Proposed dosage.* For topical use in concentrations of 0.1 to 2 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) OTC Volume 160350.
(2) OTC Volume 160393.
(3) OTC Volume 160308.
(4) OTC Volume 160330.
(5) OTC Volume 160306.
(6) Draize, J. H., G. Woodward, and H. O. Calvery, "Methods for the Study of Irritation and Toxicity of Substances Applied Topically to the Skin and Mucous Membranes," *Journal of Pharmacology and Experimental Therapeutics,* 82:377–390, 1944.
(7) "Interim Report on Studies of Pesticides and Other Agricultural and Industrial Chemicals," *Congressional Record,* National Cancer Institute Studies of Pesticides, 10996–11001, May 1, 1969.

f. *Chloroxylenol.* The Panel concludes that the safety and effectiveness data on chloroxylenol (previously known as parachlorometaxylenol (PCMX)) are insufficient to permit its final classification for OTC topical use for controlling dandruff and seborrheic dermatitis in the dosage specified below.

Chloroxylenol is a halogen-substituted phenol compound. Halogen substitution increases the antimicrobial activity of phenol derivatives, the halogen in the para position to the hydroxyl group being considered the most effective substitution. The indications are that this compound would have strong antimicrobial activity, but very little information about its in vivo activity on the skin is available.

(1) *Safety.* The Panel has reviewed the agency's comments on chloroxylenol in the Antimicrobial I tentative final order published in the **Federal Register** of January 6, 1978 (43 FR 1210). The agency's findings were based upon the recommendations of the OTC Antimicrobial I Panel, which received very little information with regard to chloroxylenol (39 FR 33134). Only a few acute oral and inhalation studies were submitted. These studies indicated an oral LD_{50} of greater than 3 g/kg in rats, not a high degree of toxicity.

However, because information was not available with respect to subchronic dosing by various routes of application, determination of target organ, dermal and mucosal absorption, and metablic studies, the Antimicrobial I Panel could not make an evaluation of the safety of this chemical in a topical preparation.

This Panel received two submissions for marketed products containing chloroxylenol in a concentration of 2 percent in combination with other active ingredients (Refs. 1 and 2). The irritation potential of 2 percent chloroxylenol was evaluated in a study using nine rabbits in which 0.1 mL of a 1:3 aqueous dilution of 2 percent chloroxylenol was instilled in one eye of each rabbit (Refs. 1 and 2). The opposite eye served as the control. It was shown that if the product was not rinsed out of the treated eye in 2 to 4 seconds, redness and swelling occurred, the eye became partly closed, and there was a discharge.

The primary skin irritation index of 2 percent chloroxylenol was determined by applying the test material to the intact and abraded skin of rabbits. The irritation index was found to be 1.71 (on a scale of 0 to 4) (Refs. 1 and 2). The 2 percent concentration of chloroxylenol was not shown to be a primary skin irritant, was not a corrosive material, and was not an eye irritant when in a 1:3 dilution.

A 21-day human irritation study was performed to compare the irritancy potential of six test materials: (1) 1 percent selenium sulfide; (2) a shampoo of 1 percent salicylic acid and 1 percent sulfur; (3) 1 percent chloroxylenol; (4) 3 percent selenium sulfide; (5) a shampoo of 3 percent salicylic acid and 3 percent

sulfur, and (6) 3 percent chloroxylenol. The samples were applied to gauze patches that were placed on the backs of the subjects and occluded. The patches were removed daily, the test sites examined, and the test material reapplied. The results of the study show that at the 1- and 3-percent concentrations, chloroxylenol was intermediate in irritancy potential, with selenium sulfide being the most irritating, and the salicylic acid and sulfur combination shampoo being the least irritating (Ref. 1).

In a modified Draize sensitization test on 110 subjects (Ref. 1), chloroxylenol gave no indication of contact sensitization.

The Panel concurs with the Antimicrobial I Panel (39 FR 33134) and with the agency (43 FR 1210) that studies to establish the safety of topically applied chloroxylenol are needed before a final determination can be made about the classification of this ingredient.

(2) *Effectiveness.* To support the effectiveness of the product for controlling dandruff and seborrheic dermatitis, partially controlled and uncontrolled studies were submitted. In addition, pertinent medical and scientific literature was cited.

Chloroxylenol was shown to have an antimicrobial effect on selective bacteria but little or no effect on fungi and yeast. The Panel reviewed reports by two different investigators, but the results were not tablulated and appear to be highly subjective (Ref. 1). No conclusions could be drawn from these reports. Therefore, the Panel concludes that additional data are needed to demonstrate the effectiveness of chloroxylenol for controlling dandruff and seborrheic dermatitis.

(3) *Proposed dosage.* For topical use in a concentration of 2 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) OTC Volume 160311.
(2) OTC Volume 160313.

g. *Coal tar preparations (coal tar USP, coal tar distillate, coal tar extract, coal tar solution).* The Panel classifies coal tar in Category III for any other use than a shampoo that is applied on the scalp. Data are needed to show that coal tar is safe for longer application to the scalp than a shampoo would require or for application to the skin on the body. (See part III. paragraph A.1.a. above—*Coal tar preparations (coal tar USP, coal tar distillate, coal tar extract, coal tar solution).*)

h. *Ethodexadiol.* The Panel concludes that ethohexadiol is safe, but there are insufficient effectiveness data available to permit its final classification for OTC topical use for controlling dandruff in the dosage specified below.

Ethohexadiol is also known as 1,3-dihydroxy, 2-ethyl hexane; octylene glycol; and 2-ethyl-3-propyl-1,3-propanediol. The Panel received two submissions, one for a shampoo and one for a hair and scalp conditioner, with the labeled active ingredient 1,3 hexadiol, 2-ethyl hexane, also known as ethohexadiol (Refs. 1 and 2). However, the Panel noted that the effectiveness data contained in the submissions dealt with a compound of ethohexadiol and salicylic acid, not with the ingredient ethohexadiol. The manufacturer confirmed that the active ingredient contained in the marketed products was ethohexadiol (Ref. 3).

(1) *Safety.* Ethohexadiol is a slightly oily liquid that causes central nervous system depression if ingested. It has been used as an insect repellent (Ref. 4).

Oral toxicity studies in which the submitted shampoo and hair and scalp conditioner formulations were force-fed to rats over a 14-day period showed the LD_{50} in rats to be around 24 mg/kg for these formulations. Eye irritation tests done in rabbits showed the shampoo formulation to cause mild irritation to the cornea and to the conjunctiva depending on the length of the exposure. The conditioner formulation caused no irritation to the rabbits' eyes. Application of both formulations to the intact and abraded skin of rabbits showed that they are not primary irritants, and neither formulation caused sensitization reactions in guinea pigs (Refs. 1 and 2).

(2) *Effectiveness.* The clinical data contained in the submissions concerning the effectiveness of ethohexadiol consist of testimony by a dermatologist regarding a formulation containing the salicylic acid monoester of ethohexadiol. As explained above, this is not the active ingredient that is identified on the label of the product. In order to demonstrate that the claimed active ingredient, ethohexadiol, is effective in controlling dandruff, adequate clinical trials should be done testing this ingredient against a control on patients with various degrees of dandruff.

(3) *Proposed dosage.* For topical use in concentrations of 3.4 to 12.4 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) OTC Volume 160343.
(2) OTC Volume 160344.
(3) OTC Volume 160410.
(4) Windholz, M., editor, "Merck Index," 9th Ed., Merck and Co., Inc., Rahway, NJ, p. 492, 1976.

i. *Eucalyptol.* The Panel concludes that eucalyptol is safe, but there are insufficient effectiveness data available to permit its final classification for OTC topical use for contolling dandruff in the dosage specified below.

Eucalyptol (cineole) is a volatile oil obtained from the distillation of the fresh leaves of *Eucalyptus globulus* (Ref. 1). The eucalyptus tree is native to Australia, Tasmania, and Malaysia. Eucalyptol is a colorless or pale yellow volatile liquid with a characteristic aromatic, somewhat camphoraceous odor, and a spicy, cooling taste (Ref. 1). Eucalyptol comprises approximately 70 percent of eucalyptus oil and is one of its more active ingredients (Ref. 2). It is insoluble in water but miscible with alcohol, chloroform, and ether.

Eucalyptol has been used topically for the treatment of certain skin conditions. It is an active germicide, but is not as effective as many other volatile oils (Ref. 3).

(1) *Safety.* Eucalyptol, taken internally in large quantities, can be toxic. Symptoms include a burning sensation in the stomach, nausea, vomiting, rapid beating of the heart, dizziness, muscular weakness, a feeling of suffocation, and in severe cases, delirium and convulsions. Death due to respiratory paralysis has occurred in about one-third of the human subjects who have accidentally ingested between 3.5 and 30 mL of eucalyptol. The sensitivity of some people to small doses of eucalyptol may be manifested by skin eruptions (Refs. 2, 3, and 4), but such sensitization occurs infrequently (Ref. 5).

Samitz and Shmunes (Ref. 6) reported that eucalyptol, as well as menthol, thymol, and methyl salicylate, were among the less frequent sensitizing compounds. Adams and Farber (Ref. 7) pointed out that, while eucalyptus oil and menthol are relatively harmless to intact normal skin, they can, when applied to acute eczematous dermatitis, aggravate the disorder. Eucalyptol was cited by Meyer (Ref. 8) as showing fairly rapid percutaneous absorption. The Panel concludes that eucalyptol is safe when applied topically to intact skin.

(2) *Effectiveness.* The Panel received a submission for a marketed product containing eucalyptol in combination with thymol, methyl salicylate, and menthol (Ref. 9). The manufacturer acknowledged in the submission that

the product is marketed primarily as an antiseptic mouth rinse, but its labeling also contains a claim for treatment of "infectious dandruff." It was pointed out by the manufacturer that the product is a combination of active ingredients in a hydroalcoholic solution, with each ingredient exhibiting some activity, and it is the specific combination of ingredients as formulated that is responsible for the total effectiveness of the product. Although this ingredient has demonstrated antimicrobial activity against a variety of microorganisms, a definitive relationship between reduction of microorganisms and controlling dandruff has not been established. The Panel concludes that additional data are needed to demonstrate the effectiveness of the combination and the contribution of each active ingredient, including eucalyptol, to the combination in controlling dandruff.

(3) *Proposed dosage.* For topical use in a concentration of 0.091 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.)*

References

(1) Osol, A., and R. Pratt, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, p. 517, 1973.

(2) Sollmann, T., "A Manual of Pharmacology," 8th Ed., W. B. Saunders Co., Philadelphia, p. 169, 1957.

(3) Osol, A., and G. E. Farrar, "The Dispensatory of the United States," 25th Ed., J. B. Lippincott Co., Philadelphia, pp. 458–460, 1950.

(4) Blacow, N. W., and A. Wade, editors, "Martindale. The Extra Pharmacopoeia," 26th Ed., the Pharmaceutical Press, London, pp. 1239-1240, 1972.

(5) Fisher, A. A., "Contact Dermatitis," 2d Ed., Lea and Febiger, Philadelphia, p. 83, 1973.

(6) Samitz, M. H., and E. Shmunes, "Occupational Dermatoses in Dentists and Allied Personnel," *CUTIS; Cutaneous, Medicine for the Practitioner,* 5:180–184, 1969.

(7) Adams, R.M., and E. M. Farber, "Treatment Dermatitis. 1. Secondary Contact Dermatitis," *Postgraduate Medicine,* 45:95–98, 1969.

(8) Meyer, F., and E. Meyer, "Percutane Resorption von atherischen Olen und ihren Inhaltsstoffen," *Arzneimittelforschung,* 9:516–519, 1959.

(9) OTC Volume 160353.

j. *Hydrocortisone preparations (hydrocortisone acetate and hydrocortisone alcohol).* The Panel concludes that there are insufficient data available to permit final classification of the safety and effectiveness of hydrocortisone preparations for OTC topical use for controlling dandruff, seborrheic dermatitis, and psoriasis when used in the dosage specified below.

Hydrocortisone is a naturally occurring steroid found in the adrenal cortex. It is cortisone in which the ketone group on carbon 11 has been converted to a hydroxyl group by the addition of two hydrogen atoms. It is also know as cortisol.

Hydrocortisone preparations have been marketed in the United States as prescription drugs since 1952. This Panel notes that the Topical Analgesic Panel Recommended the OTC use of hydrocortisone and hydrocortisone acetate in concentrations of 0.25 to 0.5 percent. (See **Federal Register** of December 4, 1979; 44 FR 69768.) That Panel stated the clinical use of hydrocortisone and hydrocortisone acetate as prescription drugs has confirmed that they are safe for topical application for adults and children 2 years of age and older when applied in a concentration of 0.25 to 0.5 percent. The Topical Analgesic Panel recommended OTC use "for the temporary relief of minor skin irritations, itching, and rashes due to eczema, dermatitis, insect bites, poison ivy, poison oak, poison sumac, soaps detergents, cosmetics and jewelry, and for itchy genital and anal areas."

This Panel is also aware of the recommendation of the Advisory Review Panel on OTC Antimicrobial (II) Drug Products in its report published on March 23, 1982 (47 FR 12480) for the OTC use of combinations of any antifungal ingredient with hydrocortisone or hydrocortisone acetate in concentrations of 0.5 to 1 percent for the treatment of athlete's foot. That Panel also recommends that such combination products contain the following warning: "Do not use longer than 30 days without consulting your doctor."

The Panel received two submissions for hydrocortisone products which are currently not marketed OTC (Refs. 1 and 2).

One submission (Ref. 1) provided information on a topical antifungal, anti-inflammatory cream containing 3 percent calcium undecylenate and 1 percent hydrocortisone acetate in a water-washable base. This combination of ingredients was claimed to relieve the inflammation and irritation associated with such conditions as "redness and scaling of the scalp, face, forehead, and ears associated with dandruff (seborrheic dermatitis)" and "redness, itching, and scaling associated with psoriasis."

The second submission included information on a drug product containing 5 percent coal tar extract (equivalent to approximately 1 percent crude coal tar) and 0.5 percent hydrocortisone alcohol (Ref. 2). The intended use of the product was for the treatment of psoriasis, eczema, and certain other minor dermatoses.

(1) *Safety.* One submission included skin irritation tests conducted on rabbits (Ref. 1). Four test products were used containing (1) the base with 3 percent calcium undecylenate and 1 percent hydrocortisone acetate, (2) the base alone, (3) the base with 1 percent hydrocortisone acetate, and (4) the base with 3 percent calcium undecylenate. A slight-to-moderate erythema was observed with all test products including the base alone. The erythema produced by the test products containing the single ingredients did not differ significantly from the erythema produced by the base alone. Ointments containing 3 percent calcium undecylenate and 1 percent hydrocortisone acetate were shown to evoke no cumulative or acute local toxicity on the rabbits' skin. A slight redness occurred, but disappeared within 24 to 48 hours after ointment application was discontinued.

The second submission included published clinical studies (Refs. 3 through 7) as supporting data on the safety of the combination product. For supporting safety data on the hydrocortisone preparations, the manufacturer cited references reviewed by the Topical Analgesic Panel (44 FR 69823).

This Panel recognizes the wide clinical use of hydrocortisone preparations as prescription drugs and concurs with the Topical Analgesic Panel that hydrocortisone preparations are safe in concentrations of 0.25 to 0.5 percent for the indications cited above. However, this Panel notes that, while corticosteroids, specifically fluorinated corticosteriods applied topically under occlusion, have been shown to promote blanching and flattening of lesions of psoriasis, suppression may require ever-increasing doses, and, when therapy is gradually discontinued, there is a rebound effect (Ref. 8). It is not known whether this effect may occur with hydrocortisone preparations in concentrations higher than 0.5 percent.

Because of the lack of submitted data on the safety of hydrocortisone ingredients alone for controlling seborrheic dermatitis and psoriasis of the scalp and body and dandruff, the Panel concludes it is not possible to make a final determination of the safety of these ingredients for these indications.

(2) *Effectiveness.* Hydrocortisone preparations have had wide use in the topical treatment of dermatoses.

Numerous controlled and uncontrolled studies provide strong documentation for their efficacy as antipruritic and anti-inflammatory agents. This Panel concurs with the Topical Analgesic Panel that hydrocortisone preparations are effective as anti-inflammatory and antipruritic agents and recognizes the wide clinical use by doctors of 1 percent hydrocortisone in the treatment of seborrheic dermatitis. However, data are lacking to demonstrate the safety of this concentration for OTC use, whereas data are lacking to demonstrate the effectiveness of the lower concentrations.

One manufacturer submitted clinical experience reports on a combination product of 3 percent calcium undecylenate and 1 percent hydrocortisone acetate used for a number of skin disorders (Ref. 1). The reports were limited in terms of information provided and offered no useful information on hydrocortisone preparations for controlling dandruff, seborrheic dermatitis, and psoriasis.

In a second submission for a product containing coal tar extract in combination with hydrocortisone alcohol, the manufacturer submitted published clinical studies (Refs. 3 through 7) as supporting data on the effectiveness of the combination product.

Unfortunately, the submitted studies do not evaluate hydrocortisone ingredients used alone in controlling dandruff, seborrheic dermatitis, and psoriasis. Lacking sufficient data on such use of hydrocortisone, the Panel is unable to make a final determination of the effectiveness of hydrocortisone acetate and hydrocortisone alcohol.

(3) *Proposed dosage.* For topical use in concentrations of 0.25 to 1 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) OTC Volume 160342.

(2) OTC Volume 160365.

(3) Bleiberg, J., "Treatment of Subacute and Chronic Dermatoses with a Tar Extract-Hydrocortisone Cream," *Journal of the Medical Society of New Jersey,* 53:371–374, 1956.

(4) Bleiberg, J., "Pruritus Ani. Treatment with Tar Extract Hydrocortisone Cream," *American Practitioner and Digest of Treatment,* 8:1404–1407, 1957.

(5) Clyman, S. G., "Comparative Effects of Hydrocortisone-Coal Tar Extract Creams in Cases of Atopic Dermatitis," *Postgraduate Medicine,* 12:309–312, 1957.

(6) Strick, S., "Comparison of Two Active Topical Preparations in Psoriasis and Atopic Dermatitis," *CUTIS: Cutaneous Medicine for the Practitioner,* 16:579, 582–583, 1975.

(7) Welsh, A. L., and M. Ede, "Three-Way Therapeutic Effectiveness of Tar-Steroid Cream," *Journal of the American Medical Association,* 166:158–159, 1958.

(8) Johnson, M. L, "Certain Cutaneous Diseases with Significant Systematic Manifestations," *in* "Cecil Textbook of Medicine," 15th Ed., edited by P. B. Beeson, W. McDermott, and J. B. Wyngaarden, W. B. Saunders Co., Philadelphia, pp. 2280–2281, 1979.

k. *Juniper tar.* The Panel concludes that juniper tar is safe but there are insufficient effectiveness data available to permit its final classification for OTC topical use for controlling dandruff, seborrheic dermatitis, and psoriasis when used in the dosage specified below.

This ingredient is more commonly referred to as oil of cade or cade oil (Ref. 1). It is obtained by distillation of the woody portion of *Juniperus oxycedrus.* It is a dark brown, clear, thick liquid having a tarry odor and a faintly aromatic bitter taste. Its solubility in water is slight, but it is soluble in alcohol and ether.

Juniper tar is classified as a mild irritant oil and is employed as a topical antipruritic to treat several dermatolgical disorders such as psoriasis, atopic dermatitis, pruritis, eczema, and seborrheic dermatitis (Ref. 2).

Because it is an irritant to the conjunctiva and may also cause swelling of the cornea, care must be taken to keep juniper tar out of the eyes. Labeling of juniper tar products should therefore include a warning to avoid contact of the products with the eyes and to rinse the eyes immediately should this occur.

(1) *Safety.* Conclusive data on oral toxicity are not available; however, if juniper tar is swallowed, it may be damaging to the kidneys (Refs. 2 an 3). The Topical Analgesic Panel concluded that juniper tar is safe for topical use (44 FR 69768), and this Panel concurs that it is safe for topical application in concentrations up to 5 percent up to four times daily.

(2) *Effectiveness.* Juniper tar is markedly keratolytic and has widespread use in the treatment of cutaneous lesions.

Four products containing juniper tar were submitted for review (Refs. 4 through 7); however, none of the submissions contained data on the effectiveness of juniper tar as a single ingredient, and the Panel is unaware of any data to show that this ingredient is effective by itself for controlling dandruff, seborrheic dermatitis, and psoriasis. This ingredient is therefore placed in Category III in order that well-controlled, double-blind studies may be done to demonstrate its effectiveness.

(3) *Proposed dosage.* For topical use in concentrations up to 5 percent to be applied up to four times a day.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) "The National Formulary," 14th Ed., American Pharmaceutical Association, Washington, pp. 803–804, 1975.

(2) Harvey, S. C., "Topical Drugs," *in* "Remington's Pharmaceutical Sciences," 16th Ed., edited by A. Osol, Mack Publishing Co., Easton, PA, p. 725, 1980.

(3) Osol, A., and R. Pratt, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, p. 647, 1973.

(4) OTC Volume 160364.

(5) OTC Volume 160407.

(6) OTC Volume 160040.

(7) OTC Volume 160379.

1. *Lauryl isoquinolium bromide.* The Panel concludes that lauryl isoqinolinium bromide is safe, but there are insufficient effectiveness data available to permit its final classification for OTC topical use for controlling dandruff when used in the dosage specified below.

Lauryl isoquinolinium bromide (2-dodecylisoquinolinium bromide) is a quaternary ammonium compound; quaternary ammonium compounds are a group of salts that have been used as surface-active and antimicrobial agents since 1935.

(1) *Safety.* Available toxicological testing data indicate that lauryl isoquinolinium bromide has little or no dermal toxicity, but has potential toxicity if ingested orally (Ref. 1).

In a study utilizing nine rabbits, 0.1 mL of a combination product containing 0.05 percent lauryl isoquinolinium bromide and 0.05 percent benzalkonium chloride was instilled in the right eye of each rabbit (Ref. 2). The left eye served as the control. The product was found to be essentially nonirritating.

A repeated insult patch test using the same combination product on 61 subjects showed mild irritation characteristic of skin fatigue; however, there was no evidence of sensitization to the samples in any test subjects (Ref. 2).

Based on clinical experience and the amount of data available in the literature, the Panel concludes that lauryl isoquinolinium bromide is safe for use on the scalp in a concentration of 0.05 percent.

(2) *Effectiveness.* No data were submitted on the effectiveness of lauryl

isoquinolinium bromide as a single ingredient for controlling dandruff.

One submission furnished data on a combination of 0.05 percent lauryl isoquinolinium bromide with 0.05 percent benzalkonium chloride, a similar quaternary ammonium salt (Ref. 2). A crossover home use test of this combination product claimed for use as an after shampoo rinse, showed a significant decrease in dandruff in subjects using this product twice a week for 5 weeks. When the same subjects shampooed twice a week for 5 weeks and did not use the rinse, a small, but not significant, decrease in dandruff was also observed. In another study the product was used after shampooing by 2 groups of 10 adult males who had moderately severe dandruff (a clinical grade of 5 on a 10-point scale). The product was judged to have a moderating effect on dandruff. These results were supported by several other studies, and the product was also shown to be effective against *Pityrosporum ovale* and *Staphylococcus aureus* (Ref. 2). No submitted studies assessed the contribution of the lauryl isoquinolinium bromide to the combination, and the Panel knows of no data to show that this ingredient is effective when used alone for controlling dandruff. Although this ingredient has demonstrated antimicrobial activity against a variety of microorganisms, a definitive relationship between reduction of microorganisms and controlling dandruff has not been established. The Panel concludes that additional data are needed to demonstrate the effectiveness of lauryl isoquinolinium bromide for controlling dandruff.

(3) *Proposed dosage.* For topical use in a concentration of 0.05 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) OTC Volume 160297.
(2) OTC Volume 160352.

m. *Menthol.* The Panel concludes that menthol is safe, but there are insufficient effectiveness data available to permit its final classification for OTC topical use for controlling dandruff, seborrheic dermatitis, and psoriasis when used in the dosage specified below.

Menthol is a secondary alcohol obtained from peppermint oil and other mint oils, or prepared synthetically by hydrogenation of thymol (Refs. 1 and 2). It is known chemically as hexahydrothymol or 3-paramenthanol. Menthol exists as colorless hexagonal crystals, as needlelike crystals in fused masses, or as a crystalline powder with a peppermint-like odor. Menthol is only slightly soluble in water, but soluble in alcohol, ether, chloroform, mineral oil, and fixed and volatile oils (Refs. 2 and 3).

Menthol is lipophilic and germicidal, being more powerful than phenol (Ref. 2). Gershenfeld and Miller (Ref. 4) reported that a saturated aqueous solution of menthol has some antimicrobial properties.

Menthol also has antipruritic activity and is thought to provide relief by substituting a cool sensation for that of itching. It has been used topically in a 1- to 10-percent solution (Ref. 2).

(1) *Safety.* Menthol can cause sensitization in certain individuals (Refs. 5 and 6); however, the index for potential sensitization is low. Symptoms include urticaria, erythema, and other cutaneous lesions.

Menthol may be dangerously toxic if ingested in large quantities. Toxic effects include nausea, abdominal pain, vomiting, and symptoms of central nervous system depression, such as dizziness, staggering gait, flushed face, sleepiness, slow respiration, and coma. Menthol is excreted in the bile and urine as a glucuronide; the fatal oral does in humans is estimated to be about 2 g (Ref. 5).

When a 20-percent solution of menthol is vigorously applied to the skin, an intense and lasting cooling sensation results. This is followed by numbness with a slight smarting sensation and hyperemia. Irritation beyond the rubefacient stage does not occur.

This Panel finds menthol safe for topical use, but concurs with the Topical Analgesic Panel that care should be taken to ensure that safety of this ingredient is maintained through adequate packaging, labeling, and application. (See **Federal Register** of December 4, 1979; 44 FR 69828.)

(2) *Effectiveness.* The Panel received a submission for a marketed product containing menthol in combination with thymol, eucalyptol, and methyl salicylate (Ref. 7). The manufacturer acknowledged that the product is marketed primarily as an antiseptic mouth rinse, but its labeling also contains an indication for the treatment of "infectious dandruff." It was pointed out by the manufacturer that the product is a combination of active ingredients in a hydroalcoholic solution, with each ingredient exhibiting some activity, and that it is the specific combination of ingredients as formulated that is responsible for the total effectiveness of the product.

The Panel also received a submission for a hair and scalp conditioner containing a combination of 1 percent menthol and 2 percent sulfur (Ref. 8). This product is used as a grooming aid to treat dandruff and itchy scalp. The manufacturer states that menthol is added as an antipruritic, referring for support of effectiveness to the finding of the Topical Analgesic Panel (44 FR 69828) that menthol is an effective antipruritic agent at concentrations of 0.1 to 1 percent.

A third submission reviewed was for a shampoo containing a combination of 1.5 percent menthol and 7.5 percent coal tar solution intended for use in dandruff, seborrheic dermatitis, and psoriasis (Ref. 9).

The Panel concludes that the data submitted are insufficient to demonstrate the effectiveness of menthol as a single ingredient for controlling dandruff, seborrheic dermatitis, and psoriasis. Although menthol has demonstrated activity against a variety of microorganisms, a definitive relationship between reduction of microorganisms and control of these conditions has not been established. The submitted data are also insufficient to demonstrate that the addition of menthol to the other ingredients contributes to the effectiveness of the combinations.

(3) *Proposed dosage.* For topical use in concentrations of 0.04 to 1.5 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Inc., Rahway, NJ, p. 757, 1976.
(2) Osol, A., and R. Pratt, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, pp. 697–698, 1973.
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(4) Gershenfeld, L., and R. E. Miller, "The Bactericidal Efficiency of Menthol and Camphor," *American Journal of Pharmacy*, 105:490–500, 1933.
(5) Blacow, N. W., and A. Wade, editors, "Martindale. The Extra Pharmacopoeia," 26th Ed., The Pharmaceutical Press, London, pp. 374–375, 1972.
(6) Rudzki, E., and D. Kleniewska, "Kontaktallergie auf einige Lokaltherapeutika und Konservierungsmittel," *Dermatologica*, 143:36–42, 1971.
(7) OTC Volume 160353.
(8) OTC Volume 160404.
(9) OTC Volume 160315.

n. *Methylbenzethonium chloride.* The Panel concludes that methylbenzethonium chloride is safe, but there are insufficient data available to permit its final classification for OTC topical use for controlling cradle cap when used in the dosage specified below.

Methylbenzethonium chloride is a quaternary ammonium compound, the quaternary ammonium compounds being a group of salts that have been used widely as antimicrobial agents since 1935. These compounds have been used for cold instrument sterilization in hospitals (Ref. 1).

Methylbenzethonium chloride has cationic surface activity. Surface-acting antimicrobials have been shown to affect cell membrane permeability causing the loss or leakage of cell contents.

(1) *Safety.* The Panel is aware of the agency's conclusions on the use of quaternary ammonium compounds as described in the tentative final order on OTC topical antimicrobial drug products. (See **Federal Register** of January 6, 1978; 43 FR 1218.) In that document the Commissioner expressed no serious concern with the safety of quaternary ammonium compounds including methylbenzethonium chloride for topical use.

The Panel concurs with the agency and concludes that methylbenzethonium chloride is safe for OTC topical use at the dosage specified below.

(2) *Effectiveness.* The Panel received one submission and supplemental data for a marketed product containing 0.07 percent methylbenzethonium chloride in an emulsified petrolatum base (Refs. 2 and 3). The product is labeled for infant scalp care. In addition, the product is claimed to soften and separate crusts and scales from the scalp and help prevent and treat local infection. The manufacturer indicated that methylbenzethonium chloride is included for its bacteriostatic activity in prevention of infection of a cradle cap lesion by susceptible microorganisms. The directions for treatment are to massage the product into the affected scalp area three times daily for 3 days followed by a cleansing shampoo and fine combing or brushing to remove residual scales. Two references from the literature were provided to support the effectiveness of the product (Refs. 4 and 5). In one study by Pasachoff and Maffia (Ref. 4), 150 infants were followed for development of cradle cap. A product containing methylbenzethonium chloride was used on 50 infants, soap and water was used on 50 infants, and petroleum jelly was used on the remaining 50 infants. In the study, 15 infants developed cradle cap. Of these, eight infants had been treated with soap and water, six had been treated with petroleum jelly, and one had been treated with the product containing methylbenzethonium chloride. In a second study, 60 of 120 infants with cradle cap were treated with the methylbenzethonium product, 30 were treated with soap and water, and 30 were treated with a 1-percent salicylic acid ointment. It is reported that, of the 60 infants treated with the methylbenzethonium product, 97 percent experienced cure or improvement. Of the 30 infants treated with soap and water, 60 percent experienced improvement; and 92 percent of the 30 who were treated with salicylic acid experienced improvement.

In a study by Agerty and Fischer (Ref. 5) two groups of infants and children with cradle cap were treated with either a salicylic acid lotion or the methylbenzethonium chloride product. Sixty children ranging in age from 3 weeks to 15 months were examined. Thirty children were treated with the product containing methylbenzethonium chloride, and 30 were treated with the salicylic acid lotion. The concentrations of both ingredients were not given; however, the article refers to the marketed product submitted to the Panel which contains 0.07 percent methylbenzethonium chloride. Twenty-two of the 30 children treated with the product containing methylbenzethonium chloride were described as cured as compared with 12 of the 30 that were treated with the salicylic acid lotion. Eight children who did not respond at all to the salicylic acid treatment were subsequently treated with the methylbenzethonium chloride product, and six of these eight children were described as cured. Two showed no improvement.

While these studies suggest that methylbenzethonium chloride may be effective in controlling or preventing cradle cap, they are not adequate to permit final classification of this ingredient. Details necessary for a complete evaluation of the studies are lacking.

(3) *Proposed dosage.* For topical use in a concentration of 0.07 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) Harvey, S. C., "Antimicrobial Drugs," *in* "Remington's Pharmaceutical Sciences," 16th Ed. edited by A. Osol, Mack Publishing Co., Easton, PA, p. 1100, 1980.

(2) OTC Volume 160319.

(3) OTC Volume 160322.

(4) Pasachoff, H. D., and A. J. Maffia, "A New Treatment for Cradle Cap," *New York Journal of Medicine,* 57:265–267, 1957.

(5) Agerty, H. A., and C. C. Fischer, "The Prevention and Treatment of Seborrhea Capitis with an Antibacterial Emulsion Containing Methylbenzethonium Chloride," *Archives of Pediatrics,* 74:219–222, 1957.

o. *Methyl salicylate.* The Panel concludes that methyl salicylate is safe, but there are insufficient effectiveness data available to permit its final classification for OTC topical use for controlling dandruff when used in the dosage specified below.

Methyl salicylate, also known as 2-hydroxybenzoic acid methyl ester, wintergreen oil, betula oil, sweet birch oil, and teaberry oil, occurs as a colorless, yellowish, or reddish oily liquid with a fragrant odor and a taste of wintergreen. One g is soluble in 1,500 mL water. It is soluble in chloroform and ether and miscible with alcohol and glacial acetic acid. Its pharmacologic activities are similar to those of salicylic acid and 1 mL methyl salicylate has a salicylate content equivalent to 1.4 g aspirin. Its primary topical use is as a counterirritant. It is also employed for flavoring candies, etc., and in perfumery (Refs. 1 and 2).

(1) *Safety.* Except for severe local irritation of the mucous membranes, ingestion of methyl salicylate is not notably different in its toxic actions from other salicylates (Ref. 3). The average lethal dose of methyl salicylate is estimated to be approximately 10 mL for children and 30 mL for adults (Refs. 4 and 5), but the ingestion of as little as 4 mL methyl salicylate has been reported to cause fatalities in children (Ref. 6). The Topical Analgesic Panel reviewed and evaluated methyl salicylate for OTC topical use as a counterirritant and found it safe in concentrations ranging from 10 to 60 percent. (See **Federal Register** of December 4, 1979; 44 FR 69830.) This Panel concurs.

(2) *Effectiveness.* The Panel received a submission for a marketed product containing methly salicyalte in combination with thymol, eucalyptol, and menthol (Ref. 7). The product is marketed primarily as an antiseptic mouth rinse, but its labeling also contains an indication for the treatment of "infectious dandruff." It was pointed out by the manufacturer that the product is a combination of active ingredients in a hydroalcoholic solution, each exhibiting some activity, and that the specific combination of ingredients as formulated is responsible for the total effectiveness of the product. The Panel is unaware of any data which

demonstrate the effectiveness of methyl salicylate as a single ingredient in the control of dandruff.

(3) *Proposed dosage.* For topical use in a concentration of 0.06 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) Culbreth, D. M. R., "A Manual of Materia Medica and Pharmacology," 7th Ed., Lea and Febiger, Philadelphia, pp. 460–462, 1927.

(2) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Inc., Rahway, NJ, p. 798, 1976.

(3) Davison, C., E. F. Zimmerman, and P. K. Smith, "On the Metabolism and Toxicity of Methyl Salicylate," *Journal of Pharmacology and Experimental Therapeutics,* 132:207–211, 1961.

(4) Deichmann, W. B., and H. W. Gerarde, "Toxicology of Drugs and Chemicals," Academic Press, New York, p. 662, 1969.

(5) Soine, T. O., and R. E. Willette, "The Antipyretic Analgesics," *in* "Textbook of Organic Medicinal and Pharmaceutical Chemistry," 5th Ed., edited by C. O. Wilson, O. Gisvold, and R. F. Doerge, J. B. Lippincott Co., Philadelphia, p. 675, 1965.

(6) Beckman, H., "The Year Book of Drug Therapy—1969," Year Book Medical Publishers, Chicago, p. 268, 1969.

(7) OTC Volume 160353.

p. *Phenol and phenolate sodium.* The Panel concludes that phenol and phenolate sodium are safe, but there are insufficient effectiveness data available to permit final classification for OTC topical use for controlling seborrheic dermatitis and psoriasis when used in the dosage specified below.

Phenol, also referred to as carbolic acid, has been used as an antimicrobial since 1867; however, its use topically has declined in recent years with the availability of new and more effective antimicrobials. It also has demonstrated activity as an external analgesic.

Although phenol is no longer a significantly used antimicrobial, it is still formulated in topical products, and there is a large body of literature concerning its effectiveness. Phenol can be bacteriostatic or bactericidal, depending on the concentration; it is not sporicidal. Its antimicrobial activity may be decreased in the presence of excess oil or fats.

(1) *Safety.* Phenol is absorbed by all routes of administration and can reach the circulation even when applied to intact skin. One portion is oxidized to hydroquinoline and pyrocatechol, and another portion is oxidized more completely. Approximately 80 percent is excreted by the kidney, either unchanged or conjugated with glucuronic and sulfuric acids (Ref. 1). Because of this metabolism, phenol can be quite toxic to the kidneys. The Panel does not recommend its use in body folds or on large areas of the body.

One case was reported in which an adult male ingested a 2-ounce bottle of a phenol and saline combination, containing 600 mg of phenol. There were no untoward effects. Leider and Moser (Ref. 2) suggest that the fatal dose of phenol for adults may be between 1.5 and 8.5 g.

The Panel is aware of the findings of the Topical Analgesic Panel published in the **Federal Register** of December 4, 1979 (44 FR 69832) in which it concluded that phenol was safe for OTC use in concentrations from 0.5 to 2 percent. The Panel also has reviewed the agency's findings on phenol as stated by the Commissioner in the Antimicrobial I tentative final order in the **Federal Register** of January 6, 1978 (43 FR 1222 and 1237). The Commissioner noted a published report that indicated that doses of phenol above 5 percent act to promote tumors in mice when applied topically (Ref. 3) and that the Antimicrobial I Panel concluded that carcinogenicity studies should be done. The Commissioner recognized that the accepted protocol for determining the potential for carcinogenicity of a drug is the standard bioassay of the National Cancer Institute (NCI). Phenol has been included in the NCI National Toxicology Program, but the results are not yet available. This Panel is aware that the agency will carefully review the results of the NCI study when they are available and will determine at that time whether any regulatory action is appropriate.

The Commissioner concluded that the total concentration of phenol in powders and in aqueous, alcoholic or oil formulations should be restricted to less than 1.5 percent, and phenolate sodium should be considered as phenol in the calculation of the total phenol in any formulation. The Commissioner further concluded that phenol may be used as an inactive ingredient for its aromatic characteristics, but at a concentration of less than 0.5 percent.

Concentrations of phenol of 1.5 percent of more are not generally recognized as safe. The Panel finds phenol safe for use on the scalp in the control of seborrheic dermatitis and psoriasis in the dosage specified below.

(2) *Effectiveness.* Phenol presumably exerts its germicidal action by denaturing protein (Ref. 1). The protein-phenol complex is a loose one. Therefore, phenol is diffusible and penetrates the tissues. The compound has a markedly toxic action, and because of its penetrability, affects even intact skin. This toxic action to cells is the probable action in psoriasis; in a disease in which the cells are duplicating as frequently as in seborrheic dermatitis and psoriasis, such an action may be helpful.

When applied locally, phenol exerts a depolarizing anesthetic action. A 5-percent solution, even on the unabraded epithelial surface, produces a feeling of warmth and tingling and eventually a rather complete local anesthesia. This concentration can cause necrosis. In one submission reviewed by the Panel, the concentration of phenol is less than 1 percent by volume in a paraffin base (Ref. 4). This would enable the phenol to exert a mild anesthetic-antipruritic effect without causing necrosis. The clinical studies included in this submission were not recent and were not controlled (Refs. 5, 6, and 7). The only control was withdrawing treatment, at which time the psoriatic scaling or seborrheic dermatitis returned.

The Panel also reviewed a combination of phenol, salicylic acid, and allantoin in an emulsion base for psoriasis; a mixture of phenol and sulfur in an ointment base for softening scaly, dry patches of skin in psoriasis; and a mixture of phenol and phenolate sodium to control itching in seborrheic dermatitis (Refs. 8 through 11). These submissions did not include adequate studies to demonstrate the effectiveness of phenol or phenolate sodium in controlling psoriasis and seborrheic dermatitis.

Although these ingredients have demonstrated antimicrobial activity against a variety of microorganisms, a definitive relationship between reduction of microorganisms and controlling seborrheic dermatitis and psoriasis has not been established. The Panel concludes that effectiveness data are insufficient for final classification of phenol and phenolate sodium at this time.

(3) *Proposed dosage.* For topical use in a total phenol concentration up to 1.2 percent.

(4) *Labeling.* The Panel recommends the category I labeling described above. (See part III. paragaraph A.2. above—*Category I labeling.*)

References

(1) Harvey, S.C., "Antiseptic and Disinfectants; Fungicides; Ectoparasiticides," *in* "The Pharmaceutical Basis of Therapeutics," 5th Ed., edited by A. G. Gilman, L. S. Goodman, and A. Gilman, MacMillan Publishing Co., Inc., New York, p. 967, 1980.

(2) Leider, M., and H. S. Moser, "Toxicology of Topical Dermatologic

Preparations. Report of a Case in which 2 Ounces of a Phenol-Saline Preparation Were Swallowed," *Archives of Dermatology*, 83:928–929, 1961.

(3) Boutwell, R. K., and D. K. Bosch, "The Tumor-Promoting Action of Phenol and Related Compounds for Mouse Skin," *Cancer Research*, 19:413–424, 1959.

(4) OTC Volume 160201.

(5) Vickers, M. A., "The Clinical evaluation of a Liquid Suggested for Psoriasiform Problems of the Scalp," *Journal of the Main Medical Association*, 45:332, 1954.

(6) Sulzberger, M. D., and J. Obadia, "A Modified Liquid Petrolatum Preparation," *Archives of Dermatology*, 73:373–375, 1956.

(7) Goldberg, L. C., and S. B. Barnett, "Treatment of Cutaneous Problems with a Carbolated Medication, "*Antibiotic Medicine and Clinical Therapy*, 4:594–597, 1957.

(8) OTC Volume 160060.

(9) OTC Volume 160326.

(10) OTC Volume 160408.

(11) OTC Volume 160255.

q. *Pine tar preparations (pine tar and rectified pine oil).* The Panel concludes that pine tar preparations are safe, but there are insufficient effectiveness data available to permit their final classification for OTC topical use for controlling dandruff, seborrheic dermatitis, and psoriasis in the dosage specified below.

Pine tar is commonly referred to in the compendia as "tar" and is classified as a topical antieczematic and rubefacient (Refs. 1 and 2). Its principal use, when suitably diluted, is as a mildly stimulating and antiseptic application to treat chronic skin diseases such as eczema, seborrheic dermatitis, and psoriasis (Refs. 3. and 4).

Pine tar is usually obtained as a byproduct in the manufacture of charcoal or acetic acid from the destructive distillation of the wood of the *Pinus palustris* (Refs. 4 and 5). It is a complete mixture of phenolic bodies, for the most part insoluble in water. It is a very viscid, blackish-brown liquid. It is translucent in thin layers but becomes granular and opaque with age. It has a characteristic odor and bitter taste (Ref. 4).

Rectified tar oil is defined as the volatile oil from pine tar rectified by steam distillation (Ref. 6). It consists largely of phenolic substances and occurs as a thin liquid having a dark reddish-brown color. It is insoluble in water, but miscible with alcohol. It is prefered to pine tar for most medicinal uses, because the insoluble and inert substances have been removed.

(1) *Safety.* The Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Products stated in their report of September 9, 1976 (41 FR 38367) that pine tar was safe for oral ingestion in the dosage range used as an expectorant, pointing out that it had been used for decades as an expectorant without any recorded reports of adverse effects. Current reference texts (Refs. 2 and 4 through 8) list pine tar as moderately toxic.

Pine tar is used for the same conditions as coal tar and can also cause allergic sensitization and folliculitis. Caution should be observed regarding its photosensitizing effects. Systemic toxic effects may occur if used over widespread areas, especially in children (Ref. 9).

The Miscellaneous External Panel finds pine tar safe for application to the scalp for controlling dandruff, seborrheic dermatitis, and psoriasis.

(2) *Effectiveness.* Pine tar, like coal tar, is not uniform in composition, and there is no accurately standardized pine tar product. The Panel is aware of no data to show that pine tar alone is effective for use in controlling dandruff, seborrheic dermatitis, and psoriasis, and none were submitted (Refs. 10 through 15). This ingredient is therefore placed in Category III so that well-controlled, double-blind studies may be done to demonstrate its effectiveness in controlling dandruff, seborrheic dermatitis, and psoriasis.

(3) *Proposed dosage.* For topical use in concentrations of 0.33 to 8 percent.

(4) *Labeling.* the Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.)*

References

(1) "National Dispensatory," J. B. Lippincott Co., Philadelphia, pp. 1254–1256, 1894.

(2) Windholz, M., editor, "The Merck Index," 9th Ed., Mack Publishing Co., Rahway, NJ, p. 969, 1975.

(3) Osol, A., and R. Pratt, editors, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, p. 1141, 1973.

(4) Harvey, S. C., "Topical Drugs," *in* "Remington's Pharamaceutical Sciences," 16th Ed., edited by A. Osol, Mack Publishing Co., Easton, PA, p. 725, 1980.

(5) "The National Formulary," 14th Ed., American Pharmaceutical Association, Washington, p. 578, 1975.

(6) "The National Formulary," 10th Ed., American Pharmaceutical Association, Washington, pp. 588–590, 1955.

(7) "AMA Drug Evaluations," 1st Ed., American Medical Association, Chicago, p. 498, 1971.

(8) Gosselin, R. E., et al., "Clinical Toxicology of Commercial Products," 4th Ed., The Williams and Wilkins Co., Baltimore, pp. 128–129, 1976.

(9) Modell, W., editor, "Drugs of Choice. 1968–1969," C. V. Mosby Co., St. Louis, p. 690, 1967.

(10) OTC Volume 160069.

(11) OTC Volume 160070.

(12) OTC Volume 160364.

(13) OTC Volume 160407.

(14) OTC Volume 160310.

(15) OTC Volume 160328.

r. *Povidone-iodine.* The Panel concludes that povidone-iodine is safe, but data are lacking to demonstrate its effectiveness for OTC topical use for controlling dandruff and seborrheic dermatitis of the scalp when used in the dosage specified below.

Povidone-iodine is a complex of iodine and the nonsurfactant polymer, polyvinylpyrrolidone from which free iodine is released slowly, providing a broad spectrum of antimicrobial activity (Ref. 1).

(1) *Safety.* The Panel received two submissions for a shampoo containing 7.5 percent povidone-iodine (Refs. 2 and 3). Its formulation is similar to that of a povidone-iodine surgical scrub and skin cleanser.

Povidone-iodine has been found to be nonirritating to the skin and mucous membranes. Only one alleged sensitivity reaction resulted from controlled skin patch testing according to data obtained from published literature. Microscopic examination of tissue cultures and minor skin wounds showed less intense tissue injury following the application of povidone-iodine compared with other antimicrobial agents (Ref. 2).

No adverse skin or mucosal reactions were reported in 16 controlled studies involving over 3,400 patients (Ref. 2). This, coupled with the patch-testing results cited above, provides substantial evidence to support the safety of povidone-iodine for topical use.

(2) *Effectiveness.* Three controlled studies were performed to show the effectiveness of povidone-iodine used in a shampoo for controlling dandruff (Refs. 2, 3, and 4). In one submission, 106 subjects with severe or moderately severe dandruff were studied in a double-blind study using the shampoo detergent base as the control (Ref. 3). The subjects shampooed twice weekly for the first 2 weeks of the study, after which the improvement of the patients using the shampoo with povidone-iodine was found to be significantly greater (95 percent confidence level) than those patients using the control. Fifty-nine percent of the patients using the povidone-iodine shampoo and 32 percent of the patients using the control experienced improvement, but none were completely cleared of dandruff. Both groups then shampooed once weekly with no significant difference seen between the active and control groups at 4, 6, and 8 weeks. This study suggests that the povidone-iodine shampoo is effective in controlling dandruff when used twice weekly, but not once weekly.

Frank (Ref. 4) treated 114 patients with seborrheic dermatitis of the scalp with the povidone-iodine shampoo for 6 weeks. Complete control of symptoms and scaling resulted in 102 patients; the other 12 patients showed improvement but still had some scaling. Ten additional seborrheic dermatitis patients using only the detergent shampoo base as a control improved, but complete control of the condition was achieved in only three. In the Panel's opinion, the control group was too small for adequate comparison.

A double-blind study using 101 subjects with seborrheic dermatitis of the scalp compared the povidone-iodine shampoo with a 2.5-percent selenium sulfide suspension (Ref. 3). The subjects shampooed twice weekly for 2 weeks and once weekly thereafter.

On a single return visit, 1 to 12 weeks later (average 3 weeks for povidone-iodine, 3.6 weeks for selenium sulfide), itching, redness, and scaling were evaluated. Eighty percent of the subject using the povidone-iodine shampoo and 85 percent of the subjects using the selenium sulfide shampoo improved.

While this study indicates that povidone-iodine may be effective in the control of seborrheic dermatitis of the scalp, it lacks a control group, and return visits were not precisely timed.

The Panel concludes that additional data are needed to demonstrate the effectiveness of povidone-iodine in controlling dandruff and seborrheic dermatitis of the scalp.

(3) *Proposed dosage.* For topical use as a shampoo in a concentration of 7.5 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) "AMA Drug Evaluations," 4th Ed., John Wiley and Sons, Inc., New York, pp. 1021–1022, 1980.

(2) OTC Volume 160331.

(3) OTC Volume 160395.

(4) Frank, L., "Povidone-Iodine Shampoo for Seborrheic Dermatitis and Pyodermas," *New York State Journal of Medicine.* 59:2892–2894, 1959.

s. *Sodium salicylate.* The Panel concludes that sodium salicylate is safe, but data are lacking to show its effectiveness in controlling dandruff and seborrheic dermatitis when used in the dosage specified below.

Sodium salicylate is obtained by mixing salicylic acid with distilled water and sodium carbonate (Ref. 1) and occurs as an amorphous or microcrystalline powder or scales. It may either be colorless or have a faint pink tinge, and has a slightly saline taste. It has a long history of use for relieving pain and reducing fever when taken orally and was introduced into therapy about 25 years before aspirin (Ref. 2).

(1) *Safety.* Sodium salicylate has similar side effects to aspirin and the other salicylic acid derivatives. Systemic absorption occurs whether these compounds are administered orally, rectally, intravenously, or cutaneously. The possible side effects of toxic dose, collectively know as salicylism, are nausea, decreased ability to hear, ringing in the ears, confusion, metabolic disturbances, hallucinations, and, in some extreme cases, death. However, the Panel is unaware of any instances of salicylism resulting from topical application of sodium salicylate in a 0.5-percent concentration.

Salicylic acid softens and destroys the outer layer of the skin by increasing its water concentration. This causes the epithelium, or horny layer of skin, to swell, soften, and shed. The Panel believes that the amount of salicylic acid released by the 0.5-percent concentration of sodium salicylate is not sufficient to damage the skin. The Panel concludes that sodium salicylate in this concentration is safe for use on the scalp.

(2) *Effectiveness.* In the preparation in which it was submitted, sodium salicylate is combined with sulfur in a synthetic detergent base. The rationale for the inclusion of the sodium salicylate is that in the process of shampooing a small amount of salicylic acid is released to exert a mild keratolytic effect on the scalp (Ref. 3).

The original formulation also included an antiseptic, which has since been removed because of safety concerns. In one study, this original formulation was tested in a group of 150 women who had seborrheic dermatitis, seborrhea oleosa, or excessive dandruff (Ref. 4). Subjects were instructed to apply about a tablespoonful of the preparation to the wet hair, rub it in thoroughly, and rinse. A second application was worked into a lather and allowed to remain on the hair 3 to 5 minutes, after which the scalp was rinsed thoroughly. The procedure was repeated twice weekly for 2 or 3 weeks, and once weekly thereafter. After a period of time ranging from 3 weeks to a year, the subjects were evaluated, with 100 showing excellent results, 30 showing good results, and 6 showing poor results. There were 2 instances of adverse reactions to the preparation amounting to burning and increased itching, and 14 subjects were not adequately followed.

The Panel finds this study deficient in that it was not double-blinded or placebo-controlled, and the contribution of the sodium salicylate to the combination was not assessed. In fact, the Panel is not aware of any data showing the effectiveness of sodium salicylate in controlling dandruff and seborrheic dermatitis, and none were submitted. The Panel recommends double-blind, placebo-controlled clinical trials testing sodium salicylate alone for effectiveness in controlling dandruff and seborrheic dermatitis.

(3) *Proposed dosage.* For topical use in a concentration of 0.5 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) Swinyard, E. A., "Analgesics and Antipyretics," *in* "Remington's Pharmaceutical Sciences," 16th Ed., edited by A. Osol, Mack Publishing Co., Easton, PA, p. 1062, 1980.

(2) Martin, B. K., "Significant Factors in the History of Aspirin," *in* "Salicylates: An International Symposium," edited by A. St. J. Dixon et al., Little, Brown and Co., Boston, pp. 6–8, 1963.

(3) OTC Volume 160320.

(4) Robinson, R. C. V., and D. Roberts, "A New Medicated Shampoo for Seborrheic Scalp Conditions," *Maryland State Medical Journal,* 12:223–225, 1963.

t. *Thymol.* The Panel concludes that thymol is safe, but data are lacking to show its effectiveness in controlling dandruff when used in the dosage specified below.

Thymol (5-methyl-2-isopropyl-1-phenol) is also known as thyme camphor. It may be prepared synthetically or obtained from volatile oils distilled from *Thymus vulgaris* and other related plant sources. Thymol occurs as large colorless crystals or as a white crystalline powder; it melts at 48° to 51° C. One g dissolves in 1000 mL of water. It is highly soluble in alcohol, chloroform, in mineral, and in volatile oils (Ref. 1). Thymol has a characteristic aromatic odor of thyme and a pungent taste. Thymol is an alkyl derivative of phenol and has bactericidal, fungicidal, and anthelmintic properties (Ref. 2).

(1) *Safety.* Thymol has long been used for a variety of medicinal purposes, but has been supplanted by newer, more effective drugs. It has been used in mouthwashes for its antiseptic action and as a flavoring agent. It also has been used internally as an intestinal antiseptic and anthelmintic, especially against hookworm (Refs. 3 and 4).

The intravenous LD_{50} of thymol in mice is 74 mg/kg (Ref. 5). Jenner (Ref. 6) studied the acute oral toxicity of thymol instilled by intubation into the stomachs of rats and guinea pigs. The oral LD_{50} for the rat was 980 mg/kg and for the guinea pig was 880 mg/kg. The oral toxicity of thymol is about one-fourth that of phenol, and, if it is absorbed, only one-half is metabolized. The remainder is conjugated with sulfuric acid and glucuronic acid and excreted in the urine (Ref. 4).

Five male and four female rats were given an oral dose of 10,000 ppm of thymol for 19 weeks. No untoward effects were noted after this period of time (Ref. 7).

According to Sollmann (Ref. 4), doses larger than 1 g produce dizziness, severe epigastric pain, and excitement, followed by nausea, vomiting, weakness, drowsiness, and even deafness and cyanosis. Samitz and Shmunes (Ref. 8) noted that dentists found thymol one of the less frequent sensitizers in occupational dermatoses. Thymol irritates the mucous membranes, but when topically applied to the skin it has little effect and is virtually unabsorbed (Ref. 4).

(2) *Effectiveness.* The Panel received a submission for a marketed product containing thymol in combination with eucalyptol, methyl salicylate, and methol (Ref. 9). The manufacturer acknowledged that the product is marketed primarily as an antiseptic mouth rinse, but it is also labeled for the treatment of "infectious dandruff." It was pointed out by the manufacturer that the product is a combination of active ingredients in a hydroalcoholic solution, each exhibiting some activity, and that the specific combination of ingredients as formulated is responsible for the total effectiveness of the product. The Panel is not aware of any data which demonstrate the effectiveness of thymol as a single ingredient for controlling dandruff.

(3) *Proposed dosage.* For topical use in a concentration of 0.06 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*).

References

(1) Osol, A., and R. Pratt, editors "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, pp. 1189–1190, 1973.

(2) Harvey, S. C., "Antiseptics and Disinfectants; Fungicides; Ectoparasidicides," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, the Macmillan Publishing Co., Inc., New York, p. 992, 1975.

(3) Harvey, S. C., "Antimicrobial Drugs," *in* "Remington's Pharmaceutical Sciences," 15th Ed., edited by A. Osol, et al., Mack Publishing Co., Easton, PA, p. 1101, 1975.

(4) Sollmann, T., "A Manual of Pharmacology," 8th Ed., W. B. Saunders Co., Philadelphia, pp. 227–228, 1975.

(5) Edwards, E. H., and B. Hall, "Thymol as a Bacteriostatic Agent," *The Pharmaceutical Journal,* 166:54, 1951.

(6) Jenner, P. M., et al., "Food Flavourings and Compounds of Related Structure: I. Acute Oral Toxicity," *Food and Cosmetic Toxicology,* 2:327–343, 1964.

(7) Hagan, E. C., et al., "Food Flavourings and Compounds of Related Structure: II. Subacute and Chronic Toxicity," *Food and Cosmetics Toxicology, 5:141–157, 1967.*

(8) Samitz, M. H., and E. Shmunes, "Occupational Dermatoses in Dentists and Allied Personnel," *CUTIS; Cutaneous Medicine for the Practitioner,* 5:180–185, 1969.

(9) OTC Volume 160353.

u. *Undecylenate preparations (calcium undecylenate and undecylenic acid monoethanolamide sulfosuccinate, sodium salt).* The Panel concludes that data are lacking to show safety and effectiveness of undecylenate preparations in contolling dandruff, seborrheic dermatitis, and psoriasis when used in the dosage specified below.

The submissions received included an ointment containing calcium undecylenate for topical use in the control of psoriasis (Ref. 1) and three shampoos containing undecylenic acid monoethanolamide sulfosuccinate, sodium salt for the control of dandruff and seborrheic dermatitis (Refs. 2, 3, and 4). Undecylenate preparations are not presently marketed OTC in this country for controlling dandruff, seborrheic dermatitis, and psoriasis.

Undecylenic acid is obtained by pyrolysis of the principal fatty acid of castor oil, ricinoleic acid. It is a liquid ranging from clear to pale yellow in color and is practically insoluble in water but miscible with alcohol, chloroform, and ether (Ref. 5). Undecylenate preparations are primarily used for their antifungal activity, but are also considered to have weak antibacterial activity.

(1) *Safety.* The oral LD_{50} of undecylenic acid in rats is estimated by one source to be 2.5 g/kg of body weight (Ref. 6); however, one submission included tests purporting to show that the LD_{50} in rats of another undecylenate preparation, undecylenic acid monoethanolamide sulfosuccinate, sodium salt, was greater than 10 g/kg of body weight (Ref. 3).

Local irritation tests using four test materials on rabbit skin were performed according to the Draize method. Two-hundred mg of each test material (base plus 3 percent calcium undecylenate and 1 percent hydrocortisone acetate; base as the control; base plus 1 percent hydrocortisone acetate; base plus 3 percent calcium undecylenate) was applied three times a day for 2 weeks (Ref. 1). Results showed no cumulative or acute toxicity on the skin. When 25 mg of the same test materials were instilled in the conjunctival sacs of six rabbits three times a day for 2 weeks, no cumulative or acute toxicity was observed. The slight changes that were observed disappeared 24 to 48 hours after the medication was discontinued.

Tests conducted using the calcium undecylenate and hydrocortisone acetate ointment on patients with various forms of dermatoses resulted in no signs of irritation or adverse effects over the study period of 1 month (Ref. 1). No human safety data on calcium undecylenate as a single ingredient were presented.

The Panel concludes that the submitted data are insufficient to determine the safety of undecylenate preparations used for controlling dandruff, seborrheic dermatitis, and psoriasis.

(2) *Effectiveness.* One study using a shampoo containing 2 percent undecylenic acid monoethanolamide sulfosuccinate, sodium salt on 25 patients with seborrheic dermatitis of the scalp showed that 80 percent had good results, 12 percent had fair results, and 8 percent had poor results (Ref. 7). In another study, a similar preparation was used by 131 subjects with dandruff and itching of the scalp (Ref. 8). This study tested the vehicle, the vehicle with tar, and the vehicle with tar and undecylenic acid monoethanolamide sulfosuccinate, sodium salt. All three shampoos were shown to reduce dandruff for a few days. The vehicle with tar and the vehicle with tar and undecylenic acid monoethanolamide sulfosuccinate, sodium salt were superior to the vehicle alone in this respect. The vehicle with tar and undecylenic acid monoethanolamide sulfosuccinate, sodium salt showed a greater mean reduction in dandruff than the other two.

The Panel believes that undecylenic acid and its salts show promise in controlling dandruff, seborrheic dermatitis, and psoriasis, but additional data are needed to demonstrate effectiveness conclusively for this use. Well-controlled, double-blind clinical trials should be done testing undecylenate preparations against their vehicles alone as controls to show that these ingredients are effective in controlling dandruff, seborrheic dermatitis, and psoriasis.

(3) *Proposed dosage.* For topical use in the following concentrations: (a) Calcium undecylenate—3 percent and (b) Undecylenic acid monoethanolamide sulfosuccinate, sodium salt—2 percent.

(4) *Labeling.* The Panel recommends the Category I labeling described above. (See part III. paragraph A.2. above—*Category I labeling.*)

References

(1) OTC Volume 160342.
(2) OTC Volume 160345.
(3) OTC Volume 160394.
(4) OTC Volume 160402.
(5) Harvey, S. C., "Antimicrobial Drugs," *in* Remington's Pharmaceutical Sciences," 16th Ed., edited by A. Osol, Mack Publishing Co., Easton, PA, p. 1177, 1980.
(6) Gosselin, R. E., et al., "Clinical Toxicology of Commercial Products," 4th Ed., The Williams and Wilkins Co., Baltimore, p. 135, 1976.
(7) Lubowe, I. I., "The Treatment of Seborrhea Capitis with Undecylenic Alkanolamides," *Soap, Perfumery, and Cosmetics*, 35:908, 1962.
(8) Alexander, S., "Do Shampoos Affect Dandruff?" *The British Journal of Dermatology*, 79:92–95, 1967.

2. *Category III labeling.* None.

D. Combination Products

1. *Combination policy.* The Panel concurs with the combination drug policy for OTC products as set forth in 21 CFR 330.10(a)(4)(iv):

> An OTC drug may combine two or more safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent therapy for a significant proportion of the target population.

In general, the Panel believes that the interests of the consumer are best served by exposure to the fewest ingredients possible at the lowest possible dose that will still be effective. Single ingredient products are preferred to multiple ingredient products to reduce the likelihood of toxic or other undesirable effects. However, the Panel recognizes that combinations of active ingredients may be desirable in some circumstances. For example, the FDA "General Guidelines for OTC Drug Combination Products," placed on file in the Dockets Management Branch on November 28, 1978, Docket No. 78D-0322, provide for the combination of active ingredients from different therapeutic categories to treat different concurrent symptoms. While the Panel generally agrees with this guideline, it is difficult to apply in the case of dandruff, seborrheic dermatitis, and psoriasis drug products. Even though ingredients from various therapeutic categories are often included in these products, with the exception of antipruritics, which are intended to relieve the symptom of itching, they are included to control dandruff, seborrheic dermatitis, and psoriasis. Itching can be a symptom of these conditions, but temporary relief of itching does not amount to control of the condition. It should be noted that several of the ingredients reviewed by the Panel which are claimed to control these conditions have inherent antipruritic activity in addition to other activity (e.g., tars, hydrocortisone, resorcinol, menthol, and phenol).

The Panel strongly believes that, for a combination to be generally recognized as safe and effective, it must be demonstrated by adequate data that each active ingredient contributes to the claimed effects of the product. The Panel concludes that data are lacking to demonstrate that the addition of an antipruritic ingredient to other ingredients used in the control of dandruff, seborrheic dermatitis, and psoriasis contributes to the effectiveness of the product.

Most of the combination products submitted for review have been used empirically with little attempt to demonstrate the contribution of each active ingredient to the combination. In fact, of all the submitted combination products, the Panel is aware of only a few studies which attempted to demonstrate that the combination of ingredients was more effective than the single ingredients when used alone, and these studies were concerned only with the treatment of psoriasis.

One study was conducted to evaluate the effectiveness of three different psoriasis lotions: 2 percent allantoin, 5, percent coal tar extract, and 5 percent coal tar extract with 2 percent allantoin (Ref. 1). While the study was claimed to demonstrate that the combination product is "radically more effective than the coal tar or allantoin used alone," the Panel points out that the details of the study are insufficient to allow for a conclusive evaluation.

2. *Category I combination.* A study compared shampoo formulations of 2 percent salicylic acid, 2 percent sulfur, and a combination of sulfur and salicylic acid (2 percent each) against the vehicle alone in controlling dandruff (Ref. 2). The products were used under supervision twice a week. Clinical grading of dandruff, on a scale of 0 to 10, and corneocyte counts were made at weekly intervals. The results of this study showed that salicylic acid was significantly more effective in reducing both the clinical grade of dandruff and the corneocyte counts than either the sulfur alone or the vehicle. The combination of salicylic acid and sulfur proved to be significantly more effective than salicylic acid alone in reducing the clinical grade of dandruff and the corneocyte counts. Based on these data the Panel concludes that combinations of sulfur (2 to 5 percent) with salicylic acid (1.8 to 3 percent) are safe and effective for use in controlling dandruff.

The Panel is unaware of any other data on products containing combinations of ingredients used for controlling dandruff, seborrheic dermatitis, or psoriasis which demonstrate a contribution of each active ingredient to the claimed effects of the combination product.

3. *Category II combinations.* The Panel concludes that any combination product containing a Category II ingredient is Category II.

4. *Category III combinations.* All other combinations submitted to the Panel are Category III. (See list below.)

Before any of these combinations may move to Category I, appropriately designed studies must demonstrate that each of the active ingrediants contributes to the claimed effect.

Allantoin and phenol
Benzalkonium chloride and alkyl isoquinolinium bromide
Benzalkonium chloride and lauryl isoquinolinium bromide
Benzalkonium chloride and salicylic acid
Benzalkonium chloride and captan
Calcium undecylenate and hydrocortisone acetate
Coal tar, benzalkonium chloride, and salicylic acid
Coal tar extract and allantoin
Coal tar extract and hydrocortisone alcohol
Coal tar extract and menthol
Coal tar solution and menthol
Coal tar, pine tar, and juniper tar
Coal tar and salicylic acid
Phenol, allantoin, salicylic acid, and sodium lauryl sulfate
Sulfur, coal tar, and salicylic acid
Sulfur, coal tar distillate, and salicylic acid
Sulfur and menthol
Sulfur and pine tar
Sulfur, recitified tar oil, and captan
Sulfur and sodium salicylate
Thymol, methyl salicylate, eucalyptol, and menthol

References

(1) OTC Volume 16047.
(2) OTC Volume 16014.

List of Subjects in 21 CFR Part 358

OTC drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), the agency advises in this advance notice of proposed rulemaking that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations would be amended by adding to Part 358 (proposed in the Federal Register of November 3, 1978 (43 FR 51546) and September 3, 1982 (47 FR 39108), a new Subpart H, to read as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart H—Drug Products for the Control of Dandruff, Seborrheic Dermatitis, and Psoriasis

Sec.
358.701 Scope.
358.703 Definitions.
358.710 Active ingredients for the control of dandruff, for the control of seborrheic dermatitis, or for the control of psoriasis.
358.712 Active ingredients for the control of cradle cap. [Reserved]
358.720 Permitted combinations of active ingredients.
358.750 Labeling of drug products for the control of dandruff, for the control of seborrheic dermatitis, or for the control of psoriasis.
358.752 Labeling of drug products for the control of cradle cap.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704).

Subpart H—Drug Products for Control of Dandruff, Seborrheic Dermatitis, and Psoriasis

§ 358.701 Scope.

(a) An over-the-counter dandruff, seborrheic dermatitis, or psoriasis drug product in a form suitable for topical application is generally recognized as safe and effective and is not misbranded if it meets each condition in this subpart and each general condition established in § 330.1.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter 1 of Title 21 unless otherwise noted.

§ 358.703 Definitions.

As used in this subpart:

(a) *Dandruff control drug product.* A drug product applied to the scalp to control the itching and excess shedding of dead epidermal cells.

(b) *Seborrheic dermatitis control drug product.* A drug product applied to the scalp and/or body to control the irritation, itching, and excess shedding of dead epidermal cells.

(c) *Psoriasis control drug product.* A drug product applied to the scalp and/or body to control the itching, redness, and excess shedding of dead epidermal cells.

(d) *Cradle cap control drug product.* A drug product applied to the scalp to control the inflammation, irritation, itching, crusting, and excess shedding of dead epidermal cells in infants, i.e., a drug product to control infantile seborrheic dermatitis.

§ 358.710 Active ingredients for the control of dandruff, for the control of seborrheic dermatitis, or for the control of psoriasis.

The active ingredient of the product consists of any of the following within the specified concentration established for each ingriedient:

(a) Coal tar distillate 4 percent.
(b) Coal tar extract 2 to 8.75 percent.
(c) Coal tar solution 2.5 to 5 percent.
(d) Coal tar, USP, 0.5 to 5 percent.
(e) Pyrithione zinc 1 to 2 percent.
(f) Pyrithione zinc 0.1 to 0.25 percent.
(g) Salicylic acid 1.8 to 3 percent.
(h) Selenium sulfide 1 percent.
(i) Sulfur 2 to 5 percent.

§ 358.712 Active ingredients for the control of cradle cap. [Reserved]

§ 358.720 Permitted combinations of active ingredients.

Salicylic acid identified in § 358.710(g) may be combined with sulfur identified in § 358.710(i) provided the product is labeled according to § 358.750(b)(1).

§ 358.750 Labeling of drug products for the control of dandruff, for the control of seborrheic dermatitis, or for the control of psoriasis.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as follows:

(1) Any product labeled according to paragraph (b)(1) of this section is identified as "Controls dandruff."

(2) Any product labeled according to paragraph (b)(2) of this section is identified as "Controls seborrheic dermatitis of the scalp."

(3) Any product labeled according to paragraph (b)(3)(i) of this section is identified as "Controls seborrheic dermatitis of the body."

(4) Any product labeled according to paragraph (b)(3)(ii) of this section is identified as "Controls psoriasis of the body."

(5) Any product labeled according to paragraph (b)(4) of this section is identified as "Controls psoriasis of the scalp."

(6) The statements of identity for any product with more than one indication identified in paragraph (b) of this section may be combined to eliminate duplicate words.

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to one or more of the following phrases:

(1) *For products containing any ingredient identified in § 358.710.* "Relieves the itching and scalp flaking associated with dandruff."

(2) *For products containing any ingredient identified in § 358.710(a), (b), (c), (d), (e), (f), or (g).* "Relieves the itching, irritation, and skin flaking associated with seborrheic dermatitis of the scalp."

(3) *For products containing salicylic acid identified in § 358.710(g).* (i) "Relieves the itching, irritation, and skin flaking associated with seborrheic dermatitis of the body."

(ii) "Relieves the itching, redness, and scaling associated with psoriasis of the body."

(4) *For products containing any ingredient identified in § 358.710(a), (b), (c), (d), or (g).* "Relieves the itching, redness, and scaling associated with psoriasis of the scalp."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing any ingredient identified in § 358.710.* (i) "For external use only."

(ii) "Avoid contact with the eyes—if this happens, rinse thoroughly with water."

(iii) "If condition worsens or does not improve after regular use of this product as directed, consult a doctor."

(iv) "Do not use on children under 2 years of age except as directed by a doctor."

(2) *For products containing coal tar identified in § 358.710(a), (b), (c), or (d).* (i) "Use caution in exposing skin to sunlight after applying this product. It may increase your tendency to sunburn for up to 24 hours after application."

(ii) "Do not use this product in or around the rectum or in the genital area or groin except on the advice of a doctor."

(3) *For products containing selenium sulfide identified in § 358.710(h).* "Do not use if you have open sores on your scalp."

(4) *For products labeled according to paragarph (a) (3) or (4) of this section.* "If the condition covers a large area of the body, consult your doctor before using this product."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products formulated for use as a shampoo.* "For best results use twice a week. Wet hair, apply to scalp and massage vigorously. Rinse and repeat."

(2) *For products formulated for use as a hairgroom.* "Apply a small amount to scalp daily. For best results, also shampoo twice a week."

(3) *For products formulated for use on the body.* "Apply a thin layer to the affected area one to two times daily."

§ 358.752 Labeling of drug products for the control of cradle cap.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as "controls cradle cap."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the following phrase: "Relieves scaly inflammation of the scalp associated with cradle cap."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "For external use only."

(2) "Avoid contact with the eyes—if this happens, rinse thoroughly with water."

(3) "If condition worsens or does not improve after regular use of this product as directed, consult a doctor."

(d) *Directions.* [Reserved]

Interested persons may, on or before March 3, 1983, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this advance notice of proposed rulemaking. Three 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. Comments replying to comments may also be submitted on or before April 4, 1983. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Richard S. Schweiker,

Secretary of Health and Human Services.

Dated: November 22, 1982.

[FR Doc. 82-32846 Filed 12-2-82; 8:45 am]

BILLING CODE 4160-01-M

federal register

Friday
December 3, 1982

Part V

Department of Labor

Employment and Training Administration

Unemployment Compensation for Federal Civilian Employees; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 609

Unemployment Compensation for Federal Civilian Employees

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: These are the Department of Labor's revised regulations for implementing the program of Unemployment Compensation for Federal Civilian Employees (UCFE Program). Changes to the regulations incorporate statutory amendments, which principally concern the finality of Federal findings as to the reasons for termination of Federal employment; the treatment of the Virgin Islands as a participating State in the Federal-State Unemployment Compensation Program; and which prescribe a new rule for determining the Federal share of the costs of benefits on joint claims under the UCFE Program and State unemployment compensation laws. One other statutory change affecting the UCFE Program that was overlooked in the proposed rule is added to this final rule. It pertains to the exclusion of commissioned officers of the National Oceanic and Atmospheric Administration (NOAA) from coverage under the UCFE Program and their coverage under the Unemployment Compensation Program for Ex-servicemembers effective March 25, 1980.

The regulations are also reorganized and revised to state the rights and obligations of claimants for the benefits and to clarify the respective duties and responsibilities of the Federal Government and the State agencies. The setting forth of this information in each part dealing with a separate unemployment compensation program conforms to the more recent practice in writing regulations for unemployment compensation and related benefit programs. The final regulations incorporate the substantive changes and improvements as set forth in the published proposal.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Bert Lewis, Administrator, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, N.W., Washington, D.C. 20213; telephone: (202) 376-7032 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The UCFE Program is a program financed by Federal funds to furnish unemployment benefits to eligible individuals who are separated from Federal employment and are unable to obtain work. The UCFE Program was created by Pub. L. 83-767, approved on September 1, 1954. It has been codified in 5 U.S.C. 8501-8508.

Part 609, Chapter V, Title 20 of the Code of Federal Regulations (20 CFR Part 609) implements the statute creating the UCFE Program, as most recently amended by Public Law 94-566 and Public Law 96-215. The proposal to revise the regulations was published in the **Federal Register** on January 23, 1981 (46 FR 7786), and this document contains the final revised regulations for Part 609.

Comments on the proposal published on January 23, 1981, were solicited through March 24, 1981, and the proposal was further reviewed in the Department. As a result of comments and review, a few changes have been made in the proposal. Also, changes have been made as a result of the statutory amendment relating to commissioned officers of the National Oceanic and Atmospheric Administration.

1. Commissioned officers of the National Oceanic and Atmospheric Administration were covered under the UCFE Program until March 25, 1980. First claims for unemployment compensation filed after that date are covered under the program of Unemployment Compensation for Ex-servicemembers (UCX Program; 20 CFR Part 614 and 5 U.S.C. Chapter 85), pursuant to an amendment to 5 U.S.C. 8521(a)(1) in Public Law 96-215 (94 Stat. 123). This coverage change is reflected in § 609.2(f)(2) and in the regulations for the UCX Program at 20 CFR 614.2(g).

2. The Nevada Employment Security Department commented that the revision of § 609.8 in assigning all Federal wages at the time of first claim filing would require a revision to Form ES-931 to allow inclusion of service and wages not previously reported.

While that is true, we foresee no problems with State agencies adopting this modification or the Federal agencies being able to furnish the requested information. No change is made in § 609.8 as proposed.

3. Section 609.1(d)(1) requires each State agency to forward a copy of each judicial or "administrative decision" ruling on an individual's entitlement to payment of UCFE or to credit for a waiting period. The Oregon Department of Human Resources requested a definition of the term "administrative decision" because their interpretation of the term includes nonmonetary determinations. They also commented that the procedures outlined in § 609.1(d)(2), relating to procedures to assure nationwide uniformity in the application of the Act and the regulations, seem unnecessary.

"Administrative decision" as contemplated by the Department are first and second appeal level decisions concerning claims for UCFE. The phrase does not include or apply to monetary or nonmonetary determinations, which are identified in § 609.1(d) as determinations and redeterminations. No change is made in § 609.1(d).

The Department believes that it should notify the State agency of its view if a State agency's determination, redetermination, or decision (regarding an appeal) is inconsistent with the Department's interpretation of the Act or Part 609.

This will assure nationwide uniformity in the application of the Act and the regulations. No change is made in § 609.1(d)(2) as proposed.

4. The Oregon Department of Human Resources also commented that § 609.6(e)(2) appears to say that the State agency will wait 12 days before determining a UCFE claim on the basis of a claimant affidavit even though procedurally they are required to complete an affidavit as part of the initial claim process. Section 609.6(e)(2) does not differ from the current regulation as to when a determination of entitlement will be made absent timely Federal findings. However, we have suggested in a directive that State agencies consider taking the claimant affidavit (Form ES-935) at the time the "new claim" is filed, provided credible evidence of Federal civilian employment is available. If State agencies adopt this suggestion, it would assist in ensuring that first payments are being made promptly. However, this suggestion is not a procedural requirement nor is it required by § 609.6(e)(2). No change is made in this regulation.

5. In addition, a few minor proofing and technical errors were made in the proposed document as published in the **Federal Register** on January 23, 1981 (46 FR 7786). Those errors have been corrected.

Drafting Information

This document was prepared under the direction and control of the Administrator of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, N.W., Washington, D.C. 20213; telephone (202) 376-7032 (this is not a toll-free number).

Classification—Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: 1. an annual effect on the economy of $100 million or more; 2. a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or 3. significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

Information collection requirements contained in this regulation (§§ 609.1(d)(1), 609.5(a) and 609.6(e)(2)) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 1205–0163 (pertaining to § 609.1(d)(1)) and 1205–0179 (pertaining to §§ 609.5(a) and 609.6(e)(2)).

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because this rule only implements amendments to an individual entitlement program, and thus no economic impact is expected with respect to any small entities. Accordingly, no regulatory flexibility analysis is required.

Regulatory Flexibility Act Certification

I, Raymond J. Donovan, Secretary of Labor, hereby certify, pursuant to 5 U.S.C. 605(b), that the final regulations published hereinafter (20 CFR Part 609, Final Amendments to the Unemployment Compensation Program for Federal Employees Regulations) will not, if promulgated, have a significant economic impact on a substantial number of small entities because this is an individual entitlement program and affects only individuals applying for benefits under the Unemployment Compensation Program for Federal Employees.

Dated: November 29, 1982.

Raymond J. Donovan.

List of Subjects in 20 CFR Part 609

Unemployment Compensation for Federal Employees (UCFE), Unemployment compensation.

Words of Issuance

Accordingly, Part 609 of Title 20 of the Code of Federal Regulations is revised as set forth below.

Signed at Washington, D.C., on November 29, 1982.

Albert Angrisani,

Assistant Secretary of Labor.

PART 609—UNEMPLOYMENT COMPENSATION FOR FEDERAL CIVILIAN EMPLOYEES

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Authority: 5 U.S.C. 8508; Secretary's Order No. 4–75, 40 FR 18515; (5 U.S.C. 301). Interpret and apply secs. 8501–8508 of title 5, United States Code.

Subpart A—General Provisions

§ 609.1 Purpose and application.

(a) *Purpose.* Subchapter I of chapter 85, title 5 of the United States Code, as amended by Pub. L. 94–566, 90 Stat. 2667, 5 U.S.C. 8501–8508, provides for a permanent program of unemployment compensation for unemployed Federal civilian employees. The unemployment compensation provided for in Subchapter I is hereinafter referred to as unemployment compensation for Federal employees, or UCFE. The regulations in this part are issued to implement the UCFE Program.

(b) *First rule of construction.* The Act and the implementing regulations in this part shall be construed liberally so as to carry out the purposes of the Act.

(c) *Second rule of construction.* The Act and the implementing regulations in this part shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act throughout the United States.

(d) *Effectuating purpose and rules of construction.* (1) In order to effectuate the provisions of this section, each State agency shall forward to the United States Department of Labor (hereafter Department), not later than 10 days after issuance, a copy of each judicial or administrative decision ruling on an individual's entitlement to payment of UCFE or to credit for a waiting period. On request of the Department, a State agency shall forward to the Department a copy of any determination or redetermination ruling on an individual's entitlement to UCFE or waiting period credit.

(2) If the Department believes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Act or this part, the Department may at any time notify the State agency of the Department's view. Thereafter the State agency shall issue a redetermination or appeal if possible, and shall not follow such determination, redetermination, or decision as a precedent; and, in any subsequent proceedings which involve such determination, redetermination, or decision, or wherein such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the State agency shall inform the claims deputy or hearing officer or court of the Department's view and shall make all reasonable efforts, including appeal or other proceedings in an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

(3) If the Department believes that a determination, redetermination, or decision is patently and flagrantly violative of the Act or this part, the Department may at any time notify the State agency of the Department's view. If the determination, redetermination, or decision in question denies UCFE to a claimant, the steps outlined in paragraph (d)(2) of this section shall be followed by the State agency. If the

determination, redetermination, or decision in question awards UCFE to a claimant, the benefits are "due" within the meaning of section 303(a)(1) of the Social Security Act, 42 U.S.C. 503(a)(1), and therefore must be paid promptly to the claimant. However, the State agency shall take the steps outlined in paragraph (d)(2) of this section, and payments to the claimant may be temporarily delayed if redetermination or appeal action is taken not more than one business day following the day on which the first payment otherwise would be issued to the claimant; and the redetermination action is taken or appeal is filed to obtain a reversal of the award of UCFE and a ruling consistent with the Department's view; and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than two weeks after the redetermination action is taken or the appeal is filed. If redetermination action is not taken or appeal is not filed within the above time limit, or a redetermination or decision is not obtained within the two-week limit, or any redetermination or decision or order is issued which affirms the determination, redetermination, or decision awarding UCFE or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the claimant.

(4)(i) If any determination, redetermination, or decision, referred to in paragraph (d)(2) or paragraph (d)(3) of this section, is treated as a precedent for any future UCFE claim or claim under the UCX Program (Part 614 of this chapter), the Secretary will decide whether the Agreement with the State entered into under the Act shall be terminated.

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this Part, including any determination, redetermination, or decision referred to in paragraph (d)(3) of this section, the Secretary will decide whether the State shall be required to restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, the Agreement with the State shall be terminated and whether other action shall be taken to recover such sums for the United States.

(5) A State agency may request reconsideration of a notice issued pursuant to paragraph (d)(2) of paragraph (d)(3) of this section, and shall be given an opportunity to present views and arguments if desired.

(6) Concurrence of the Department in a determination, redetermination, or decision shall not be presumed from the absence of a notice issued pursuant to this section.

§ 609.2 Definitions of terms.

For the purposes of the Act and this part:

(a) "Act" means subchapter I of chapter 85, title 5, United States Code, 5 U.S.C. 8501–8508.

(b) "Agreement" means the agreement entered into pursuant to the Act between a State and the Secretary under which the State agency of the State agrees to make payments of unemployment compensation in accordance with the Act and the regulations and procedures thereunder prescribed by the Department.

(c) "Based period" means the base period as defined by the applicable State law for the benefit year.

(d) "Benefit year" means the benefit year as defined by the applicable State law, and if not so defined the term means the period prescribed in the agreement with the State or, in the absence of an Agreement, the period prescribed by the Department.

(e) "Federal agency" means any department, agency, or governmental body of the United States, including any instrumentality wholly or partially owned by the United States, in any branch of the Government of the United States, which employs any individual in Federal civilian service.

(f) "Federal civilian service" means service performed in the employ of any Federal agency, except service performed—

(1) By an elective official in the executive or legislative branches of the Government of the United States; (2) As a member of the Armed Forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration;

(3) By Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22 of the United States Code;

(4) Outside the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia, by an individual who is not a citizen of the United States;

(5) By an individual excluded by regulations of the Office of Personnel Management from civil service retirement coverage provided by Subchapter III of chapter 83 of title 5 of the United States Code because the individual is paid on a contract or fee basis;

(6) By an individual receiving nominal pay and allowances of $12 or less a year;

(7) In a hospital, home, or other institution of the United States by a patient or inmate thereof;

(8) By a student-employee as defined by 5 U.S.C. 5351; that is: (i) A student nurse, medical or dental intern, resident-in-training, student dietitian, student physical therapist, or student occupational therapist, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by an agency as defined in section 5351; or (ii) any other student-employee, assigned or attached primarily for training purposes to such a hospital, clinic, or medical or dental laboratory operated by such an agency, who is designated by the head of the agency with the approval of the Office of Personnel Management;

(9) By an individual serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(10) By an individual employed under a Federal relief program to relieve the individual from unemployment;

(11) As a member of a State, county, or community committee under the Agricultural Stabilization and Conservation Service or of any other board, council, committee, or other similar body, unless such body is composed exclusively of individuals otherwise in the full-time employ of the United States;

(12) By an officer or member of the crew on or in connection with an American vessel which is: (i) Owned by or bareboat chartered to the United States, and (ii) the business of which is conducted by a general agent of the Secretary of Commerce, and (iii) if contributions on account of such service are required under section 3305(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3305(g)) to be made to an unemployment fund under a State law;

(13) By an individual excluded by any other Federal law from coverage under the UCFE Program; or

(14) By an individual whose service is covered by the UCX Program to which Part 614 of this chapter applies.

(g) "Federal employee" means an individual who has performed Federal civilian service.

(h) "Federal findings" means the facts reported by a Federal agency pertaining to an individual as to: (1) Whether or not the individual has performed Federal civilian service for such an agency; (2) the period or periods of such Federal civilian service; (3) the individual's Federal wages; and (4) the reasons for termination of the individual's Federal civilian service.

(i) "Federal wages" means all pay and allowances, in cash and in kind, for Federal civilian service.

(j) "First claim" means an initial claim for unemployment compensation under the UCFE Program, the UCX Program (Part 614 of this chapter), a State law, or some combination thereof, whereby a benefit year is established under an applicable State law.

(k) "Official station" means the State (or country, if outside the United States) designated on a Federal employee's notification of personnel action terminating the individual's Federal civilian service (Standard Form 50 or its equivalent) as the individual's "duty station." If the form of notification does not specify the Federal employee's "duty station", the individual's official station shall be the State or country designated under "name and location of employing office" on such form or designated as the individual's place of employment on an equivalent form.

(l) "Secretary" means the Secretary of Labor of the United States.

(m) "State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(n) "State agency" means the agency of the State which administers the applicable State law and is administering the UCFE Program in the State pursuant to an Agreement with the Secretary.

(o)(1) "State law" means the unemployment compensation law of a State approved by the Secretary under section 3304 of the Internal Revenue Code of 1954, 26 U.S.C. 3304, if the State is certified under section 3304(c) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(c).

(2) "Applicable State law" means the State law made applicable to a UCFE claimant by § 609.8.

(p)(1) "Unemployment compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular, additional, emergency, and extended compensation.

(2) "Regular compensation" means unemployment compensation payable to an individual under any State law, but not including additional compensation or extended compensation.

(3) "Additional compensation" means unemployment compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors.

(4) "Emergency compensation" means supplementary unemployment compensation payable under a temporary Federal law after exhaustion of regular and extended compensation.

(5) "Extended compensation" means unemployment compensation payable to an individual for weeks of unemployment in an extended benefit period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, 26 U.S.C. 3304 note, and Part 615 of this chapter, with respect to the payment of extended compensation.

(q) "Week" means, for purposes of eligibility for and payment of UCFE, a week as defined in the applicable State law.

(r) "Week of unemployment" means a week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to all employment and earnings, and in the same manner and to the same extent for the purposes of the UCFE Program, as if the individual filing for UCFE were filing a claim for State unemployment compensation.

Subpart B—Administration of UCFE Program

§ 609.3 Eligibility requirements for UCFE.

An individual shall be eligible to receive a payment of UCFE or to waiting period credit with respect to a week of unemployment if:

(a) The individual has Federal civilian service and Federal wages in the base period under the applicable State law;

(b) The individual meets the qualifying employment and wage requirements of the applicable State law, either on the basis of Federal civilian service and Federal wages alone or in combination with service and wages covered under a State law or under the UCX Program (Part 614 of this chapter);

(c) The individual has filed an initial claim for UCFE and, as appropriate, has filed a timely claim for waiting period credit or a payment of UCFE with respect to that week of unemployment; and

(d) The individual is totally, part-totally, or partially unemployed, and is able to work, available for work, and seeking work within the meaning of or as required by the applicable State law, and is not subject to disqualification under this Part or the applicable State law, with respect to that week of unemployment.

§ 609.4 Weekly and maximum benefit amounts.

(a) *Total unemployment.* The weekly amount of UCFE payable to an eligible individual for a week of total unemployment shall be the amount that would be payable to the individual as unemployment compensation for a week of total unemployment as determined under the applicable State law.

(b) *Partial and part-total unemployment.* The weekly amount of UCFE payable for a week of partial or part-total unemployment shall be the amount that would be payable to the individual as unemployment compensation for a week of partial or part-total unemployment as determined under the applicable State law.

(c) *Maximum amount.* The maximum amount of UCFE which shall be payable to an eligible individual during and subsequent to the individual's benefit year shall be the maximum amount of all unemployment compensation that would be payable to the individual as determined under the applicable State law.

(d) *Computation rules.* (1) The weekly and maximum amounts of UCFE payable to an individual under the UCFE Program shall be determined under the applicable State law to be in the same amount, on the same terms, and subject to the same conditions as the State unemployment compensation which would be payable to the individual under the applicable State law if the individual's Federal civilian service and Federal wages assigned or transferred under this Part to the State had been included as employment and wages covered by that State law.

(2) All Federal civilian service and Federal wages for all Federal agencies shall be considered employment with a single employer for purposes of the UCFE Program.

§ 609.5 Claims for UCFE.

(a) *First claims.* A first claim for UCFE shall be filed by an individual in any State agency of any State (or Canada) according to the applicable State law, and on a form prescribed by the Department which shall be furnished to the individual by the State agency where the claim is filed.

(b) *Weekly claims.* Claims for waiting week credit and payments of UCFE for weeks of unemployment shall be filed in any State agency (or Canada) at the times and in the manner as claims for State unemployment compensation are filed under the applicable State law, and on forms prescribed by the Department which shall be furnished to the

individual by the State agency where the claim is filed.

(c) *Secretary's standard.* The procedure for reporting and filing claims for UCFE and waiting period credit shall be consistent with this Part 609 and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" (*Employment Security Manual,* Part V, sections 5000 *et seq.*).

§ 609.6 Determinations of entitlement; notices to individual.

(a) *Determination of first claim.* The State agency whose State law applies to an individual under § 609.8 shall, promptly upon the filing of a first claim for UCFE, determine whether the individual is eligible and whether a disqualification applies, and, if the individual is found to be eligible, the individual's benefit year and the weekly and maximum amounts of UCFE payable to the individual.

(b) *Determinations of weekly claims.* The State agency promptly shall, upon the filing of a claim for payment of UCFE or waiting period credit with respect to a week, determine whether the individual is entitled to a payment of UCFE or waiting period credit with respect to such week, and, if entitled, the amount of UCFE or waiting period credit to which the individual is entitled.

(c) *Redetermination.* The provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to State unemployment compensation under the applicable State law shall apply to determinations pertaining to UCFE.

(d) *Notices to individual.* The State agency promptly shall give notice in writing to the individual of any determination or redetermination of a first claim, and, except as may be authorized under paragraph (g) of this section, of any determination or redetermination of any weekly claim which denies UCFE or waiting period credit or reduces the weekly amount or maximum amount initially determined to be payable. Each notice of determination or redetermination shall include such information regarding the determination or redetermination and notice of right to reconsideration or appeal, or both, as is furnished with written notices of determinations and redeterminations with respect to claims for State unemployment compensation; and where information furnished by a Federal agency was considered in making the determination, or redetermination, the notice thereof shall include an explanation of the right of the individual to seek additional information pursuant to § 609.23 and/or a reconsideration of Federal findings pursuant to § 609.24.

(e) *Obtaining information for claim determinations.* (1) Information required for the determination of claims for UCFE shall be obtained by the State agency from claimants, employers, and others, in the same manner as information is obtained for claim purposes under the applicable State law, but information (including additional and reconsidered Federal findings) shall be obtained from the Federal agency that employed the UCFE claimant as prescribed in §§ 609.21 through 609.25. On request by a UCFE claimant, the State agency shall seek additional information pursuant to § 609.23 and reconsideration of Federal findings pursuant to § 609.24.

(2) If Federal findings have not been received from a Federal agency within 12 days after the request for information was submitted to the Federal agency, the State agency shall determine the individual's entitlement to UCFE on the basis of an affidavit completed by the individual on a form prescribed by the Department. In addition, the individual shall submit for examination by the State agency any documents issued by the Fedeal agency (for example, Standard Form 50 or W-2) verifying that the individual performed services for and received wages from such Federal agency.

(3) If Federal findings received by a State agency after a determination has been made under this section contain information which would result in a change in the individual's eligibility for or entitlement to UCFE, the State agency promptly shall make a redetermination and notify the individual, as provided in this section. All payments of UCFE made prior to or after such redetermination shall be adjusted in accordance therewith.

(f) *Promptness.* Full payment of UCFE when due shall be consistent with this Part 609 and shall be made with the greatest promptness that is administratively feasible, but the provisions of Part 640 of this chapter (relating to promptness of benefit payments) shall not be applicable to the UCFE Program.

(g) *Secretary's standard.* The procedures for making determinations and redeterminations, and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals applying for UCFE, shall be consistent with this Part 609 and with the Secretary's "Standard for Claim Determinations—Separation Information" (*Employment Security Manual,* Part V, sections 6010 *et seq.*).

§ 609.7 Appeal and review.

(a) *Applicable State law.* The provisions of the applicable State law concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to State unemployment compensation shall apply to determinations and redeterminations of eligibility for or entitlement to UCFE and waiting period credit. Any such determination or redetermination shall be subject to appeal and review only in the manner and to the extent provided in the applicable State law with respect to determinations and redeterminations of entitlement to State unemployment compensation.

(b) *Rights of appeal and fair hearing.* The provisions on right to appeal and opportunity for a fair hearing with respect to claims for UCFE shall be consistent with this Part and with sections 303(a)(1) and 303(a)(3) of the Social Security Act, 42 U.S.C. 503(a)(1) and 503(a)(3).

(c) *Promptness on appeals.* (1) Decisions on appeals under the UCFE Program shall accord with the Secretary's "Standard for Appeals Promptness—Unemployment Compensation" in Part 650 of this chapter, and with § 609.1(d).

(2) Any provision of an applicable State law for advancement or priority of unemployment compensation cases on judicial calenders, or otherwise intended to provide for the prompt payment of unemployent compensation when due, shall apply to proceedings involving claims for UCFE.

(d) *Appeal and review by Federal agency.* If a Federal agency believes that a State agency's determination or redetermination of an individual's eligibility for or entitlement to UCFE is incorrect, the Federal agency may seek appeal and review of such determination or redetermination in the same manner as an interested employer may seek appeal and review under the applicable State law.

§ 609.8 The applicable State for an individual.

(a) *The applicable State.* The applicable State for an individual shall be the State to which the individual's Federal civilian service and Federal wages are assigned or transferred under this section. The applicable State law for the individual shall be the State law of such State.

(b) *Assignment of service and wages.* (1) An individual's Federal civilian service and Federal wages shall be assigned to the State in which the

individual had his or her last official station prior to filing a first claim unless:

(i) At the time a first claim is filed the individual resides in another State in which, after separation from Federal civilian service, the individual performed service covered under the State law, in which case all of the individual's Federal civilian service and wages shall be assigned to the latter State; or

(ii) Prior to filing a first claim an individual's last official station was outside the States, in which case all of the individual's Federal civilian service and Federal wages shall be assigned to the State in which the individual resides at the time the individual files a first claim, provided the individual is personally present in a State when the individual files the first claim.

(2) Federal civilian service and wages assigned to a State in error shall be reassigned for use by the proper State agency. An appropriate record of a reassignment shall be made by the State agency which makes the reassignment.

(3) Federal civilian service and Federal wages assigned to a State shall be transferred to another State where such transfer is necessary for the purposes of a combined-wage claim filed by an individual.

(c) *Assignment deemed complete.* All of an individual's Federal civilian service and Federal wages shall be deemed to have been assigned to a State upon the filing of a first claim. Federal civilian service and Federal wages shall be assigned to a State only in accordance with paragraph (b) of this section.

(d) *Use of assigned service and wages.* All assigned Federal civilian service and Federal wages shall be used only by the State to which assigned or transferred in accordance with paragraph (b) of this section.

§ 609.9 Provisions of State law applicable to UCFE claims.

(a) *Particular provisions applicable.* Except where the result would be inconsistent with the provisions of the Act or this Part or the procedures thereunder prescribed by the Department, the terms and conditions of the applicable State law which apply to claims for, and the payment of, State unemployment compensation shall apply to claims for, and the payment of, UCFE and claims for waiting period credit. The provisions of the applicable State law which shall apply include, but are not limited to:

(1) Claim filing and reporting;

(2) Information to individuals, as appropriate;

(3) Notices to individuals and Federal agencies, as appropriate, including notice to each individual of each determination and redetermination of eligibility for or entitlement to UCFE;

(4) Determinations and redeterminations;

(5) Ability to work, availability for work, and search for work; and

(6) Disqualifications.

(b) *IBPP.* The *Interstate Benefit Payment Plan* shall apply, where appropriate, to individuals filing claims for UCFE.

(c) *Wage combining.* The State's provisions complying with the *Interstate Arrangement for Combining Employment and Wages* (Part 616 of this chapter) shall apply, where appropriate, to individuals filing claims for UCFE.

(d) *Procedural requirements.* The provisions of the applicable State law which apply hereunder to claims for and the payment of UCFE shall be applied consistently with the requirements of Title III of the Social Security Act and the Federal Unemployment Tax Act which are pertinent in the case of State unemployment compensation, including but not limited to those standards and requirements specifically referred to in the provisions of this part, except as provided in paragraph (f) of § 609.6.

§ 609.10 Restrictions on entitlement.

(a) *Disqualification.* If the week of unemployment for which an individual claims UCFE is a week to which a disqualification for State unemployment compensation applies under the applicable State law, or would apply but for the fact that the individual has no right to such compensation, the individual shall not be entitled to a payment of UCFE for that week.

(b) *Allocation of terminal annual leave payments.* Lump-sum terminal annual leave payments shall not be allocated by a Federal agency and shall be allocated by a State agency in the same manner as similar payments to individuals employed by private employers are allocated under the applicable State law. In a State in which a private employer has an option as to the period to which such payments shall be allocated, such payments shall be allocated to the date of separation from employment.

§ 609.11 Overpayments; penalties for fraud.

(a) *False statements and representations.* Section 8507(a) of the Act provides that if a State agency, the Department, or a court of competent jurisdiction finds that an individual—

(1) Knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) As a result of that action has received an amount as UCFE to which the individual was not entitled; the individual shall repay the amount to the State agency or the Department. Instead of requiring repayments, the State agency or the Department may recover the amount by deductions from UCFE payable to the individual during the 2-year period after the date of the finding. A finding by a State agency or the Department may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under § 609.7.

(b) *Prosecution for fraud.* Section 1919 of title 18, United States Code, provides that whoever makes a false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase for himself or for any other individual any payment authorized to be paid under chapter 85 of title 5, United States Code, or under an agreement thereunder, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(c) *Absence of fraud.* If a State agency or court of competent jurisdiction finds that an individual has received a payment of UCFE to which the individual was not entitled under the Act and this part, which was not due to a false statement or representation as provided in paragraph (a) or (b) of this section, the individual shall be liable to repay to the applicable State the total sum of the payment to which the individual was not entitled, and the State agency shall take all reasonable measures authorized under any State law or Federal law to recover for the account of the United States the total sum of the payment to which the individual was not entitled.

(d) *Recovery by offset.* (1) The State agency shall recover, insofar as is possible, the amount of any overpayment which is not repaid by the individual, by deductions from any UCFE payable to the individual under the Act and this Part, or from any unemployment compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(2) A State agency shall also recover, insofar as is possible, the amount of any overpayment of UCFE made to the individual by another State, by

deductions from any UCFE payable by the State agency to the individual under the Act and this part, or from any unemployment compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(3) Recoupment of fraudulent overpayments referred to in paragraph (a) of this section shall be limited to the 2-year period stated in that paragraph. Recoupment of fraudulent overpayments referred to in paragraph (b) of this section, and nonfraudulent overpayments referred to in paragraph (c) of this section shall be subject to any time limitation on recoupment provided for in the State law that applies to the case.

(e) *Debts due the United States.* UCFE payable to an individual shall be applied by the State agency for the recovery by offset of any debt due to the United States from the individual, but shall not be applied or used by the State agency in any manner for the payment of any debt of the individual to any State or any other entity or person except pursuant to a court order for child support or alimony in accordance with the law of the State and Section 459 of the Social Security Act, 42 U.S.C. 659.

(f) *Application of State law.* (1) Except as indicated in paragraph (a) of this section, any provision of State law that may be applied for the recovery of overpayments or prosecution for fraud, and any provision of State law authorizing waiver of recovery of overpayments of unemployment compensation, shall be applicable to UCFE.

(2) In the case of any finding of false statement or representation under the Act and paragraph (a) of this section, or prosecution for fraud under 18 U.S.C. 1919 or pursuant to paragraph (f)(1) of this section, the individual shall be disqualified or penalized in accordance with the provisions of the applicable State law relating to fraud in connection with a claim for State unemployment compensation.

(g) *Final decision.* Recovery of any overpayment of UCFE shall not be enforced by the State agency until the determination or redetermination establishing the overpayment has become final, or if appeal is taken from the determination or redetermination, until the decision after opportunity for a fair hearing has become final.

(h) *Procedural requirements.* (1) The provisions of paragraphs (c), (d), and (g) of § 609.6 shall apply to determinations and redeterminations made pursuant to this section.

(2) The provisions of § 609.7 shall apply to determinations and redeterminations made pursuant to this section.

(i) *Fraud detection and prevention.* Provisions in the procedures of each State with respect to detection and prevention of fraudulent overpayments of UCFE shall be, as a minimum, commensurate with the procedures adopted by the State with respect to State unemployment compensation and consistent with the Secretary's "Standard for Fraud and Overpayment Detection" *(Employment Security Manual,* Part V, section 7510 *et seq.*).

(j) *Recovered overpayments.* An amount repaid or recouped under this section shall be—

(1) Deposited in the fund from which payment was made, if the repayment was to a State agency; or

(2) Returned to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payment was made, if the repayment was to the Department.

§ 609.12 Inviolate rights to UCFE.

Except as specifically provided in this part, the rights of individuals to UCFE shall be protected in the same manner and to the same extent as the rights of persons to State unemployment compensation are protected under the applicable State law. Such measures shall include protection of applicants for UCFE from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to UCFE, except as provided in § 609.11. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for, and receiving any right to UCFE.

§ 609.13 Recordkeeping; disclosure of information.

(a) *Recordkeeping.* Each State agency will make and maintain records pertaining to the administration of the UCFE Program as the Department requires, and will make all such records available for inspection, examination, and audit by such Federal officials or employees as the Department may designate or as may be required by law.

(b) *Disclosure of Information.* Information in records maintained by a State agency in administering the UCFE Program shall be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to State unemployment compensation and the entitlement of individuals thereto may be disclosed under the applicable State law. This provision on the confidentiality of information maintained in the administration of the UCFE Program shall not apply, however, to the Department or for the purposes of §§ 609.11 or 609.13, or in the case of information, reports and studies required pursuant to §§ 609.17 or 609.25, or where the result would be inconsistent with the Freedom of Information Act [5 U.S.C. 552], the Privacy Act of 1974 [5 U.S.C. 552a], or regulations of the Department promulgated thereunder.

§ 609.14 Payments to States.

(a) *State entitlement.* Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages, an amount bearing the same ratio to the total amount of compensation paid to such individual as the amount of the individual's Federal wages in the individual's base period bears to the total amount of the individual's base period wages.

(b) *Payment.* Each State shall be paid, either in advance or by way of reimbursement, as may be determined by the Department, the sum that the Department estimates the State is entitled to receive under the Act and this Part for each calendar month. The sum shall be reduced or increased by the amount which the Department finds that its estimate for an earlier calendar month was greater or less than the sum which should have been paid to the State. An estimate may be made on the basis of a statistical, sampling, or other method agreed on by the Department and the State agency.

(c) *Certification by the Department.* The Department, from time to time, shall certify to the Secretary of the Treasury the sum payable to each State under this section. The Secretary of the Treasury, before audit or settlement by the General Accounting Office, shall pay the State in accordance with the certification from the funds for carrying out the purposes of the Act and this part.

(d) *Use of money.* Money paid a State under the Act and this Part may be used solely for the purposes for which it is paid. Money so paid which is not used solely for these purposes shall be returned, at the time specified by the Agreement, to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payments to states

under the Act and this part may be made.

§ 609.15 Public access to Agreements.

The State agency of a State will make available to any individual or organization a true copy of the Agreement with the State for inspection and copying. Copies of an Agreement may be furnished on request to any individual or organization upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the State agency.

§ 609.16 Administration in absence of an Agreement.

(a) *Administering Program.* The Department shall administer the UCFE Program through personnel of the Department or through other arrangements under procedures prescribed by the Department, in the case of any State which does not have an Agreement with the Secretary as provided for in 5 U.S.C. 8502. The procedures prescribed by the Department under this section shall be consistent with the Act and this part.

(b) *Applicable State law.* On the filing by an individual of a claim for UCFE in accordance with arrangements under this section, UCFE shall be paid to the individual, if eligible, in the same amount, on the same terms, and subject to the same conditions as would be paid to the individual under the applicable State law if the individual's Federal civilian service and Federal wages had been included as employment and wages under the State law. Any such claim shall include the individual's Federal civilian service and Federal wages, combined with any service and wages covered by State law. However, if the individual, without regard to his or her Federal civilian service and Federal wages, has employment or wages sufficient to qualify for compensation during the benefit year under that State law, then payments of UCFE under this section may be made only on the basis of the individual's Federal civilian service and Federal wages.

(c) *Fair hearing.* An individual whose claim for UCFE is denied under this section is entitled to a fair hearing under rules of procedure prescribed by the Department. A final determination by the Department with respect to entitlement to UCFE under this section is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act, 42 U.S.C. 405(g).

§ 609.17 Information, reports, and studies.

State agencies shall furnish to the Department such information and reports and conduct such studies as the Department determines are necessary or appropriate for carrying out the purposes of the UCFE Program.

Subpart C—Responsibilities of Federal Agencies

§ 609.20 Information to Federal civilian employees.

Each Federal agency shall:

(a) Furnish information to its employees as to their rights and responsibilities under the UCFE Program and 18 U.S.C. 1919; and

(b) Furnish a completed copy of a form approved by the Department, "Notice to Federal Employee About Unemployment Compensation," in accordance with instructions thereon, to each employee at the time of separation from Federal civilian service, when transferred from one payroll office to another, or when the office responsible for distribution of the form is advised that an individual is in nonpay status for seven consecutive days or more.

§ 609.21 Findings of Federal agency.

(a) *Answering request.* Within four workdays after receipt from a State agency of a request for Federal findings on a form furnished by the State agency, and prescribed by the Department, a Federal agency shall make such Federal findings, complete all copies of the form, and transmit the completed copies to the State agency. If documents necessary for completion of the form have been assigned to an agency records center or the Federal Records Center in St. Louis, the Federal agency shall obtain the necessary information from the records center. Any records center shall give priority to such a request.

(b) *Failure to meet time limit.* If a completed form containing the Federal agency's findings cannot be returned within four workdays of receipt, the Federal agency immediately shall inform the State agency, and shall include an estimated date by which the completed form will be returned.

(c) *Administrative control.* Each Federal agency shall maintain a control of all requests for Federal findings received by it, and the Federal agency's response to each request. The records shall be maintained so as to enable the Federal agency to ascertain at any time the number of such forms that have not been returned to State agencies, and the dates of the Federal agency's receipt of such unreturned forms.

§ 609.22 Correcting Federal findings.

If a Federal agency ascertains at any time within one year after it has returned a completed form reporting its findings, that any of its findings were erroneous, it shall promptly correct its error and forward its corrected findings to the State agency.

§ 609.23 Furnishing additional information.

On receipt of a request for additional information from a State agency, a Federal agency shall consider the information it supplied initially in connection with such request and shall review its findings. The Federal agency promptly shall forward to the State agency such additional findings as will respond to the request. The Federal agency shall, if possible, respond within four workdays after the receipt of a request under this section.

§ 609.24 Reconsideration of Federal findings.

On receipt of a request for reconsideration of Federal findings from a State agency, the Federal agency shall consider the initial information supplied in connection with such request and shall review its findings. The Federal agency shall correct any errors or omissions in its findings and shall affirm, modify, or reverse any or all of its findings in writing. The Federal agency promptly shall forward its reconsidered findings to the requesting authority. The Federal agency shall, if possible, respond within four workdays after the receipt of a request under this section.

§ 609.25 Furnishing other information.

(a) *Additional Information.* In addition to the information required by §§ 609.21, 609.22, 609.23, and 609.24, a Federal agency shall furnish to a State agency or the Department, within the time requested, any information which it is not otherwise prohibited from releasing by law, which the Department determines is necessary for the administration of the UCFE Program.

(b) *Reports.* Federal agencies shall furnish to the Department or State agencies such reports containing such information as the Department determines are necessary or appropriate for carrying out the purposes of the UCFE Program.

§ 609.26 Liaison with Department.

To facilitate the Department's administration of the UCFE Program, each Federal agency shall designate one or more of its officials to be the liaison with the Department. Each Federal agency will inform the Department of its designation(s) and of any change in a designation.

[FR Doc. 82-32921 Filed 12-2-82; 8:45 am]

BILLING CODE 4510-30-M

federal register

Friday
December 3, 1982

Part VI

Department of Labor

Employment and Training Administration

Unemployment Compensation for Ex-Servicemembers; Final Rule

DEPARTMENT OF LABOR

20 CFR Part 614

Unemployment Compensation for Ex-Servicemembers

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: These are the Department of Labor's revised regulations for implementing the program of Unemployment Compensation for Ex-Servicemembers (UCX Program). Changes to the regulations incorporate statutory amendments, which require treatment of the Virgin Islands as a participating State in the Federal-State Unemployment Compensation Program, which prescribe a new rule for determining the Federal share of the cost of benefits in connection with joint claims under the UCX Program and State unemployment compensation laws, and which revise the eligibility requirements for entitlement to the program benefits. The final regulations also incorporate the amendment in Public Law 96-215, which provides that Commissioned Corps Officers of the National Oceanic and Atmospheric Administration (NOAA) shall be covered under the UCX Program. The regulations are also reorganized and revised to state the rights and obligations of claimants for the benefits and to clarify the respective duties and responsibilities of the Federal Government and the State agencies. The setting forth of this information in each Part dealing with a separate unemployment compensation program conforms to the more recent practice in writing regulations for unemployment compensation and related benefit programs. The final regulations incorporate the substantive changes and improvements as set forth in the published proposal.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Bert Lewis, Administrator, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, N.W., Washington, D.C. 20213, telephone: (202) 376-7032 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The UCX Program is financed by Federal funds to furnish unemployment benefits to eligible individuals who are separated from military service and are unable to obtain work. The program was created by Pub. L. 85-848, approved on August 28, 1958. It has been codified in 5 U.S.C. 8521-8525.

Part 614, Chapter V, Title 20 of the Code of Federal Regulations (20 CFR Part 614), implements the Unemployment Compensation for Ex-Servicemembers Programs as most recently amended by Pub. L. 94-566, Pub. L. 96-215, and Pub. L. 96-364. The proposal to revise the regulations was published in the **Federal Register** on January 23, 1981 (46 FR 7796), and this document contains the final revised regulations for Part 614. Comments on the proposal published on January 23, 1981, were solicited through March 24, 1981, and the proposal was further reviewed in the Department. As a result of comments and review, a few changes have been made in the proposal. Also, a new statutory amendment has been added.

1. Public Law 96-215 amended 5 U.S.C. 8521(a)(1) to read: "Federal service means active service, including active duty for training purposes, in the armed forces *or the Commissioned Corps of the National Oceanic and Atmospheric Administration* * * *". This amendment provides that ex-officers of NOAA are entitled to file for benefits under the UCX Program after March 25, 1980.

2. The New York Department of Labor and Washington Employment Security Department suggested in a comment that we amend § 614.2(f) to take in consideration the passage of Pub. L. 96-215 regarding the coverage of members of the Commissioned Corps of NOAA. Although this change was overlooked in the proposal, we recognize the need for the change and therefore have changed §§ 614.2(f) and 614.2(g).

3. The New York Department of Labor (and the Colorado Division of Employment and Training orally) suggested that we eliminate the requirement in § 614.11(d)(3) that limits recovery of UCX fraud overpayments by offsets during the 2-year period after the date of the finding establishing the overpayments. They contend that this is different from the time limit in applicable State laws and is harder to administer.

The current requirement as reflected in §§ 614.11(a)(2) and 614.11(d)(3) of the proposed regulations is not a new requirement. It specifically follows Section 8507 of the law. Time limits on recovery of nonfraudulent overpayments are governed by the applicable State law. Although this may result in different time limits on recovery of fraudulent and nonfraudulent overpayments, the 2-year period is specifically required by the law. Therefore, no change is made in § 614.11 (a) or (b).

4. The Illinois Division of Unemployment Insurance found an error in the text of § 614.23(a) of the proposed rule. The minimum service requirement was changed by amendment instead in Pub. L. 96-364 from "90" days to "365" days. In the proposal, this change was made in § 614.2(g), but was overlooked in § 614.23(a). The error is corrected in the final regulations.

5. A review of proposed Part 614, § 614.2(h), revealed an error in the definition of Federal wages. That error has been corrected in the text.

6. In addition, a few minor proofing and technical errors were made in the proposed document as published in the **Federal Register** on January 23, 1981. Those errors have been corrected.

Drafting Information

This document was prepared under the direction and control of the Administrator of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, N.W., Washington, D.C. 20213; telephone: (202) 376-7032 (this is not a toll-free number).

Classification—Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

Information collection requirements contained in this regulation (§§ 614.1(d)(1), 614.5(a) and 614.22(a)) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 1205-0163 (pertaining to § 614.1(d)(1)) and 1205-0176 (pertaining to §§ 614.5(a) and 614.22(a)).

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact on a substantial number of small

entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because this rule only implements amendments to an individual entitlement program, and thus no economic impact is expected with respect to any small entities. Accordingly, no regulatory flexibility analysis is required.

Regulatory Flexibility Act Certification

I, Raymond J. Donovan, Secretary of Labor, hereby certify, pursuant to 5 U.S.C. 605(b) that the final regulations published hereinafter (20 CFR Part 614, Final Amendments to the Unemployment Compensation Program for Ex-Servicemembers Regulation) will not, if promulgated, have a significant economic impact on a substantial number of small entities because this is an individual entitlement program and affects only individuals applying for benefits under the Unemployment Compensation Program for Ex-Servicemembers.

Dated: November 29, 1982.

Raymond J. Donovan.

List of Subjects in 20 CFR Part 614

Unemployment Compensation for Ex-Servicemembers (UCX), Unemployment compensation.

Words of Issuance

Accordingly, Part 614 of Title 20 of the Code of Federal Regulations is revised as set forth below.

Signed at Washington, D.C. on November 29, 1982.

Albert Angrisani,

Assistant Secretary of Labor.

PART 614—UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEMBERS

Subpart A—General Provisions

Sec.
614.1 Purpose and application.
614.2 Definitions of terms.

Subpart B—Administration of UCX Program

614.3 Eligibility requirements for UCX.
614.4 Weekly and maximum benefit amounts.
614.5 Claims for UCX.
614.6 Determinations of entitlement; notices to individual.
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614.8 The applicable State for an individual.
614.9 Provisions of State law applicable to UCX claims.
614.10 Restrictions on entitlement.
614.11 Overpayments; penalties for fraud.
614.12 Schedules of Remuneration.
614.13 Inviolate rights to UCX.
614.14 Recordkeeping; disclosure of information.
614.15 Payments to States.
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614.17 Administration in absence of an Agreement.
614.18 Information, reports, and studies.

Subpart C—Responsibilities of Federal Military Agencies and State Agencies

614.20 Information to ex-servicemembers.
614.21 Findings of Federal military agency.
614.22 Correcting Federal findings.
614.23 Findings of Veterans Administration.
614.24 Correcting Veterans Administration findings.
614.25 Finality of findings.
614.26 Furnishing other information.
614.27 Liaison with Department.

Authority: 5 U.S.C. 8508; Secretary's Order No. 4-75, 40 FR 18515 (5 U.S.C. 301). Interpret and apply secs. 8521-8525 of title 5, United States Code.

Subpart A—General Provisions

§ 614.1 Purpose and application.

(a) *Purpose.* Subchapter II of chapter 85, title 5 of the United States Code, as amended by Pub. L. 94-566, 90 Stat. 2667 (5 U.S.C. 8521-8525), provides for a permanent program of unemployment compensation for unemployed individuals separated from the Armed Forces. The unemployment compensation provided for in Subchapter II is hereinafter referred to as Unemployment Compensation for Ex-Servicemembers, or UCX. The regulations in this part are issued to implement the UCX Program.

(b) *First rule of construction.* The Act and the implementing regulations in this part shall be construed liberally so as to carry out the purposes of the Act.

(c) *Second rule of construction.* The Act and the implementing regulations in this part shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act throughout the United States.

(d) *Effectuating purpose and rules of construction.* (1) In order to effectuate the provisions of this section, each State agency shall forward to the United States Department of Labor (hereafter Department), not later than 10 days after issuance, a copy of each judicial or administrative decision ruling on an individual's entitlement to payment of UCX or to credit for a waiting period. On request of the Department, a State agency shall forward to the Department a copy of any determination or redetermination ruling on an individual's entitlement to UCX or waiting period credit.

(2) If the Department believes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Act or this part, the Department may at any time notify the State agency of the Department's view. Thereafter, the State agency shall issue a redetermination or appeal if possible, and shall not follow such determination, redetermination, or decision as a precedent; and, in any subsequent proceedings which involve such determination, redetermination, or decision, or wherein such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the State agency shall inform the claims deputy or hearing officer or court of the Department's view and shall make all reasonable efforts, including appeal or other proceedings in an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

(3) If the Department believes that a determination, redetermination, or decision is patently and flagrantly violative of the Act or this part, the Department may at any time notify the State agency of the Department's view. If the determination, redetermination, or decision in question denies UCX to a claimant, the steps outlined in paragraph (2) above shall be followed by the State agency. If the determination, redetermination, or decision in question awards UCX to a claimant, the benefits are "due" within the meaning of section 303(a)(1) of the Social Security Act, 42 U.S.C. 503(a)(1), and therefore must be paid promptly to the claimant. However, the State agency shall take the steps outlined in paragraph (d)(2) of this section, and payments to the claimant may be temporarily delayed if redetermination or appeal action is taken not more than one business day following the day on which the first payment otherwise would be issued to the claimant; and the redetermination action is taken or appeal is filed to obtain a reversal of the award of UCX and a ruling consistent with the Department's view; and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than two weeks after the redetermination action is taken or the appeal is filed. If redetermination action is not taken or appeal is not filed within the above time limit, or a redetermination or decision is not obtained within the two-week limit, or any redetermination or decision or order is issued which affirms the determination, redetermination, or decision awarding UCX or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the claimant.

(4)(i) If any determination, redetermination, or decision, referred to

in paragraph (d)(2) or paragraph (d)(3) of this section, is treated as a precedent for any future UCX claim or claim under the UCFE Program (Part 609 of this chapter), the Secretary will decide whether the Agreement with the State entered into under the Act shall be terminated.

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this Part, including any determination, redetermination, or decision referred to in paragraph (d)(3) of this section, the Secretary will decide whether the State shall be required to restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, the Agreement with the State shall be terminated and whether other action shall be taken to recover such sums for the United States.

(5) A State agency may request reconsideration of a notice issued pursuant to paragraph (d)(2) or paragraph (d)(3) of this section, and shall be given an opportunity to present views and arguments if desired.

(6) Concurrence of the Department in a determination, redetermination, or decision shall not be presumed from the absence of a notice issued pursuant to this section.

§ 614.2 Definitions of terms.

For purposes of the Act and this Part:

(a) "Act" means subchapter II of chapter 85 of title 5 of the United States Code, 5 U.S.C. 8521–8525.

(b) "Agreement" means the Agreement entered into pursuant to 5 U.S.C. 8502 between a State and the Secretary under which the State agency of the State agrees to make payments of unemployment compensation in accordance with the Act and the regulations and procedures thereunder prescribed by the Department.

(c) "Base period" means the base period as defined by the applicable State law for the benefit year.

(d) "Benefit year" means the benefit year as defined by the applicable State law, and if not so defined the term means the period prescribed in the Agreement with the State or, in the absence of an Agreement, the period prescribed by the Department.

(e) "Ex-servicemember" means an individual who has performed Federal military service.

(f) "Federal military agency" means any of the Armed Forces of the United States, including the Army, Air Force, Navy, Marine Corps, and Coast Guard, and the National Oceanic and Atmospheric Administration (Department of Commerce).

(g) "Federal military service" means a period of active service, including active duty for training purposes, in the Armed Forces or (with respect to first claims filed after March 25, 1980) the Commissioned Corps of the National Oceanic and Atmospheric Administration if—

(1) Such service was continuous for 365 days or more or was terminated in less than 365 days because of an actual service-incurred injury or disability; and

(2) With respect to such service the individual (i) was discharged or released under conditions other than dishonorable, (ii) was not given a bad conduct discharge, or (iii) if an officer, did not resign for the good of the service.

(h) "Federal military wages" means all pay and allowances in cash and in kind for Federal military service, computed on the basis of the pay and allowances for the pay grade of the individual at the time of his or her latest discharge or release from Federal/military service, as determined in accordance with the Schedule of Remuneration applicable at the time the individual files his or her first claim for compensation for a benefit year.

(i) "First claim" means an initial claim for unemployment compensation under the UCX Program, the UCFE Program (Part 609 of this chapter), or a State law, or some combination thereof, first filed by an individual after the individual's latest discharge or release from Federal military service, whereby a benefit year is established under an applicable State law.

(j) "Military document" means an official document or documents issued to an individual by a Federal military agency relating to the individual's Federal military service and discharge or release from such service.

(k) "Period of active service" means a period of continuous active duty (including active duty for training purposes) in a Federal military agency or agencies, beginning with the date of entry upon active duty and ending on the effective date of the first discharge or release thereafter which is not qualified or conditional.

(l) "Schedule of Remuneration" means the schedule issued by the Department from time to time under 5 U.S.C. 8521(a)(2) and this part, which specifies for purposes of the UCX Program, the pay and allowances for each pay grade of servicemember.

(m) "Secretary" means the Secretary of Labor of the United States.

(n) "State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(o) "State agency" means the agency of the State which administers the applicable State unemployment compensation law and is administering the UCX Program in the State pursuant to an Agreement with the Secretary.

(p)(1) "State law" means the unemployment compensation law of a State approved by the Secretary under section 3304 of the Internal Revenue Code of 1954, 26 U.S.C. 3304, if the State is certified under section 3304(c) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(c).

(2) "Applicable State law" means the State law made applicable to a UCX claimant by § 614.8.

(q)(1) "Unemployment compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular, additional, emergency, and extended compensation.

(2) "Regular compensation" means unemployment compensation payable to an individual under any State law, but not including additional compensation or extended compensation.

(3) "Additional compensation" means unemployment compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors.

(4) "Emergency compensation" means supplementary unemployment compensation payable under a temporary Federal law after exhaustion of regular and extended compensation.

(5) "Extended compensation" means unemployment compensation payable to an individual for weeks of unemployment in an extended benefit period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, 26 U.S.C. 3304 note, and Part 615 of this chapter, with respect to the payment of extended compensation.

(r) "Unemployment Compensation for Ex-Servicemember" means the unemployment compensation payable under the Act to claimants eligible for the payments, and is referred to as UCX.

(s) "Week" means, for purposes of eligibility for and payment of UCX, a week as defined in the applicable State law.

(t) "Week of unemployment" means a week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to all employment and earnings, and in the same manner and to

the same extent for the purposes of the UCX Program, as if the individual filing for UCX were filing a claim for State unemployment compensation.

Subpart B—Administration of UCX Program

§ 614.3 Eligibility requirements for UCX.

An individual shall be eligible to receive a payment of UCX or waiting period credit with respect to a week of unemployment if:

(a) The individual has Federal military service and Federal military wages in the base period under the applicable State law;

(b) The individual meets the qualifying employment and wage requirements of the applicable State law, either on the basis of Federal military service and Federal military wages alone or in combination with service and wages covered under a State law or under the UCFE Program (Part 609 of this chapter);

(c) The individual has filed an initial claim for UCX and, as appropriate, has filed a timely claim for waiting period credit or payment of UCX with respect to that week of unemployment; and

(d) The individual is totally, part-totally, or partially unemployed, and is able to work, available for work, and seeking work within the meaning of or as required by the applicable State law, and is not subject to disqualification under this Part or the applicable State law, with respect to that week of unemployment.

§ 614.4 Weekly and maximum benefit amounts.

(a) *Total unemployment.* The weekly amount of UCX payable to an eligible individual for a week of total unemployment shall be the amount that would be payable to the individual as unemployment compensation for a week of total unemployment as determined under the applicable State law.

(b) *Partial and part-total unemployment.* The weekly amount of UCX payable for a week of partial or part-total unemployment shall be the amount that would be payable to the individual as unemployment compensation for a week of partial or part-total unemployment as determined under the applicable State law.

(c) *Maximum amount.* The maximum amount of UCX which shall be payable to an eligible individual during and subsequent to the individual's benefit year shall be the maximum amount of all unemployment compensation that would be payable to the individual as determined under the applicable State law.

(d) *Computation rule.* The weekly and maximum amounts of UCX payable to an individual under the UCX Program shall be determined under the applicable State law to be in the same amount, on the same terms, and subject to the same conditions as the State unemployment compensation which would be payable to the individual under the applicable State law if the individual's Federal military service and Federal military wages assigned or transferred under this part to the State had been included as employment and wages covered by that State law, subject to the use of the applicable Schedule of Remuneration.

§ 614.5 Claims for UCX.

(a) *First claims.* A first claim for UCX shall be filed by an individual in any State agency of any State according to the applicable State law, and on a form prescribed by the Department which shall be furnished to the individual by the State agency where the claim is filed.

(b) *Weekly claims.* Claims for waiting week credit and payments of UCX for weeks of unemployment shall be filed in any State agency (or Canada) at the times and in the manner as claims for State unemployment compensation are filed under the applicable State law, and on forms prescribed by the Department which shall be furnished to the individual by the State agency where the claim is filed.

(c) *Secretary's standard.* The procedures for reporting and filing claims for UCX and waiting period credit shall be consistent with this Part 614 and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" (*Employment Security Manual,* Part V, sections 5000 *et seq.*).

§ 614.6 Determinations of entitlement; notices to individual.

(a) *Determination of first claim.* Except for findings of a Federal military agency or the Veterans Administration and the applicable Schedule of Remuneration which are final and conclusive under § 614.25, the State agency whose State law applies to an individual under § 614.8 shall, promptly upon the filing of a first claim for UCX, determine whether the individual is otherwise eligible, and, if the individual is found to be eligible, the individual's benefit year and the weekly and maximum amounts of UCX payable to the individual.

(b) *Determinations of weekly claims.* The State agency promptly shall, upon the filing of a claim for a payment of UCX or waiting period credit with respect to a week, determine whether the individual is entitled to a payment of UCX or waiting period credit respect to such week, and, if entitled, the amount of UCX or waiting period credit to which the individual is entitled.

(c) *Redetermination.* The provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to State unemployment compensation under the applicable State law shall apply to determinations pertaining to UCX.

(d) *Notices to individual.* The State agency promptly shall give notice in writing to the individual of any determination or redetermination of a first claim, and, except as may be authorized under paragraph (g) of this section, of any determination or redetermination of any weekly claim which denies UCX or waiting period credit or reduces the weekly amount or maximum amount initially determined to be payable. Each notice of determination or redetermination shall include such information regarding the determination or redetermination and notice of right to reconsideration or appeal, or both, as is furnished with written notices of determinations and redeterminations with respect to claims for State unemployment compensation. Such notice shall include the findings of any Federal military agency or the Veterans Administration, and shall inform the individual of the finality of such findings and of the individual's right to request correction of such findings as is provided in §§ 614.22 and 614.24.

(e) *Obtaining information for claim determinations.* (1) Information required for the determination of claims for UCX shall be obtained by the State agency from claimants, employers, and others, in the same manner as information is obtained for claim purposes under the applicable State law, but Federal military findings shall be obtained from military documents, the applicable Schedule of Remuneration, and from Federal military agencies and the Veterans Administration as prescribed in §§ 614.21 through 614.26.

(2) Procedures for requesting correction of Federal findings and Veterans Administration findings, and State agency procedures when requests are made and responses are received, are prescribed in §§ 614.22 through 614.24.

(f) *Promptness.* Full payment of UCX when due shall be consistent with this part and shall be made with the greatest promptness that is administratively feasible, but the provisions of Part 640 of

this chapter (relating to promptness of benefit payments) shall not be applicable to the UCX Program.

(g) *Secretary's standard.* The procedures for making determinations and redeterminations, and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals applying for UCX, shall be consistent with this part and with the Secretary's "Standard for Claim Determinations—Separation Information" (*Employment Security Manual,* Part V, sections 6010 *et seq.*).

§ 614.7 Appeal and review.

(a) *Applicable State Law.* The provisions of the applicable State law concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to State unemployment compensation (exclusive of findings which are final and conclusive under § 614.25) shall apply to determinations and redeterminations of eligibility for or entitlement to UCX and waiting period credit. Any such determination or redetermination shall be subject to appeal and review only in the manner and to the extent provided in the applicable State law with respect to determinations and redeterminations of entitlement to State unemployment compensation.

(Section 614.24 governs appeals of findings of the Veterans Administration)

(b) *Rights of appeal and fair hearing.* The provisions on right of appeal and opportunity for a fair hearing with respect to claims for UCX shall be consistent with this part and with sections 303(a)(1) and 303(a)(3) of the Social Security Act, 42 U.S.C. 503(a)(1) and 503(a)(3).

(c) *Promptness on appeals.* (1) Decisions on appeals under the UCX Program shall accord with the Secretary's "Standard for Appeals Promptness—Unemployment Compensation" in Part 650 of this chapter, and with § 614.1(d).

(2) Any provision of an applicable State law for advancement or priority of unemployment compensation cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, shall apply to proceedings involving claims for UCX.

(d) *Appeal and review by Federal military agency.* If a Federal military agency believes that a State agency's determination or redetermination of an individual's eligibility for or entitlement to UCX is incorrect, the Federal military agency may seek appeal and review of such determination or redetermination in the same manner as an interested employer may seek appeal and review under the applicable State law.

§ 614.8 The applicable State for an individual.

(a) *The applicable State.* The applicable State for an individual shall be the State to which the individual's Federal military service and Federal military wages are assigned or transferred under this section. The applicable State law for the individual shall be the State law of such State.

(b) *Assignment of service and wages.* (1) When an individual files a first claim, all of the individual's Federal military service and Federal military wages shall be deemed to be assigned to the State in which such claim is filed, which shall be the "Paying State" in the case of a combined-wage claim. (§ 616.6(e) of this chapter.)

(2) Federal military service and Federal military wages assigned to a State in error shall be reassigned for use by the proper State agency. An appropriate record of the reassignment shall be made by the State agency which makes the reassignment.

(c) *Assignment deemed complete.* All of an individual's Federal military service and Federal military wages shall be deemed to have been assigned to a State upon the filing of a first claim. Federal military service and Federal military wages shall be assigned to a State only in accordance with paragraph (b) of this section.

(d) *Use of assigned service and wages.* All assigned Federal military service and Federal military wages shall be used only by the State to which assigned in accordance with paragraph (b) of this section, except that any Federal military service and Federal military wages which are not within the base period of the State to which they were assigned shall be subject to transfer in accordance with Part 616 of this chapter for the purposes of any subsequent Combined-Wage Claim filed by the individual.

§ 614.9 Provisions of State law applicable to UCX claims.

(a) *Particular provisions applicable.* Except where the result would be inconsistent with the provisions of the Act or this Part or the procedures thereunder prescribed by the Department, the terms and conditions of the applicable State law which apply to claims for, and the payment of, State unemployment compensation shall apply to claims for, and the payment of, UCX and claims for waiting period credit. The provisions of the applicable State law which shall apply include, but are not limited to:

(1) Claim filing and reporting;

(2) Information to individuals, as appropriate;

(3) Notices to individuals, as appropriate, including notice to each individual of each determination and redetermination of eligibility for or entitlement to UCX;

(4) Determinations and redeterminations;

(5) Ability to work, availability for work, and search for work; and

(6) Disqualifications, except in regard to separation from any Federal military agency.

(b) *IBPP.* The *Interstate Benefit Payment Plan* shall apply, where appropriate, to individuals filing claims for UCX.

(c) *Wage combining.* The State's provisions complying with the *Interstate Arrangement for Combining Employment and Wages* (Part 616 of this chapter) shall apply, where appropriate, to individuals filing claims for UCX.

(d) *Procedural requirements.* The provisions of the applicable State law which apply hereunder to claims for and the payment of UCX shall be applied consistently with the requirements of Title III of the Social Security Act and the Federal Unemployment Tax Act which are pertinent in the case of State unemployment compensation, including but not limited to those standards and requirements specifically referred to in the provisions of this part, except as provided in paragraph (f) of § 614.6.

§ 614.10 Restrictions on entitlement.

(a) *Disqualification.* If the week of unemployment for which an individual claims UCX is a week to which a disqualification for State unemployment compensation applies under the applicable State law, the individual shall not be entitled to a payment of UCX for that week. As provided in § 614.9(a), no disqualification shall apply in regard to separation from any Federal military agency.

(b) *Effect of "days lost".* The continuity of a period of an individual's Federal military service shall not be deemed to be interrupted by reason of any "days lost" in such period, but "days lost" shall not be counted for purposes of determining:

(1) Whether an individual has performed Federal military service;

(2) Whether an individual meets the wage and employment requirements of a State law; or

(3) The amount of an individual's Federal military wages.

(c) *Allocation of military accrued leave.* A State agency shall allocate the number of days of unused military leave

specified in an ex-servicemember's military document, for which a lump-sum payment has been made, in the same manner as similar payments by private employers to their employees are allocated under the applicable State law, except that the applicable Schedule of Remuneration instead of the lump-sum payment shall be used to determine the amount of the claimant's Federal military wages. In a State in which a private employer has an option as to the period to which such payments shall be allocated, such payments shall be allocated to the date of the individual's latest discharge or release from Federal military service. An allocation under this paragraph shall be disregarded in determining whether an individual has had a period of active service constituting Federal military service.

(d) *Education and training allowances.* An individual is not entitled to UCX under the Act or this Part for a period with respect to which the individual receives:

(1) A subsistence allowance for vocational rehabilitation training under chapter 31 of title 38 of the United States Code, 38 U.S.C. 1501 *et seq.*, or under Part VIII of Veterans Regulation Numbered 1(a); or

(2) An educational assistance allowance or special training allowance under chapter 35 of title 38 of the United States Code, 38 U.S.C. 1700 *et seq.*

§ 614.11 Overpayments; penalties for fraud.

(a) *False statements and representations.* Section 8507(a) of the Act provides that if a State agency, the Department, or a court of competent jurisdiction finds that an individual—

(1) Knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) As a result of that action has received an amount as UCX to which the individual was not entitled; the individual shall repay the amount to the State agency or the Department. Instead of requiring repayment, the State agency or the Department may recover the amount by deductions from UCX payable to the individual during the 2-year period after the date of the finding. A finding by a State agency or the Department may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under § 614.7.

(b) *Prosecution for fraud.* Section 1919 of title 18, United States Code, provides that whoever makes a false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase for himself or for any other individual any payment authorized to be paid under chapter 85 of title 5, United States Code, or under an agreement thereunder, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(c) *Absence of fraud.* If a State agency or court of competent jurisdiction finds that an individual has received a payment of UCX to which the individual was not entitled under the Act and this part, which was not due to a false statement or representation as provided in paragraph (a) or (b) of this section, the individual shall be liable to repay to the applicable State the total sum of the payment to which the individual was not entitled, and the State agency shall take all reasonable measures authorized under any State law or Federal law to recover for the account of the United States the total sum of the payment to which the individual was not entitled.

(d) *Recovery by offset.* (1) The State agency shall recover, insofar as is possible, the amount of any overpayment which is not repaid by the individual, by deductions from any UCX payable to the individual under the Act and this part, or from any unemployment compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(2) A State agency shall also recover, insofar as is possible, the amount of any overpayment of UCX made to the individual by another State by deductions from any UCX payable by the State agency to the individual under the Act and this part, or from any unemployment compensation payable to the individual under any Federal unemployment compensation law administered by the State agency, or from any assistance or allowance payable to the individual with respect to unemployment under any other Federal law administered by the State agency.

(3) Recoupment of fraudulent overpayments referred to in paragraph (a) of this section shall be limited to the 2-year period stated in that paragraph. Recoupment of fraudulent overpayments referred to in paragraph (b) of this section, and nonfraudulent overpayments referred to in paragraph (c) of this section shall be subject to any time limitation on recoupment provided for in the State law that applies to the case.

(e) *Debts due the United States.* UCX payable to an individual shall be applied by the State agency for the recovery by offset of any debt due to the United States from the individual, but shall not be applied or used by the State agency in any manner for the payment of any debt of the individual to any State or any other entity or person except pursuant to a court order for child support or alimony in accordance with the law of the State and Section 459 of the Social Security Act, 42 U.S.C. 659.

(f) *Application of State law.* (1) Except as indicated in paragraph (a) of this section, any provision of State law that may be applied for the recovery of overpayments or prosecution for fraud, and any provision of State law authorizing waiver of recovery of overpayments of unemployment compensation, shall be applicable to UCX.

(2) In the case of any finding of false statement of representation under the Act and paragraph (a) of this section, or prosecution for fraud under 18 U.S.C. 1919 or pursuant to paragraph (f)(1) of this section, the individual shall be disqualified or penalized in accordance with the provision of the applicable State law relating to fraud in connection with a claim for State unemployment compensation.

(g) *Final decision.* Recovery of any overpayment of UCX shall not be enforced by the State agency until the determination or redetermination establishing the overpayment has become final, or if appeal is taken from the determination or redetermination, until the decision after opportunity for a fair hearing has become final.

(h) *Procedural requirements.* (1) The provisions of paragraphs (c), (d), and (g) of § 614.6 shall apply to determinations and redeterminations made pursuant to this section.

(2) The provisions of § 614.7 shall apply to determinations and redeterminations made pursuant to this section.

(i) *Fraud detection and prevention.* Provisions in the procedures of each State with respect to detection and prevention of fraudulent overpayments of UCX shall be, as a minimum, commensurate with the procedures adopted by the State with respect to State unemployment compensation and consistent with the Secretary's "Standard for Fraud and Overpayment Detection" (*Employment Security Manual,* Part V, sections 7510 *et seq.*).

(j) *Recovered overpayments.* An amount repaid or recouped under this section shall be—

(1) Deposited in the fund from which payment was made, if the repayment was to a State agency; or

(2) Returned to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payment was made, if the repayment was to the Department.

§ 614.12 Schedules of remuneration.

(a) *Authority.* Section 8521(a)(2) of chapter 85, title 5 of the United States Code, 5 U.S.C. 8521(a)(2), requires the Secretary of Labor to issue from time to time, after consultation with the Secretary of Defense, a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the Armed Forces.

(b) *Elements of schedule.* A schedule reflects representative amounts for appropriate elements of the pay and allowances, whether in cash or kind, for each pay grade of members of the Armed Forces, with a statement of the effective date of the schedule. Benefit amounts for the UCX Program are computed on the basis of the Federal military wages for the pay grade of the individual at the time of the individual's latest discharge or release from Federal military service, as specified in the schedule applicable at the time the individual files his or her first claim for compensation for the benefit year.

(c) *Effective date.* Any new Schedule of Remuneration shall take effect beginning with the first week of the calendar quarter following the calendar quarter in which such schedule is issued, and shall remain applicable until a subsequent schedule becomes effective. Prior schedules shall continue to remain applicable for the periods they were in effect.

(d) *Publication.* Any new Schedule of Remuneration shall be issued by the Secretary of Labor to the State agencies and the Federal military agencies. Promptly after the issuance of a new Schedule of Remuneration it shall be published as a notice in the **Federal Register.**

§ 614.13 Inviolate rights to UCX.

Except as specifically provided in this Part, the rights of individuals to UCX shall be protected in the same manner and to the same extent as the rights of persons to State unemployment compensation are protected under the applicable State law. Such measures shall include protection of applicants for UCX from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to UCX, except as provided in § 614.11. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for, and receiving any right to UCX.

§ 614.14 Recordkeeping; disclosure of information.

(a) *Recordkeeping.* Each State agency will make and maintain records pertaining to the administration of the UCX Program as the Department requires, and will make all such records available for inspection, examination, and audit by such Federal officials or employees as the Department may designate or as may be required by law.

(b) *Disclosure of information.* Information in records maintained by a State agency in administering the UCX Program shall be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to State unemployment compensation and the entitlement of individuals thereto may be disclosed under the applicable State law. This provision on the confidentiality of information maintained in the administration of the UCX Program shall not apply, however, to the Department or for the purposes of §§ 614.11 or 614.14, or in the case of information, reports and studies required pursuant to §§ 614.18 or 614.26, or where the result would be inconsistent with the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act of 1974, 5 U.S.C. 552a, or regulations of the Department promulgated thereunder.

§ 614.15 Payments to States.

(a) *State entitlement.* Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal military wages, an amount bearing the same ratio to the total amount of compensation paid to such individual as the amount of the individual's Federal military wages in the individual's base period bears to the total amount of the individual's base period wages.

(b) *Payment.* Each State shall be paid, either in advance or by way of reimbursement, as may be determined by the Department, the sum that the Department estimates the State is entitled to receive under the Act and this part for each calendar month. The sum shall be reduced or increased by the amount which the Department finds that its estimate for an earlier calendar month was greater or less than the sum which should have been paid to the State. An estimate may be made on the basis of a statistical, sampling, or other method agreed on by the Department and the State agency.

(c) *Certification by the Department.* The Department, from time to time, shall certify to the Secretary of the Treasury the sum payable to each State under this section. The Secretary of the Treasury, before audit or settlement by the General Accounting Office, shall pay the State in accordance with the certification from the funds for carrying out the purposes of the Act and this part.

(d) *Use of money.* Money paid a State under the Act and this Part may be used solely for the purposes for which it is paid. Money so paid which is not used solely for these purposes shall be returned, at the time specified by the Agreement, to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payments to States under the Act and this Part may be made.

§ 614.16 Public access to Agreements.

The State agency of a State will make available to any individual or organization a true copy of the Agreement with the State for inspection and copying. Copies of an Agreement may be furnished on request to any individual or organization upon payment of the same charges, if any, as apply to the furnishing of copies of other records of the State agency.

§ 614.17 Administration in absence of an Agreement.

(a) *Administering program.* The Department shall administer the UCX Program through personnel of the Department or through other arrangements under procedures prescribed by the Department, in the case of any State which does not have an Agreement with the Secretary as provided for in 5 U.S.C. 8502. The procedures prescribed by the Department under this section shall be consistent with the Act and this part.

(b) *Applicable State law.* On the filing by an individual of a claim for UCX in accordance with arrangements under this section, UCX shall be paid to the individual, if eligible, in the same amount, on the same terms, and subject to the same conditions as would be paid to the individual under the applicable State law if the individual's Federal military service and Federal military wages had been included as employment and wages under the State law. Any such claims shall include the individual's Federal military service and Federal military wages, combined with any service and wages covered by State law. However, if the individual, without regard to his or her Federal military

service and Federal military wages, has employment or wages sufficient to qualify for compensation during the benefit year under that State law, then payments of UCX under this section may be made only on the basis of the individual's Federal military service and Federal military wages.

(c) *Fair hearing.* An individual whose claim for UCX is denied under this section is entitled to a fair hearing under rules of procedures prescribed by the Department. A final determination by the Department with respect to entitlement to UCX under this section is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act, 42 U.S.C. 405(g).

§ 614.18 Information, reports, and studies.

State agencies shall furnish to the Department such information and reports and conduct such studies as the Department determines are necessary or appropriate for carrying out the purposes of the UCX Program.

Subpart C—Responsibilities of Federal Military Agencies and State Agencies

§ 614.20 Information to ex-servicemembers.

At the time of discharge or release from Federal military service, each Federal military agency shall furnish to each ex-servicemember information explaining rights and responsibilities under the UCX Program and 18 U.S.C. 1919, and military documents necessary for filing claims for UCX.

§ 614.21 Findings of Federal military agency.

(a) *Findings in military documents.* Information contained in a military document furnished to an ex-service-member shall constitute findings to which § 614.25 applies as to:

(1) Whether an individual has performed Federal military service, or whether paragraph (b) of this section or §§ 614.23 and 614.24 are applicable;

(2) The beginning and ending dates of the period of military service and "days lost" during such period;

(3) The type of discharge or release terminating the period of military service; and

(4) The individual's pay grade at the time of discharge or release from military service.

(b) *Bad Conduct and Dishonorable discharges.* A military document which shows that an individual received a bad conduct or dishonorable discharge shall be a finding to which § 614.25 applies, that the individual did not perform Federal military service.

§ 614.22 Correcting Federal findings.

(a) *Request for correction.* (1) If an individual believes that a finding specified in § 614.21 is incorrect or that information as to any finding has been omitted from a military document, the individual may request the issuing Federal military agency to correct the military document. A request for correction may be made through the State agency, which shall forward such request and any supporting information submitted by the individual to the Federal military agency.

(2) The Federal military agency shall promptly forward to the individual or State agency making the request the corrected military document. Information contained in a corrected military document issued pursuant to such a request shall constitute the findings of the Federal military agency under § 614.21.

(3) If a determination or redetermination based on a finding as to which correction is sought has been issued by a State agency before a request for correction under this paragraph is made, the individual who requested such correction shall file a request for redetermination or appeal from such determination or redetermination with the State agency, and shall inform the State agency of the request for correction.

(4) An individual who files a request for correction of findings under this paragraph shall promptly notify the State agency of the action of the Federal military agency on such request.

(b) *State agency procedure when request made.* (1) If a determination of entitlement has not been made when an individual notifies a State agency of a request for correction under paragraph (a) of this section, the State agency may postpone such determination until the individual has notified the State agency of the action of the Federal military agency on the request.

(2) If a determination of entitlement has been made when an individual notifies a State agency that a request for correction of Federal findings has been made, or if an individual notifies a State agency prior to a determination of entitlement that a request has been made but such determination is not postponed by the State agency, the individual may file a request for redetermination or appeal in accordance with the applicable State law.

(3) Except as provided in paragraph (c) of this section, no redetermination shall be made or hearing scheduled on an appeal until the individual has notified the State agency of the action of the Federal military agency on a request for correction under paragraph (a) of this section.

(c) *State agency procedure when request answered.* On receipt of notice of the action of a Federal military agency on a request for correction of its findings, a State agency shall:

(1) Make a timely determination or redetermination of the individual's entitlement, or

(2) Promptly schedule a hearing on the individual's appeal.

If such notice is not received by a State agency within one year of the date on which an individual first filed a claim, or such notice is not given promptly by an individual, a State agency without further postponement may make such determination or redetermination or schedule such hearing.

(d) *Findings corrected without request.* Information as to any finding specified in § 614.21 contained in a corrected military document issued by a Federal military agency on its own motion shall constitute the findings of such agency under § 614.21, if notice thereof is received by a State agency before the period for redetermination or appeal has expired under the State law. On timely receipt of such notice a State agency shall take appropriate action under the applicable State law to give effect to the corrected findings.

§ 614.23 Findings of Veterans Administration.

(a) *Request for findings.* If a military document shows that an individual's discharge or release from Federal military service was under conditions other than honorable, or that the period of such service was less than 365 days the Veterans Administration on request of a State agency shall decide whether the individual was discharged or released—

(1) Under conditions other than dishonorable, or

(2) In the case of an officer, by reason of resignation for the good of the service, or

(3) By reason of an actual service-incurred disability.

(b) *Qualified or conditional separations.* On request of a State agency, the Veterans Administration also shall decide whether an individual's discharge or release from Federal military service was qualified or conditional.

(c) *Finality of findings.* Any decision by the Veterans Administration under this section shall constitute a finding to which § 614.25 applies.

(d) *Promptness of decision.* The Veterans Administration shall promptly

act on and reply to any request received under this section.

§ 614.24 Correcting Veterans Administration findings.

(a) *Request for correction.* (1) If an individual believes that a finding under § 614.23 is incorrect, the individual may request reconsideration of or appeal such finding under the procedures of the Veterans Administration. The decision of the Veterans Administration on any such request shall constitute the findings of the Veterans Administration under § 614.23.

(2) Any request for correction must be filed before the period for redetermination or appeal of the UCX claim has expired under the applicable State law.

(3) A request for correction may be made through the State agency, which shall forward such request and any supporting information submitted by the individual to the Veterans Administration. If a request for correction is not made through the State agency, the individual shall notify the State agency promptly that a request for correction has been filed with the Veterans Administration.

(4) The individual making a request for correction under this section shall notify the State agency promptly of the action of the Veterans Administration on the request, unless the State agency is notified directly by the Veterans Administration.

(b) *State agency procedure when request made.* (1) If a State agency has not made a determination of entitlement when an individual requests correction of a Veterans Administration finding under paragraph (a) of this section, the State agency shall postpone such determination until it is notified of the action of the Veterans Administration on the request.

(2) If a determination of entitlement has been made when an individual requests correction of a Veterans Administration finding under paragraph (a) of this section, the individual may file with the State agency a request for redetermination or an appeal in accordance with the applicable State law. No redetermination shall be made, or hearing scheduled on an appeal, until the State agency receives notice of the action of the Veterans Administration on such request.

(c) *State agency procedure when request answered.* On receipt of the action of the Veterans Administration, a State agency shall:

(1) Make a timely determination or redetermination of the individual's entitlement; or

(2) Promptly schedule a hearing on the individual's appeal.

(d) *Promptness of correction.* The Veterans Administration shall promptly act on and reply to any request received under this section.

§ 614.25 Finality of findings.

The findings of a Federal military agency referred to in §§ 614.21 and 614.22, the findings of the Veterans Administration referred to in §§ 614.23 and 614.24, and the Schedules of Remuneration issued by the Department pursuant to the Act and § 614.12, shall be final and conclusive for all purposes of the UCX Program, including appeal and review pursuant to § 614.7 or § 614.17.

§ 614.26 Furnishing other information.

(a) *Additional information.* In addition to the information required by §§ 614.21, 614.22, 614,23, and 614.24, a Federal military agency or the Veterans Administration shall furnish to a State agency or the Department, within the time requested, any information which it is not otherwise prohibited from releasing by law, which the Department determines is necessary for the administration of the UCX Program.

(b) *Reports.* Federal military agencies shall furnish to the Department or State agencies such reports containing such information as the Department determines are necessary or appropriate for carrying out the purposes of the UCX Program.

§ 614.27 Liaison with Department.

To facilitate the Department's administration of the UCX Program, each Federal military agency and the Veterans Administration shall designate one or more of its officials to be the liaison with the Department. Each Federal military agency will inform the Department of its designation(s) and of any change in a designation.

[FR Doc. 82-32920 Filed 12-2-82; 8:45am]

BILLING CODE 4510-30-M

federal register

Friday
December 3, 1982

Part VII

Department of Labor

Employment and Training Administration

General Administration Letter; Federal Supplemental Compensation Implementation Instructions

DEPARTMENT OF LABOR

Employment and Training Administration

General Administration Letter; Federal Supplemental Compensation Implementation Instructions

The Federal Supplemental Compensation Act of 1982 (Subtitle A of Title VI of Pub. L. 97-248) established the Federal Supplemental Compensation Program. The Department of Labor issued implementing instructions to all State employment security agencies with General Administration Letter Number 2-83 which is published below.

Dated: November 26, 1982.

Albert Angrisani,

Assistant Seceretary of Labor.

Classification: UI
Correspondence symbol: TEUMI
November 3, 1982

Subject: Federal Supplemental Compensation.

Directive: General Administration Letter No. 2-83

To: All State Employment Security Agencies

From: Royal S. Dellinger, *Acting Administrator for Regional Management*

Expiration Date: November 30, 1983

1. *Purpose.* To advise SESAs of the provisions of the "Federal Supplemental Compensation Act of 1982" and to provide instructions for implementing the legislation to ensure the timely and accurate payment of benefits.

2. *References.* Pub. L. 97-248: UIPL 14-81 and Changes; FL 9-82; RAL 2-82; The Federal-State Extended Unemployment Compensation Act of 1970, as amended, 20 CFR Part 615; GALs 21-81 and 22-81.

3. *Background.* Pub. L. 97-248 created the Federal Supplemental Compensation (FSC) program. The FSC program provides six or eight weeks of benefits (depending on the State's insured unemployment rate), or ten weeks of benefits in States if an extended benefit period was in effect for any week beginning on or after June 1, 1982. FSC benefits are payable to individuals who have exhausted their rights to regular benefits and who have no rights to regular extended, or additional benefits under any State law. Except where inconsistent with the FSC law (as specifically noted in the attached instructions), the terms and conditions for payment of extended benefits apply to claims for FSC.

The FSC program is administered through a voluntary agreement between a State and the Secretary of Labor. Under the law, FSC benefits become payable in a State the later of: (1) The week following the week the agreement is signed, or (2) the week beginning September 12, 1982. The program terminates at the end of the last week which begins on or before March 31, 1983.

4. *Policy.* It is imperative that this program be implemented in a balanced and effective manner. This will require cooperation and coordination between the Unemployment Insurance Service and the Employment Service in each SESA. On the one hand, payment of benefits should be timely; on the other eligibility of beneficiaries should be carefully reviewed. Integrity in program implementation should be a prime goal. SESAs are to make every effort to avoid overpayment to FSC claimants and, in the event overpayment is made, to effect timely recovery.

The payment of FSC will be limited to individuals who engage in a systematic and sustained effort to find work, and who are willing to apply for and accept any work within their capabilities (if their reemployment prospects are not good) by not limiting the employment they will search for and accept to the individuals' higher skills or previous rates of pay or customary occupations. They are to be required to provide tangible evidence of their efforts to find work each week.

The Employment Service in each SESA must establish effective procedures to improve the rate of placement for FSC claimants and to facilitate the prompt identification and exchange of eligibility information for the adjudication of FSC claims. All FSC claimants must be fully registered and in the active file; all claimants, whose job prospects are determined to be "not good", must be provided at least one reinterview for job placement assistance early in the FSC eligibility period.

In the case of a violation of the law and these instructions by a SESA or by any appellate authority in paying FSC, the State is responsible for making the United States whole, under the "Lopez Rule" discussed in the attachment.

5. *Implementation Instructions.* Federal Supplemental Compensation Implementation Instructions are attached. Instructions in the form of regulations will not be issued. Therefore, this GAL and the attached Implementation Instructions will be published in the **Federal Register** and be binding on the States.

6. *Action Required.* Administrators should provide above information and instructions to appropriate staff.

7. *Inquiries.* Direct questions to the appropriate Regional Office.

8. *Attachment.* Federal Supplemental Compensation Implementation Instructions.

Attachment to General Administration Letter No. 2-83

Federal Supplemental Compensation Implementing Instructions

(Pub. L. 97-248 Created The Federal Supplemental Compensation (FSC) Program)

I. Section-by-Section Explanation of Pub. L. 97-248

A. Section 601—Title of Program

This subtitle (of Pub. L. 97-248) may be cited as the "FSC Act of 1982," and shall be know as The FSC Program.

B. Section 602—Federal-State Agreements

1. *Agreements.* Subsection (a) provides for administration of the FSC Program through an agreement between the Secretary of Labor and the State. The agreement may be terminated by the State on 30 days' written notice to the Secretary. The agreement also provides for termination by the Secretary in prescribed circumstances, and provides for amendment by mutual consent.

2. *Eligible Individuals.* Subsection (b) provides for payment of FSC benefits to individuals who:

a. Have exhausted all rights to regular compensation under the State law,

b. Have no rights to compensation (including regular and extended compensation) for a week under such law or any other State unemployment compensation law or to compensation under any other Federal law,

c. Are not paid or entitled to be paid any additional compensation under any such State or Federal law, and

d. Are not receiving compensation for such week under the unemployment compensation law of Canada.

FSC benefits are payable for any week which begins in an individual's period of eligibility (as defined in Section 605); however, no FSC may be paid to an individual for any week of unemployment which begins more than two years after the end of the individual's most recent benefit year with respect to which such individual is deemed an exhaustee.

3. *Exhaustees of Regular Benefits.* For FSC, subsection (c) defines an exhaustee of regular benefits as one:

a. to whom no regular benefits may be paid because the individual has received all regular compensation available based on employment and/or wages during the base period, or

b. whose rights to regular benefits were terminated because of the expiration of the benefit year with respect to which such rights existed.

4. *Weekly Amount of FSC Payable; Applicability of EB Provisions.* Subsection (d) provides that the weekly amount of FSC payable for a week of total unemployment will be equal to the amount of regular compensation (including dependents' allowances) payable during the most recent benefit year. Except where inconsistent with the FSC law (as set out in these instructions), the terms and conditions for payment of extended compensation apply to FSC claims.

5. *Maximum FSC Payable.* Subsection (e) requires the SESA to establish an FSC account for each individual eligible for FSC. The amount payable as established in each individual account is the lesser of:

a. 50 percent of the total amount of regular compensation (including dependents' allowances) payable with respect to the most recent benefit year, or

b. Six times the average weekly benefit amount (as determined for extended benefits),

except as provided below.

If an extended benefit period was in effect in a State on or after June 1, 1982, and before the week for which the individual claims FSC, the maximum amount of FSC payable is ten times the individual's average weekly benefit amount (or a above, if less). For States not meeting the extended benefit period criteria, a maximum FSC amount of eight times the weekly benefit amount becomes payable for weeks during a high unemployment period. High unemployment period is defined as a period:

i. Which begins the third week after the first week for which the extended benefit trigger rate equals or exceeds 3.5 percent, and

ii. Which ends the third week after the extended benefit trigger rate drops below 3.5 percent.

A high unemployment period must last at least four weeks. There is no such minimum period for the six-week extension of benefits, and once a State is in a ten-week period, that maximum will continue for the duration of the FSC Program. A State's IUR for claims filed as of the week ending August 28, 1982, will determine whether a high unemployment period is in existence for the week beginning September 12, 1982. The critical fact is that a State may fluctuate between a six-week and eight-week program, but once in a ten-week program the State will remain on ten weeks for the duration of the program.

6. *Effective Dates.* Subsection (f) provides that FSC benefits become payable the later of:

a. The week following the week in which an agreement is entered into, or

b. The week beginning September 12, 1982.

The program terminates March 31, 1983, and no FSC benefits can be paid for any week of unemployment beginning after that date.

C. Section 603—Payments to the States

1. *Amounts.* Subsection (a) authorizes payments to the State, which has entered into an agreement, equal to 100 percent of the amount of FSC payments made by the State in accordance with the Act and these instructions, as determined by the Secretary.

2. *UCFE-UCX.* Subsection (b) authorizes financing of FSC payments for UCFE and UCX claimants from the funds provided for these programs.

3. *Method of Payment.* Subsection (c) provides for payments to the States either in advance or by reimbursement in amounts the Secretary estimates for each calendar month. Estimates may be made based on statistical sampling, or other agreed upon methods.

D. Section 604—Financing Provision

1. *EB Account.* Subsection (a) requires the use of funds in the EUCA Account in the Unemployment Trust Fund for payments to States for the costs of FSC benefits. The Secretary of Labor will, from time to time, certify to the Secretary of the Treasury the amounts to be paid to States, and the Secretary of the Treasury will make such payments prior to audit or settlement by the General Accounting Office.

2. *Authorization.* Subsection (b) authorizes Congress to appropriate funds to the EB account to cover costs of FSC benefits. Subsection (c) authorizes Congress to appropriate funds from general revenues to the employment security administration account to finance costs of FSC administration.

E. Section 605—Definitions

1. *Terms.* Under Subsection (1), the following terms have the same meaning as those applied to claims for extended benefits.

a. Compensation;
b. Regular Compensation;
c. Extended Compensation;
d. Base Period;
e. Benefit Year;
f. State;
g. State Agency;
h. State Law;
i. Week.

The meaning assigned to these terms in the extended benefit regulations (20 CFR Part 615) shall apply to the FSC program.

2. *Period of Eligibility.* Subsection (2) limits eligibility for FSC benefits by specifying that an individual will not have a period of eligibility for FSC benefits unless:

a. the individual's benefit year ends on or after June 1, 1982, or

b. the individual was entitled to extended benefits for a week which begins on or after June 1, 1982.

F. Section 606. Fraud and Overpayments

1. *Fraud Penalties.* Subsection (a) specifies that if an individual knowingly has made or caused to be made by another, a false statement or misrepresentation or nondisclosure of a material fact and as a result obtains any amount of FSC to which he/she was not entitled, the individual:

a. Shall be ineligible for further FSC benefits, as provided in the provisions of the applicable State law relating to fraudulent claims, and

b. Shall be subject to prosecution under Section 1001 of Title 18, United States Code.

2. *Recovery of Overpayments.* Subsection (a)(2)(A) authorizes the States to require repayment of FSC overpayments, except that the State agency may waive repayment if:

a. The individual was without fault in receiving the payment, and

b. Repayment would be contrary to equity and good conscience.

The criteria for the above tests of waiver of overpayments are detailed in the instructions under recovery of overpayments.

Subsection (a)(2)(B) authorizes recovery of overpayments by offset against any FSC benefits payable or against any compensation or amounts in the nature of compensation payable under any other Federal unemployment compensation law (UCFE or UCX) or similar Federal law (TRA, DUA, REPP, AEPP, etc.) administered by the State agency. The period during which FSC overpayments may be recovered by offset is limited to three years after the date the overpayment was received, and recoupment is limited to 50 percent of the individual's weekly benefit payment from which the deduction is made.

3. *Fair Hearing.* Subsection (a)(2)(C) prohibits recovery of the overpayment until an appealable determination has been issued and has become final.

Subsection (a)(3) provides that reconsideration and appeal rights from determinations made under the State law also apply to fraud and overpayment determinations. It should

be especially noted that such reconsideration and appeal rights apply to all determinations of entitlement to or denial of rights to FSC.

II. Procedures for Implementing FSC

A. Definitions

1. "Act" means the "Federal Supplemental Compensation Act of 1982" (Subtitle A of Title VI of Pub. L. 97-248), approved September 3, 1982.

2. "Agreement" means the agreement entered into pursuant to the Act between a State and the Secretary of Labor, under which the State agency makes payments of Federal Supplemental Compensation in accordance with the Act as interpreted by the Secretary or the Department of Labor as set forth in these instructions or other instructions issued by the Department.

3. "Period of Eligibility" means, with respect to any individual, the period beginning with the week following the week in which the State entered into an agreement to pay Federal Supplemental Compensation, or the period beginning on or after September 12, 1982, whichever is the later; and ending with the last week which begins before April 1, 1983; except that an individual shall not have a period of eligibility unless such individual's benefit year ends on or after June 1, 1982, of such individual was entitled to extended benefits for a week which begins on or after June 1, 1982.

4. "Federal Supplemental Compensation" means the compensation payable under the Federal Supplemental Compensation Act of 1982, and which is referred to as FSC.

5. Terms which have the same meanings as those defined in the Extended Benefit regulations 20 CFR Part 615:

a. "Base Period" means, with respect to an individual, the base period as determined under the applicable State law for the individual's, benefit year.

b. "Benefit Year" means, with respect to an individual, the benefit year as defined in the applicable State law.

c. "Applicable Benefit Year" means, with respect to an individual, the current benefit year if, at the time an initial claim for FSC is filed, the individual has an unexpired benefit year only in the State in which such claim is filed, or, in any other case, the individual's most recent benefit year. For this purpose, the most recent benefit year, for an individual who has unexpired benefit years in more than one State when an initial claim for FSC is filed, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which the latest continued claim for regular compensation was filed.

d. "Compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular compensation, additional compensation and extended compensation as defined in this section.

e. "Regular Compensation" means compensation payable to an individual under any State law, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include extended compensation or additional compensation.

f. "Extended Compensation" means the extended unemployment compensation payable to an individual for weeks of unemployment which begin in an extended benefit period, under those provisions of a State law which satisfy the requirements of the Federal State Extended Umployment Compensation Act of 1970, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include regular compensation or additional compensation. Extended compensation is referred to as Extended Benefits of EB.

g. "Additional Compensation" means compensation totally financed by a State under its law by reason of conditions of high unemployment or by reason of other special factors, and when so payable includes compensation payable pursuant to 5 USC Chapter 85.

h. "Secretary" means the Secretary of Labor of the United States.

i. "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

j. "State Law" means the unemployment compensation law of a State approved by the Secretary under Section 3304(a) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)).

k. "Applicable State Law" means the State law of the State which is the applicable State for an individual.

l. "Week" means, for purposes of eligibility for and payment of FSC, a week as defined in the applicable State law, and, for purposes of computation of FSC "on" and "off" indicators and insured employment rates, and the beginning and ending of high unemployment periods, a calendar week.

m. "Week of Unemployment" means a week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to the FSC program, as if the individual filing a claim for FSC benefits were filing a claim for regular compensation.

n. "Insured Unemployment Rate" means the rate of insured unemployment for a week determined in the same manner as such rate is determined for the purposes of Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970.

B. *Beginning and Ending of the FSC Program.* For States which enter into a signed agreement by September 11, 1982, an FSC period of eligibility begins September 12, 1982. The earliest compensable week for which FSC will be payable is the week ending September 18, 1982.

For States which enter into agreements after September 11, 1982, the first compensable week will be the first full week beginning on or after the Sunday which follows the date the agreement was signed.

The FSC program is scheduled to end on March 31, 1983, and no FSC will be paid for any week of unemployment which begins after that date. Accordingly, in the calendar week States, the last compensable week will be the week ending April 2, 1983. In flexible week States, no FSC benefits will be paid for weeks of unemployment *beginning* after March 31, 1983.

States may terminate the FSC agreement at any time. The FSC period will end 30 days from the date the State notifies the Secretary of its election to terminate the FSC program. No FSC benefits will be payable for weeks which begin after the date the agreement is terminated. The agreement may also be terminated by the Secretary, as provided in the agreement.

C. Eligibility Requirements for Federal Supplemental Compensation

1. *Basic Eligibility Requirements.* To be eligible for a week of Federal Supplemental Compensation, an individual must:

a. Have exhausted all rights to regular compensation under the applicable State law,

b. Have no rights to compensation (including regular and extended compensation) with respect to that week under such law or any other State unemployment compensation law, the Railroad Unemployment Insurance Act, or under any other Federal law, administered by a State agency, and is not paid or entitled to be paid any additional compensation under any such State or Federal law,

c. Have a benefit year which ends on or after June 1, 1982, or be entitled to extended benefits for a week which begins on or after June 1, 1982,

d. Have at least 20 weeks of work during the base period or earned its equivalent under State law (1½ times the high quarter wage or 40 times the weekly benefit amount) during that period (see UIPL No. 1–82),

e. have satisfied the requirement of Section 202(a)(4) of the Federal-State Extended Unemployment Compensation Act of 1970, which provides that no disqualification which has been imposed under State law for "voluntary leaving, discharge for misconduct, or refusing suitable employment" will be deemed terminated for the purposes of paying EB (and now FSC) unless the State law requires employment to terminate such disqualification (see UIPL No. 14–81),

f. have been actively seeking work during the week he/she is claiming FSC and provide to the State agency tangible evidence of a systematic and sustained effort to obtain work (see UIPL No. 14–81, GAL 21–81 and 22–81),

g. have a benefit year which ended *not* more than two years prior to the beginning date of the week he/she is claiming FSC.

h. have satisfied any EB disqualification under Section 202(a)(3) of the EUCA for failing to actively engage in seeking work or failing to apply for or accept any offer of suitable work by earning not less than four times his/her WBA during at least four weeks following the week he/she was disqualified.

2. *Determining Exhaustees.* For an individual to be deemed to have exhausted benefit rights to regular compensation, with respect to any week of unemployment in the individual's eligibility period, the individual must have received all regular compensation payable based on employment and/or wages during the applicable base period, or eligibility for regular compensation must have terminated because the benefit year expired, and the individual has insufficient wages, or employment, or both, on the basis of which a subsequent benefit year could be established in any State that includes such week.

To determine that an individual has *no rights* to regular compensation or extended compensation, the factors are the same as those used for determining an exhaustee for EB, as specified in 20 CFR Part 615. Specifically, an individual is considered to have no rights to benefits if, during a week in his/her eligibility period, the individual received all benefits available under the applicable State law or any other State law (including UCFE and UCX benefits under 4 U.S.C. Chapter 85) after some or all wage credits are cancelled, or his/her entitlement to benefits was otherwise totally or partially reduced.

An individual is an exhaustee with respect to an expired benefit year which ends on or after June 1, 1982, when he/she is precluded from establishing a second (new) benefit year by reason of the requalifying provision in State law which requires earnings after the beginning of the first benefit year or he/she establishes a second benefit year but is suspended indefinitely until he/she has met the requalifying earnings requirements. The individual with respect to the expired benefit year when he/she satisfies the requalifying earnings requirement and compensation is payable in the new benefit year.

An individual shall be treated as having no rights to benefits even though as a result of a pending appeal with respect to wages or employment or both which were not included in his/her original monetary determination he/she may subsequently be determined to be entitled to more or less compensation. This also applies to an individual who may be denied benefits for certain weeks during the year by reason of a State law seasonal provision but has entitlement to future weeks in the off season.

For an individual who has established a benefit year but during such year his/her wage credits were cancelled or the right to regular, additional, or extended compensation was *totally* reduced as the result of a disqualification, he/she too is considered to have no benefit rights to such compensation and is an exhaustee for the purposes of FSC.

In those States which pay additional benefits (AB), it will be necessary to determine if an individual has been paid or is entitled to be paid additional compensation before FSC can be paid. Certain State laws provide for the suspension of the payment of additional benefits when a federally financed program of benefits is payable. In these cases, individuals may be paid FSC in lieu of AB. However, under no circumstances shall FSC and additional benefits (or any other unemployment benefits) be paid for the same week.

Under Section 202(c) of the Federal-State Extended Unemployment Compensation Act of 1970, an individual filing for Extended Benefits under the Interstate Benefit Payment Plan from a State which is not in an EB period is eligible for the first two weeks of EB filed from that State and is disqualified for any other benefits in his/her EB account until such time as his/her agent State begins an EB period or until such time as he/she files from a State which is in an extended benefit period. Individuals who were denied extended benefits under this provision shall be deemed to have no benefit rights to EB and will be eligible for FSC.

Liable State interstate claim units need to monitor the extended benefit trigger status of agent States and be prepared to redetermine FSC claimants' eligibility for extended benefits when an EB period begins in a given agent State.

3. *Determination of "Period of Eligibility".* Under Section 605(2) of the Act, an individual may establish a "period of eligibility" for FSC for any week which began on or after September 12, 1982, and which begins before April 1, 1983, provided:

a. His/her benefit year ended on or after June 1, 1982, or

b. He/she was entitled to extended benefits for a week which began or or after June 1, 1982.

This means that State agencies in determining whether an individual can qualify for a period of eligibility for FSC, must first look at the individual's benefit year ending date. If that BYE date is on or after June 1, 1982, the individual qualifies for a period of eligibility for FSC and can be paid FSC if all the other eligibility requirements are met.

If an individual has a benefit year ending (BYE) date prior to June 1, 1982, State agencies must ascertain if the individual was entitled to a week of EB which began on or after June 1, 1982. If such an individual was paid a week of EB or *could* have been paid a week of EB which began after June 1, 1982, but was not otherwise eligible, he/she is deemed to have satisfied the requirement of Section 605(2)(B) of the Act and qualifies for a period of eligibility.

For example, an individual's benefit year ended prior to June 1, 1982. The individual is considered to have entitlement to a week of EB for a week which began on or after June 1, 1982, provided the individual's period of eligibility for EB had not ended prior to such week (and he/she had not exhausted EB entitlement prior to such week), even though he/she had not claimed or was not paid EB for such week.

Similarly, an individual was denied benefits during an EB period for refusal of suitable work. He/she then returned to work after the week beginning on or after June 1, 1982, after which, the State triggered "off" extended benefits. Having had remaining EB entitlement on or after June 1, 1982, which could have been paid but for the disqualification, the individual could qualify for a period of eligibility for FSC. Eligibility for FSC then depends on whether he/she purged

the special disqualification required by Section 202(a)(3)(B) of EUCA.

An interstate claimant filing from a State not in an EB period who was denied benefits after claiming two weeks under the provisions of Section 202(c) of EUCA is considered to have EB entitlement for a week beginning on or after June 1, 1982, provided the individual's period of eligibility for EB had not ended prior to such week, even though he/she was precluded from receiving benefits for such week by reason of this denial. Accordingly, he/she qualifies for a period of eligibility for FSC and may be paid FSC if otherwise eligible.

4. *20-Weeks of Work Requirement.* The 20 weeks of full-time work or equivalent qualifying requirement for the payment of extended benefits under Section 202(a)(5) of EUCA shall be applied with respect to any individual claiming a week of FSC beginning on or after September 12, 1982, even though this requirement will only apply to EB claimants who file claims for weeks beginning after September 25, 1982. State interpretations on full-time work weeks will apply as in the case of EB. See UIPL No. 1-82.

States which have enacted an equivalent test under their UI laws to the 20 weeks of work (1½ times the high quarter or 40 times the weekly benefit amount) must apply the same equivalency test to an individual claiming FSC. For those States in which no 20 weeks of work or equivalent requirement is provided under State law, agencies should develop a method of this test which will effectively carry out the intent of the law, which is administratively feasible, and which is consistent with UIPL No. 14-81 and Changes.

States must determine a claimant's eligibility under the 20 weeks of work requirement as part of the initial claims process.

5. *Disqualifications Based on Separation from Work.* Section 202(a)(4) of EUCA requires State laws to provide for the termination of disqualifications for voluntary leaving, discharge for misconduct or refusal of suitable work only with subsequent employment before an individual can be eligible for extended benefits. This same provision applies to the payment of FSC. Therefore, any individual who was denied EB because his/her disqualification was terminated under State law without the required period of employment would similarly be ineligible for FSC. See UIPL 14-81.

States which have not paid extended benefits and applied the denial provisions of Section 202(a)(4) EUCA must review any nonmonetary determination issued to potentially eligible FSC claimants and determine whether they are qualified for FSC under this provision. Employment for the purpose of terminating a disqualification means service performed in an employer-employee relationship as provided in the State law which would requalify an individual on EB.

In no case may a period of reemployment be used to terminate a disqualification for the purpose of paying FSC, unless the State law specifically requires new work to purge this denial of benefits. See UIPL No. 14-81.

6. *Actively Seeking Work Requirement.* The extended benefit requirement to actively seek work under Section 202(a)(3)(A)(ii), EUCA, is also a condition of eligibility for FSC. In accordance with the provisions of 202(a)(3)(E) of EUCA, and individual will be treated as actively engaged in seeking work if:

a. The individual has engaged in a systematic and sustained effort to obtain work during such week, and

b. The individual provides tangible evidence to the State agency that he/she has engaged in such an effort during such week.

Any disqualification of an individual for failure to actively seek work during a week of FSC will result in a denial of benefits with respect to the week in which such failure occurs and will not end until such individual purges the special disqualification in accordance with Section 202(a)(5)(B) of the EUCA. The total amount required to be earned to purge this disqualification cannot be less than four times the individual's weekly benefit amount. See UIPL No. 14-81.

7. *Suitable Work Provisions.* Provisions required by Section 202(a)(3)(B), EUCA, will be applied to any individual claiming a week of FSC who fails to apply for or accept any offer of suitable work as defined in Section 202(a)(3)(C), EUCA.

The term "suitable work" means, with respect to any individual claiming FSC, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his/her customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the State law applicable to entitlement for regular benefits. See UIPL No. 14-81, and Changes.

Paralleling the provisions of Section 202(a)(3)(D), EUCA, FSC shall not be denied under provisions required by Section 202(a)(3)(B), EUCA, to any individual for any week by reason of a failure to accept an offer of, or to apply for, suitable work:

a. If the gross average weekly remuneration payable to such individual for the work does not exceed the sum of:

(i) The individual's weekly benefit amount of FSC, Plus

(ii) The amount (if any) of supplemental unemployment benefits (as defined is Section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week,

b. If the position was not offered to such individual in writing *or* was not listed with the State employment service.

c. If such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions are not inconsistent with the provisions of subparagraphs (C) and (D) of Section 202(a)(3), EUCA, or

d. If the position pays wages less than the higher of:

(i) The minimum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or

(ii) Any applicable State or local minimum wage.

Detailed guidance on the appropriate application of the active search for work and refusal of suitable work provisions of Section 202(a) (3), EUCA, are in GALs 21-81 and 22-81 and UIPL No. 14.81 and Changes.

States will use the appropriate sections of State law when issuing determinations for FSC which are required by the corresponding provisions of EUCA but such determinations shall not be inconsistent with Federal law regardless of the particular provisions of State law.

D. Weekly Benefit Amount

1. *Total Unemployment.* The FSC weekly benefit amount payable to an individual for a week of total unemployment will be equal to the individual's weekly benefit amount for regular compensation (including dependents' allowances) payable during such individual's most recent benefit year. If an individual had more than one weekly benefit amount of regular compensation, the SESA will determine the FSC weekly benefit amount in the same manner that it would determine

the weekly extended benefit amount, as prescribed in 20 CFR 615.5.

2. *Partial and Part-Total Unemployment.* The weekly amount of FSC payable for week of partial or part-total unemployment will be determined in accordance with the State law applicable to such a week of unemployment.

E. Maxmum FSC Benefits Payable

1. *Accounts.* The SESA will establish a separate FSC account for each eligible individual. The amount of FSC payable in the individual's account will be the lesser of:

a. 50 percent of the total entitlement to regular benefits (including dependents' allowances) payable to the individual with respect to the most recent benefit year, from which the individual received benefits, or

b. The maximum FSC benefits payable in the State.

2. *Maximum FSC Payable in a State*—a. *Six weeks.* The base level of FSC payable is up to six weeks of FSC benefits regardless of the State's IUR. A State may pay up to a maximum of 8 or 10 weeks of FSC depending on its insured unemployment rate or EB status, as specified below.

b. *Ten weeks.* The Act provides that States that were in an extended benefit period on or after June 1, 1982, will pay up to a maximum of ten weeks of FSC. Once a State is in a ten-week extension period, it remains so for the life of the program. Thus, even though a State is not currently in an extended benefit period, it will continue to pay the maximum of ten weeks of FSC. Similarly, States which were not in an EB period on June 1, 1982, but commence the payment of EB at a later date will be considered to have paid EB for weeks after June 1, 1982, and will pay ten weeks of FSC for the life of the program regardless of later changes in EB status, after EB becomes payable in the State.

c. *Eight weeks.* The Act provides that States which are not in an extended benefit period, but are in a period of " high unemployment," will pay up to eight weeks of FSC benefits. For purposes of determining a period of "high unemployment", the State's insured unemployment rate is used. A high unemployment period begins the third week after the first week the insured unemployment rate equals or exceeds 3.5 percent. A high unemployment period ends the third week after the first week the insured unemployment rate drops below 3.5 percent. However, a "high unemployment period" must last a minimum of four weeks.

There is no corresponding minimum "off" period for States which drop below the 3.5 percent trigger rate. Thus, a State may drop to a six-week extension and the following week, if its insured unemployment rate equals or exceeds the 3.5 percent rate, again be in a period of high unemployment during which up to eight weeks of FSC are payable. The State will remain in this high unemployment period and any later one for a minimum of four weeks.

Determinations of the beginning and ending of high unemployment periods shall be made by the head of the State agency, in accordance with these instructions and 20 CFR Part 615. Public notice shall be given of any such determination, and each individual affected by the change shall be given a written notice.

3. *Computation of FSC payable based on a new benefit year.* During the life of the FSC program, a small number of FSC claimants may establish new benefit years with a new entitlement to regular benefits and again become exhaustee withing the meaning of the Act. These individuals' monetary entitlement to FSC will be determined without regard to the amount of FSC they have already received based on their benefit years. Although the Act limits the amount of FSC payable during an individual's period of eligibility, it does not limit the number of eligibility periods an individual may have during the life of the program.

4. *Beginning of an Extended Benefit Period After the Effective Date of the Act.* States may begin an extended benefit period after the effective date of the FSC Act. When an extended benefit period begins, the maximum FSC payable increases to ten weeks (providing the maximum FSC payable is not already at ten weeks because of an earlier extended benefit period).

When an extended benefit period begins, the SESA must, prior to paying FSC for a week of unemployment, determine each person's eligibility for extended benefits, in accordance with State law provisions relating to EB. If an individual has entitlement to extended benefits, such individual is not eligible for FSC. Once an individual has exhausted any entitlement to extended benefits, the individual may receive the remaining balance in his/her FSC account. A new entitlement to FSC is not made since the individual has the same period of eligibility upon which the FSC entitlement was determined.

5. *Interstate Claimants.* The extended benefit provisions apply to claims for and payment of FSC. The EB provisions limit interstate claimants to two weeks of extended benefits if they file claims in an agent State not in an extended benefit period. The two-week limitation applies only to claimants filing for FSC under the Interstate Benefit Payment Plan in agent States that have not entered into or have discontinued an agreement to adminster the FSC program. Payment of FSC to individuals filing from such agent States is limited to two weeks regardless of whether or not the agent State is in an Extended Benefit period. The two-week limitation is applied because the agent State is not in an FSC period.

In all other States (where both agent and liable States have entered into an agreement to administer FSC) claimants filing for FSC under the Interstate Benefit Payment Plan shall receive the maximum payable in the *liable* State.

6. *Changes in Account.* If it is later determined as the result of a redetermination or appeal that an individual was entitled to more or less regular or extended benefits under the State law or under 5 U.S.C. Chapter 85, the individual's status as an enhaustee should be redetermined as of the new date of the individual's exhaution, and an appropriate change shall be made in the individual's FSC account. If the individual is entitled to more or less FSC as a result of a change in the maximum weeks of FSC payable in the State or because of the beginning of an extended benefit period in the State, the appropriate change should be made in the individual's FSC account.

The FSC maximum in a State may change with economic changes. When a State's FSC maximum goes up (six to eight or eight to ten), the maximum payable to all intrastate FSC recipients is increased. An individual who had exhausted six to eight weeks of FSC is now eligible for two to four additional weeks of FSC as long as the new maximum does not exceed 50 percent of the individual's regular benefits. Such changes may occur even though many weeks have elapsed since the individual exhausted initial FSC entitlement.

When a State FSC maximum is reduced (eight to six), the reduced maximum applies to all individuals claiming FSC after the date of the change. Individuals who had not exhausted their eight-week maximum are now terminated at six or seven weeks.

F. Effect of Special Federal Programs on Eligibility for FSC

1. *Trade Readjustment Allowances (TRA).* Under the 1981 amendments to the Trade Act which became effective in most States for weeks beginning on or after October 1, 1981, the combination of

UI, EB, FSC and basic TRA cannot exceed a maximum benefit amount equal to 52 times the TRA weekly benefit amount.

In States, where legislatures did not meet in time to enact enabling legislation effective October 1, 1981, the limitation became effective October 1, 1982, Thus, in these States, beginning for all claims (both initial and continued) filed on or after October 1, 1982, the combination of UI, EB, FSC, and basic TRA cannot exceed a maximum benefit amount equal to 52 times the TRA weekly benefit amount.

Consistent with the provisions of Section 231(a)(3) (which outlines qualifying requirements) and Section 247(12) (which defines the term "unemployment insurance") of the Trade Act as amended, a worker who becomes entitled to FSC for any week during such worker's TRA eligibility period would not be entitled to TRA benefits for such week(s).

In keeping with the 52-week limit to entitlement for a combination of UI, EB, and TRA, States must also apply the rule contained in Section 233(d) of the Trade Act to FSC. Accordingly, when an individual has an FSC balance remaining at the end of the benefit year, that FSC balance will be reduced by the number of weeks for which TRA was paid multiplied by the FSC weekly benefit amount (regardless of the actual amount of TRA paid for the weeks). (See UIPL No. 1-82.) For example:

BYE	UI	TRA	EB	FSC (10-week)	FSC balance at—
Number of weeks paid ($100 WBA)	26	2	13	3	7 ($700)
Payments as adjusted	2,600	200	1,300	300	$500 ($700-$200)

In the States where the amendments did not become effective until October 1, 1982, the rule contained in section 233(d) of the Trade Act should be applied to individuals who have an FSC balance remaining at the end of a benefit year ending on or after October 1, 1982.

2. *Disaster Unemployment Assistance (DUA).* An individual who is eligible for DUA with respect to a week of unemployment under Section 407 of the Disaster Relief Act of 1974 (42 U.S.C. 5177) will be eligible to receive FSC for that week and will have his/her DUA weekly benefit amount reduced by the amount of FSC received in accordance with Pub. L. 93-288.

3. *Comprehensive Employment and Training Act (CETA).* Receipt of allowances under the Comprehensive Employment and Training Act (29 U.S.C. 801) does not affect an individual's entitlement to FSC. Prime sponsors are required under Pub. L. 95-542, Section 124(2)(1), to make appropriate adjustments to an individual's allowance payment based on the receipt of FSC.

4. *Redwood Employees Protection Program (REPP).* Receipt of weekly layoff benefits or vacation replacement benefits under the Redwood Park Expansion Act (Pub. L 95-250) does not affect an individual's entitlement to FSC. Appropriate adjustments to such an individual's REPP benefits will need to be made in accordance with Section 207(e)(3) of the Redwood Park Expansion Act.

G. Claims for Federal Supplemental Compensation

1. *Initial Claims.* An inital claim for FSC shall be filed by an individual with respect to the individual's applicable State and according to the applicable State law on a form prescribed by the Secretary, which shall be furnished to the individual by the State agency.

2. *Weekly Claims.* Claims for payments of FSC for weeks of unemployment shall be filed with respect to the individual's applicable State at the times and in the same manner as claims for regular compensation are filed under the applicable State law, and on forms prescribed by the Secretary which shall be furnished to the individual by the State agency.

3. *Secretary's Standard.* The procedures for reporting and filing claims for FSC shall be consistent with these instructions and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" (*Employment Security Manual*, Part V, sections 5000 et seq.).

H. Determinations of Entitlement: Notices to Individual

1. *Determination of initial claim.* The State agency shall promptly, upon the filing of an initial claim for FSC, determine whether the individual is eligible and whether a disqualification applies, and, if the individual is found to be eligible, the weekly and maximum amounts of FSC payable to the individual.

2. *Determination of weekly claims.* The State agency shall promptly, upon the filing of a claim for a payment of FSC with respect to a week of unemployment, determine whether the individual is entitled to a payment of FSC with respect to such week, and, if entitled, the amount of FSC to which the individual is entitled.

3. *Redetermination.* The provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to regular compensation under the applicable State law shall apply to determinations pertaining to FSC.

4. *Notices to individual.* The State agency shall give notice in writing to the individual of any determination or redetermination of an initial claim and determinations and redeterminations of all weekly claims with respect to weeks of unemployment, and each notice of determination or redetermination shall include such information regarding the determination or redetermination and notice of right to reconsideration or appeal, or both, as is furnished with written notices of determinations and written notices of redeterminations with respect to claims for regular compensation.

5. *Promptness.* Full payment of FSC when due shall be made with the greatest promptness that is administratively feasible.

6. *Secretary's standard.* The procedures for making determinations and redeterminations and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals claiming FSC shall be consistent with the Secretary's "Standard for Claim Determinations-Separation Information" (*Employment Security Manual,*) Part V, sections 6010 et seq.)

I. Appeal and Hearing

1. *Applicable State law.* The provisions of the applicable State law concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to regular compensation shall apply to determinations and redeterminations of eligibility for or entitlement to FSC.

2. *Rights of appeal and fair hearing.* The provisions on aright of appeal and opportunity for a fair hearing with respect to claims for FSC shall be consistent with these instructions and with sections 303(a)(1) and 303(a)(3) of the Security ACt (42 U.S.C. 503(a)(1) and 503(a)(3).

3. *Promptness on appeals*—a. Decisions on appeals under the FSC

Program shall accord with the Secretary's "Standard for Appeals Promptness-Unemployment Compensation" in 20 CFR Part 650.

b. Any provision of an applicable State law for advancement or priority of unemployment compensation cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, shall apply to proceedings involving intitlement to FSC.

J. Applicability of State Law Provisions

Except where inconsistent with this Act and the Federal-State Extended Unemployment Compensation Act of 1970, the terms and conditions of the State unemployment compensation law which are applicable to claims for and payment of regular compensation in the State, apply to the same extent to claims for, and payment of, FSC in the State. The provisions of the applicable State law which apply to claims for, and payment of, FSC include but are not limited to:

1. Claim filing and reporting,
2. Information to individuals as appropriate,
3. Notices to individuals and employers, as appropriate, including notice to each individual of each determination and redetermination of eligibility for or entitlement to FSC,
4. Determinations, redeterminations, appeals, and hearings,
5. Disqualification, including disqualifying income provisions,
6. The Interstate Benefit Payment Plan (see also special instructions for interstate claims in section E.5.),
7. The interstate arrangement for combining employment and wages.

K. Claimstaking Procedures

1. *Notification of Potential FSC Claimants.* The SESA will identify individuals who are potentially eligible for FSC benefits, and provide such individuals with appropriate written notification of their potential entitlement to FSC. The liable State will notify its interstate claimants of potential entitlement to FSC.

2. *Initial Claim.* When an individual files an initial FSC claim, the SESA must:

a. Review eligibility for FSC and make an initial determination of eligibility,

b. Fully inform claimant of rights and responsibilities under the EB provisions,

c. Ensure that the EB provisions with respect to assessing the claimant's prospects for work, are applied,

d. Ensure the individual is registered for referral to "suitable work" as defined for EB, if the individual's prospects for obtaining work in customary occupations are not good.

3. *Notification of Responsibility.* FSC claimants must be fully informed of their rights and responsibilities under FSC. Specifically, FSC claimants must be informed of the EB eligibility requirements applicable to FSC. The SESA should follow procedures outlined in GAL 21-81. However, if the claimant receives such information prior to claiming EB, the SESA need only advise the claimant that the same requirements apply to FSC claims.

To the extent possible, SESAs should provide a notice to any potential FSC claimant prior to entering FSC status.

4. *EB Eligibility Requirements*—a. *Assessing Job Prospects.* As part of the initial claims process, the SESA must assess a claimant's job prospects. If the SESA has recently classified the claimant's job prospects as "good" or "not good," the SESA need only ascertain that the classification is still valid based on any changes in the claimant's circumstances or the local labor market. In assessing job prospects, the SESA should refer to and follow procedures in Section I of GAL 21-81 and the applicable questions and answers in GAL 22-81. Also see UIPL No. 14-81, and Changes.

b. *Applying Active Search for Work Requirements; Referral for Job Placement; Failure to Apply for or Accept Suitable Work.* The extended benefit requirements on active search for work, referral to "suitable work," and the disqualification for failure to apply for or accept suitable work are applicable to claims for FSC. Section III of GAL 21-81 provides procedures for administering these provisions. SESAs should refer to and follow these same procedures for FSC claimants. Also see UIPL No. 14-81, and Changes.

5. *Work Registration.* All FSC claimants must be registered for employment with the SESA. Procedures should be adopted to annotate FSC claim records to insure that claimstakers know whether FSC claimants have been registered for work and, if not, the claimstakers must refer FSC claimants to the job placement staff to be registered for work. Likewise, the work registration form (511) should be annotated to show an individual is an FSC claimant.

It is also important that UI staff correlate the job prospects classification process with the Job Service staff. This will be necessary to ensure that the Job Service is aware of an FSC claimant's *current* job prospects classification in order that ES-511s can be updated for claimants with poor prospects of returning to work and that referrals can be made using a wider range of job openings than those related to the FSC claimant's primary DOT code.

6. *Documentation and Reporting of Referral Results.* Job placement staff must notify the claims adjudication staff in writing of:

a. Failure to respond to mailed call-in and appointment to which the claimant did not appear,

b. Refusal of referrals to suitable work, and

c. Failure to appear for a job interview or refusal of an offer of suitable work.

7. *Eligibility Review Program.* It is expected that FSC claimants who have been through eligibility review will continue to receive intensified services in this program.

L. Fraud and Overpayment

The Act contains specific provisions with respect to fraud and overpayments of FSC benefits.

Provisions of the State law applied to detection and prevention of fraudulent overpayments of FSC will be, as a minimum, commensurate with those applied by the State with respect to regular compensation and which are consistent with the Secretary's "Standard for Fraud and Overpayment Detection" (*Employment Security Manual*, Part V, Sections 7510, et seq.)

1. *Fraudulent Claiming of FSC.* If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact or knowingly has failed or caused another to fail to disclose a material fact, and as a result of such false statement or representation or such nondisclosure the individual has received an amount of FSC benefits to which the individual was not entitled, the individual:

a. Shall be ineligible for further FSC benefits in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation, and

b. shall be subject to prosecution under Section 1001 of Title 18, USC.

Provisions of State law relating to disqualification for fraudulently claiming or receiving a payment of compensation shall apply to claims for and payment of FSC.

When a SESA has sufficient facts to make a prima facie case under the Federal Criminal Code (18 U.S.C. 1001), it will consider criminal prosecution in accordance with the provisions of Section 7560, Part V, *Employment Security Manual.* If prosecution in the Federal Courts is to be recommended,

the matter will be referred to the appropriate office of the Federal Bureau of Investigation (FBI).

In those cases not referred to the FBI for prosecution, or if the U.S. Attorney declines prosecution, the SESA may and should prosecute in State Courts.

2. *Recovery of Overpayments.* Each State is authorized to require repayment from individuals who have received any payment of FSC to which they are not entitled (whether fraudulent or non-fraudulent), unless the SESA waives recovery of the overpayment. The SESA may waive recovery of a non-fraudulent overpayment if it determines that—

a. The payment of such FSC benefits was without fault on the part of the individual, and

b. Such repayment would be contrary to equity and good conscience.

(1) In determining whether fault exists, the following factors shall be considered:

(a) Whether a statement or representation of a material nature was made by the individual in connection with the application for FSC that resulted in the overpayment, and whether the individual knew or should have known that the statement or representation was inaccurate.

(b) Whether the individual failed or caused another to fail to disclose a material fact, in connection with an application for FSC that resulted in the overpayment, and whether the individual knew or should have known that the fact was material.

(c) Whether the individual knew or could have been expected to know that the individual was not entitled to the FSC payment.

(d) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any other action or omission of the individual or of which the individual had knowledge, and which was erroneous or inaccurate or otherwise wrong.

In the event of an affirmative finding on any of the foregoing factors, recovery of the overpayment shall not be waived.

(2) In determining whether equity and good conscience exists the following factors shall be considered:

(a) Whether the overpayment was the result of a decision on appeal, and whether the State agency had given notice to the individual that the case has been appealed further and that the individual shall be required to repay the overpayment in the event of a reversal of the appeal decision.

(b) Whether recovery of the overpayment will not cause extraordinary financial hardship to the individual, and there has been no affirmative finding under paragraph 2(a) of this section with respect to such individual and such overpayment.

In the event of an affirmative finding on either of the foregoing factors, recovery of the overpayment should not be waived. For this purpose an extraordinary financial hardship shall exist if recovery of the overpayment would result directly in the individual's loss of or inability to obtain minimal necessities of food, medicine, and shelter; and extraordinary and lasting financial hardship shall be extraordinary as described above and "lasting" means that the financial hardship may be expected to endure for more than 30 days.

Each State may elect whether to allow waiver of overpayments, and if so it should apply these rules in determining whether a waiver of overpayment shall be granted.

(3) An FSC overpayment may be recovered either by offset or repayment by the individual. The SESA will, during the three-year period after the date the individual received the payment of FSC to which the individual was not entitled, recover the amount to be repaid, or any part thereof,

(a) From any FSC payable under the Act;

(b) From any compensation payable to the individual under any Federal unemployment compensation law administered by the SESA (UCFE, UCX, etc.);

(c) Under any other Federal law administered by the SESA (DUA, REPP, AEPP, etc.) which provides for payment of any assistance or allowance with respect to any week of unemployment.

(4) No single deduction, however, may exceed 50 percent of the amount of the payment from which such deduction is made. To the extent permitted under State law, an FSC overpayment may be recovered by offset, within the 50 percent and three-year limitations, from benefits payable under the State unemployment compensation law.

(5) At the end of the three-year limitation, the SESA may remove the overpayment from its accounting record. Although no further active collection efforts by the SESA are required, the SESA should maintain an administrative record during the subsequent three-year period to provide for possible collection through methods other than offset. After the subsequent three-year period, the SESA may dispose of the overpayment record.

(6) Under the Act, no repayment shall be required, and no deduction shall be made, until a determination of overpayment has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(7) FSC overpayment recovery shall be enforced by any action or proceeding which may be brought under State or Federal law, unless recovery of the overpayment is waived in accordance with the Act and these instructions.

Overpayments of FSC recovered in any manner shall be credited or returned to the appropriate account of the United States.

(8) FSC payments shall *not* be used to offset State regular UI or EB overpayments. FSC payments shall be used to recover any existing overpayments made under any Federal unemployment benefit or allowance program administered by the SESA. Determinations under this section, shall be subject to the determination and appeal and hearing provisions of sections H and I.

M. Payment to States

Under Section 603 of the Act each State which has entered into an agreement to pay FSC will be paid an amount equal to 100 percent of the amount of FSC which is paid to individuals by the State pursuant to the agreement and in full accordance with the Act and these instructions.

Further, no payment shall be made to any State for FSC to the extent the State is entitled to reimbursement under the provisions of any other Federal law other than the Act, which shall mean and include Chapter 85 of Title 5 of the USC. This means that States will charge the EUCA account for FSC paid to UCFE or UCX claimants.

The paying State on a combined-wage claim will pay all FSC benefits directly, and will not bill transferring States for any share of such benefits paid.

N. Records and Reports

1. *Reports.* The SESA will maintain FSC claims and payment data (including data on eligibility, disqualification and appeals) as required by the Employment and Training Administration (ETA). The SESA will report such required data as specified in instructions issued by ETA.

2. *Recordkeeping.* Each SESA will make and maintain records pertaining to the administration of the FSC program as the ETA requires, and will make all such records available for inspection, examination, and audit by such Federal officials or employees as the Secretary of Labor or ETA may designate or as may be required by the Act.

O. Disclosure of Information

Information in records made and maintained by a State agency in

administering the Act shall be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to regular compensation and the entitlement of individuals thereto may be disclosed under the applicable State law. This provision on the confidentiality of information obtained in the administration of the Act shall not apply, however, to the U.S. Department of Labor, or in the case of information, reports and studies requested pursuant to section N of these instructions, or where the result would be inconsistent with the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a) of regulations of the U.S. Department of Labor promulgated thereunder.

P. Inviolate Rights to FSC

Except as specifically provided in these instructions, the right of individuals to FSC shall be protected in the same manner and to the same extent as the rights of persons to regular compensation are protected under the applicable State law. Such measures shall include protection of claimants for FSC from waiver, release, assignment, pledge encumbrance, levy, execution, attachment, and garnishment, of their rights to FSC. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for and receiving any right to FSC.

Q. Application of "Lopez Rule"

1. In order to effectuate the purpose of the Act and these instructions and to assure uniform interpretation and application of the Act and these instructions throughout the United States, a State agency shall forward, not later than ten days after issuance, to the Employment and Training Administration of the Department, a copy of any judicial or administrative decision ruling on an individual's entitlement to FSC. On request of the Department, a State agency shall forward to the Department a copy of any determination or redetermination ruling on an individual's entitlement to FSC.

2. If the Department believes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Act or these instructions, the Department may at any time notify the State agency of the Department's view. Thereafter, the State agency shall issue a redetermination or appeal if possible, and shall not follow such determination, redetermination, or decision as a precedent; and, in any subsequent proceedings which involve such determination, redetermination, or in which such decision is cited as precedent or otherwise relied upon, the State agency shall inform the claims deputy or hearing officer or court of the Department's view and shall make all reasonable efforts, including appeal or other proceedings in an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

3. If the Department believes that a determination, redetermination, or decision is patently and flagrantly violative of the Act or these instructions, the Department may at any time notify the State agency of the Department's view. If the determination, redetermination, or decision in question denies FSC to an individual, the steps outlined in paragraph 2 of this section shall be followed by the State agency. If the determination, redetermination, or decision in question awards FSC to an individual, the benefits are "due" within the meaning of section 303(a)(1) of the Social Security Act, 42 U.S.C. 503(a)(1), and therefore must be paid promptly to the individual. However, the State agency shall take the steps outlined in paragraph 2 of this section, and payments to the individual may be temporarily delayed if redetermination or appeal action is taken not more than one business day following the day on which the first payment otherwise would be issued to the individual; and the redetermination action is taken or appeal is filed to obtain a reversal of the award of FSC and a ruling consistent with the Department's view; and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than two weeks after the redetermination action is taken or the appeal is filed. If redetermination action is not taken or appeal is not filed within the above time limit, or a redetermination or decision is not obtained within the two-week limit, or any redetermination or decision or order is issued which affirms the determination, redetermination, or decision awarding FSC or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the individual.

4. If any determination, redetermination, or decision, referred to in paragraph 2 or paragraph 3 of this section, is treated as a precedent for any future application for FSC, the Secretary will decide whether the Agreement with the State entered into under the Act shall be terminated.

In the case of any determination, redetermination, or decision that is not legally warranted under the Act or these instructions, including any determination, redetermination, or decision referred to in paragraph 2 or paragraph 3 of this section, the Secretary will decide whether the State shall be required to restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, the Agreement with the State shall be terminated and whether other action shall be taken to recover such sums for the United States.

5. A State agency may request reconsideration of a notice issued pursuant to paragraph 2 or paragraph 3 of this section, and shall be given an opportunity to present views and arguments if desired.

6. Concurrence of the Department in a determination, redetermination, or decision shall not be presumed from the absence of a notice issued pursuant to this section.

III. Job Placement and Work Test Activities.

As previously indicated, the objectives of the FSC program are to make timely and accurate benefit payments, to assist in the reemployment of FSC claimants, and to apply the same work test applicable under the extended benefits program. To carry out the reemployment and work test objectives, the following requirements are being established for FSC eligibles.

A. All FSC claimants must be fully registered (not partially) and in the active file, and the 511 annotated to show FSC claim status. SESAs must insure that FSC claimants are registered as quickly as is administratively feasible. In all but exceptional cases, the FSC claimant should be registered by no later than the end of the second compensable week.

B. Each State agency shall establish appropriate internal mechanisms and procedures so that all FSC claimants whose prospects for work have been determined to be "not good" are provided at least one reinterview for job placement assistance during the eligibility period—preferably at the outset of the period. The reinterview shall focus on:

1. Reassessment of the claimant's qualifications and updating the application to reflect all relevant work experience and the addition of secondary and tertiary DOT codes as necessary and FSC status,

2. Exposure to and referral of the claimants to all suitable job listings fitting the EB suitable work definition,

3. Referral to Job Finding Club and other self-directed job search assistance projects in areas where they are operating.

C. SESAs are also to establish procedures for the prompt interchange of information for the adjudication of FSC claims issues regarding:

1. Failure to report for call-in;
2. Refusal of referral;
3. Failure to report for job interview;
4. Refusal of job offer;
5. Results of referral to suitable work;
6. Able, available, and other related issues.

[FR Doc. 82-32916 Filed 12-2-82; 8:45 am]

BILLING CODE 4510-30-M

federal register

Friday
December 3, 1982

Part VIII

Department of Education

Proposed Regulations for Programs Authorized Under Chapter 1 of the Education Consolidation and Improvement Act of 1981

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 201, 202, 203, 204, and 302

Chapter 1, Education Consolidation and Improvement Act of 1981; Financial Assistance to State Educational Agencies To Meet Special Educational Needs of Migratory Children, Handicapped, and Neglected or Delinquent Children in Institutions, and General Definitions and Administrative, Fiscal, and Due Process Requirements

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations for the programs authorized under Chapter 1 of the Education Consolidation and Improvement Act of 1981, to provide financial assistance to (1) State educational agencies for programs designed to meet the special educational needs of migratory children; (2) State agencies for programs to meet the special educational needs of handicapped children; and (3) State agencies for programs to meet the special educational needs of neglected or delinquent children in institutions. In addition, the Secretary proposes general regulations that would apply to these programs, and to the programs in 34 CFR Part 200 that provide financial assistance to local educational agencies for programs to meet the special educational needs of educationally deprived children.

DATE: All comments on this notice to proposed rulemaking must be received on or before February 1, 1983.

ADDRESSES: All written comments should be addressed as follows:

Part 201: Dr. Vidal Rivera, Acting Director, Migrant Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 1100, Donohoe Building), Washington, D.C. 20202.

Part 202: Ms. Shirley A. Jones, Acting Director, Policy, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4000 Donohue Building) Washington, D.C. 20202.

Parts 203 and 204: Dr. Thomas W. Fagan, Director of Grants, Policy, and Administration, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3616, ROB 3) Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Part 201: Dr. Vidal Rivera. Telephone: (202) 245-2222.

Part 202: Ms. Shirley A. Jones. Telephone: (202) 426-6114.

Parts 203 and 204: Dr. Thomas W. Fagan. Telephone: (202) 245-9877.

SUPPLEMENTARY INFORMATION:

A. Overview of Chapter 1

Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Chapter 1 supersedes Title I of the Elementary and Secondary Education Act of 1965, as amended (Title I). The purpose of Chapter 1 is to continue to provide financial assistance to State and local educational agencies to meet the special educational needs of educationally deprived children, on the basis of allocations calculated under Title I, but to do so in a manner which will eliminate burdensome, unnecessary and unproductive paperwork and free the State and local educational agencies of unnecessary Federal supervision, direction, and control.

The programs authorized by Chapter 1 provide financial assistance to—

(a) Local educational agencies (LEAs) for projects designed to meet the special educational needs of educationally deprived children and children in local institutions for neglected or delinquent children;

(b) State agencies and eligible LEAs for projects designed to meet the special educational needs of children who are or have been served in institutions for handicapped children;

(c) State agencies for projects designed to meet the special educational needs of children in institutions for neglected or delinquent children, or in adult correctional institutions;

(d) State educational agencies (SEAs) for projects designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishermen.

(e) State educational agencies (SEAs) for special projects designed to improve interstate and intrastate coordination of migrant education activities; and

(f) The Secretary of the Interior to meet the special educational needs of Indian children.

B. Overview of These Proposed Regulations

These proposed regulations are necessary to administer Chapter 1 grants or address topics of particular concern to the Secretary. These proposed regulations include—

- Part 201 which contains proposed regulations for the program of assistance to SEAs for projects designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishermen.
- Part 202 which contains proposed regulations for the program of assistance to State agencies and eligible LEAs for projects designed to meet the special educational needs of children who are or who have been served in institutions for handicaped children;
- Part 203 which contains proposed regulations for the program of assistance to State agencies for projects designed to meet the special educational needs of children in institutions for neglected or delinquent children, or in adult correctional institutions.
- Part 204 which contains proposed general regulations for programs covered by Parts 201 to 203, and for the program of assistance to LEAs to meet the special educational needs of educationally deprived children and children in local institutions for neglected or delinquent children which is covered in Part 200. Part 204 does not apply to the program to improve interstate and intrastate coordination of migrant education activities which is covered in Part 205.

Final regulations for Part 200, covering the program of financial assistance to LEAs for projects designed to meet the special educational needs of educationally deprived children and children in local institutions for neglected or delinquent children, have been published in the **Federal Register** at 47 FR 52340 (November 19, 1982). Final regulations for Part 205 under Title I were published on April 21, 1982 at 47 FR 17246.

The numbering of Parts in these proposed regulations is a change from the Part numbers that were in the Title I regulations. In the Title I regulations, general regulations for Title I were in Part 200, the regulations for the program of assistance to LEAs were in Part 201, the regulations for the migrant education program were in Part 204, and the regulations for the program of assistance to handicapped children were in Part 302.

In summary, the proposed regulations in Parts 201 to 203 relate to—

- Applying for Chapter 1 Funds (Subparts A).

- Procedures for Determining Amount of Grants and Subgrants (Subparts B).
- Project Requirements (Subparts C).

The proposed general regulations in Part 204 relate to—

- General Definitions and Applicability (Subpart A).
- General Administrative Requirements (Subpart B).
- General Project Requirements (Subpart C).
- Fiscal Requirements (Subpart D).
- Due Process Procedures (Subpart E).

C. Summary of Regulatory Provisions in Parts 201 Through 203

1. *Applying for Chapter 1 Funds (Subparts A).* Each of the Subparts A contains definitions of several key terms used in each Part and explains the procedures for applying for funds for each Chapter 1 program.

One proposed definition deserves special mention. The proposed definition of "currently migratory child" in § 201.2 is a change from the one that was included in the regulations under the Title I Migrant Education Program. The proposed definition adds a requirement that for a child to be considered currently migratory, he must have had his education interrupted as a result of a move within the past 12 months. The purpose of the proposed change is to make sure that the Migrant Education Program only serves those whose education is disrupted directly by migrancy. The change is also being proposed after various audits and a study of the Title I Migrant Education Program have shown that the program was serving significant numbers of children whose education was not interrupted by migrancy and who may not have had special educational needs caused by migrancy. If this proposed definition is included in the final regulations, it would take effect for the Migrant Education Program as soon as practicable at a time to be specified when the final regulations are published.

With regard to applications, each of the Subparts A provides generally that an SEA that wishes to receive Chapter 1 funds must submit an application and have on file with the Secretary assurances that meet the applicable requirements in Section 435 of the General Education Provisions Act (GEPA) pertaining to fiscal control and fund accounting procedures.

The proposed regulations also indicate that other agencies must submit an application to an SEA and meet the requirements for SEA approval of an application, in order to receive a grant from the SEA to operate a project. One proposed exception to this is that under § 202.11 an SEA is not required to receive an application from an LEA that is eligible to receive funds under Section 146(c) (Counting of Children Transferring from State to Local Programs) of Title I.

2. *Procedures for Determining the Amount of Grants and Subgrants (Subparts B).* Each of the Subparts B describes how a grant is made to an SEA, including the method for determining the amount available for an SEA's grant and the amount available for SEA administration. In addition, each of the Subparts B describes how grants to other agencies within a State are made. Section 201.24 indicates the circumstances under which the Secretary may make a special arrangement (a bypass) for migrant education services.

3. *Project Requirements (Subparts C).* Although the Chapter 1 statute retains most of the basic project design characteristics found in Title I, it reflects the Congressional intent to simplify the requirements. Each of the Subparts C contains the few special requirements that apply to the design and operation of each type of program supported with Chapter 1 funds.

D. Summary of Regulatory Provisions in Part 204

As noted above, the Department has published final regulations in 34 CFR Part 200, governing the Chapter 1 program of financial assistance to LEAs for projects designed to meet the special educational needs of educationally deprived children and children in local institutions for neglected or delinquent children. Part 200 contains certain provisions that are proposed to be included in Part 204. These include the provisions in §§ 200.4; 200.51, 200.53–200.62; 200.64; 200.90 through 200.106, and certain definitions in § 200.3. Upon publication of Part 204 in final form, the provisions included in Part 204 will govern programs covered by Part 200. At that time, the Department will publish technical amendments to (1) delete the duplicatory provisions in Part 200, (2) correct citations in the CFR which reference the deleted provisions in Part 200, and (3) make conforming changes in the due process and other uniform provisions in Part 298 (See for example § 298.41–298.57).

1. General Definitions and Applicability (Subpart A).

Subpart A contains definitions of several key terms that apply to the programs covered in Parts 200–203. This Subpart also contains commonly-used acronyms that apply to Parts 200–203.

2. General Administrative Requirements (Subpart B); and

3. General Project Requirements (Subpart C).

Subparts B and C contain the general requirements that apply to the design and operation of projects supported with Chapter 1 funds. These requirements relate to—

- Recordkeeping (§ 204.10)
- Access to records and audits (§ 204.11)
- Compromise of audit claims (§ 204.12)
- State rulemaking (§ 204.13)
- Availability of funds (§ 204.14)
- Sufficient size, scope, and quality of project (§ 204.20)
- Consultation with parents and teachers (§ 204.21)
- Allowable costs (§ 204.22)
- Evaluation (§ 204.23)

It should be emphasized that the provisions in Subpart C reflect the new flexibility provided by Chapter 1. For example, although agencies are required to consult with parents and teachers of children being served, § 204.21 emphasizes that an agency is no longer required to have parent advisory councils.

Section 204.14 implements Section 412(b) of GEPA, specifically made applicable by Section 596(b) of the ECIA. Section 204.14 provides that an SEA or LEA may obligate funds during the fiscal year for which the funds were appropriated and during the succeeding fiscal year.

4. Fiscal Requirements (Subpart D).

Subpart D contains the fiscal requirements that apply to grantees that receive Chapter 1 funds. The provisions in this subpart relate to—

- Maintenance of effort (§§ 204.30–204.31).
- Supplement, not supplant (§ 204.32).

Chapter 1 retains the underlying principles of equity that were reflected in the fiscal requirements of Title I. However, Chapter 1 has significantly streamlined and modified those requirements to reduce the burden on State and local agencies and provide greater flexibility in determining compliance. The proposed regulations reflect these changes.

Under § 204.30, SEAs determine an LEA's or State agency's compliance with the maintenance of effort requirement. Section 204.31 allows a ten percent leeway in meeting the maintenance of effort requirements by requiring that the LEA's fiscal effort for the preceding fiscal year be not less than 90 percent of that effort for the second preceding year. In addition, § 204.31 permits an SEA, rather than the Secretary, to waive the maintenance of effort requirement for one fiscal year if the SEA determines

that a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster. The Conference Report for Chapter 1 indicates that Congress considers declining resources as a result of severe economic conditions, natural disaster, or similar circumstances as grounds for a waiver. However, the Report also indicates that tax initiatives or referenda are not to be considered grounds for a waiver. (127 Cong. Rec. H. 5645 (daily ed. July 29, 1981).

Section 204.32 provides that an SEA or operating agency may use Chapter 1 funds only to supplement, and to the extent practical, increase the level of funds that would in the absence of Chapter 1 funds, be made available from non-Federal sources for the education of pupils participating in Chapter 1 projects, and in no case may Chapter 1 funds be used to supplant non-Federal funds. Section 204.32(b) specifically provides that an agency shall not be required to provide Chapter 1 services outside the regular classroom or school program in order to demonstrate compliance with the supplement, not supplant requirement.

5. Due Process Procedures (Subpart E).

Subpart E contains specific provisions that afford due process protections to SEAs concerning—

- Final audit determinations.
- Determinations to withhold funds.
- Cease and desist proceedings.

These proposed regulations are consistent with the Administration's efforts to reduce regulatory burden while increasing State and local flexibility. To the extent feasible, the Secretary will give deference to an SEA's interpretation of a Chapter 1 requirement if that interpretation is not inconsistent with applicable provisions of the General Education Provisions Act and with the Chapter 1 statute, legislative history, or regulations.

E. Application of Other Statutes and Regulations

(1) Recipients of funds under Chapter 1 are recipients of Federal financial assistance and, therefore, must comply with Federal civil rights laws generally applicable to recipients of Federal financial assistance. Consequently, those statutes, as well as the regulations that implement them, apply to Chapter 1 programs. The applicable civil rights regulations are found in 34 CFR Parts 100, 104, and 106. Although regulations implementing the Age Discrimination Act of 1975 have not yet been published, recipients of Chapter 1 funds must comply with the provisions of that Act.

(2) Section 596 of the ECIA makes certain sections of the General Education Provisions Act (GEPA) specifically applicable to Chapter 1 programs. Subject to the exceptions stated below, the Secretary adopts the interpretation that the other provisions of GEPA are applicable to Chapter 1. These proposed regulations reflect that interpretation.

Even though GEPA generally applies ot Chapter 1, some specific provisions of GEPA are inapplicable as a matter of law because they are specifically made inapplicable by the ECIA, because they are superseded by specific provisions of the ECIA, or for other reasons explained below. Other provisions of GEPA, though not inapplicable, have been superseded by the Department of Education Organization Act or are otherwise irrelevant to the operation of the Chapter 1 program. After a careful consideration of the ECIA and its legislative history, the Secretary interprets the following sections of GEPA as inapplicable to Chapter 1 as a matter of law:

(A) Section 408(a)(1) of GEPA (authorizing the Secretary to promulgate regulations), 20 U.S.C. 1221e-3(a)(1), is superseded by Section 591(a) of the ECIA.

(B) Section 425 of GEPA, 20 U.S.C. 1231b-2, provides complex procedures regarding certain actions by an SEA that affect applicants or recipients under an applicable program. Section 425 also provides for Federal review of an SEA's action under that section. The Secretary believes that this provision was not intended to apply to Chapter 1. Section 425 only applies to programs in which assistance is provided "in accordance with a State plan approved by the Secretary." Chapter 1 is not such a program. Further, Section 425 of GEPA is clearly inconsistent with Section 552 of Chapter 1 which provides: "The Congress declares it to be the policy of the United States to continue to provide financial assistance to State and local educational agencies to meet the special needs of educationally deprived children * * * but to do so in a manner which will * * * free the schools of unnecessary Federal supervision, direction, and control."

(C) Section 426(a) of GEPA (relating to technical assistance from the Department), 20 U.S.C. 1231c(a), is superseded by Section 591(b) of the ECIA.

(D) Section 427 of GEPA, 20 U.S.C. 1231d, directs the promulgation of Federal regulations or criteria relating to parental participation where the Secretary determines that such participation at the State or local level will increase the effectiveness of a Federal program. The Secretary believes that Section 427 should not be invoked with respect to Chapter 1 even in the context of a determination of general GEPA applicability. The matter of parental involvement is covered in Section 556(b)(3) of Chapter 1, and the Secretary regards this section as preemptive and rendering unnecessary the issuance of regulations or criteria under Section 427 of GEPA.

(E) Section 430 of GEPA (regarding applications to receive Federal financial assistance), 20 U.S.C. 1231g, is superseded by Section 556 (Application by local educational agency) of Chapter 1.

(F) Section 431A of GEPA (relating to maintenance of effort determinationa), 20 U.S.C. 1232-1, is inapplicable by its terms and, in any event, is superseded by Section 558(a) of Chapter 1 relating to the same topic.

(G) In accordance with Section 596(a) of the ECIA, Sections 434 (SEA monitoring and enforcement), 435 (single State application), and 436 (single LEA application) do not apply except to the extent that they relate to fiscal control and fund accounting procedures (including the title to property acquired with Federal funds).

Section 435 of GEPA applies to Chapter 1 only with respect to paragraphs (b)(2) and (b)(5), which pertain to two assurances concerning fiscal control and fund accounting procedures. Section 436 of GEPA applies to Chapter 1 with regard to similar assurances in paragraphs (b)(2) and (b)(3).

(H) Section 437(b) of GEPA (relating to access to records), 20 U.S.C. 1232f, is superseded by Section 1744 of the Omnibus Budget Reconciliation Act of 1981.

(I) Section 453 of GEPA (relating to withholding), 20 U.S.C. 1234b, is superseded by Section 592 of the ECIA relating to the same topic.

(J) The judicial review provisions of Section 593 of the ECIA are controlling with respect to judicial review of withholding actions under Section 592 of the ECIA. Therefore, Section 455 of GEPA, 20 U.S.C. 1234d, is superseded to the extent that it applies to withholding actions under Chapter 1.

(3) Section 1741 (distribution of block grant funds), Section 1742 (reports on the proposed use of funds and public hearings), Section 1743 (transition provisions), and Section 1745 (State audit requirements) of the Omnibus Budget Reconciliation Act of 1981 do not apply to Chapter 1. However, Section 1744 regarding access to records by the

Comptroller General does apply, and its provisions have been incorporated in § 204.11 of these proposed regulations.

(4) The Education Department General Administrative Regulations (EDGAR), with the exception noted in paragraph 5 below, do not apply to these programs. EDGAR includes 34 CFR Part 74, which incorporates OMB Circulars A-21, A-87, A-102, and A-110, and 34 CFR Part 76, which deals with State-administered programs. Rather than complying with the provisions contained in these parts, States may apply equivalent procedures of their own for financial management and control of their programs. However, States continuing to comply with the provisions in 34 CFR Part 74 will be considered to be in compliance with the fiscal control and fund accounting procedures required by Sections 435 and 436 of GEPA that apply to Chapter 1. The parts of EDGAR that do not apply to Chapter 1 also include 34 CFR Part 77 (definitions in EDGAR that apply generally to education programs) and part 78 (Education Appeal Board).

(5) 34 CFR 74.62, related to non-Federal audits, applies to Chapter 1. This section incorporates the audit requirements contained in Attachment P to OMB Circular A-102.

Executive Order 12291

These proposed regulations have been reviewed by the Department in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations published in the Order.

Invitation To Comment

Public comments are invited on this notice of proposed regulations. In particular, the Secretary invites comments on whether the Department should use the definitions of "currently migratory child" and "formerly migratory child" proposed in § 201.3.

For the convenience of the reader, all proposed general regulations are contained in Part 204, even though they repeat some provisions already contained in 34 CFR Part 200. Since the time to comment on the proposed regulations in 34 CFR Part 200 has expired, comments on the general regulations in Part 204 should only deal with how those general regulations relate to the programs covered in Parts 201 through 203.

Written comments and recommendations may be sent to the contact person listed at the beginning of this preamble. All comments received on or before February 1, 1983 will be considered in developing the final regulations.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Regional Office Building 3, Room 3636, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday throuhg Friday of each week, except Federal holidays.

Regulatory Flexibility Act

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these regulations affect States and State agencies they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will also affect all small LEAs receiving Federal financial assistance under Chapter 1 of the Education Consolidation and Improvement Act of 1981. However, the regulations will not have a significant economic impact on the small LEAs affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision.

The regulations impose minimal requirements to ensure the proper allocation and expenditure of program funds. Wherever possible, SEAs will have maximum authority and responsibility for supervising the LEAs and administering the program. Program funds may be used for LEA administrative expenses. For these reasons the regulations will not have a significant economic impact on the small entities affected.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations. Except as otherwise indicated, references to "sec." in these citations refer to sections of the Education Consolidation and Improvement Act of 1981.

(Catalog of Federal Domestic Assistance No. 84.011, Educationally Deprived Children—Migrants; 84.009, Program for Education of Handicapped Children in State Operated or Supported Schools; 84.013, Educationally Deprived Children in State Administered Institutions Serving Neglected or Delinquent Children)

Dated: November 26, 1982.

T. H. Bell,

Secretary of Education.

List of Subjects

34 CFR Part 201

Education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Migrant labor.

34 CFR Part 202

Education, Education of handicapped, Elementary and secondary education, Grant programs—education.

34 CFR Part 203

Education, Education of disadvantaged, Elementary and secondary education, Grant programs—education; Juvenile delinquency, Neglected.

34 CFR Part 204

Education, Education of disadvantaged, Education of handicapped, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Migrant labor, Neglected.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by redesignating the regulations for the Migrant Education Program (formerly in Part 204) as Part 201 and revising it as follows:

PART 201—FINANCIAL ASSISTANCE TO STATE EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF MIGRATORY CHILDREN

Subpart A—Applying for Chapter 1 Migrant Education Program Funds

General

Sec.
201.1 Purpose.
201.2 Applicable regulations.
201.3 Definitions for this program.
201.4 through 201.9 [Reserved]

Applying for an SEA Grant

201.10 Eligibility of an SEA to participate as a grantee.
201.11 Documents an SEA must submit to recieve a grant.
201.12 Contents of an SEA's application and updating information.
201.13 Approval of an SEA's application.
201.14 and 201.15 [Reserved]

Applying to an SEA for a Subgrant

201.16 Documents that an LEA must submit to receive a subgrant.
201.17 Submission of LEA project applications to the SEA.
201.18 Approval of an LEA's project application for a subgrant.
201.19 [Reserved]

Subpart B—Determining the Amount of Grants and Subgrants

Sec.
201.20 Amount availble for an SEA grant.
201.21 Determination of an SEA grant.
201.22 Reallocation of excess funds.
201.23 Amount available for State administration.
201.24 Secretary's special arrangment for services (By-pass).
201.25 Amount of a subgrant to an LEA.
201.26 through 201.29 [Reserved]

Subpart C—Project Requirements

201.30 Eligibility of a child to participate.
201.31 Service priorities.
201.32 Annual needs assessment
201.33 Allowable costs for migrant programs.
201.34 Coordination with other migrant programs and projects.

Authority: Secs. 552–558, 591–596 of Pub. L. No. 97–35, 95 Stat. 464–469, 480–482 (20 U.S.C. 3801–3807, 3871–3876), unless otherwise noted.

Subpart A—Applying for Chapter 1 Migrant Education Program Funds

General

§ 201.1 Purpose.

The Migrant Education Program, authorized by Section 554(a) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1), is designed to—

(a) Provide financial assistance to State educational agencies (SEAs) to establish or improve programs for education designed to meet the special educational needs of migratory children of migratory agricultural workers or migratory fisherman; and

(b) Enable these SEAs to coordinate their migrant education programs and local migrant education projects with similar programs and projects in other States, including the transfer of school records and other information about eligible migratory children.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 552, 20 U.S.C. 3801; Title I, Sec. 141–142, 20 U.S.C. 2761–2762)

§ 201.2 Applicable regulations.

The regulations in this part and in 34 CFR Part 204 apply to migrant education programs and projects for which the Secretary provides financial assistance under Chapter 1.

(Sec. 552–558, 20 U.S.C. 3801–3807)

§ 201.3 Definitions for this program.

(a) The definitions in § 204.2 of 34 CFR Part 204 apply to the programs covered by this part.

(b) In addition to the definitions referred to in paragraph (a) of this section, the following definitions apply to this part:

"Agricultural activity" means—

(1) Any activity directly related to the production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence;

(2) Any activity directly related to the cultivation or harvesting of trees; or

(3) Any activity directly related to fish farms.

"Currently migratory child" means a child—

(1) Whose parent or guardian is a migratory agricultural worker or a migratory fisherman; and

(2) Who has moved from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another—within the past 12 months, and during the regular school year, and had his education interrupted as a result of the move. The move must have been made to enable the child, the child's guardian, or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity. This definition includes a child who has been eligible to be served under the requirements in the preceding sentence, and who, without the parent or guardian, has continued to migrate annually to enable him to secure temporary or seasonal employment in an agricultural or fishing activity.

"Fishing activity"means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or as a principal means of personal subsistence.

"Formerly migratory child" means a child who—

(1) Was eligible to be counted and served as a currently migratory child within the past five years, but is not now a currently migratory child;

(2) Resides in the area served by the agency carrying on a Chapter 1 Migrant Education program or project; and

(3) Has the concurrence of his or her parent or guardian to continue to be considered a migratory child.

"Migratory agricultural worker" means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, from one school administrative area to another—to enable him to obtain temporary or seasonal employment in an agricultural activity (and whose primary employment during the past 12 months has been in an agricultural activity).

"Migratory children" means children who qualify under either the definition of "currently migratory child" or "formerly migratory child" described in this section.

"Migratory fisherman" means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, for one school administrative area to another—to enable him to obtain temporary or seasonal employment in a fishing activity (and whose primary employment during the past 12 months has been in a fishing activity).

"Operating agency" means—

(1) An LEA to which an SEA makes a subgrant of Migrant Education Program funds; or

(2) A public or nonprofit private agency with which an SEA makes an arrangement to carry out a Migrant Education project.

(Sec. 552–558, 20 U.S.C. 3801–3807; Title I, Sec. 142(b), 20 U.S.C. 2762(b))

§§ 201.4 through 201.9 [Reserved]

Applying for an SEA Grant

§ 201.10 Eligibility of an SEA to participate as a grantee.

(a) An SEA may apply to the Secretary for a grant to operate a State migrant education program directly, through subgrants to local educational agencies (LEAs), or through arrangements with public or nonprofit private agencies.

(b) Two or more SEAs may apply jointly for a grant to support a migrant education program that benefits eligible migratory children in those States.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I, Sec. 141(a), 20 U.S.C. 2761(a))

§ 201.11 Documents an SEA must submit to receive a grant.

(a) *SEA assurances.* An SEA that wishes to receive Chapter 1 Migrant Education Program funds under this part shall have on file with the Secretary assurances that—

(1) Have been properly submitted to the Secretary by the SEA of that State; and

(2) Meet the requirements in Section 435 of the General Education Provisions Act (GEPA) as they relate to fiscal control and fund accounting procedures.

(b) *SEA application.* To receive a Chapter 1 Migrant Education Program grant, an SEA shall submit to the Secretary an application to cover a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that applications. The application must be sufficiently specific to allow the Secretary to determine whether it satisfies the applicable requirements of

Chapter 1 and the applicable regulations.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 596, 20 U.S.C. 3876)

§ 201.12 Contents of an SEA's application and updating information.

(a) *Content of an application.* An SEA's application must include a description of—

(1) How the SEA will spend Chapter 1 Migrant Education Program funds during the period for which the application is submitted; and

(2) How the proposed State migrant education program complies with the Chapter 1 statute and the applicable regulations.

(b) *Annual updating of information in the application.* An SEA shall annually update its application by submitting to the Secretary a budget for the expenditure of Chapter 1 Migrant Education funds.

(c) *Further updating of information in the application.* When there are substantial changes in the number or needs of the Children to be served, or the services to be provided, the SEA shall submit a description of those changes to the Secretary.

(Sec. 554(a), 20 U.S.C. 3803(a) Sec. 596, 20 U.S.C. 3876)

201.13 Approval of an SEA's application.

The Secretary approves an SEA's application if the proposed State migrant eduction program—

(a) Complies with the Chapter 1 statute and the applicable regulations;

(b) Is designed to meet the special educational needs of eligible migratory children; and

(c) Holds reasonable promise of making substantial progress toward meeting those needs.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 556, 20 U.S.C. 3805)

§§ 201.14 and 201.15 [Reserved]

Applying to an SEA for a Subgrant

201.16 Documents that an LEA must submit to receive a subgrant.

An LEA that desires to receive a subgrant, shall submit to the SEA, under the procedures in § 201.17 of this part, a project application that is specific enough to allow the SEA to determine if the proposed local Migrant Education project satisfies the applicable requirements in the Chapter 1 statute, the applicable regulations, and the provisions of the approved SEA application.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 556, 20 U.S.C. 3805)

§ 201.17 Submission of LEA project applications to the SEA.

(a) *Frequency of submission.* An LEA shall submit a project application ot the SEA, for a period of not more than three fiscal years, including the first fiscal year for which a subgrant is made under that application.

(b) *Contents of the application.* The project application must include—

(1) A description of the local Chapter 1 Migrant Education project to be conducted;

(2) The applicable assurances in Section 556(b)(2)–(4) of Chapter 1, as determined by the Secretary; and

(3) Any other information that the SEA requires.

(c) *Annual updating of information in the application.* An LEA, Shall annually update its project application by submitting to its SEA—

(1) Data showing that the LEA has maintained fiscal effort on the same basis as is required for LEAs by Section 558(a) of Chapter 1; and

(2) A budget for the expenditure of Chapter 1 Migrant Education funds.

(Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805)

§ 201.18 Approval of an LEA's project application for a subgrant.

(a) *Standards for approval.* An SEA may approve an LEA's application for a subgrant if it complies with the requirements in the Chapter 1 statute, the applicable regulations, and the provisions of the approved SEA application.

(b) *Effect of approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA of its responsibility to comply with all applicable requirements.

(Sec. 556, 20 U.S.C. 3805)

§ 201.19 [Reserved]

Subpart B—Determining the Amount of Grants and Subgrants

§ 201.20 Amount available for an SEA grant.

(a) *General.* (1) The Secretary determines for each fiscal year the amount of the Chapter 1 Migrant Education Program grant for which the SEA in each State (including the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) may apply according to Section 141 of Title I.

(2) In applying Section 141(b)(1) of Title I, the Secretary determines the number of migratory children aged five to seventeen in each State on the basis of statistics from the migrant student record transfer system or any other system the Secretary believes most accurately reflects the actual number of migratory children. Each SEA is required to submit the data necessary to make these determinations.

(b) *Special summer formula.* In making the adjustment required by Section 141(b) of Title I to reflect the special needs of migratory children for summer projects and the additional costs of operating those projects, the Secretary uses the best available information about the cost of operating summer projects and the number of children participating in those projects.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I, Sec. 141(b), 20 U.S.C. 2761(b))

§ 201.21 Determination of an SEA grant.

(a) *Estimated cost of a State migrant education program.* (1) An applicant SEA is entitled to receive a Chapter 1 Migrant Education Grant in the amount the Secretary determines, on the basis of the best information available to the Secretary at the time, is necessary to carry out the activities in its application.

(2) This amount may not exceed the total amount available to that SEA as determined by the Secretary under §§ 201.20 and 201.22 of this part.

(b) *Consideration of the cost of past and future activities and the amount of funds available.* In determining the amount of the Chapter 1 Migrant Education Program grant to which an SEA is entitled, the Secretary considers—

(1) The amount for which the SEA may apply, as determined under § 201.20;

(2) The cost of completed program activities under previous Migrant Education Program grants, under Section 554(a)(2) of Chapter 1 or Section 141 of Title I, and the number of children who were served;

(3) The estimated cost of activities not yet begun under the preceding grant and the number of children who will be served;

(4) In the case of a request for an increase in the grant that the Secretary previously determined to be necessary to carry out the activities in the approved SEA application, the estimated cost of providing additional program services before the end of the grant period and the number of children who would receive additional services;

(5) The unused amount of the SEA's preceding Migrant Education Program grant; and

(6) Any other relevant information.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I, Sec. 141, 20 U.S.C. 2761)

§ 201.22 Reallocation of excess funds.

(a) If the Secretary determines that the amount for which an SEA may apply, as determined under § 201.20, is more than the amount needed to carry out the activities in its application, the Secretary may allocate some or all of this excess to one or more other SEAs whose amounts available under § 201.20 would otherwise be insufficient to serve the eligible migratory children in those States.

(b) The Secretary notifies an SEA if part of the amount available to it is being considered for reallocation. The SEA may—within 15 days after receiving that notice—request an opportunity to explain why a reallocation is not warranted. If the SEA does not request an opportunity to explain, or if—after the explanation—the Secretary determines that the total amount available to the SEA for that fiscal year exceeds the amount needed, the Secretary may reallocate the amount in excess.

(Sec. 554(a), 20 U.S.C. 3803(a), Sec. 554(b), 20 U.S.C. 3803(b); Title I, Sec. 141, 20 U.S.C. 2761)

§ 201.23 Amount available for State administration.

For the purpose of administering all Chapter 1 programs in the State, the Secretary pays each State an amount equal to the amount spent by it for the proper and efficient performance of its duties under Chapter 1—provided that the amount paid by the Secretary for any fiscal year does not exceed the limits imposed by Sections 554(b) and 554(d) of Chapter 1.

(Sec. 554(b), 20 U.S.C. 3803(b); Sec. 554(d), 20 U.S.C. 3803(d); Title I, Sec. 194, 20 U.S.C. 2844)

§ 201.24 Secretary's special arrangement for services (by-pass).

(a) *General.* The Secretary may make a special arrangement with one or more public or nonprofit private agencies to carry out the Migrant Education Program in a State if the Secretary determines that—

(1) An SEA is unwilling or unable to conduct an educational program for the migratory children who are eligible to be served;

(2) The arrangement would result in more efficient administration of the program; or

(3) The arrangement would add substantially to the welfare or educational attainment of the migratory children who are eligible to be served.

(b) *Availability of funds.* The Secretary may use all or part of the total amount of the Chapter 1 Migrant Education Program grant available to the affected SEA—under § 201.20 of these regulations—to make one or more special arrangements.

(c) *Notice to the SEA.* The Secretary does not make a special arrangement until after the affected SEA has had reasonable notice and an opportunity for a hearing.

(d) *Obligations of the Operating Agency.* If the Secretary makes a special arrangement for services through a public or nonprofit private agency, that agency shall administer its project in a manner consistent with an operating agency's obligations under the regulations in this part.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I Sec. 142(c), 20 U.S.C. 2762(c))

§ 201.25 Amount of a subgrant to an LEA.

An SEA shall determine the amount of a subgrant to an LEA based on—

(a) The number of children to be served;

(b) The nature and scope of the proposed project; and

(c) Any other relevant criteria developed by the SEA, including its priorities concerning ages and grade levels of children to be served, areas of the State to be served, and types of services to be provided.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I, Sec. 141, 20 U.S.C. 2761)

§§ 201.26 through 201.29 [Reserved]

Subpart C—Project Requirements

§ 201.30 Eligibility of a child to participate.

(a) A child may not be counted under § 201.20 of these regulations, or be provided with Chapter 1 Migrant Education Program services until an SEA or operating agency has—

(1) Determined that the child is either a currently or formerly migratory child as defined under § 201.3; and

(2) Indicated in writing how the child's eligibility was determined.

(b) In determining the eligibility of a child, an SEA or operating agency may rely on credible information from any source, including that provided by the child or his parent or guardian. An SEA or operating agency is not required to obtain documentary proof of either the child's eligibility or civil status from the child or his parent or guardian.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I Sec. 141, 20 U.S.C. 2761)

§ 201.31 Service priorities.

(a) *Currently and formerly migrtatory children.* An SEA or operating agency shall give priority to currently migratory children in the design and implementation of programs and activities supported with Chapter 1 Migrant Education Program funds. A formerly migratory child may participate in a project that—

(1) Also included currently migratory children; or

(2) Includes only formerly migratory children.

(b) *Preschool migratory children.* An SEA or operating agency may support a project that provides instructional or supporting services to preschool migratory children only if the participation of those children does not—

(1) Prevent the participation of school-aged migratory children; or

(2) Detract from the operation of the State program for these school-aged children.

(Sec. 554(a), 20 U.S.C. 3803(a); Title I Sec. 142(b), 20 U.S.C. 2762(b))

§ 201.32 Annual needs assessment.

An SEA or operating agency that receives Chapter 1 Migrant Education Program funds, shall base its Chapter 1 Migrant Education Program and projects on an annual assessment of educational needs that—

(a) Identifies migratory children who are eligible to be counted under § 201.20(a)(2);

(b) Permits the selection of those migratory children in the greatest need of special assistance; and

(c) Determines the educational needs of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(Sec. 555, 20 U.S.C. 3804; Sec. 556(b)(2), 20 U.S.C. 3805(b)(2))

§ 201.33 Allowable costs for migrant programs.

In addition to the allowable costs described in 34 CFR 204.22 the SEA may use funds available under § 201.20 (amount available for an SEA grant) to pay for necessary administrative functions that are unique to the State's Chapter 1 Migrant Education Program as long as those functions resulted from the SEA's dual role of administering the program and providing program services.

(Sec. 554(a)(2)(A), 20 U.S.C. 3803(a)(2)(A))

§ 201.34 Coordination with other migrant programs and projects.

An SEA or operating agency shall plan and operate the activities described in its application in coordination with migrant programs and projects of other groups or agencies that provide services to migrants in the area served by the SEA or operating agency.

(Sec. 554(a), 20 U.S.C. 3803(a))

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by redesignating the regulations for the State Agency Program for Handicapped Children (formerly in Part 302) as Part 202 and revising it as follows:

PART 202—FINANCIAL ASSISTANCE TO STATE AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF HANDICAPPED CHILDREN

Subpart A—Applying for Chapter 1 Funds for Grants to State Agencies Directly Responsible for Providing Free Public Education to Handicapped Children

General

Sec.
202.1 Purpose.
202.2 Applicable regulations.
202.3 Definitions for this program.
202.4 through 202.9 [Reserved]

Application Procedure

202.10 State assurances.
202.11 State agencies and LEAs that may receive Chapter 1 funds.
202.12 Submission of State agency project application to the SEA.
202.13 SEA approval of applications.
202.14 through 202.19 [Reserved]

Subpart B—Determining the Amount of Grants

202.20 Amount of funds available for Chapter 1 grants.
202.21 through 202.29 [Reserved]

Subpart C—Project Requirements

202.30 Annual needs assessment.

Authority: Secs. 552–556, 558, 591–596 of Pub. L. 97–35, 95 Stat. 464–466, 468–469, 480–482 (20 U.S.C. 3801–3805, 3807, 3871–3876), unless otherwise noted.

Subpart A—Applying for Chapter 1 Funds for Grants to State Agencies Directly Responsible for Providing Free Public Education to Handicapped Children

General

§ 202.1 Purpose.

Under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1), the Secretary provides financial assistance to State agencies and local educational agencies for projects designed to meet the special educational needs of handicapped children—

(a) In schools for handicapped children operated or supported by State agencies directly responsible for providing free public education to handicapped children; and

(b) In schools operated by local educational agencies which provide free public education to handicapped children who transfer from programs operated or supported by State agencies.

(Sec. 552, 20 U.S.C. 3801; Sec. 554(a)(2)(B), 20 U.S.C. 3803(a)(2)(B); Title I, Sec. 146–147, 20 U.S.C. 2771–2772)

§ 202.2 Applicable regulations.

The regulations in this part and in 34 CFR Part 204 apply to projects for which the Secretary provides financial assistance under Chapter 1 for handicapped children to State agencies and eligible local educational agencies.

(Sec. 552–556, 20 U.S.C. 3801–3805; Sec. 558, 20 U.S.C. 3807)

§ 202.3 Definitions for this program.

(a) The definitions in 34 CFR 204.2 apply to the programs covered by this part.

(b) In addition to the definitions referred to in paragraph (a) of this section the following definitions apply to this part:

"Handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services.

(1) "Special education" as used in the above definition of "Handicapped children" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education and home instruction, and instruction at hospitals and institutions.

(2) "Related services" as used in the above definition of "Handicapped children" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

"Local educational agency" means a local educational agency which is eligible to receive funds under this Part, as determined under Section 146(c) of Title 1.

"Operated by a State agency" means administered directly by a State agency.

"State agency" means an institution or agency of the State which has direct responsibility established under State law for providing free public education for handicapped children.

"Supported by a State agency" means operated under contract or other arrangement with a State agency.

(Sec. 552–556, 20 U.S.C. 3801–3805; Sec. 558, 20 U.S.C. 3807; Title I, Sec. 146(a), 20 U.S.C. 2771(a); Education of the Handicapped Act, Sec. 602(1), (16), (17), 20 U.S.C. 1401(1), (16), (17))

§ 202.4 through 202.9 [Reserved]

Application Procedure

§ 202.10 State assurances.

A State that wishes to receive Chapter 1 funds for a project under this part shall have on file with the Secretary assurances that—

(a) Have been properly submitted to the Secretary by the SEA of that State; and

(b) Meet the requirements in Section 435 of the General Education Provisions Act as they relate to fiscal control and fund accounting procedures.

(Sec. 596, 20 U.S.C. 3876)

§ 202.11 State agencies and LEAs that may receive Chapter 1 funds.

(a) A State agency that is eligible to receive funds for a fiscal year may receive those funds through a grant from the SEA, if the State agency has on file with the SEA a current Chapter 1 project application that—

(1) Describes the projects to be conducted with the Chapter 1 funds; and

(2) Has been approved by the SEA.

(b) An SEA may require a similar application from an LEA.

(Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805)

§ 202.12 Submission of State agency project applications to the SEA.

(a) *Frequency of submission.* A State agency shall submit a Chapter 1 project application to the SEA for a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that application.

(b) *Contents of the application.* The Chapter 1 project application that is submitted under this subpart by the State agency must include—

(1) A description of the Chapter 1 project to be conducted;

(2) The applicable assurances in Section 556(b)(2)–(4) of Chapter 1; and

(3) An assurance that each handicapped child in the project will be provided a program commensurate with the child's special educational needs during any fiscal year for which payments are made.

(c) *Amendments to the application; Annual updating of information in a*

Chapter 1 application. A State agency shall annually update its Chapter 1 project application by submitting to its SEA—

(1) Data showing that the State agency has maintained fiscal effort on the same basis as is required for LEAs by Section 558(a) of Chapter 1; and

(2) A budget for the expenditure of Chapter 1 funds.

(Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805)

§ 202.13 SEA approval of applications.

(a) *Standards for approval.* An SEA shall approve a State agency application for Chapter 1 funds if that application meets the requirements in § 202.12 of this part.

(b) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the State agency of its responsibility to comply with all applicable requirements.

(Sec. 556, 20 U.S.C. 3805; Title I, Sec. 147, 20 U.S.C. 2772)

§§ 202.14 through 202.19 [Reserved]

Subpart B—Determining the Amount of Grants

§ 202.20 Amount of funds available for Chapter 1 grants.

(a) *Grants to States.* For the purpose of administering all Chapter 1 programs in the State, a State is eligible to receive up to one (1) percent of the total amount of Chapter 1 program funds granted to eligible agencies within the State.

(b) *Grants to State agencies and LEAs.* (1) the Secretary annually notifies the SEA of the amount of funds that each State agency and LEA is eligible to receive in accordance with the provisions of Section 146 of Title I.

(2) The SEA shall notify each State agency and LEA of the amount available to it under paragraph (a) of this section, and from that amount shall make funds available to the State agency and LEA equal to the cost of programs and projects approved by the SEA in accordance with the procedure prescribed in §§ 202.11 and 202.12 of this part. The amount made available to a State agency or LEA shall not exceed the amount the agency is entitled to receive under paragraph (b)(1) of this section.

(c) *Amount of grants.* The Secretary computes grants under Section 146 of Title I based on the: (1) The applicable average per pupil expenditure data; (2) average daily attendance data; and (3) the provisions of paragraph (d) of this section, in the schools for handicapped children operated or supported by the State agencies and in LEA projects eligible for funding under Section 146(c) of Title I. On a date specified by the Secretary for each year, the SEA provides the Secretary with the data described in (1), (2) and (3) of this paragraph necessary for this computation.

(d) *Exclusions.* For the purpose of computing an allocation under this part, the Secretary may not count a child who (1) has been counted under Part B of the Education of the Handicapped Act, as amended by Pub. L. 94-142, or (2) has been counted in average daily attendance under the provisions of 34 CFR Part 203 (Grants to State Agencies Serving Institutionalized, Neglected or Delinquent Children).

(Sec. 554, 20 U.S.C. 3803; Title I, Sec. 146, 20 U.S.C. 2771; Education of the Handicapped Act, Sec. 611(a)(5)(A)(iii), 20 U.S.C. 1411(a)(5)(A)(iii))

§§ 202.21 through 202.29 [Reserved]

Subpart C—Project Requirements

§ 202.30 Annual needs assessment.

A State agency that receives Chapter 1 funds shall base its Chapter 1 project on an annual assessment of education needs of the children in the institution that—

(a) Permits the selection for counting of those eligible children in the greatest need of special assistance; and

(b) Determines the educational needs of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(Sec. 555, 20 U.S.C. 3804)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 203 to read as follows:

PART 203—FINANCIAL ASSISTANCE TO STATE AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF INSTITUTIONALIZED NEGLECTED OR DELINQUENT CHILDREN INCLUDING CHILDREN IN ADULT CORRECTIONAL INSTITUTIONS

Subpart A—Applying for Chapter 1 Funds for Grants to State Agencies Serving Institutionalized Neglected or Delinquent Children

General

Sec.
203.1 Purpose.
203.2 Applicable regulations.
203.3 Definitions for this program.
203.4 through 203.9 [Reserved]

Application Procedure

203.10 State assurances.
203.11 State agencies that may receive Chapter 1 funds.
203.12 Submission of project applications by the State agency to the SEA.
203.13 SEA approval of applications.
203.14 through 203.19 [Reserved]

Subpart B—Determining the Amount of Grants

203.20 Amount of funds available for Chapter 1 grants.
203.21 through 203.29 [Reserved]

Subpart C—Project Requirements

203.30 Annual needs assessment.

Authority: Secs. 552–556, 558, 591–596 of Pub. L. 97-35, 95 Stat. 464–466, 468–469, 480–482 (20 U.S.C. 3801–3805, 3807, 3871–3876), unless otherwise noted.

Subpart A—Applying for Chapter 1 Funds for Grants to State Agencies Serving Institutionalized Neglected or Delinquent Children

General

§ 203.1 Purpose.

Under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1), the Secretary provides financial assistance to State agencies for projects designed to meet the special educational needs of neglected or delinquent children—

(a) In institutions for neglected children;

(b) In institutions for delinquent children; and

(c) In adult correctional institutions.

(Sec. 552, 20 U.S.C. 3801; Sec. 554(a)(2)(C), 20 U.S.C. 3803(a)(2)(C); Title I, Sec. 151–152, 20 U.S.C. 2781–2782)

§ 203.2 Applicable regulations.

The regulations in this part and in 34 CFR Part 204 apply to projects for neglected and delinquent children for which the Secretary provides financial assistance to State agencies, as defined in § 203.3, under Chapter 1.

(Sec. 552–556, 20 U.S.C. 3801–3805; Sec. 558, 20 U.S.C. 3807)

§ 203.3 Definitions for this program.

(a) The definitions in 34 CFR 204.2 apply to the programs covered by this part.

(b) In addition to the definitions referred to in paragraph (a) of this section the following definitions apply to this part:

"Adult correctional institution" means a facility in which persons are confined as a result of a conviction of a criminal offense, including persons under 21 years of age.

"Custody" means custody as defined by State law. However, for the purposes of this part, a child who resides in an institution 24 hours a day is considered to be in the custody of the public agency

that assigned him or her to the institution.

"Institution" means either an institution for neglected children, an institution for delinquent children, or an adult correctional institution.

"Institution for delinquent children" means a facility which has an average length of stay of at least 30 days and which is operated for the care of children who are in the custody of a public agency as a result of a determination under State law that they are delinquent.

"Institution for neglected children" means a facility which has an average length of stay of at least 30 days and which is operated for the care of children that are in the care of a public agency as a result of a determination of neglect under State law.

"Organized program of instruction" means an educational program (not beyond grade 12) which consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally-oriented subjects, and which is supported by other than Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

"State agency" means an agency of State government which is directly responsible for the free public education of children in institutions for neglected or delinquent children or in adult correctional institutions. This education may be provided in schools operated or supported by the State agency or in schools under contract or other arrangement with that agency. The term does not include an agency whose responsibility for these children is limited to the distribution of State financial assistance to other agencies which State law makes directly responsible for the free public education of these children.

(Secs. 552–556, 20 U.S.C. 3801–3805; Sec. 558, 20 U.S.C. 3807; Title I, Sec. 151, 20 U.S.C. 2781)

§§ 203.4 through 203.9 [Reserved]

Application Procedure

§ 203.10 State assurances.

A State that wishes to receive Chapter 1 funds for a project under this part shall have on file with the Secretary assurances that—

(a) Have been properly submitted to the Secretary by the SEA of that State; and

(b) Meet the requirements in Section 435 of the General Education Provisions Act as they relate to fiscal control and fund accounting procedures.

(Sec. 596, 20 U.S.C. 3876)

§ 203.11 State agencies that may receive Chapter 1 funds.

A State agency that is eligible to receive funds for a fiscal year may receive those funds through a grant from the SEA, if the State agency has on file with the SEA a current Chapter 1 project application that—

(a) Describes the projects to be conducted with the Chapter 1 funds; and

(b) Has been approved by the SEA.

(Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805)

§ 203.12 Submission of project applications by the State agency to the SEA.

(a) *Frequency of submission.* A State agency shall submit a Chapter 1 project application to the SEA for a period of not more than three fiscal years, including the first fiscal year for which a grant is made under that application.

(b) *Contents of the application.* The Chapter 1 project application that is submitted under this subpart by the State agency must include—

(1) A description of the Chapter 1 project to be conducted; and

(2) The applicable assurances in Section 556(b)(2)–(4) of Chapter 1.

(c) *Amendments to the application; annual updating of information in a Chapter 1 application.* A State agency shall annually update its Chapter 1 project application by submitting to its SEA—

(1) Data showing that the State agency has maintained fiscal effort on the same basis as is required for LEAs by Section 558(a) of Chapter 1; and

(2) A budget for the expenditure of Chapter 1 funds.

(Sec. 555, 20 U.S.C. 3804; Sec. 556, 20 U.S.C. 3805)

§ 203.13 SEA approval of applications.

(a) *Standards for approval.* An SEA shall approve a State agency's application for Chapter 1 funds if that application meets the requirements in § 203.12 of this part.

(b) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the State agency of its responsibility to comply with all applicable requirements.

(Sec. 556, 20 U.S.C. 3805)

§§ 203.14 through 203.19 [Reserved]

Subpart B—Determining the Amount of Grants

§ 203.20 Amount of funds available for Chapter 1 grants.

(a) *Grants to States.* For the purpose of administering all Chapter 1 programs in the State, a State is eligible to receive up to one (1) percent of the total amount of Chapter 1 program funds granted to eligible agencies within the State.

(b) *Grants to State agencies.* (1) The Secretary annually notifies the SEA of the amount of funds that each State agency is eligible to receive in accordance with the provisions of Section 151 of Title I.

(2) The SEA shall notify each State agency of the amount available to it under paragraph (a) of this section, and from that amount shall make funds available to the State agency equal to the cost of programs and projects approved by the SEA in accordance with the procedure prescribed in §§ 203.12 and 203.13 of this part. The amount made available to a State agency shall not exceed the amount the agency is entitled to receive under paragraph (b)(1) of this section.

(c) *Amount of grants.* The Secretary computes grants under Section 151 of Title I based on: (1) Average daily attendance data determined in accordance with the provisions of paragraph (d) of this section, in the schools operated or supported by the State agencies; and (2) the applicable average per pupil expenditure data. On a date specified by the Secretary for each year, the SEA provides the Secretary with the data described in (1) and (2) of this paragraph necessary for this computation.

(d) *Determination of average daily attendance.* (1) Average daily attendance is computed for each institution by: (i) calculating from daily attendance records the total number of days of attendance of children in the organized program of instruction, as defined in § 203.3, during the most recently completed school year, and (ii) dividing that total by 180.

(2) For the purpose of computing average daily attendance—

(i) A child is counted as being in a full day of attendance for each day he or she attends the organized program of instruction for three (3) or more hours; and

(ii) A child is counted as being in one-half (½) day of attendance for each day he or she attends the organized program of instruction for at least one (1) hour, but less than three (3) hours.

(3) To be counted in average daily attendance a child must be:

(i) In the custody of the public agency that assigned him or her to an institution;

(ii) One for whom a State agency is providing a free public education; and

(iii) For at least ten hours a week in an organized program of instruction for which daily attendance records are kept.

(4) For the purpose of computing an allocation under this Part, the Secretary may not count a child who is counted in average daily attendance under the provisions of 34 CFR Part 202 (State Operated Programs for Handicapped Children).

(Sec. 554, 20 U.S.C. 3803; Title I, Sec. 151, 20 U.S.C. 2781)

§§ 203.21 through 203.29 [Reserved]

Subpart C—Project Requirements

§ 203.30 Annual needs assessment.

A State agency that receives Chapter 1 funds shall base its Chapter 1 project on an annual assessment of educational needs of the children in the institution that—

(a) Permits the selection of those institutionalized children in the greatest need of special assistance; and

(b) Determines the educational needs of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(Sec. 555, 20 U.S.C. 3804; Sec. 556(b)(2), 20 U.S.C. 3805(b)(2))

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 204 as follows:

PART 204—GENERAL DEFINITIONS, AND ADMINISTRATIVE, FISCAL, AND DUE PROCESS REQUIREMENTS FOR CHAPTER 1 PROGRAMS

Subpart A—General Definitions and Applicability

General

Sec.
204.1 Applicability of regulations in this part.
204.2 Definitions.
204.3 Acronyms that are frequently used.
204.4 through 204.9 [Reserved]

Subpart B—General Administrative Requirements

204.10 Recordkeeping requirements.
204.11 Access to records and audits.
204.12 Compromise of audit claims.
204.13 State rulemaking.
204.14 Availability of funds.
204.15 through 204.19 [Reserved]

Subpart C—Project Requirements

204.20 Sufficient size, scope, and quality of project.
204.21 Consultation with teachers and parents.
204.22 Allowable costs.
204.23 Evaluation.
204.24 through 204.29 [Reserved]

Subpart D—Fiscal Requirements

204.30 Maintenance of effort.
204.31 Waiver of the maintenance of effort requirement.
204.32 Supplement, not supplant.
204.33 through 204.39 [Reserved]

Subpart E—Other Due Process Procedures

204.40 General.
204.41 Jurisdiction.
204.42 Definitions.
204.43 Eligibility for review.
204.44 Written notice.
204.45 Filing an application for review of a final audit determination or a withholding hearing.
204.46 Review of the written notice.
204.47 Acceptance of the application.
204.48 Rejection of the application.
204.49 Intervention.
204.50 Practice and procedure.
204.51 The Panel's decision.
204.52 Opportunity to comment on the Panel's decision.
204.53 The Secretary's decision.
204.54 Cease and desist hearing.
204.55 Cease and desist written report and order.
204.56 Enforcement of a cease and desist order.

Authority: Sections 552–558, 591–596 of Pub. L. NO. 97–35, 95 Stat. 464–469, 480–482 (20 U.S.C. 3801–3807, 3871–3876), unless otherwise noted.

Subpart A—General Definitions and Applicability

General

§ 204.1 Applicability of regulations in this part.

The regulations in this part apply to all Chapter 1 programs except where otherwise noted.

(Sec. 552–556, 20 U.S.C. 3801–3805, Sec. 558, 20 U.S.C. 3807)

§ 204.2 Definitions.

(a) The definitions in Section 595 of the Education Consolidation and Improvement Act of 1981 apply to the programs covered by this part.

(b) In addition to the definitions referred to in paragraph (a) of this section the following definitions apply to this part:

"Chapter 1" means Chapter 1 of the Education Consolidation and Improvement Act of 1981.

"Children" means, except for the purposes of Part 202, or where otherwise stated: (1) Persons not above age twenty-one who are entitled to a free public education not above grade 12; and (2) preschool children. For the purposes of Part 202, "children" means persons aged birth to twenty-one.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the State educational agency for recordkeeping.

"Preschool Children" means children who are—

(1) Below the age and grade level at which the agency provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

"Public" as applied to an agency, organization, or institution, means under the administrative supervision or control of a government other than the Federal Government.

"Title I" means Title I of the Elementary and Secondary Education Act of 1965, as amended.

(c) Any term used in the provisions of Title I referenced in Section 554 of Chapter 1 and not defined in Section 595 of Chapter 1 has the same meaning as that term was given in Title 1.

(b) The definitions in 34 CFR Part 77 (Definitions in the Education Department General Administrative Regulations (EDGAR) that apply generally to education programs) do not apply to programs covered by this part.

(e) Additional definitions pertaining to the due process procedures in § § 204.40–204.56 are found in § 204.42 of these regulations.

(Sec. 522–556, 20 U.S.C. 3801–3805; Sec. 558, 20 U.S.C. 3807; Sec. 595, 20 U.S.C. 3875)

§ 204.3 Acronyms that are frequently used.

The following acronyms are used frequently in this Part and in 34 CFR Parts 200 through 203:

"LEA" means local educational agency.

"SEA" means State educational agency.

(Sec. 552–556, 20 U.S.C. 3801–3805; Sec. 558, 20 U.S.C. 3807; Sec. 595, 20 U.S.C. 3875)

§§ 204.4 through 204.9 [Reserved]

Subpart B—General Administrative Requirements

§ 204.10 Recordkeeping requirements.

(a) The SEA or any other agency that receives Chapter 1 funds shall use fiscal control and fund accounting procedures that will ensure proper disbursement of an accounting for Chapter 1 funds.

(b) The SEA or any other agency that receives Chapter 1 funds shall keep—

(1) Records of the amount and disposition of all Chapter 1 funds, including records that show the share of the cost provided from non-Chapter 1 sources;

(2) Other records that are needed to facilitate an effective audit of the Chapter 1 project and that show compliance with Chapter 1 requirements; and

(3) Evaluation data collected under § 204.23 of this Part.

(c) All records required under this section must be retained—

(1) For five years after the completion of the activity for which funds were used.

(2) Until all pending audits or reviews concerning the Chapter 1 project have been completed; and

(3) Until all findings and recommendations arising out of any audits concerning the Chapter 1 project have been finally resolved.

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 556(b), 20 U.S.C. 3805(b); Sec. 437(a) of GEPA, 20 U.S.C. 1232f(a); Sec. 596(a), 20 U.S.C. 3876(a))

§ 204.11 Access to records and audits.

(a) *Federal responsibilities.* For the purpose of evaluating and reviewing the use of Chapter 1 funds—

(i) The Inspector General of the Department, authorized Department officials and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that—

(A) Are related to programs assisted with Chapter 1 funds; and

(B) Are in the possession, custody, or control of any SEA, State agency or LEA that receives Chapter 1 funds.

(ii) The Inspector General of the Department and the Comptroller General are authorized to conduct audits.

(2) An SEA shall repay to the Department the amount of Chapter 1 funds determined by the audit not to have been spent in accordance with applicable law.

(b) *State and local responsibilities.* (1) Any State or local government that receives Chapter 1 funds shall comply with the audit requirements in 34 CFR 74.62, which implement OMB Circular A-102, Attachment P.

(2)(i) A State agency or LEA shall repay to the SEA the amount of Chapter 1 funds determined by the State not to have been spent in accordance with applicable law.

(ii) If the SEA recovers funds under paragraph b(2)(i) of this section during the period in which the misspent Chapter 1 funds are still available for obligation under the terms of Section 412(b) of GEPA (relating to the availability of appropriations), the SEA shall treat the recovered funds as Chapter 1 funds and—

(A) If the agency repaying is an LEA—

(1) Reallocate those funds to eligible LEAs—Other than the agency that was found to have misspent the funds—under the procedures in 34 CFR 200.45; or

(2) Return the funds for proper use to the LEA from which they were received; or

(B) If the agency repaying is a State agency—

(1) Return the funds for proper use to the agency from which they were recovered; or

(2) Return the funds to the Department.

(iii) If the Chapter 1 funds that an SEA recovers under paragraph (b)(2)(i) of this section are no longer available for obligation under the terms of Section 412(b) of GEPA, the SEA shall return those funds to the Department.

(Sec. 555(d), 20 U.S.C. 3804(d); Sec. 556(b), 20 U.S.C. 3805(b); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 1744 of the Omnibus Budget Reconciliation Act of 1981, 31 U.S.C. 1243 note; Secs. 3, 4, and 6 of the Inspector General Act of 1978, Pub. L. 95-452 (5 U.S.C. App.); Sec. 202 of the Intergovernmental Cooperation Act of 1968, Pub. L. 90-577 (42 U.S.C. 4212))

§ 204.12 Compromise of audit claims.

In deciding whether to compromise audit claims, or in recommending possible compromise to the Department of Justice, the Secretary may take into account—

(a) The cost of collecting the claim;

(b) The probability of the claim being upheld;

(c) The nature of the violation;

(d) Whether the practices of the agency receiving Chapter 1 funds that resulted in the audit finding have been corrected;

(e) Whether the agency receiving Chapter 1 funds is in all aspects in compliance with Chapter 1; and

(f) The extent to which the agency receiving Chapter 1 funds agrees to use non-Federal funds to supplement Chapter 1 programs.

Sec. 555(d), 20 U.S.C 3804(d); Sec. 556(b), 20 U.S.C. 3805(b); Sec. 452 of GEPA, 20 U.S.C. 1234a; Federal Claims Collection Act, 31 U.S.C. 951 *et seq.; 4 CFR Part 103)*

§ 204.13 State rulemaking.

In accordance with State law, the State or an appropriate entity thereof, may adopt rules, regulations, procedures, guidelines, and criteria regarding the use of Chapter 1 funds, provided that those rules, regulations, procedures, guidelines, and criteria do not conflict with the provisions of—

(a) Chapter 1;

(b) The regulations in this Part and 34 CFR Parts 200 through 203; or

(c) Other applicable Federal statutes and regulations.

(Sec. 555, 20 U.S.C. 3804; Sec. 556(b), 20 U.S.C. 3805(b); Sec. 591, 20 U.S.C. 3871)

§ 204.14 Availability of funds.

An SEA or LEA may obligate funds during the fiscal year for which the funds were appropriated and during the succeeding fiscal year.

(Sec. 596, 20 U.S.C. 3876; Sec. 412(b) of GEPA, 20 U.S.C. 1223(b))

§§ 204.15 through 204.19 [Reserved]

Subpart C—Project Requirements

§ 204.20 Sufficient size, scope, and quality of project.

An agency that receives Chapter 1 funds shall use those funds for a project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the speical educational needs of the children being served.

(Sec. 555, 20 U.S.C. 3804; Sec. 556(b)(3), 20 U.S.C. 3805(b)(3))

§ 204.21 Consultation with teachers and parents

(a) An agency that receives Chapter 1 funds shall design and implement its Chapter 1 project in consultation with teachers of the children to be served and, to the extent feasible, in consultation with the parents of the children to be served.

(b) To meet the consultation requirement in paragraph (a) of this section, an agency may, but is not required to, use parent advisory councils.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 556(b)(3), 20 U.S.C. 3805(b)(3))

§ 204.22 Allowable costs.

(a) An agency may use Chapter 1 funds only to meet the costs of project activities that—

(1) Are designed to meet the special educational needs of the children eligible to be served under the applicable Chapter 1 program.

(2) Are included in an approved application, and

(3) Comply with all applicable Chapter 1 requirements.

(b) The project activities referred to in paragraph (a) of this section may include the applicable activities in Section 555(c) of chapter 1 as determined by the Secretary and other

expenditures authorized under Title I as in effect on September 30, 1982.

(c) An agency may use funds under Chapter 1 only if control of these funds, and title to property derived therefrom, is in a public agency for the uses and purposes provided in Chapter 1, and only if a public agency will administer these funds and property.

(Sec. 554(a), 20 U.S.C. 3803(a); Sec. 555(c), 20 U.S.C. 3804(c); Sec. 556(b)(2), 20 U.S.C. 3805(b)(2); Sec. 556(b)(3), 20 U.S.C. 3805(b)(3))

§ 204.23 Evaluation.

An agency that receives Chapter 1 funds shall at least once every three years, conduct an evaluation of its Chapter 1 project that includes—

(a) Objective measurements of educational achievement in basic skills; and

(b) A determination of whether improved performance is sustained over a period of more than one year.

(Sec. 556(b)(4), 20 U.S.C. 3805(b)(4))

§§ 204.24 through 204.29 [Reserved]

Subpart D—Fiscal Requirements

§ 204.30 Maintenance of effort.

(a) *Basic standard.* Except as provided in § 204.31, an SEA shall pay a State agency or LEA its allocation of funds under Chapter 1 programs if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public education in the affected State agency or LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year. For purposes of determining maintenance of effort, "preceding fiscal year" means the fiscal year prior to the beginning of the Federal fiscal year for which funds are available.

Example: For funds made available on July 1, 1982, if a State is using the Federal fiscal year, the "preceding fiscal year" is Fiscal Year 1981 (which began on October 1, 1980). If a State is using a fiscal year that begins on July 1, 1982, the "preceding fiscal year" is the 12-month fiscal period ending on June 30, 1981.

(b) *Failure to maintain effort.* (1) If a State agency or LEA fails to maintain effort and a waiver under § 204.31 is not appropriate, the SEA shall reduce the affected State agency's or LEA's allocation of funds under Chapter 1 in the exact proportion to which the State agency or LEA fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (whichever is more favorable to the State agency or LEA) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the State agency or LEA failed to maintain effort, the SEA may consider the State agency's or LEA's fiscal effort for the second preceding fiscal year to be 90 percent of the combined fiscal effort per student or aggregate expenditures for the third preceding fiscal year.

Example: A State agency or LEA fails to maintain effort because its fiscal effort in the preceding fiscal year (1981) is less than 90 percent of its fiscal effort in the second preceding year (1980). In the following fiscal year, the State agency's or LEA's fiscal effort in the second precent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 558(a), 20 U.S.C. 3807(a))

§ 204.31 Waiver of the maintenance of effort requirement.

(a) (1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement applying to an affected State agency or LEA in § 204.30 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include—

(i) A natural disaster; or

(ii) Other exceptional or uncontrollable circumstances.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall allocate to the affected State agency or LEA its full entitlement of Chapter 1 funds.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA may consider the State agency's or LEA's fiscal effort for the second preceding fiscal year to be 90 percent of the combined fiscal effort per student or aggregate expenditures for the third preceding fiscal year.

Example: A State agency or LEA secures a waiver because its fiscal effort in the preceding fiscal year (1981) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1980) due to exceptional or uncontrollable circumstances. In the following fiscal year, the State agency's or LEA's fiscal effort in the second preceding fiscal year (1981) would be considered to be 90 percent of its fiscal effort in the third preceding fiscal year (1980).

(Sec. 558(a)(3), 20 U.S.C. 3807(a)(3); 127 Cong. Rec. H5645 (daily ed. July 29, 1981))

§ 204.32 Supplement, not supplant.

(a) An agency receiving Chapter 1 funds may use Chapter 1 funds only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of Chapter 1 funds, be made available for the education of pupils participating in Chapter 1 projects, and in no case may Chapter 1 funds be used to supplant those non-Federal funds.

(b) No agency shall be required to provide Chapter 1 services outside the regular classroom or school program in order to demonstrate compliance with the supplement, not supplant requirement in paragraph (a) of this section.

(Sec. 558(b), 20 U.S.C. 3807(b))

§ 204.33 through 204.39 [Reserved]

Subpart E—Other Due Process Procedures

§ 204.40 General.

Sections 204.41 through 204.56 contain rules for the conduct of proceedings arising under Chaper 1 regarding—

(a) The review of final audit determinations;

(b) Withholding hearings; and

(c) Cease and desist proceedings.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 204.41 Jurisdiction.

Under Chapter 1, the Education Appeal Board has jurisdiction to—

(a) Review final audit determinations;

(b) Conduct withholding hearings; and

(c) Conduct cease and desist proceedings.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 204.42 Definitions

For the purposes of §§ 204.40 through 204.56, the following definitions apply:

"Appellant" means an SEA that requests—

(a) A review of a final audit determination; or

(b) A withholding hearing.

"Authorized Department official" means—

(a) The Secretary; or

(b) A person employed by the Department who has been designated to act under the Secretary's authority.

"Board" means the Education Appeal Board of the Department.

"Board chairperson" means the Board member designated by the Secretary to serve as administrative officer of the Board.

"Cease and desist" means to discontinue a prohibited practice or initiate a required practice.

"Final audit determination" means a written notice issued by an authorized Department official disallowing expenditures made by a recipient under Chapter 1.

"Hearing" means any review proceeding conducted by the Board.

"Panel" means an Education Appeal Board Panel, consisting of at leas three members of the Board, designated by the Board Chairperson to sit in any case.

"Panel Chairperson" means the person designated by the Board Chairperson to serve as the presiding officer of a Panel.

"Party" means—

(a) The recipient requesting or appearing at a hearing under these regulations;

(a) The authorized Department official who issued the final audit determination being appealed, the notice of an intent to withhold funds, or the cease and desist complaint; or

(c) Any person, group, or agency that files an acceptable application to intervene.

"Recipient" means the named party or entity that initially received Federal Funds under Chapter 1.

"Withholding" means stopping payment of Federal funds under Chapter 1 to a recipient and stopping the recipient's authority to charge costs under Chapter 1 for the period of time the recipient is in violation of a requirement.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a), (e) of GEPA, 20 U.S.C. 1434(a), (e); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 204.43 Eligibility for review.

Review under these regulations is available to a recipient of Chapter 1 funds that receives a written notice from an authorized Department official of—

(a) A final audit determination;

(b) An intent to withhold funds; or

(c) A cease and desist complaint.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

§ 204.44 Written notice.

(a) *Written notice of a final audit determination.*

(1) An authorized Department official issues a written notice of a final audit determination to a recipient in connection with Chapter 1.

(2) In the written notice, the authorized Department official—

(i) Lists the disallowed expenditures made by the recipient;

(ii) Indicates the reasons for the final audit determination in sufficient detail to allow the recipient to respond;

(iii) Cities the requirements that are the basis for the alleged failure to comply; and

(iv) Advises the recipient that it must repay the disallowed expenditures to the Department or, within 30 calendar days of its receipt of the written notice, request a review by the Board of the final audit determination.

(3) The authorized Department official sends the written notice to the recipient by certified mail with return receipt requested.

(b) *Written notice of an intent to withhold funds.* (1) An authorized Department official issues a written notice to a recipient under Chapter 1 of an intent to withhold funds.

(2) In the written notice, the authorized Department official—

(i) Indicates the reason why the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement that is the basis for the alleged failure to comply; and

(iii) Advises the recipient that it may, within 30 calendar days of its receipt of the written notice, request a hearing before the Board.

(3) The authorized Department official sends the written notice to the recipient by certified mail with return receipt requested.

(c) *Written notice of a cease and desist complaint.* (1) The Secretary issues a written notice of a cease and desist complaint to a recipient under Chapter 1. The cease and desist proceeding may be used as an alternative to a withholding hearing.

(2) In the written notice, the Secretary—

(i) Indicates the reasons why the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement that is the basis for the alleged failure to comply; and

(iii) Gives notice of a hearing that is to be held at least 30 calendar days after the date the recipient receives the written notice.

(3) The Secretary sends the written notice to the recipient by certified mail with return receipt requested.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(a) of GEPA, 20 U.S.C. 1234a(a); Sec. 454(a) of GEPA, 20 U.S.C. 1234c(a))

§ 204.45 Filing an application for a review of a final audit determination or a withholding hearing.

(a) An appellant seeking review of a final audit determination or a withholding hearing shall file a written application with the Board Chairperson no later than 30 calendar days after the date it receives written notice.

(b) In the application for a hearing, the appellant shall attach a copy of the written notice and shall, to the satisfaction of the Board Chairperson—

(1) Identify the issues and facts in dispute; and

(2) State the appellant's position, together with the pertinent facts and reasons supporting that position.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 204.46 Review of the written notice.

(a) The Board Chairperson reviews the written notice of the final audit determination or the intent to withhold funds after an application is received under § 204.45 to ensure that the written notice meets the applicable requirements in § 204.44.

(b) If the Board Chairperson decides that the written notice does not meet the applicable requirements in § 204.44 the Board Chairperson—

(1) Returns the determination to the official who issued it so that the determination may be properly modified; and

(2) Notifies the recipient of that decision.

(c) If the official makes the appropriate modifications and the recipient wishes to pursue its appeal to the Board, the recipient shall amend its application within 30 calendar days of the date it receives the modification.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 204.47 Acceptance of the application.

If the appellant files an application that meets the requirements of § 204.45, the Board Chairperson—

(a) Issues within 45 days of receiving the application, a notice of the acceptance of the application to the appellant and to the authorized Department official who issued the written notice;

(b) Publishes a notice of acceptance of the application in the Federal Register prior to the scheduling of initial proceedings;

(c) Refers the appeal to a Panel;

(d) Arranges for the scheduling of initial proceedings; and

(e) Forwards to the Panel and the parties an initial hearing record that includes—

(1) The written notice;

(2) The appellant's application; and

(3) Other relevant documents, such as audit reports.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 204.48 Rejection of the application.

(a) If the Board Chairperson determines that an application does not satisfy the requirements of § 204.45, the Board Chairperson, within 45 days of receiving the application, returns the application to the appellant, together with the reasons for the rejection by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application is rejected twice, the Department may take appropriate administrative action to—

(1) Collect the expenditures disallowed in the final audit determination; or

(2) Withhold funds.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

§ 204.49 Intervention.

(a) A person, group, or agency with an interest in and having relevant information about a case before the Board may file with the Board Chairperson an application to intervene.

(b) The application to intervene shall contain—

(1) A statement of the applicant's interest; and

(2) A summary of the relevant information.

(c)(1) If the application is filed before a case is assigned to a Panel, the Board Chairperson decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(2) If the application is filed after the Board Chairperson has assigned the case to a Panel, the Panel decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(d) The Board Chairperson notifies the applicant seeking to intervene and the other parties of the approval or disapproval of the application to intervene.

(e) If an application to intervene is approved, the intervenor becomes a party to the proceedings.

(f) If an application to intervene is disapproved, the applicant may submit to the Board Chairperson an amended application to intervene.

(Sec. 451(a), (e), of GEPA, 20 U.S.C. 1234(a), (e))

§ 204.50 Practice and procedure.

(a) Practice and procedure before the Board in a proceeding for review of a final audit determination or a cease and desist complaint are governed by the rules in Subpart E of 34 CFR Part 78 (Education Appeal Board).

(b) Practice and procedure before the Board in a withholding hearing are governed by the procedures in the Administrative Procedure Act, 5 U.S.C. 554 and 556.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(e) of GEPA, 20 U.S.C. 1234(e))

§ 204.51 The Panel's decision.

(a) The Panel issues a decision, based on the record as a whole, in the appeal from a final audit determination, or a notice of an intent to withhold funds within 180 days after receiving the parties' final submissions; unless the Board Chairperson, for good cause shown, grants the Panel an extension of this deadline.

(b) The Board Chairperson submits the Panel's decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 204.52 Opportunity to comment on the Panel's decision.

(a) *Initial comments and recommendations.* Each party has the opportunity to file comments and recommendations on the Panel's decision in § 204.51 with the Board Chairperson within 15 calendar days of the date the party receives the Panel's decision.

(b) *Responsive comments and recommendations.* The Board Chairperson sends a copy of a party's initial comments and recommendations to each of the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Board Chairperson within seven days of the date the party receives the initial comments and recommendations.

(c) *Forwarding comments.* The Board Chairperson forwards the parties' initial and responsive comments on the Panel's decision to the Secretary.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 204.53 The Secretary's decision.

(a) The Panel's decision in § 204.51 becomes the final decision of the Secretary 60 calendar days after the date the recipient receives the Panel's decision unless the Secretary, for good cause shown, modifies or sets aside the Panel's decision.

(b) If the Secretary modifies or sets aside the Panel's decision within the 60 days, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Secretary's final decision 60 calendar days after it is issued.

(c) The Board Chairperson sends a copy of the Secretary's final decision and statement of reasons, or a notice that the Panel's decision has become the Secretary's final decision, to the Panel and to each party.

(d) The final decision of the Secretary in the final decision of the Department.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

§ 204.54 Cease and desist hearing.

(a) *Right to appear at the cease and desist hearing.* The recipient has the right to appear at the cease and desist hearing, which is held before a Panel of the Board on the date specified in the complaint.

(b) *Opportunity to show cause.* At the hearing, the recipient may present reasons why a cease and desist order should not be issued by the Board based on the violation of law stated in the complaint.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454(b) of GEPA, 20 U.S.C. 1234c(b))

§ 204.55 Cease and desist written report and order.

(a) If, after the hearing, the Panel decides that the recipient has violated a legal requirement as stated in the complaint, the Panel—

(1) Makes a written report stating its findings of fact; and

(2) Issues a cease and desist order.

(b) The Board Chairperson sends the report and order to the recipient by certified mail with return receipt requested.

(c) The order becomes final 60 calendar days after the date the order is received by the recipient.

(d) The Secretary does not review the order issued by the Board under this section.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454(c), (d) of GEPA, 20 U.S.C. 1234c(c), (d))

§ 204.56 Enforcement of a cease and desist order.

(a) If the Panel issues a cease and desist report and order, the recipient shall take immediate steps to comply with the order.

(b) If, after a reasonable period of time, the Secretary determines that the recipient has not complied with the cease and desist order, the Secretary may—

(1) Withhold funds payable to the recipient under Chapter 1 without any further proceedings before the Board; or

(2) Certify the facts of the matter to the Attorney General for enforcement through appropriate proceedings.

(Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 454(e) of GEPA, 1234c(e))

[FR Doc. 82-32996 Filed 12-2-82; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
December 3, 1982

Part IX

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California:	
CA82-5112	July 4, 1982.
CA82-5118	Aug. 20, 1982.
CA82-5120	Aug. 27, 1982.
Colorado: CO82-5107	Apr. 9, 1982.
Connecticut: CT81-3032	May 15, 1982.
Florida:	
FL81-1135	May 22, 1981.
FL81-1270	July 17, 1981.
Louisiana:	
LA82-4050	Oct. 15, 1982.
LA82-4053	Nov. 5, 1982.
North Dakota: ND81-5131	July 6, 1981.
New Jersey: NJ82-3006	Feb. 26, 1982.
Nevada:	
NV82-5113	Aug. 6, 1982.
NV82-5114	Aug. 6, 1982.
NV82-5116	Aug. 6, 1982.
Oklahoma:	
OK82-4035	June 25, 1982.
OK82-4059	Nov. 19, 1982.
OK82-4063	Nov. 26, 1982.
Texas:	
TX81-4064	Aug. 7, 1981.
TX82-4001	Jan. 29, 1982.
TX82-4024	June 18, 1982.
TX82-4026	June 18, 1982.
TX82-4046	Oct. 1, 1982.
TX82-4054	Nov. 11, 1982.
TX82-4002	Jan. 15, 1982.
West Virginia: WV82-3002	Oct. 29, 1982.
Wisconsin: WI82-2024	Apr. 9, 1982.

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 decisions being superseded.

Florida:	
FL80-1119 (FL82-1085)	Nov. 7, 1980.
FL81-1255 (FL82-1086)	June 26, 1981.
Mississippi: MS81-1238(MS82-1084)	May 29, 1981.
Virginia:	
VA82-3022 (VA82-3033)	July 23, 1982.
VA82-3023 (VA82-3034)	July 23, 1982.
VA82-3024 (VA82-3035)	July 23, 1982.

Signed at Washington, D.C. this 26th day of November 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION NO. CA82-5112 - Mod. #7
(47 FR 31154 - July 4, 1982)
Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassne, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Cement Masons	$16.52	$5.93
Electricians:		
Area 1:		
Electricians	22.56	6.298+ 3%
Area 4:		
Electricians	20.32	4.26+ 3%
Area 6:		
Electricians	24.01	4.60+ 3%
Cable Splicers	26.01	4.60+ 3%
Area 8:		
Electricians	18.35	3.56+ 3%
Cable Splicers	20.19	3.56+ 3%
Area 11:		
Electricians	20.90	6.58+ 3%
Cable Splicers	23.51	6.58+ 3%
Area 13:		
Electricians	22.80	5.95+ 3%
Cable Splicers	25.65	5.95+ 3%
Line Construction:		
Area 1:		
Groundman	$18.01	$4.60+ 3%
Line Equipment Operators	21.61	4.60+ 3%
Lineman	24.01	4.60+ 3%
Cable Splicers	26.01	4.60+ 3%
Area 3:		
Groundman	17.53	3.56+ 3%
Linemen; Line Equipment Operators	18.35	3.56+ 3%
Area 6:		
Groundmen	15.68	5.07+ 3%
Linemen; Technicians	20.90	6.38+ 3%
Cable Splicers	23.51	6.38+ 3%
Area 9:		
Linemen	22.56	6.20+ 3%
Painters:		
Area 4:		
Brush	20.93	3.93
Tapers	21.73	3.93

MODIFICATION P. 2

DECISION NO. CA82-5118 - Mod. #3
(47 FR 36513 - August 20, 1982)
Imperial, Invo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers	$21.29	$3.83
Electricians:		
Area 1:		
Electricians	21.32	3%+3.61
Cable Splicers	21.77	3%+3.61
Area 4:		
Electricians	23.12	3%+2.31
Area 5:		
Electricians	20.79	3%+4.13
Cable Spicers	21.29	3%+4.13
Area 6:		
Electricians	20.00	3%+4.90
Cable Splicers	20.50	3%+4.90
Soft Floor Layers:		
Area 1	17.80	3.59
Plumbers; Steamfitters:		
Area 2	17.59	5.53
Area 3	22.59	5.53

DECISION NO. CA82-5120 - Mod. #4
(47 FR 38022 - August 27, 1982)
Alameda, Amador, Calaveras, Contra Costa, Del Norte, El Dorado, Humboldt, Marin, Mariposa, Merced, Monterey, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Sutter, Tuolumne, Yolo, and Yuba Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Cement Masons	$16.52	$5.93
Electricians:		
Area 1:		
Electricians	22.56	6.29% +3%
Area 5:		
Electricians	24.01	4.60 +3%
Cable Splicers	26.01	4.60 +3%
Area 9:		
Electricians	20.90	6.86
Cable Splicers	23.51	6.93
Area 11:		
Electricians	22.80	5.95 +3%
Cable Splicers	25.65	5.95 +3%
Painters: Area 3:		
Brush	20.93	3.93
Tapers	21.73	3.93

MODIFICATION P. 3

DECISION NO. CO82-5107 - Mod. #3
(47 FR 15491 - April 9, 1982)
Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin Counties, Colorado

	Basic Hourly Rates	Fringe Benefits
Change:		
Sprinkler Fitters	$16.67	$2.83

DECISION NO. CT81-3032 - MOD. #22
(46 FR 20740 - May 15, 1981)
(HARTFORD, MIDDLESEX, NEW HAVEN, NEW LONDON AND TOLLAND COUNTIES, CONN.

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PAINTERS		
AREA 2		
Brush; tapers	14.60	1.58
Paperhangers	15.10	1.58
Riding steel; steam-cleaning; sandblasting; tank; towers; and hazardous work	15.18	1.58
Spray	17.60	1.58

DECISION NO. FL81-1135 - MOD. #1
(46 FR 28099 - May 22, 1981)
ALACHUA COUNTY, FLORIDA
BUILDING CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	$16.20	$ 3.015
PLUMBERS	14.15	1.62

DECISION NUMBER FL81-1270 - MOD. # 3
(July 17, 1981 - 46 FR 37166)
BROWARD COUNTY, FLORIDA
BUILDING CONSTRUCTION

	Basic Hourly Rates	Fringe Benefi
CHANGE:		
POWER EQUIPMENT OPERATORS:		
GROUP I	$ 15.00	$ 1.96
GROUP II	14.85	1.96
GROUP III	14.35	1.96
GROUP IV	13.90	1.96
GROUP V	13.75	1.96
GROUP VI	13.40	1.96
GROUP VII	13.15	1.96
GROUP VIII	13.05	1.96
GROUP IX	12.10	1.96

MODIFICATION P. 4

DECISION NO. LA82-4050 - MOD. #4
(47 FR 46231 - 10/15/82)
Jefferson, Orleans, Bossier, Caddo, Calcasieu, Beauregard, Cameron, Jefferson Davis, Allen, Plaquemines, St.Bernard, St.Charles Pars., Louisiana

	Basic Hourly Rates	Fringe Benefits
ADD:		
Asphalt or overlay projects:		
Power equipment ops.:		
Zones 1 & 7:		
Group 1	$12.25	1.95
Group 2	12.50	1.95
Group 3	12.00	1.95
Group 4 & 5	10.00	1.95
Group 6	9.00	1.95
Group 7	7.50	1.95
Group 8	10.00	1.95
Group 9	10.25	1.95
Group 10	7.75	1.95
Truck drivers:		
Zones 1 & 7 - Group 1	8.34	.70
Group 2	8.47	.70
Group 3	8.53	.70
Group 4	8.65	.70
Group 5	8.84	.70

DECISION NO. LA82-4053 - MOD. #2
(47 FR 50421 - 11/5/82)
Statewide Louisiana

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians:		
Zone 2 - Electricians	15.60	.82+3%
Cable splicer	16.10	.82+3%
OMIT ALL WAGE RATES & ZONE DEFINITIONS FOR LATHERS		
ADD:		
Lathers - Zone 1	13.93	1.40
Zone 2	15.20	1.76
Zone 3	13.25	.65
Zone 4	14.83	1.60
Zone 5	13.40	1.78
Zone 6	12.95	
Zone 7	12.30	1.8[illegible]

DECISION NO. LA82-4053 - MOD. #2 (CONT'D)

	Basic Hourly Rates	Fringe Benefits

ZONE DEFINITIONS FOR LATHERS
ZONE 1 - Assumption, Iberia (east of the Atchafalaya River), Jefferson, Lafourche Orleans, Plaquemines, St.Bernard, St. Charles, St.James (south of the Miss. River), St.John the Baptist, St.Martin (eastern segment of the Atchafalaya River), St.Mary (east of the Atchafalaya River), St.Tammany, Tangipahoa. Terrebonne & Washington Parishes
ZONE 2 - Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St.Helena, St.James (North of the Miss. River), West Baton Rouge & West Feliciana Parishes
ZONE 3 - All of Acadia, Evangeline, Lafayette, St.Landry & Vermilion Pars.; Parts of Iberia, St.Martin & St.Mary (west of the Atchafalaya River)
ZONE 4 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Pars.
ZONE 5 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster
ZONE 6 - Avoyelles, Grant, LaSalle, Natchitoches, Rapides & Sabine Pars.
ZONE 7 - Caldwell, Catahoula, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn Pars.

DECISION NO. ND81-5131 - Mod. #3
(46 FR 35008 - July 6, 1981)
Burleigh, Cass, Grand Forks, Morton, Richland, Steele, Traill, Walsh and Ward Counties, North Dakota

	Basic Hourly Rates	Fringe Benefits
Change:		
Sprinkler Fitters	$15.47	$2.83

MODIFICATION P. 5

DECISION NO. NJ82-3006 - MOD. #3 (47 FR 8523 - February 26, 1982) BERGEN, ESSEX, HUDSON AND PASSAIC COUNTIES, NEW JERSEY	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS & CEMENT MASONS & PLASTERERS:		
AREA 1	14.61	2.65
AREA 2	16.99	2.07
AREA 4		
Bricklayers & Stonemasons	15.55	3.00
Cement Masons & Plasterers	15.35	2.15
CARPENTERS & INSULATOR & MILLWRIGHTS:		
AREA 1		
Carpenters & Insulators	16.01	20.5%
Millwrights	16.51	20.5%
AREA 2		
Carpenter & Insulators	16.70	15.5%
Millwrights	17.20	15.5%
AREA 3	15.35	3.88
AREA 4		
Carpenters & Insulators	11.05	20.5%
DOCKBUILDERS & PILEDRIVERMEN	15.95	5.75
ELECTRICIANS & CABLE SPLICERS:		
Family residence construction not to exceed 4 unit apartments (Note: Firewalls alone are not a determinative criterion.)	9.25	10%+.01
Other residential construction:		
Essex County	16.30	26.5%
Bergen & Hudson Counties	18.72	21.5%+ 1.00

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS-STRUCTURAL, ORNAMENTAL & REINFORCING	15.35	5.41
LABORERS:		
AREA 1		
GROUP	11.00	2.10
AREA 2		
GROUP 1	10.55	2.55
AREA 3		
GROUP 1	11.60	2.20
GROUP 2	11.35	2.20
AREA 4		
Unskilled Laborers	11.50	1.60
AREA 5		
Unskilled Laborers	11.00	2.10
AREA 6		
GROUP 1	10.50	2.60
AREA 7		
Unskilled Laborers	10.55	2.60
LINE CONSTRUCTION:		
Essex County	16.30	26.75%
PAINTERS:		
Bergen & Passaic Cos.:		
Residential - Uncontrollable & Repaint Work	11.30	4.56
Spray	15.30	4.56
Essex & Hudson (West half of County) Cos.:		
Painters on New Construction and Major Alterations	13.30	1.88
Painters on Repaint Work	12.30	1.88
Spraying or application of hazardous or dangerous material on repaint work	12.90	1.88
Exterior work exceeding 3 stories in height for painting of open structural steel and on interior work which requires painting higher than 20' above the ground or floor	13.45	1.88

MODIFICATION P. 6

DECISION NO. NJ82-3006 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
PAINTERS: CONT'D		
Repaint work as described above	12.45	1.88
Spraying or application of hazardous or dangerous materials	13.90	1.88
Hudson (remainder of county) County:		
Painters, paperhangers tapers, coverers, spacklers, preparatory and cleaning work	12.95	3.13
Extension ladder work (36 feet or over), scaffold work (except one or two family homes), and boatswain Chair	13.25	3.13
Spraying and sandblasting	13.75	3.13
PIPEFITTERS:		
Bergen, Hudson & Passaic Cos.	15.75	5.68
Essex Co.	16.12	5.30
PLUMBERS:		
Bergen, Hudson (Excluding E. Newark, Harrison & Kearny only) & Essex Cos.	16.425	4.95
POWER EQUIPMENT OPERATORS:		
CLASS I	11.24	4.10+ g
ROOFERS:		
Bergen & Passaic	16.30	3.34
Hudson County:		
E. of the Hackensack River	13.25	6.14
SOFT FLOOR LAYERS	14.55	16%

Basic Hourly Rates	Fringe Benefits

MODIFICATIONS P. 7

DECISION NO. NV82-5113 - Mod. #3
(47 FR 34300 - August 6, 1982)
Clark County (does not include the Nevada Test Site), Nevada

	Basic Hourly Rates	Fringe Benefits
Change:		
Cement Masons:		
Cement Masons	$15.93	$3.70
Cement Floor Finishing Machine; Color Work	16.28	3.70
Electricians:		
Electricians: Technicians	20.88	4.79+3%
Cable Splicers	21.21	4.79+3%
Plasterers	16.37	3.70

DECISION NO. NV82-5114 - Mod. #2
(47 FR 34312 - August 6, 1982)
Nevada Test Site including Tonopah Test Range in Clark, Lincoln, and Nye Counties, Nevada

Change:		
Elevator Constructors:		
Mechanics	$22.24	$2.69+a
Helpers	15.57	2.69+a
Probationary Helpers	11.12	

DECISION NO. NV82-5116 - Mod. #3
(47 FR 34303 - August 6, 1982)
Statewide (does not include the Nevada Test Site and Tonopah Test Range, and Highway Construction in Douglas County, Nevada)

	Basic Hourly Rates	Fringe Benefits
Change:		
Cement Masons: Area 1:		
Cement Masons	$15.93	$3.70
Cement Floor Finishing Machine and Color Work	16.28	3.70
Electricians: Area 1:		
Electricians; Technicians	20.88	4.79+3%
Cable Splicers	21.21	4.79+3%
Plasterers: Area 1	16.37	3.70

MODIFICATION P. 8

DECISION #OK82-4035-Mod.#3
47FR27683-June 25, 1982
Tulsa, Delaware, Creek, Craig, Ottawa, Mayes and Roger Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits
OMIT:		
GRoup IV and Group V TRUCK DRIVERS WAGE RATES AND CLASSIFICATION DEFINITIONS for Tulsa, Creek, Craig, Ottawa, Mayes and Roger Counties, Oklahoma.		
ELECTRICIANS:		
Cable splicers	$14.60-3%+1.34	
ADD:		
TRUCK DRIVERS CLASSIFICATION DEFINITIONS FOR (Tulsa, Creek, Craig, Ottawa, Mayes, Mayes and Roger Counties, Oklahoma.		
GROUP III		
Truck drivers 5 tons or 6 yards and over including heavy equipment such as pole trucks, winch trucks, Euclids, Mississippi wagons, semi-dumps, tourner pulls, or other heavy material moving equipment.		
CHANGE:		
ELEVATOR CONSTRUCTORS	15.12	2.465+A
AREA II		
Carpenters	12.42	1.10
Millwrights-Piledrivermen	12.67	1.10
PAINTERS(Craig, Ottawa & Delaware Cos.):		
Brush, roller, tapers and paperhangers	12.72	.60
Spray, steamclean, sandblast and pot tenders	13.22	.60
ELECTRICIANS:		
Electricians	15.15	3%+1.58
DESCRIPTION OF WORK TO READ:		
Building Projects (excluding single family homes and apartments up to and including four stories) and EXCLUSION of WATER and SEWER TREATMENT PLANTS		

DECISION #OK82-4059-Mod.#1
47FR November 19, 1982
Muskogee, Adair, Cherokee & Okmulgee Cos., Oklahoma

CHANGE:		
SOFT FLOOR LAYERS	13.47	1.88+B

DECISION #OK82-4063-Mod.#1
47FR November 26, 1982
Pittsburg Co., Oklahoma

CHANGE:		
ELECTRICIANS:		
Electricians	15.15	3%+1.58
OMIT:		
ELECTRICIANS:		
Cable splicers	14.60	3%+1.34

MODIFICATION P. 9

	Basic Hourly Rates	Fringe Benefits
DECISION NO. TX81-4064 - MOD. #8 (46 FR 40487 - 8/7/81) El Paso Co., Texas		
CHANGE:		
Electricians:		
Electricians	$13.00	.80+3½%
Cable splicers	13.25	.80+3½%
DECISION NO. TX82-4001 - MOD. #11 (47 FR 4463 - 1/29/82) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas		
CHANGE:		
Electricians:		
Zone 1 - Electricians	15.08	1.30+3½%
Cable splicer	16.59	"
Zone 2 - Electricians	14.30	.80+3-1/10%
Cable splicer	14.55	"
DECISION NO. TX82-4002 - MOD. #9 (47 FR 2472 - 1/15/82) Wichita Co., Texas		
CHANGE:		
Bricklayer & stonemason	15.30	.70
Electricians:		
Electricians	14.30	.80+3-1/10%
Cable splicers	14.55	"

	Basic Hourly Rates	Fringe Benefits
DECISION NO. TX82-4024 - MOD. #8 (47 FR 26548 - 6/18/82) Travis County, Texas		
CHANGE:		
Plumber & pipefitter	$16.60	1.27
DECISION NO. TX82-4026 - MOD. #6 (47 FR 26547 - 6/18/82) Lubbock County, Texas		
CHANGE:		
Electricians:		
Electricians	14.85	.80+3-1/10%
Cable splicers	15.10	"
Line construction:		
Linemen	14.85	.80+3-1/10%
Operators	80%JR	"
Groundmen	55%JR	"
Truck drivers	70%JR	"
Plumber & steamfitter	14.40	1.34
DECISION NO. TX82-4046 - MOD. #2 (47 FR 43525 - 10/1/82) Jefferson & Orange Cos., Texas		
CHANGE:		
Bricklayer & stonemason	17.58	2.10
Tile setter	16.07	2.10
DECISION NO. TX82-4054 - MOD. #2 (47 FR 50430 - 11/5/82) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas		
CHANGE:		
Electricians:		
Zone 1 - Electrician	15.90	.80+8[illegible]
Cable splicer	16.15	.80+8[illegible]
Zone 2 - Electrician	17.10	.80+9[illegible]
Cable splicer	18.81	[illegible]
Line construction:		
Linemen	$17.10	.60+8½
Cable splicers	17.77	.60+8[illegible]
Operators	17.96	.60+3[illegible]
Groundman	11.97	.60+[illegible]

MODIFICATION P. 10

	Basic Hourly Rates	Fringe Benefits
DECISION NO. WV82-3002 MOD. NO. 1 (47 FR 49220 - October 29, 1982) Statewide, West Virginia excluding the Counties of Berkeley, Jefferson & Morgan		
CHANGE:		
Boilermakers		
Area 2	$15.80	1.18+12%
CARPENTERS & PILEDRIVERMEN:		
AREA 1		
Carpenters		
Contracts under $100,000	14.28	2.26
Contracts $100,000 or more	14.53	2.26
Piledrivermen		
Contracts under $100,000	14.78	2.26
Contracts $100,000 or more	15.03	2.26
Electricians:		
Hampshire and Mineral County:		
Wiremen	14.60	2.30+3-3/4%
Grant County:		
Wiremen	15.60	2.30+3-3/4%
Lincoln County:		
Wiremen	17.82	3%+2.76
Cable Splicers	18.71	3%+2.76
[illegible] Wine [illegible] Summers & Wyoming Cos.:		
Contracts $15,000 or less:		
Wiremen	13.32	3%+2.27
Cable Splicers	13.62	3%+2.27
Contracts over $15,000:		
Wiremen	16.22	3%+2.27
Cable Splicers	16.52	3%+2.27
Fayette (except Falls & Kanawha Twps.) County:		
Contracts $15,000 or less:		
Wiremen	13.12	3%+2.27
Cable Splicers	13.42	3%+2.27
Contracts over $15,000:		
Wiremen	16.02	3%+2.27
Cable Splicers	$16.32	3%+2.27
Raleigh (except Clear Fork & Marsha Fork Twps.) County:		
Contracts $15,000 or less:		
Wiremen	12.82	3%+2.27
Cable Splicers	13.12	3%+2.27
Contracts over $15,000:		
Wiremen	15.72	3%+2.27
Cable Splicers	16.02	3%+2.27
Ironworkers:		
Area 4	14.47	3.05
LINE CONSTRUCTION:		
Hampshire & Mineral Counties		
Linemen	14.60	2.30+3%
Equipment Operators	13.87	2.30+3%
Truck Drivers & Groundmen	9.49	2.30+3%
Grant County		
Linemen	15.60	2.30+3%
Equipment Operators	14.87	2.30+3%
Truck Drivers & Groundman	10.49	2.30+3%
Plumbers:		
Area 5	14.38	19%+.99
Area 7	15.79	2.28
Sprinkler Fitters	16.67	3.18

	Basic Hourly Rates	Fringe Benefit
DECISION NO. WI82-2024 - MOD. #2 (47 FR 15513 - April 9, 1982) Racine County, Wisconsin		
Change:		
Bricklayers & Stonemasons	$13.52	3.22
Carpenters	14.01	2.26
Cement Masons	12.42	2.90

SUPERSEDEAS DECISION

STATE: FLORIDA COUNTIES: ALACHUA, BAKER, BRADFORD, COLUMBIA, GILCHRIST, LEVY, MARION, & UNION

DECISION NUMBER: FL82-1085 DATE: Date of Publication

Supersedes Decision No.: FL80-1119 dated November 7, 1980 in 45 FR 74312.

DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS-includes single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANICS	$ 5.50		POWER EQUIPMENT OPERATORS:		
BRICKLAYERS	8.75		Backhoe	$ 5.69	
CARPENTERS	6.00		Bulldozer	4.83	
CEMENT MASONS	5.85		Crane	7.50	
DRYWALL FINISHERS	10.38		Grader	5.50	
DRYWALL HANGERS	9.38		Loader	5.99	
ELECTRICIANS	6.77		Paver	6.85	
GLAZIERS	4.96		Roller	4.75	
INSULATION INSTALLERS-Batt or Blown	6.71		Tractor	6.50	
LABORERS:			ROOFERS	6.50	
Mason Tenders	4.35		SHEET METAL WORKERS	7.72	
Pipelayers	4.75		SOFT FLOOR LAYERS	8.43	
Unskilled	4.00		TILE SETTERS	6.13	
PAINTERS	5.60		TRUCK DRIVERS	4.00	
PLASTERERS	8.75		WELDERS - Rate for Craft		
PLUMBERS & PIPEFITTERS	7.25				

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: FLORIDA COUNTY: BROWARD

DECISION NUMBER: FL82-1086 DATE: Date of Publication

Supersedes Decision No.: FL81-1255 dated June 26, 1981 in 46 FR 33178.

DESCRIPTION OF WORK: HEAVY CONSTRUCTION.

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$ 5.25		POWER EQUIPMENT OPERATORS:		
CARPENTERS	6.40		Group I	$ 15.00	1.96
CEMENT MASONS	9.65	1.22	Group II	14.85	1.96
IRONWORKERS:			Group III	14.35	1.96
Structural	7.975		Group IV	13.90	1.96
Reinforcing	9.75	1.37	Group V	13.75	1.96
LABORERS:			Group VI	13.40	1.96
Pipelayers	5.00		Group VII	13.15	1.96
Unskilled	3.50		Group VIII	13.05	1.96
PILEDRIVERMEN	8.70	1.30	Group IX	12.10	1.96
PIPEFITTERS	5.75				
TRUCK DRIVERS	4.00				
WELDERS-Rate for Craft					

Group I - All tower cranes (must have 2 operators; mobile, rail, climbers, static-mount), cranes with boom length 250 ft & over(with or without jib), derricks, helicopters, all types of flying cranes & all nuclear powered equipment, single station hydro cranes over 18 tons but not more than 50 tons, finish grader.

Group II - All cranes with boom length 150 ft. & over(with or without jib; friction, hydro, electric or otherwise), cranes 150 tons & overwith boom length less than 250 ft., gantry & overhead cranes.

Group III- Cranes with boom length less than 150 ft(with or withoutjib), single station hydro cranes 18 tons & under & over 50 tons, dual station hydro cranes, clamshells, shovel, backhoe, gradall, dragline, piledriver, drilling of piling, tugger(all types), hoist (all types), mechanic, sideboom or tractor boom, concrete mixer, cableway.

Group IV - Boring & Drilling machine, concrete pumping machine(all types), batching plant (on job sites), forklift (with vertical lift of over 20').

Group V - Locomotive operator, motor mixing pump(all types), winch truck, A-frame truck, grease truck operator, front end loader, bulldozer, pan, motor grader, forklift.

Group VI - Trenching & ditching machine, roller, fireman, distributor(bituminous), finish machine(paving), wellpoint system(installation and/or operation), siphon, vacuum pump, tractor, conveyor.

Group VII - Utility operator(any combination of equipment up to & including 4 pieces of equipment listed in GRoup VIII), welding machines (3-4).

Group VIII - Pump(s) or any combination over 2½", compressor(s) or any combination over 125 CFM, generator(s) or any combination over 5 KW.

Group IX - Oiler, fuel truck driver, mechanic helper, boom hauling truck driver & lowboy truck driver.

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: MISSISSIPPI

COUNTIES: CLARKE, JASPER, KEMPER, LAUDERDALE, LEAKE, NESHOBA, NEWTON, SCOTT, & SMITH

DECISION NUMBER: MS82-1084

DATE: Date of Publication

Supersedes Decision No.: MS81-1238 dated May 29, 1981 in 46 FR 29174.

DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANIC	$ 6.50	
BRICKLAYERS	7.75	
CARPENTERS	7.10	
CEMENT MASONS	6.00	
DRYWALL HANGERS	6.12	
DRYWALL FINISHERS	7.00	
ELECTRICIANS	8.50	
INSULATORS-Batt or Blown	5.00	
IRONWORKERS	4.96	
LABORERS:		
Asphalt Rakers	5.35	
Pipelayers	5.25	
Unskilled	4.31	
PAINTERS, Brush	5.49	
PLUMBERS & PIPEFITTERS	8.44	
POWER EQUIPMENT OPERATORS:		
Asphalt Spreader	$ 5.00	
Backhoe	6.50	
Bulldozer	5.78	
Front End Loader	5.50	
Motor Grader	5.00	
Scraper	5.25	
Tractors	4.83	
ROOFERS	5.75	
SHEET METAL WORKERS	6.39	
SOFT FLOOR LAYERS	6.00	
TILE SETTERS	5.75	
TRUCK DRIVERS	4.31	
WELDERS - Rate for Craft		

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Virginia

COUNTIES: Henrico and the Independent City of Richmond

DECISION NO.: VA82-3033

DATE: Date of Publication

Supersedes Decision No. VA82-3022 dated July 23, 1982 in 47 FR 32034

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	13.28	2.01
BOILERMAKERS	14.75	2.915
BRICKLAYERS AND STONE-MASONS	13.50	1.47
CARPENTERS AND SOFT FLOOR LAYERS	12.05	1.60
CEMENT MASONS	11.25	
CEMENT MASONS MACHINE MAN	11.35	
ELECTRICIANS:		
ZONE I -within a 12 air mile radius of Staples Mills Road and Broad Street in the City of Richmond	13.85	15½%
ZONE II-remainder of city of Richmond and Henrico County	14.60	15½%
ELEVATOR CONSTRUCTORS	12.03	2.69+ a+b
ELEVATOR CONSTRUCTORS HELPERS	14.64	2.69+ a+b
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	6.015	
GLAZIERS	12.05	1.32
IRONWORKERS-STRUCTURAL, REINFORCING AND ORNAMENTAL:		
ZONE I-up to 10 miles from Capital Square	14.00	1.85
ZONE II-from 10 miles to 30 miles radius	14.375	1.85
ZONE III-from 30 miles and beyond	14.625	1.85
LABORERS:		
Unskilled	7.80	.66
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete Saw Operators, Air Tool and Vibrator Operators	7.90	.66
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble and Tile and Terrazzo Workers Helpers	8.05	.66
Burners (wrecking)	8.15	.66
Floor, Base and Terrazzo Grinders	8.20	.66
Wagon Drill, Air Track and Similar Drills	8.30	.66
Powdermen	8.55	.66
LATHERS:		
Plasterer and Drywall Finisher	11.49	1.41
Sheet Rock Applicator	9.39	1.41
LEADBURNERS	10.75	.66+c
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	1.235
ZONE II-remainder of City of Richmond and Henrico County	13.10	1.31
MARBLE, TILE AND TERRAZZO WORKERS	10.10	
MILLWRIGHTS	13.95	1.61
PAINTERS:		
Brush, Paperhangers, Tapers and Finishers	11.20	
Structural Steel, Swing State and Bosun Chair	11.45	
Scaffold or Other Hazard Work Over 50 Feet	11.45	
Spray	11.70	
Sandblasting, Elevated Tanks, Smoke Stacks and all Towers	11.85	
PILEDRIVERMEN AND DOCKBUILDERS	12.15	1.50
PLASTERERS	13.00	
PLUMBERS AND STEAMFITTERS	14.45	1.95
ROOFERS COMPOSITION	8.40	
ROOFERS HELPERS (TEARING OFF OLD ROOFING, CARRYING MATERIALS & CLEAN-UP)	6.50	
SHEET METAL WORKERS:		
City of Richmond	11.32	.81
Remainder of County	11.57	[illegible]
SOUND AND SIGNAL INSTALLER	6.00	

DECISION NO. VA82-3033

	Basic Hourly Rates	Fringe Benefits
SPRINKLER FITTERS	13.47	2.83
POWER EQUIPMENT OPERATORS- BUILDING CONSTRUCTION:		
GROUP 1	12.80	1.875
GROUP 2	10.25	1.875
GROUP 3	8.25	1.875
GROUP 4	8.05	1.875
GROUP 5	7.86	1.875

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. 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.

PEO DEFINITIONS:
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 backhce, 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, 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 helpers

DECISION NO. VA82-3033

	Basic Hourly Rates	Fringe Benefits

PEO DEFINITIONS: CONT'D

GROUP 4 - Firemen

GROUP 5 - Oilers

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: Virginia

LOCATION: The Cities of Chesapeake, Portsmouth and Virginia Beach

DECISION NO.: VA82-3034

DATE: Date of Publication

Supersedes Decision No. VA82-3023 dated July 23, 1982 in 47 FR 32034

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	13.00	2.01
BOILERMAKERS	14.75	2.915
BRICKLAYERS AND STONE MASONS	13.08	1.23
CARPENTERS AND SOFT FLOOR LAYERS	12.05	1.60
CEMENT MASONS:		
Cement Masons	10.85	.40
Machine and Scaffold Men	10.95	.40
ELECTRICIANS AND CABLE SPLICERS	13.45	1.00+9%
ELEVATOR CONSTRUCTORS	12.09	2.69+ a+b
ELEVATOR CONSTRUCTORS HELPERS	8.46	2.69+ a+b
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	6.045	
GLAZIERS	12.05	1.32
IRONWORKERS:		
Reinforcing, Ornamental, Structural, Riggers, Fence Erectors, Machinery Movers	13.50	2.38
LABORERS:		
Unskilled	7.80	.66
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete Saw Operators, Air Tool and Vibrator Operators	7.90	.66
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble, Tile and Terrazzo Workers Helpers	8.05	.66
Burners (wrecking)	8.15	.66
Floor, Base and Terrazzo Grinders	8.20	.66
Wagon Drill and Air Trac	8.30	.66
Powdermen	8.55	.66
LATHERS	10.75	.25
LEAD BURNERS	10.75	.66+d
LINE CONSTRUCTION:		
Linemen and Cable Splicers	13.45	9%+.60

	Basic Hourly Rates	Fringe Benefits
MARBLE SETTERS	10.45	1.20
MILLWRIGHTS	13.95	1.61
PAINTERS:		
Brush and Roller	11.50	.70
Structural Steel from Ground to 74 feet	12.00	.70
Spray, Paperhangers and Tapers	11.85	.70
Any Work Over 74 feet From the Ground	12.80	.70
Bituminous Coating and Hot Creosote	13.15	.70
Swing Stage Under 40 Feet, Rollers With 6 Feet Handles and Over, Epoxy Brushed or Rolled	11.75	.70
Swing Stage Over 40 Feet	12.00	.70
Epoxy, Sprayed	12.10	.70
Sandblasting	12.25	.70
PILEDRIVERMEN AND DOCK-BUILDERS	12.15	1.50
PLASTERERS	13.41	.40
PLUMBERS AND STEAMFITTERS	13.30	2.02
ROOFERS COMPOSITION	8.40	
ROOFERS HELPERS (Tearing off old roofing, carrying materials & clean-up)	6.50	
SHEET METAL WORKERS	12.30	2.055
SOUND AND SIGNAL INSTALLER	6.00	
SPRINKLER FITTERS	13.47	2.83
TERRAZZO AND TILE WORKERS	10.15	1.20
POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION:		
GROUP 1	12.80	1.875
GROUP 2	10.25	1.875
GROUP 3	8.25	1.875
GROUP 4	8.05	1.875
GROUP 5	7.86	1.875

DECISION NO. VA82-3034

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; 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.

POWER EQUIPMENT OPERATOR 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

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)).

SUPERSEDEA: CISION

STATE: Virginia

COUNTIES: York County, The Cities of Hampton and Newport News (including Langley AFB, Fort Eustis and Fort Monroe)

DECISION NO.: VA82-3035

DATE: Date of Publication

Supersedes Decision No. VA82-3024 dated July 23, 1982 in 47 FR 32034

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up and including 4 stories), Sewer and Water Line Construction.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	13.00	2.01
BOILERMAKERS	14.75	2.915
BRICKLAYERS AND STONE MASONS	13.00	
CARPENTERS AND SOFT FLOOR LAYERS	12.05	1.60
CEMENT MASONS:		
Cement Masons	10.85	.40
Machine and Scaffold Men	10.95	.40
ELECTRICIANS:		
Zone I-within a 16 air mile radius of 7812 Warwick Bldv., Newport News:		
Wiremen	13.58	.80+10%
Cable Splicers	13.77	.80+10%
Zone II-beyond a 16 air mile radius of 7812 Warwick Bldv., Newport News:		
Wiremen	14.58	.80+10%
Cable Splicers	14.77	.80+10%
ELEVATOR CONSTRUCTORS	10.33	2.18+ a+b
ELEVATOR CONSTRUCTORS HELPERS	7.23	2.18+ a+b
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	5.165	
GLAZIERS	12.05	1.32
IRONWORKERS:		
Structural, ornamental, riggers, reinforcing, fence erectors, and machinery movers	13.50	2.38
Unskilled		
Unskilled	7.80	.66
Tenders, motorized Georgia buggy operators, nozzlemen (gunite or sandblasting), concrete saw operators, air tool and vibrator operators	7.90	.66
Mortar mixers, hod carriers, pipelayers, caulkers, marble, tile and terrazzo worker helpers	8.05	.66
Burners (wrecking)	8.15	.66
Floor, base, and terrazzo grinder	8.20	.66
Wagon drill and air trac	8.30	.66
Powdermen	8.55	.66
LATHERS	10.75	.25
LINE CONSTRUCTION:		
Zone 1-within a 16 air mile radius of 7812 Warwick Blvd., Newport News:		
Linemen	11.05	1.59
Cable Splicer	11.30	1.61
Zone II-beyond a 16 air mile radius of 7812 Warwick Bldv., Newport News:		
Linemen	12.05	1.68
Cable Splicer	12.30	1.70
MARBLE SETTERS	10.65	
MILLWRIGHTS	13.95	1.61
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	10.35	1.30
Paperhanger, taper, spray, roller with a 6' handle or over, structural steel to 74' from the ground up, swing stage, under 40', sandblasting	10.70	1.30

DECISION NO. VA82-3035

	Basic Hourly Rates	Fringe Benefits
PAINTERS CONT'D:		
Swing stage over 40', spray epoxy	10.95	1.30
Epoxy brushed or rolled	10.60	1.30
All work over 74' from the ground	10.85	1.30
Bituminous coatings, hot creosite	11.75	1.30
PAINTERS: REMINDER OF COUNTY OF YORK		
Brush and roller	10.95	1.30
Paperhanging, taper, spray, roller with a handle 6' or over, structural steel 74' from the ground up, swing stage under 40', sandblasting	11.30	1.30
Swing stage over 40', epoxy sprayed	11.55	1.30
Epoxy brushed or rolled	11.30	1.30
All work over 74' from the ground	11.45	1.30
Bituminous coatings, hot creosite	12.35	1.30
Piledrivermen and dockbuilders	12.15	1.50
Plasterers	13.41	.40
Plumbers and Steamfitters	14.35	1.32
Roofers composition	8.40	
Roofers helpers (tearing off old roofing, carrying materials & clear-up)	6.50	
Sheet metal workers:		
Newport News and Hampton	13.07	1.785
York County	13.32	1.785
Sound and Signal Installer	6.00	
Sprinkler Fitters	13.47	2.83
Terrazzo workers and tile setters	10.65	

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS		
BUILDING CONSTRUCTION:		
Group 1	12.80	1.875
Group 2	10.25	1.875
Group 3	8.25	1.875
Group 4	8.05	1.875
Group 5	7.86	1.875
WELDERS-receive rate prescribed for craft performing operation to which welding is incidental.		
PAID HOLIDAYS:		
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.		
FOOTNOTES:		
a. Holidays: A through F, Day after Thanksgiving.		
b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.		
SEWER & WATER CONSTRUCTION:		
LABORERS	3.38	
PIPELAYERS	4.59	
TRUCK DRIVERS	3.50	
LOADERS	4.69	
BACKHOE	6.50	
CRANES	7.90	

DECISION NO. VA82- 3035

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

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 82-32834 Filed 12-2-82; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
December 3, 1982

Part X

Department of Health and Human Services

Food and Drug Administration

Pregnant or Nursing Women; Delegations of Authority and Organization; Labeling Requirements for Over-the-Counter Human Drugs; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5, 201, and 330

[Docket No. 82N-0050]

Pregnant or Nursing Women; Delegations of Authority and Organization; Amendment of Labeling Requirements for Over-the-Counter Human Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the general drug labeling provisions to include a warning concerning the use by pregnant or nursing women of over-the-counter (OTC) drugs intended for systemic absorption. FDA is also redelegating authority to grant or deny petitions seeking exemptions from the general warning. FDA is taking this action after considering public comments on the proposed rule.

DATES: The effective date of §§ 5.31(d), 201.63 and 330.2 is December 3, 1982. Manufacturers of affected drug products will have until December 5, 1983 to comply with the labeling requirement set forth in § 201.63.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFN-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 7, 1982 (47 FR 39470), FDA proposed to amend the general provisions for OTC drugs to include a requirement that OTC drug labels contain a statement advising pregnant or nursing women to seek professional advice before using any drug. This warning was to apply to all OTC drugs that are systemically absorbed and stated, "As with any drug, if you are pregnant or nursing a baby, seek professional advice before using this product." The proposal stated that, where a specific warning relating to use during pregnancy or while nursing is established for an ingredient during the OTC drug review, the specific warning listed in an OTC drug final monograph would apply rather than the proposed general warning. The proposal also provided for exemption from the general warning requirement, when appropriate, through petitioning the agency.

Interested persons were invited to file written comments regarding this proposal on or before October 7, 1982. In response to the proposed rule, comments were received from 11 health professional associations, 2 trade associations, 5 women's organizations, 3 State governments, 14 private individuals, 4 consumer associations, 2 drug merchandisers, and 19 drug manufacturers.

The agency also received six petitions requesting an extension of the comment period from 30 days to 60 days and requesting that public hearings be held in Washington, DC, and other key cities. The agency denied these petitions for the following reasons: In developing the proposal, which concerned a single labeling requirement only, FDA carefully considered potential areas of comment and determined that 30 days would be adequate to develop and submit such comments. Immediately following publication of the proposal, the agency forwarded copies of it to key consumer groups and national women's organizations throughout the country, pointing out to these persons that, the comment period was limited to 30 days. The proposal also received extensive media coverage. Further, because the State of California requirement for a pregnancy-nursing warning for OTC drugs was to become effective on November 18, 1982, FDA concluded that a 30-day comment period was necessary to minimize confusion concerning manufacturers' obligations under State and Federal law. Finally, it is unlikely that public hearings would develop information that could not be furnished to the agency through the submission of written comments.

The final rule is similar to that proposed, but clarifies the agency's intent to include only OTC drugs intended for systemic absorption (see comment 5 below) and the agency's conclusion to include the rule under Part 201 (21 CFR Part 201) (see comment 21 below). Therefore, this final rule contains the agency's decision to amend the labeling requirements for OTC drugs in Part 201 to require for OTC drugs intended for systemic absorption, unless exempted, a warning advising pregnant and nursing women to consult a health professional before using such drugs.

A. The Agency's Conclusions on the Comments

1. A number of comments supported the general warning proposed by the agency. For example, a professor of health policy commented that, although the relative risk generated by an individual OTC drug is likely to be modest, the sheer number of OTC drug products and extent of their use suggest the need for a general warning. A comment from the American Medical Association stated that, even though insufficient research has been performed on most OTC drugs to determine conclusively whether they adversely affect fetuses and breast-fed babies, it is appropriate to be cautious and require a warning advising pregnant and nursing women to use such drugs only with professional advice.

2. A number of comments requested that the general warning specify a physician or a pharmacist as the professional from whom a pregnant or nursing woman should seek advice on the use of OTC drugs. Several of the comments requested that the agency adopt the warning developed by the State of California: "Caution: If pregnant or nursing a baby, consult your physician or pharmacist before using this product." Some comments argued that a pharmacist should be specified because a pharmacist is readily available to consumers at the time of most OTC drug purchases and is particularly knowledgeable concerning OTC drug products. Other comments argued that the physician, as the primary provider of medical care for pregnant and nursing women, should be the only professional specified. One comment from a supermarket chain stated that its consumer board had determined that the word "professional" was subject to varying interpretations by consumers. Pointing out that consumers might construe the broad term "professional advice" to include persons who might not be familiar with the objectives of the warning, another comment suggested that the warning specify a "health professional."

As suggested by the comments, the agency concludes that the warning should be changed to advise pregnant or nursing women to contact a "health professional" for advice regarding OTC drug usage. While physicians or pharmacists would probably be the most likely health professionals to be consulted because of their availability and recognized expertise, the agency does not believe that the warning should specify one or both of these professionals only. FDA pointed out in the preamble to the proposed regulation that many professional groups, such as nurses, nurse practitioners, certified nurse midwives, and physician's assistants, are also sources of sound information on OTC drugs (47 FR 39470). The woman who is considering taking an OTC drug is in the best position to choose the health professional to help her assess the risks and benefits of using the drug, and the warning should not limit her sources of information.

3. Several comments contended that the phrase "seek professional advice" shifts the burden of establishing the safety of OTC drugs to the consumer and to health professionals. The comments stated that this responsibility properly belongs with the drug manufacturers; one comment stated that it is also FDA's regulatory responsibility.

One comment proposed the following warning, arguing that it would require the manufacturers of OTC drugs to establish the drug's safety and would inform pregnant and nursing women about the inadequacy of scientific testing to establish the safety of OTC drugs for the developing fetus:

> A small number of drugs have been conclusively shown to a degree of scientific certainty to have adverse effects on the developing fetus. However, information of this type is not adequate to establish that this drug is safe for the developing fetus.

Another comment stated that the proposed warning placed full responsibility to discern the possible existence of harmful effects on the woman whose fetus is at risk and suggested the following warning to resolve this problem:

> If pregnant or nursing an infant, do not use this product without consulting a health professional.

The general pregnancy-nursing warning is not intended by the agency to shift responsibility for determining the product's safety to consumers or health professionals. OTC drugs generally are intended for self-treatment to relieve symptoms and to treat conditions that are not serious. Their use is a matter of choice by the individual consumer, and this is no less true if the consumer is a pregnant or nursing woman. A pregnant or nursing woman may, however, need special assistance in determining whether the need to relieve a particular symptom or to treat a particular condition justifies a potential risk to her child. Because of the acknowledged lack of specific information on the effects of most OTC drugs on developing fetuses or on breast-fed infants, the agency believes a woman would be best advised on whether to use a particular OTC drug by a knowledgeable health professional who is either familiar with her medical history or readily available to her and capable of assessing her situation with respect to a particular drug. Comments received from health professional associations indicate that these groups do not perceive that providing such advice would be a burden. Rather, these groups demonstrated a strong desire to provide such advice in the interest of possibly helping to prevent birth defects or harm to nursing infants.

The agency believes the first warning suggested above is not apt to be understood by the average consumer. Further, the message it is intended to convey can be more effectively obtained through consultation with a health professional. The second warning suggested above is similar to the agency's proposed general warning. However, this warning does not convey the message that it is not based on specific information about the particular drug, but applies to most other OTC drugs as well. The agency's warning, which begins with the phrase "as with any drug," makes it clear that this is a general warning (see discussion in comment 9 below). Therefore, the agency is not adopting either of the warnings suggested by the comments.

4. Several comments stated that the general warning should be preceded by the word "Caution" or "Warning" to call attention to it.

The agency agrees with the comments. Labeling directions in those monographs for OTC drugs specify that warning statements should appear under the heading "Warnings." The agency has chosen the word "Warning" as a signal word because it is more likely to attract the attention of consumers than the word "Caution." The language in this final rule has been revised to make it clear that the general warning must appear under the heading "Warning"—or "Warnings" (if it appears with additional warning statements).

5. Several comments stated that the language used by the agency in the proposed rule, which would require the warning for "all drugs that are systemically absorbed into the body," was too broad, ambiguous, and needed clarification. One comment requested that the agency require the warning for OTC drugs that are "orally administered and intended to be swallowed." Several other comments recommended the approach taken by the State of California in requiring a warning only for drugs that are "intended for systemic absorption." Another comment suggested that the regulation be clarified by stating that the term "systemically absorbed" does not apply to those drugs which are not dependent on systemic absorption for their claimed effect.

The agency agrees that the warning should apply only to OTC drug products intended for systemic absorption. Although the proposal stated that the warning would apply to all OTC drugs thar are systemically absorbed, the agency did not intend to include drugs absorbed in amounts sufficiently small as to have no pharmacological or toxicological significance. The final rule has been amended to clarify that drugs that are not intended for systemic absorption need not bear the warning. For example, OTC drugs used topically or mouthwashes regulated as OTC drugs, which due to their method of use are not intended to be systemically absorbed, will not be covered by the regulation. This approach is consistent with that of the California regulation, which applies only to drugs intended for systemic absorption into the human body.

FDA is also amending the regulation to exempt OTC drugs intended to benefit the fetus or nursing infant and OTC drugs labeled exclusively for pediatric use (see comment 6 below).

6. Various comments requested that the following drugs and cosmetics be exempted from the general warning: homeopathic drugs; pediatric oral electrolyte solutions; topical antibiotic, antimicrobial, and antifungal agents; drug products labeled specifically for pregnant or nursing women; drug products with active ingredients known to be safe for pregnant women or recommended for them, e.g., antacid products containing calcium carbonate; topical analgesics for normal or abraded skin or for use in the oral cavity; mouthwashes and dentifrices; anticavity dentifrices; antibacterial mouthwashes; products intended to benefit infants or children; insoluble or nonabsorbed antacids; bulk laxatives; nonabsorbed antidiarrheals; cough lozenges containing menthol and eucalyptol; topically acting nasal sprays; topical skin preparations, including creams, lotions, and shampoos; antimicrobial soap products; shampoos and other topical agents represented to prevent dandruff; suntan products represented to prevent or treat sunburn; antiperspirants; skin moisturizing and protectant products; certain antichapping products; otic drug products; ophthalmic drug products; drug products not intended for women of childbearing years, e.g., geriatric, pediatric, or postmenopausal drug products; or products labeled exclusively for use by men. One comment requested that the warning appear on vitamins, even though these products are dietary supplements, because a pregnant woman is more likely to add a vitamin to her daily intake than any other product. Another comment cited antacids, meclizine hydrochloride and cyclizine hydrochloride used as antiemetics, pyrantel pamoate used as an anthelmintic, and nighttime sleep-aids

as drugs the agency has previously stated do not require a warning against use in pregnancy or nursing.

As discussed in comment 5 above, the regulation has been revised to apply only to OTC drug products intended for systemic absorption into the human body. Therefore, a number of the products for which exemptions were requested are not within the scope of the final regulation. Cosmetic products were not covered by the proposal, nor are they included in the final rule. Topically applied products, such as many of those listed in the comments, are not intended for systemic absorption and, therefore, are not covered by the rule. Dentifrices and mouthwashes are also not within the scope of the final regulation. Vitamins labeled solely as dietary supplements are considered foods and, therefore, are not covered by the regulation.

The regulation has also been revised to exempt from the warning requirement drugs intended to benefit the fetus or nursing infant during the period of pregnancy or nursing (§ 201.63(c)(1)). The agency finds this to be a reasonable exemption because such drugs would have been evaluated specifically for their effects on the fetus or infant and demonstrated to be beneficial. Drugs labeled exclusively for pediatric use are also exempted (§ 201.63(c)(2)) because pregnant or nursing women would not be taking such products.

OTC homeopathic drug products intended for systemic absorption are included in the final rule. The agency is aware of no evidence indicating that the potential harm to fetuses or nursing infants from this kind of drug product differs from the potential harm of other kinds of OTC drug products intended for systemic absorption. Individual manufacturers of homeopathic drugs may petition for exemption from the warning requirement if they can present evidence to support an exemption (see comment 7 below). The agency is unaware of any OTC drug products intended to be systemically absorbed that are labeled exclusively for geriatric or postmenstrual use or exclusively for use by men.

FDA does not agree with the comment suggesting that an agency decision not to require a specific warning on certain products (such as pyrantel pamoate as an anthelmintic or certain antiemetics) implies that the general warning also should not be required on such products. The general warning is intended to cover those drugs for which the available evidence shows neither that the product is unsafe for use by pregnant or nursing women *nor* that the product is safe for use by these women.

In addition, the agency is redelegating the authority to grant or deny petitions seeking exemption from the general warning in § 201.63 from the Commissioner of Food and Drugs to the Director, National Center for Drugs and Biologics (NCDB), and the Director and Deputy Director of the Office of Drugs, NCDB. Further redelegation of the authority delegated is not authorized. Section 5.31 (21 CFR 5.31) is revised to include this redelegation.

7. Noting that the proposed regulation included a provision for granting an exemption from the general warning requirement, several comments questioned what the criteria for exemption are. One comment stated that the regulation could be subverted by indiscriminate granting of exemptions unless limitations are stated in the regulation. The comment noted that the State of California regulation has an exemption provision limited to five defined classes of products.

The agency has revised the proposed regulation to clarify the scope of the requirement. As discussed more fully in comment 5, the final regulation will apply only to OTC drugs intended for systemic absorption into the human body. Furthermore, as discussed in comment 6 above, two other categories of OTC drugs are exempted from the regulation: drugs intended to benefit the fetus or nursing infant and drugs labeled exclusively for pediatric use. The clarifications should greatly reduce the number of petitions for exemption to the regulation.

The regulation (§ 201.63(d)) provides for exemptions from the pregnancy-nursing general warning requirement where appropriate upon petition under the provisions of § 10.30 (21 CFR 10.30). For example, manufacturers who believe that available data demonstrate that their products, although intended for systemic absorption, are safe for use by pregnant and nursing women may petition for an exemption from the warning requirement. Consistent with the procedures under § 10.30, the agency will notify the petitioner in writing whether the petition is granted or denied. Exemptions granted will be kept on file for public review in FDA's Dockets Management Branch. Exemptions will not be granted indiscriminately, but only upon adequate demonstration by the petitioner that an exemption is warranted.

8. One comment stated that, for an OTC drug subject to a new drug application (NDA), it should be possible to seek exemption from the general warning requirement through an NDA or a supplemental NDA, as well as through the petition procedures.

Upon request, the agency will consider data included in an NDA or supplemental NDA for an OTC drug subject to an NDA to determine whether the data qualify the drug for exemption from the pregnancy-nursing general warning requirement. Alternatively, the sponsor may follow the petition procedures in § 10.30, as discussed in comment 7 above. For drugs not subject to an NDA, manufacturers should follow the petition procedures in § 10.30.

9. One comment suggested that the phrase "as with any drug" be made optional because labeling space limitations may necessitate its deletion. The comment stated that deletion of this phrase would not alter the meaning of the proposed warning. Another comment endorsed this phrase because it does not single out a particular product labeled with the warning, but rather informs pregnant and nursing women to exercise caution when using it and other OTC drug products. A third comment suggested that this phrase be changed to read "as with any drug used internally" to clarify that the warning does not apply to all OTC drugs.

The agency does not believe the phrase should be optional. As noted in the second comment, the phrase is important because it conveys the message that a product labeled with the warning is one of many drugs that should be used with caution by pregnant or nursing women. The phrase, which makes it clear that this is a general warning, should also help to enhance the effect of those specific pregnancy-nursing warnings that represent demonstrated risks of particular drugs.

FDA agrees with the third comment that this warning requirement does not apply to all OTC drugs. The final regulation has been revised to make it clear that the warning requirement applies only to OTC drugs intended for systemic absorption. The final rule also exempts OTC drugs intended to benefit the fetus or nursing infant and OTC drugs labeled exclusively for pediatric use. However, FDA is not including the phrase "drugs used internally," suggested by the comment, because it does not accurately convey the scope of the regulation. For example, some antacid products are not intended for systemic absorption, although they are taken internally. In addition, it is less confusing to the consumer when the warning is as direct and uncomplicated as possible.

10. One comment proposed that the following language precede the warning:

CAUTION: This drug has not been proven safe for babies before or after birth.

The comment argued that the warning statement proposed by the agency fails to convey the most essential message, i.e., that the risks of taking certain OTC drugs during pregnancy and nursing are either unknown or known to be dangerous. According to the comment, referral to a health professional does not indicate possible danger from use of a drug. The comment added that, for many teenagers and women with low income, consultations with health professionals may be neither feasible nor likely, and it is important to convey in the labeling in a clear and apparent manner dangers that may be associated with an OTC drug. The comment concluded that, in order for its preventive purpose to be fulfilled, any warning on OTC drugs must include a statement that the drug has not been proven safe and that the risks of using it are unknown.

Another comment stated that the proposed warning needed to be strengthened and suggested the following statement to precede the warning:

USAGE IN PREGNANCY: The effect of this drug on the fetus and/or the subsequent development of the exposed offspring is unknown.

The agency believes that additional language as proposed by the comments would not achieve the desired purpose. First of all, if available data show that an OTC drug poses a definite risk in pregnancy or nursing use, and is thus "known to be dangerous," a specific, stronger, warning will be included in the OTC monograph for that drug or required as part of an NDA. As for the general warning, the additional statements proposed by the comments would unnecessarily lengthen the warning by adding a redundant message. The agency does not agree that referral to a health professional does not indicate possible danger. Advising a pregnant or nursing woman to seek the advice of a health professional before using an OTC drug product should convey at once the message that the drug is not known to be unquestionably safe for a fetus or nursing infant. It is a matter of concern that some women are not likely to consult health professionals during pregnancy, but it is unlikely that the statements proposed by the comments would cause such women to seek advice in situations where they otherwise would not.

11. Arguing that the general warning would have no impact on the many women in this country who neither speak nor read English, one comment proposed the following symbol for use in labeling OTC drugs for which the risks to pregnant and nursing women, fetuses, and offspring are unknown:

and the following symbol for OTC drugs that are contraindicated for pregnant and nursing women:

The agency shares the comment's concern for reaching women who are not literate in English. As one means of reaching women who are nonliterate in English, but able to read another language, the regulations at 21 CFR 201.15(c) provide for labeling products in a language in addition to English. The agency believes that properly designed symbols could be used in addition to the written warning in the labeling to attract the attention of women who do not read English. The agency will not require these symbols, but will permit voluntary use of such symbols by manufacturers. Such symbols may not, however, be used as a substitute for the required warning; they may only be used in addition to it. The regulation has been amended accordingly.

12. One comment stated that the agency's proposed warning lacks grammatical preciseness and suggested the following warning:

If you are pregnant or nursing a baby, you should seek professional advice before using this or any other drug product.

The comment's suggested warning may be grammatically more precise than the agency's proposed warning. However, this warning does not convey the same emphasis as the agency's warning; nor does it reflect the decision to specify a health professional as the agency's warning does (see comment 2 above). The agency believes that the addition of the word "health" to the proposed warning, as follows, incorporates this change clearly without losing the emphasis of the original proposed warning:

As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product.

13. Several comments requested that the agency permit alternative language to that specified in its proposed general warning and noted that the California regulation permits use of "substantially similar" language to that included in the State's warning. One comment stated its intention to propose to manufacturers that they voluntarily add to the warning the words "consult your physician or pharmacist." Another comment requested that FDA allow the California warning as "substantially similar" so that manufacturers who use it for products marketed in California would be spared the expense of relabeling with the agency's warning. The agency believes that a standard warning appearing on OTC drug products covered by the regulation would insure that the intended message is conveyed uniformly to all women and would prevent consumer confusion. Therefore, the final rule will not provide for the use of substantially similar language or for the voluntary addition of words to the warning. As discussed in comment 23 below, manufacturers will be allowed up to 1 year from the date of publication of this final order to incorporate the agency's warning into product labeling. Thus, labels can be changed in the normal course of reordering, keeping expenses to a minimum both for those manufacturers who have incorporated the California warning into their labeling and for other manufacturers.

14. Noting that it has been the agency's consistent and frequently stated policy that warnings must be used judiciously or lose their effectiveness, several comments stated that if the general warning is used when it is not necessary, for example, on all systemically absorbed OTC drugs, it will dilute the impact of important cautionary statements. One comment contended that, if instituted, the general warning will join other phrases that are so ubiquitous they are not read.

The agency acknowledges that warnings must be used judiciously so that they do not lose their effectiveness. However, OTC drugs must be labeled with the information necessary to assure their safe and proper use by consumers. The agency believes that due to the questions that exist concerning the potential effects on fetuses and nursing infants of drugs intended for systemic absorption, it is necessary to alert pregnant and nursing women to the need to consult a health professional before taking such drugs. The agency also believes that the best means of

accomplishing this goal is through a warning statement. As discussed in comments 5 and 6 above, this warning will not be required for all OTC drug products. Products not intended for systemic absorption need not bear the warning; certain other categories are also exempted. The agency believes that appropriate general warnings, such as this pregnancy-nursing warning, are an important means of educating the public about drug use. Furthermore, when consumers become familiar with the general pregnancy-nursing warning, because of their increased awareness they may more readily understand the significance of specific warnings that describe demonstrated risks of particular drugs to pregnant and nursing women.

15. One comment stated that the agency did not provide any studies to show that the general warning will actually cause women to consult with health professionals before using OTC drugs. The implication was that the warning should not, therefore, be required.

The agency acknowledges that studies of the kind described by the comment have not been provided. The provisions of the Federal Food, Drug, and Cosmetic Act that require labeling to bear adequate directions for use and adequate warnings against unsafe use are designed primarily to enable consumers to use products safely and effectively through reading the labeling. An implicit assumption underlying most OTC drug labeling regulations is that consumers, in pursuing their own best interests, will read labeling that is appropriately designed and worded. The agency does not believe that consumer behavior studies are necessary as a condition to requiring appropriate label warnings. This pregnancy-nursing warning requirement is intended to provide women an opportunity to use OTC drugs safely and effectively in appropriate situations. The agency believes that it is reasonable to expect that most pregnant and nursing women will heed the warning out of concern for themselves and their children.

16. One comment stated that FDA's general pregnancy warning for OTC drugs is inconsistent with the decision of the Bureau of Alcohol, Tobacco, and Firearms of the Treasury Department not to require a warning of this kind for alcoholic beverages. Noting the link between alcohol and the condition known as fetal alcohol syndrome, the comment stated that the fact that FDA is requiring a warning for OTC drugs and the Bureau of Alcohol, Tobacco, and Firearms is not requiring one for alcoholic beverages could provide consumers with the impression that alcohol is safe for use during pregnancy and nursing.

The agency appreciates the comment's concern, but points out that the regulation of the labeling of alcoholic beverages is outside its jurisdiction. FDA does not share the comment's belief that a warning on OTC drugs implies that alcohol is necessarily safe for use by pregnant or nursing women.

17. Several comments pointed out the difficulties posed by the requirement of an additional warning in view of limited labeling space, particularly on small packages. One comment stated, for example, that adding a warning will necessitate reduction of type size on many product labels. Another comment requested use of the word "lactating" for "nursing a baby" in the interest of shortening the warning, and another submitted a letter from the State of California authorizing use of the following shortened warning on small packages as "substantially similar" (Ref. 1): "Caution: if pregnant or nursing, seek professional assistance before using."

One comment requested that the agency permit the warning to be combined with other warnings where possible as a space-saving measure, for example, with the general warnings in § 330.1(g) (21 CFR 330.1(g)) regarding keeping all drugs out of the reach of children and regarding accidental overdose. Another comment suggested combining the warning with other warnings included in the OTC drug monographs and gave the following example, using a warning proposed for many OTC cough-cold drug products: "Persons with high fever or persistent cough, or with high blood pressure, diabetes, heart or thyroid disease, asthma, glaucoma, or difficulty in urination due to enlargement of the prostate gland, or persons pregnant or nursing should not use this preparation unless directed by a physician."

As noted in comment 13 above, the agency will require the full warning as a separate statement to insure that the intended message is conveyed uniformly to all women and to prevent consumer confusion. Alternative language will not be accepted. The word "lactating," suggested as an alternative for "nursing a baby," may not be understood by the average consumer, and in fact does not have precisely the same meaning, but means merely "secreting milk" (Ref. 2). The shortened warning does not include the phrase "As with any drug," which the agency considers important. (See comment 9 above.) Combining the warning with other warnings increases the chance that an essential part of it will be omitted or that the warning may be overlooked. For example "As with any drug" is omitted from the combination with the cough-cold warning above, and a physician is specified instead of a health professional. In addition, in this example of a combined warning, the reference to "persons pregnant or nursing" might all too easily be overlooked because the warning deals primarily with people who have diseases.

The agency recognizes the difficulties posed by limited labeling space. However, FDA concludes that the warning statements required are those that are scientifically documented, clinically significant, and important for the safe and effective use of the products by average consumers. Manufacturers may use various approaches to incorporate all required information, such as the use of package inserts.

18. Several comments argued that, based on the agency's traditional policy, cautionary labeling should be required only when a clearly defined risk supported by scientific data is evident. Noting the extensive nature of the OTC drug review and the immense amounts of data generated by it, the comments argued that the agency should require only specific warnings for particular OTC drugs as supported by the data included in the review. Some of the comments added that if a general warning is required it should be an interim measure, in place only until completion of the OTC drug review, at which time all necessary specific warnings will be included in the OTC drug final regulations. At that time, these comments stated, the general warning should be revoked for those product classes for which there is no demonstrated scientific need.

Over the past 20 to 25 years an increasing body of data has accumulated demonstrating that drugs that are systemically absorbed pass through the placenta to the fetus or reach the milk of a nursing mother. The agency discussed the scientific basis for the warning in the proposal (47 FR 39470). Although there is at present a lack of specific evidence to show that many of these drugs cause harm to the fetus or nursing infant, the agency believes that existing evidence establishing the potential for some OTC drugs to have harmful effects on the fetus or nursing infant warrants warning pregnant and nursing women to exercise caution and seek advice from a health

professional before using OTC drugs that are intended to be systemically absorbed. The agency's decision to require the warning on the labeling of OTC drugs that are "intended for systemic absorption" is discussed in comment 5 above. As set forth in § 201.63(b), the general warning will usually not be required for products labeled with specific warnings against use by pregnant women, such as specific warnings developed in the course of the OTC drug review that will be incorporated into the monographs for the appropriate drug classes. In addition, the general warning will not be required for certain OTC drug product classes. (See comment 6 above.) As the agency stated in the preamble to the proposal for a general warning (47 FR 39471), FDA will continue to review the scientific data concerning the use of OTC drugs by pregnant and nursing women and will give careful consideration to the need for the warning, both generally and for specific classes of OTC drugs. If it appears, based on these data, that the warning is no longer justified, the agency will propose to revoke the requirement.

19. One comment contended that the general warning undermines the very concept of an OTC drug as one that can be used in the treatment of illnesses and disorders that can be safely diagnosed and treated by the lay person. Another comment stated that to the extent the general warning would encourage physician consultation for every set of symptoms experienced, it could seriously disrupt the delicate balance that now exists in our nation's health care system. The comment cited experts in economics and health care regarding the effect a small shift in the population from self-treatment to physician consultation would have on the health care system in terms of disruption to the system itself and to the economy (Ref. 3).

The agency considers the general warning to be similar in concept to the warnings included in the OTC drug monographs that advise various target populations against using certain OTC drug products without consulting a physician. These warnings are not addressed to all users of OTC drugs, but are intended to prevent indiscriminate use of OTC drugs that might have harmful effects in particular target populations. More specifically, the goal of the general warning is to direct a pregnant or nursing woman to advice that will enable her to make an informed choice with respect to an OTC drug, balancing the benefit it would provide against the potential risk.

In FDA's opinion, the comment concerning potential disruption of the nation's health care system by the general warning is not an accurate assessment of the situation. Because the warning does not cover all categories of drugs, consultation for "every set of symptoms" is not being encouraged. The warning directs pregnant and nursing women to seek advice from a "health professional". While physicians are one of the sources most likely to be contacted, this contact need not be made through an office visit but may be handled by a telephone inquiry. Moreover, most pregnant or nursing women already are consulting with physicians or other health professionals regularly, as part of prenatal or well-baby checkups, so that a consultation on the use of an OTC drug may be an extension of an already established relationship between a patient and a health professional. The American Medical Association, as well as other professional organizations, has supported a warning requirement. The agency has estimated the economic impacts of the warning requirement and has concluded that the increased costs will not be substantial (see 47 FR 39471 and discussion of Executive Order 12291 and Regulatory Flexibility Act below).

20. One comment stated that the general warning would lead the consumer to conclude that products labeled with it have actually been found to be unsafe, resulting in needless avoidance of OTC drugs and pointless suffering of symptoms that might readily and safely be relieved by them. Another comment argued that the language of the proposed labeling is susceptible to misunderstanding by the lay person in that it misleadingly implies that OTC drugs are safe unless otherwise stated when taken under the instructions of a health professional.

The general warning advises the woman who is pregnant or nursing a baby to consult a health professional before using any product on which it appears. The object of the warning is for such a woman to obtain information that will assist her in making an informed decision with respect to the particular drug she is considering, based on a careful assessment of the potential risk involved. The warning neither states nor implies that the drug has actually been found to be unsafe for use by pregnant or nursing women. Nor does the warning imply that the drug has been shown to be safe for use by pregnant or nursing women when taken under the instructions of a health professional.

21. One comment stated that, in order to be immediately applicable to all OTC drugs, the general warning should be incorporated under Part 201 of Title 21 instead of Part 330. The comment added that Part 330 is only applicable to OTC drugs that are generally recognized as safe and effective, and a general warning incorporated in that part would therefore apply only to those drugs that are included in final OTC drug monographs.

The agency agrees with the comment. To ensure that when the general warning requirement becomes effective it will apply to all covered OTC drugs, the agency is placing the warning in Part 201 in new § 201.63 *Pregnancy-nursing warning*. A cross reference will be included in § 330.2 to clarify this location.

22. One comment noted the provision in paragraph (b) of the proposed regulation that a specific pregnancy-nursing warning that is required in a final OTC drug monograph supersedes the general warning, and asserted that it is difficult to interpret this provision without knowing the scope of the specific warning. The comment pointed out that, while a specific warning might indicate that a product should not be used during a defined period of pregnancy or nursing because of some expected or documented adverse reaction, it might be silent about other periods of time during pregnancy and nursing, and the general warning would therefore still be useful. The comment recommended adding to paragraph (b) language indicating that the specific and general warning must both be used as appropriate when required by FDA.

There may be instances in which a specific warning in an OTC drug monograph refers only to use during pregnancy, so that it would be appropriate to require a warning statement regarding use by a nursing woman as well as the specific pregnancy warning in the monograph. The warnings for some OTC drugs will continue to be established through NDA procedures. The agency concludes that the adjustments regarding the appropriate pregnancy-nursing warnings will be best handled in the final OTC drug monographs and in the individual NDA's. Accordingly, § 201.63(b) now states that the specific warning shall be used in place of the general warning, unless otherwise stated in the NDA or in the final OTC drug monograph.

23. Several comments addressed the agency's proposed effective date of the pregnancy-nursing warning regulation. One comment requested that the regulation become effective no sooner

than 18 months following its publication as a final regulation. The comment stated that, because most OTC drugs have a long shelf life, labels are ordered in large quantities, often in excess of 1 year's inventory, and that manufacturers should be permitted to exhaust their supply of old labels. The comment added that, because of the long lead times necessary to print labels, many manufacturers had reprinted their labeling in advance of the publication of the proposed rule, so that compliance with the rule would require a second reprinting. Another comment argued that a reasonable period before the effective date should be allowed for preparation, submission, and evaluation of petitions to exempt ingredients from the requirement. Several comments stated that it should be made clear that products labeled without the warning before the end of the 1-year grace period (or before the exhaustion of current supplies, if earlier) may continue to be distributed after the effective date of the regulation. One comment recommended that the warning be applicable to covered OTC drugs packaged after 1 year after publication of the final rule.

Although this final regulation will become effective upon publication, man;ufacturers will be permitted to defer labeling changes for a period of up to 1 year. The agency believes that a 12-month period is a reasonable period of time to enable manufacturers to relabel their products with a minimum disruption of the marketplace, thereby reducing economic loss and ensuring that consumers have continued access to safe and effective drug products. Therefore, the final rule will become effective on December 3, 1982; however, manufacturers of affected products may defer labeling changes until December 5, 1983. Twelve months is also a reasonable period of time for the preparation, submission, and evaluation of petitions to exempt products from the requirement. The agency has taken steps to expedite the evaluation process by a redelegation of authority.

After the 12-month period, OTC drug products subject to this regulation that are initially introduced or initially delivered for introduction into interstate commerce must comply with the labeling requirements. Because the warning required by this regulation does not address an immediate public health threat, supplies of drug products already shipped in interstate commerce before December 5, 1983 may continue to be sold without complying with the regulation. The agency encourages manufacturers to relabel their products to include this pregnancy-nursing warning at the earliest opportunity.

24. Several comments that were submitted in response to the agency's invitation for comments on the preemptive effect the FDA warning would have on the California and other similar State OTC drug labeling requirements supported FDA's view that a Federal pregnancy-nursing warning requirement would preempt State pregnancy-nursing warnings. The principal cases cited in the comments were *Jones* v. *Rath Packing Co.*, 430 U.S. 519 (1977), *Brookhaven Cable TV, Inc.* v. *Kelly*, 573 F. 2d 765 (2d Cir.), *cert. denied*, 441 U.S. 904 (1978), which were also cited by FDA in the proposal, and *Cosmetic, Toiletry, & Fragrance Ass'n, Inc.* v. *Minnesota*, 440 F. Supp. 1216 (D. Minn., 1977), *aff'd*, 575 F. 2d 1256 (8th Cir. 1978). Some comments took a more expansive view of the preemptive effects of the proposal, stating that all State OTC drug labeling requirements of any type either already were preempted by virtue of FDA's pervasive regulation of OTC drugs or could be preempted were FDA to issue a statement of its intention to preempt.

A comment submitted by the California Department of Health Services, however, opposed the statements in the proposal on the preemptive effects of the FDA warning on general legal and policy grounds. The California agency reiterated that the California requirement would become operational on November 18, 1982. A separate comment submitted by the same agency stated that FDA's proposed warning was substantially similar to California's requirement and would be acceptable in lieu of California's precise language.

The doctrine of Federal preemption is derived from Article VI of the Constitution, which provides that Federal law is the supreme law of the land, the "Laws of any State to the Contrary notwithstanding." Congress can preempt State laws relating to a particular subject matter, either expressly, by enacting Federal laws that prohibit State regulation of a particular area, or by implication, by enacting Federal laws that conflict with State laws or that reflect an intent to occupy a field of activity to the exclusion of even nonconflicting State law.

The cases cited above discuss the doctrine of implied preemption in a variety of factual situations. These cases and others describe the criteria used to determine whether State and Federal laws are at such odds that the State law must give way, or whether the Federal scheme created by Congress excludes all State regulation. The basic standard that has evolved is whether under the circumstances the State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the Federal law.

The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.) does not expressly preempt State activity relating to OTC drug labeling. Therefore, in determining whether FDA's pregnancy-nursing warning preempts California's warning, the doctrine of implied preemption must be applied. As stated in the proposed rule, a single national pregnancy-nursing warning with a specified text is necessary to ensure that OTC drugs are used safely and for their intended purposes (47 FR 39471). A single national warning will help ensure that consumers receive clear, unambiguous, and consistent information on the labeling of OTC drugs concerning use by pregnant or nursing women. Differing State requirements could conflict with the Federal warning, cause confusion to consumers, and otherwise weaken the Federal warning. FDA believes that differing State OTC drug pregnancy-nursing warning requirements would prevent accomplishment of the full purpose and objectives of the agency in issuing the regulation and that, under the doctrine of implied preemption, these State requirements are preempted by the regulation as a matter of law.

As noted in the proposal, the California warning allows for the use of pregnancy-nursing warnings that are "substantially similar" to the California requirement. In view of comments made by the California Department of Health Services, the FDA warning would appear to meet the California "substantially similar" exception. Therefore, under these circumstances, the issue appears to be academic: manufacturers who use the FDA warning would also be in compliance with the California requirement.

FDA shares the concerns of the comments that States may elect to regulate aspects of OTC drug labeling other than pregnancy-nursing warnings. The agency is concerned that a proliferation of such State requirements may weaken FDA's efforts to develop comprehensive national labeling and other requirements for OTC drugs. The current regulation, however, is intended to apply only to one aspect of OTC drug labeling: pregnancy-nursing warnings. FDA will monitor future State labeling requirements to determine whether further action is necessary.

The California warning requirement becomes effective on November 18, 1982. FDA regards the California requirement as preempted as of the date of publication of this regulation.

The following information had been placed on display at the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

References

1. Comment No. C0021, Docket No. 82N-0050, Dockets Management Branch.

2. Webster's Third New International Dictionary, G & C Merriam Co., 1976, s.v. "lactate."

3. Comment No. C00032, Docket No. 82N-0050, Dockets Management Branch.

B. The Agency's Final Conclusions on the Requirement of a General Label Warning Concerning the Use by Pregnant or Nursing Women of OTC Drugs Intended To Be Systemically Absorbed

Based on the available evidence and the comments received by the agency during the comment period, FDA is amending the labeling requirements for OTC drugs to include a warning for all OTC drugs intended for systemic absorption, unless exempted, as follows: "As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product."

FDA has changed the wording of the requirement so that it applies to OTC drug "labeling" rather than "labels' as stated in the proposal. This change reflects what was intended in the proposal and makes the new requirement consistent with other OTC drug warning requirements that have been developed during the OTC drug review.

The effective date of this final rule is December 3, 1982. In view of the November 18 effective date for the California regulation and the need for certainty concerning the labeling requirements that apply to OTC drugs, the agency finds that good cause exists for making this regulation effective immediately upon publication. By this early effective date, the agency intends to preempt any differing State requirements. Manufacturers marketing their products in States with differing requirements will be able to use the new FDA labeling without also being required to use the pregnancy-nursing warning labeling required by any State. Although the regulation will become effective on December 3, 1982, manufacturers of affected products will be permitted to defer labeling changes until December 5, 1983. Thereafter, covered OTC drugs initially introduced or initially delivered for introduction into interstate commerce will be required to comply with the new labeling requirements. The agency will consider requests for additional time to comply with the requirements based on a showing of good cause. Any request for additional time must state the reasons that the drug product's compliance with the labeling requirement cannot be achieved, steps that have been taken to achieve compliance, and when compliance is anticipated. Requests for additional time must be specifically granted by the agency; an extension of time will not be considered granted merely upon submission of a request. Manufacturers are therefore encouraged to submit requests for extensions of time far enough in advance to allow the agency time to act on them.

The agency has examined the regulatory impact and regulatory flexibility implications of the final regulations in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The proposed rule was estimated to generate one-time label modification costs of $3.8 to $5.7 million to marketers of affected OTC drugs and annual costs of $0.7 to $6 million for consultations between pregnant or nursing women and health professionals. Thus, first year impacts of the label warning were expected to total $4.5 to $11.7 million. These costs were found to be well below the thresholds for a major rule in Executive Order 12291; the exemptions of particular drug categories set forth in this document will further reduce these costs.

Similarly, the costs incurred by small businesses are estimated to be insufficient to warrant a regulatory flexibility analysis. Label change costs will be dominated by private label (store brand) OTC drugs which FDA believes to be heavily marketed by larger firms. FDA further believes that small marketers use relatively simple and inexpensive packaging and labeling. Hence, label change costs to small firms are not expected to be substantial. Costs for additional health care consultants will mainly affect small entities, yet will be spread over so many of them, e.g., 47,000 drug stores, 24,000 obstetrician-gynecologist practices, that the average burden per entity appears trivial. Therefore, the agency certifies that the final rule does not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(d)(13) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

21 CFR Part 201

Drug labeling.

21 CFR Part 330

OTC drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 372)) and under the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)) and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), Parts 5, 201, and 330 are amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. Part 5 is amended in § 5.31 by adding and reserving paragraph (c) and by adding new paragraph (d), to read as follows:

§ 5.31 Petitions under Part 10.

* * * * *

(c) [Reserved]

(d) The Director, NCDB, and the Director and Deputy Director of the Office of Drugs, NCDB, are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter requesting exemption from the general pregnancy-nursing warning for over-the-counter (OTC) drugs required under § 201.63 of the chapter.

PART 201—LABELING

2. Part 201 is amended by adding new § 201.63, to read as follows:

§ 201.63 Pregnancy-nursing warning.

(a) The labeling for all over-the-counter (OTC) drugs that are intended for systemic absorption, unless specifically exempted, shall contain a general warning under the heading *Warning* (or *Warnings* if it appears with additional warning statements) as

follows: "As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product." In addition to the written warning, a symbol that conveys the intent of the warning may be used in labeling.

(b) Where a specific warning relating to use during pregnancy or while nursing has been established for a particular drug product in a new drug application (NDA) or for a product covered by an OTC drug final monograph in Part 330 of this chapter, the specific warning shall be used in place of the warning in paragraph (a) of this section, unless otherwise stated in the NDA or in the final OTC drug monograph.

(c) The following OTC drugs are exempt from the provisions of paragraph (a) of this section: (1) Drugs that are intended to benefit the fetus or nursing infant during the period of pregnancy or nursing.

(2) Drugs that are labeled exclusively for pediatric use.

(d) The Food and Drug Administration will grant an exemption from paragraph (a) of this section where appropriate upon petition under the provisions of § 10.30 of this chapter. Decisions with respect to requests for exemptions shall be maintained in a permanent file for public review by the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

3. Part 330 is amended by adding new § 330.2, to read as follows:

§ 330.2 Pregnancy-nursing warning.

A pregnancy-nursing warning for OTC drugs is set forth under § 201.63 of this chapter.

Effective date: December 3, 1982.

(Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p)), 352, 355, 371); secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704).)

Arthur Hull Hayes, Jr.,
Commissioner of Food and Drugs.

Richard S. Schweiker,
Secretary of Health and Human Services.

Dated: November 18, 1982.

[FR Doc. 82-33092 Filed 12-2-82; 8:45 am]
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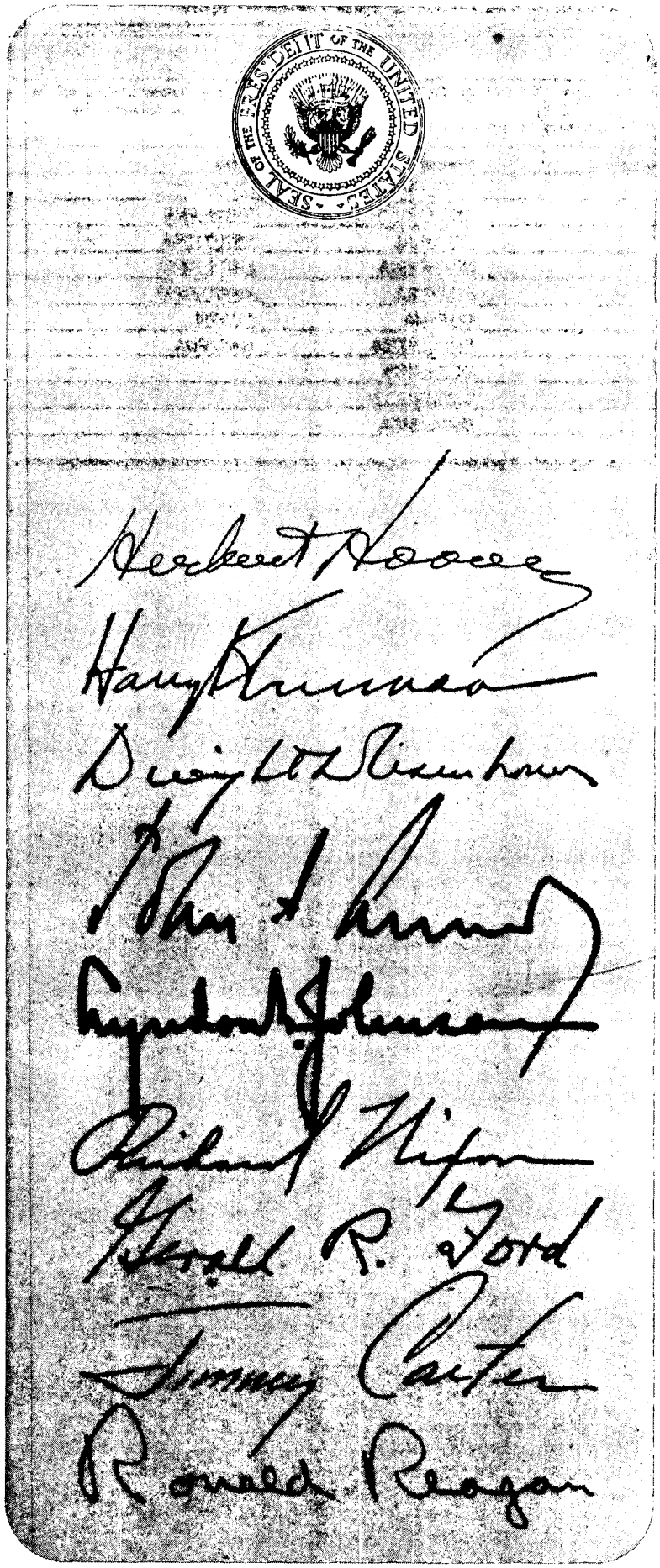

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