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federal register

Tuesday
February 15, 1983

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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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Presidential Documents

Title 3—

The President

Executive Order 12404 of February 10, 1983

Charitable Fund-Raising

By the authority vested in me as President by the Constitution of the United States of America, and in order to lessen the burdens of government and of local communities in meeting needs of human health and welfare, it is hereby ordered as follows:

Section 1. Executive Order No. 12353 of March 23, 1982, is amended as follows:

(a) By deleting Section 1 of that Order and inserting in its place the following provision:

"Section 1. The Director of the Office of Personnel Management shall make arrangements for voluntary health and welfare agencies to solicit contributions from Federal employees and members of the uniformed services at their places of employment or duty. These arrangements shall take the form of an annual Combined Federal Campaign in which eligible voluntary agencies are authorized to take part.".

(b) In Section 2 insert "(a)" after the Section number and add the following new subsection after the existing provision:

"(b) In establishing those criteria, the Director shall be guided by the following principles and policies:

"(1) The objectives of the Combined Federal Campaign are to lessen the burdens of government and of local communities in meeting needs of human health and welfare; to provide a convenient channel through which Federal public servants may contribute to these efforts; to minimize or eliminate disruption of the Federal workplace and costs to Federal taxpayers that such fund-raising may entail; and to avoid the reality and appearance of the use of Federal resources in aid of fund-raising for political activity or advocacy of public policy, lobbying, or philanthropy of any kind that does not directly serve needs of human health and welfare.

"(2) To meet these objectives, eligibility for participation in the Combined Federal Campaign shall be limited to voluntary, charitable, health and welfare agencies that provide or support direct health and welfare services to individuals or their families. Such direct health and welfare services must be available to Federal employees in the local campaign solicitation area, unless they are rendered to needy persons overseas. Such services must directly benefit human beings, whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically handicapped. Such services must consist of care, research or education in the fields of human health or social adjustment and rehabilitation; relief of victims of natural disasters and other emergencies; or assistance to those who are impoverished and therefore in need of food, shelter, clothing, education, and basic human welfare services.

"(3) Agencies that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves shall not be deemed charitable health and welfare agencies and shall not be eligible to participate in the Combined Federal Campaign.

"(4) International organizations that provide health and welfare services overseas, and that meet the eligibility criteria except for the local services

criterion, shall be eligible to participate in each local solicitation area of the Combined Federal Campaign.

"(5) Local voluntary, charitable, health and welfare agencies that are not affiliated with a national agency or federation but that satisfy the eligibility criteria set forth in this Order and by the Director, shall be permitted to participate in the Combined Federal Campaign in the local solicitation areas in which they provide or support direct health and welfare services.".

Sec. 2. All rules, regulations, and directives continued or issued under Executive Order No. 12353 shall continue in full force and effect until revoked or modified under the provisions of this Order.

Ronald Reagan

THE WHITE HOUSE,
February 10, 1983.

[FR Doc. 83-4091
Filed 2-11-83; 10:56 am]
Billing code 3195-01-M

Rules and Regulations

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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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1098

Milk in the Nashville, Tennessee, Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends for the months of February through August 1983 certain provisions affecting the regulatory status of milk plants under the Nashville, Tennessee, Federal milk marketing order. The action makes inoperative the provisions that a distributing plant must dispose of at least 50 percent of its receipts in Class I to qualify as a pool plant. The action was requested by the operator of a pool distributing plant under the order.

EFFECTIVE DATE: February 15, 1983.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-5443.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued January 24, 1983; published January 28, 1983 (48 FR 3994).

It has been determined that this suspension is not a major action under the criteria set forth in Executive Order 12291.

It also has been determined that the need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register.** However, this would not permit the issuance of the suspension on a timely enough basis since it is necessary that it be effective for the month of February 1983. In this instance, the initial request for this action was received on January 10, 1983. A notice of proposed suspension was issued on January 24, 1983, inviting interested parties to comment on the proposed action by February 4, 1983.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Nashville, Tennessee, marketing area.

Notice of proposed rulemaking was published in the **Federal Register** (48 FR 3994) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded an opportunity to file written data, views, and arguments thereon. None were filed in opposition.

After consideration of all relevant information, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of February through August 1983 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1098.7(a), the words "not less than 50 percent of the" and the words "that are physically received at such plant or diverted as producer milk to a pool or nonpool plant pursuant to § 1098.13".

Statement of Consideration

This action makes inoperative for February through August 1983 the provisions that a distributing plant must dispose of at least 50 percent of its milk receipts in Class I to qualify as a pool plant. The suspension action was requested by Kraft, Inc., the operator of a pool distributing plant under the order. Kraft's milk production has increased steadily during the past few years, while its Class I sales have remained about the same. Because of this, the handler frequently did not pool all of the milk of individual producers or shifted some producers to another market in order to maintain pool plant status for its Nashville distributing plant. In addition to the continuing imbalance between supply and demand, beginning in February 1983 the plant will no longer package about one million pounds of Class I sales per month for a distributing plant in Memphis.

Unless the suspension is granted, it is likely that Kraft's Nashville plant will not be able to qualify as a pool plant during the months of February through August 1983. Pool status for that plant could be maintained only at great expense to the handler by shifting some producers to another market or by withholding from the pool substantial quantities of milk produced by individual dairy farmers. Use of either of these methods by the handler would result in a loss of payments to producers for base milk under the order's seasonal base-excess plan. This action will avoid development of such uneconomic and disorderly marketing conditions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without this action the milk of dairy farmers currently supplying the handler's Nashville plant would not continue to have all of their milk priced under the order and thereby receive the benefits that accrue from such pricing.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1098

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions in § 1098.7(a) of the order are hereby suspended for February through August 1983.

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

Effective Date: February 15, 1983.

Signed at Washington, D.C., on: February 9, 1983.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 83-4083 Filed 2-14-83; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1814

Claims Under Federal Tort Claims Act

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is removing from the Code of Federal Regulations (CFR) its regulation regarding the handling of claims under the Federal Tort Claims Act (FTCA). This regulation is being removed since the portions of it that affect the public are contained elsewhere in the CFR. The intended effect of this action is to remove an unneeded regulation from the CFR.

EFFECTIVE DATE: February 15, 1983.

FOR FURTHER INFORMATION CONTACT: A. Bernice Chenoweth, Tort Claims Liaison Officer, Directives and Administrative Services Division, Farmers Home Administration, USDA, Room 6342, South Agriculture Building, Washington, D.C. 20250, telephone (202) 382-9738.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 to implement Execuitive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. Since the information the public needs to know is provided in the regulations issued by the Department of Justice, and contained in 28 CFR Part 14, publication of the Agency regulation is not necessary. This action is not published for proposed rulemaking since the purpose of the changes involves Agency management and publication for comment is unnecessary.

This regulation does not directly affect any FmHA programs or projects which are subject to A-95 clearinghouse review. This document has been reviewed in accordance with FmHA Instruction 1901-G, "Environmental Impact Statement." 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, Public Law 91-190, an Environmental Impact Statement is not required.

This action does not affect any programs listed in the current Catalog of Federal Domestic Assistance (CFDA).

List of Subjects in 7 CFR Part 1814

Claims, Safety, Tort claims.

PART 1814—[RESERVED]

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended by removing and reserving Part 1814.

(80 Stat. 379, 5 U.S.C. 301; Orders of the Secretary of Agriculture, 29 FR 16210; 32 FR 6650; 36 FR 18069; 71 FR 13320, 9-9-71, 7 CFR 1814)

Dated: January 19, 1983.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 83-4085 Filed 2-15-83; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Parts 1930 and 1944

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administation (FmHA) hereby revises its regulations governing the rental assistance program to allow for amendment and transfer of rental asssistance agreements and to incorporate into the regulation clarifications of procedure and interagency processing guidance now disseminated by memorandum and/or administrative notice. This action is taken in response to general public and FmHA staff requests for clarification of the rental assistance regulations and to incorporate into the regulations certain needed revisions identified by the Agency. The intended effect is to incorporate the requirements for administering the rental assistance program into the "Multiple Housing Management Handbook" which is issued to owners and managers of FmHA Multiple Family Housing projects.

EFFECTIVE DATE: February 15, 1983.

FOR FURTHER INFORMATION CONTACT: Jeanine L. Johnson, Loan Specialist, Multi-family Housing Servicing and Property Management Division, Room 5321-S, Farmers Home Administration, 14th and Independence Avenue, SW., Washington, D.C. 20250, Telephone (202) 382-1611.

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 "nonmajor." It will not result in an annual effect on the economy of $100 million or more; an major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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.

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, and Environmental Impact Statement is not required.

Information collection requirements contained in this regulation (Paragraph VA, VB, VIII, IX, XA, XI and XII) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511) and have been assigned OMB Control Number 05750033.

The FmHA programs and projects which are affected by this regulation are subject to State and local clearinghouse review in the manner delineated in Subpart H of Part 1901.

This action is necessary because the Agency has found that 77% of presently funded rental assistance units scheduled to expire pursuant to the 5-year term of their rental assistance contract, or 13,560 rental assistance units, are projected to have unused funds remaining when the rental assistance agreements expire during Fiscal Year 1983.

This constitutes a loss of previously authorized and obligated budget authority of approximately $84 million per year for the next three years.

The Agency chooses to amend the existing rental assistance agreements so they do not expire until the obligated funds are fully used and to request budget authority for 7,000 rental assistance units to renew agreements where funds will be fully disbursed before January 1, 1984. This will maximize the benefit to tenant households and communities and will have the least impact on the National budget.

This action also incorporates clarifications to administrative procedures which have previously been contained in memoranda and Agency administrative notices. The major changes are: clarification of tenant eligibility requirements and selection criteria; provision for amendment or transfer of rental assistance agreements; procedure for replacing rental assistance units when the funds obligated for them have been fully disbursed and the rental assistance agreement has expired; and, procedure for servicing rental assistance on problem loans. The rental assistance regulations will be renumbered from Exhibit C, Subpart E, Part 1944 to Exhibit E, Subpart C, Part 1930 becoming part of the Multiple Housing Management Handbook which is issued to borrowers and management agents.

A proposed rule to revise the regulations governing the rental assistance program was published in the **Federal Register** for a fifteen day comment period on November 5, 1982 (47 FR 50273). Fifteen comments were received. All comments received through November 30, 1982 were considered. Eleven of the comments were from FmHA employees, two from legal services corporations, and one each from a management agent and association of FmHA borrowers.

Discussion of Comments

In general the comments from FmHA employess requested further clarification of FmHA management and servicing requirements regarding rental assistance. Three of these comments addressed a need to use rental assistance in projects with less than 100% of the units under HUD Section 8 contract. The comments of the legal services corporations,who were National Housing Law Project and Housing Assistance Council, Inc., were directed toward the protection of tenant interests.

1. Certain parts of the regulation were rewritten and reorganized for clarity based on the comments received.

2. Waiting List. Seven of the respondents requested changes in the proposed paragraph V D of Exhibit B to Subpart C of Part 1930.

Two commenters objected to the Agency's "first come, first served" policy for selecting tenants from a waiting list and the specific requirement in paragraph V D 5 that no tenant may be given preference because he or she qualifies for rental assistance. They feel that this policy prevents the agency from complying with Section 517(o)(2) of the Housing Act of 1949, as amended.

Section 517(o)(2) requires that at least 30 per centum of the housing assistance made available in any area of any State.* * * in any fiscal year shall, to the extent practicable, benefit persons with income below 50 per centum of the median income (very low-income) * * *. The information available to the Agency December 7, 1982, showed that of approximately 195,000 occupied units, 72,429 were actively receiving rental assistance aid and 46,000 were actively receiving HUD Section 8 assistance. This indicates that 61% of the occupied units are occupied by low-income or very low-income tenants who are receiving some form of deep subsidy. In addition, FmHA is also serving many tenants whose income is low enough to qualify for basic rent, which increases the number of low-income persons served.

The Agency does not require borrowers to report on the number of tenants who have very low-income. However, rental assistance is assigned to tenants paying the highest percentage of their income for rent and utilities, so it is reasonable to assume that at least 50% of the tenants receiving subsidy are very low-income.

Section 515 of the Housing Act of 1949, as amended, authorizes rental housing loans to be occupied by low- and moderate-income senior citizens, handicapped persons and families. The Agency nevertheless has modified and inserted in paragraph XI A a provision to give priority to tenants needing RA to assure that the number of units of RA assigned to a project are occupied by tenants who qualify for RA. The first come, first served policy would be followed for operational projects as prescribed in paragraph XI B.

The Agency considered and has elected to address the remaining five comments along with comments received in response to proposed rules published by the Agency on April 23, 1982 in the **Federal Register**. Volume 47, page 17544. The five comments dealt with issues of the borrower maintaining a record of the applicant's racial and ethnic group, the waiting list category for displacees, and the requirements for purging the waiting list. The Agency feels these comments can be addressed more appropriately in the final rules of Subpart C of Part 1930 which the Agency is presently preparing for publication. This action will permit the Agency to proceed with implementing needed changes in the Rental Assistance Program to achieve conservation of previously authorized and obligated budget authority.

3. Definitions for Adjusted Income and Adjusted Monthly Income have been removed. These definitions are contained in Subpart C of Part 1930, of which this Exhibit will become a part.

4. Rental Assistance In Projects With HUD Section 8 Contracts. Three comments were received regarding the prohibited use of rental assistance in any project which has a HUD Section 8 contract. The comments indicated that projects with Section 8 assistance for less than 100% of the units are experiencing problems renting the nonsubsidized units, since existing Section 8 is no longer available.

The comments were carefully considered. However, the agency determined that using Section 8 and Rental Assistance in the same project presents too many administrative problems for FmHA, HUD and borrowers. Tenants under the Section 8 program must pay 30% of their adjusted income for rent plus utilities, while tenants receiving Rental Assistance pay only 25% of their adjusted income for rent plus utilities. Also, considerable comparison of tenant records would be required of each agency to insure that there was no abuse of either program. For these reasons the recommendation was not adopted.

5. Increase in Utility Allowance. In response to one comment paragraph II H of the proposed rule has been revised to require processing utility allowance increases under the rent increase procedures in Exhibit C to Subpart C of Part 1930.

6. Tenants Petition Owner to Apply for Rental Assistance. Six comments were received requesting instruction on what is required of the tenants, owner and District Director when the owner will not apply for rental assistance. This right of petition was included in the original regulation when the rental assistance program was initiated in 1977.

In 1980, Section 530 of the Housing Act of 1949, was passed requiring any borrower requesting a rent increase to apply for rental assistance for tenants paying in excess of 25 per centum of their income. Since this Section protects

tenants' rights, the Agency determined that paragraph III B is no longer needed.

Paragraph III B has been deleted.

7. Retroactive Rental Assistance. In response to one comment paragraph VI A has been amended to require that retroactive rental assistance received by a borrower must be passed on to any tenants who would have been entitled to the rental assistance during the retroactive period.

8. Twenty (20) Year Rental Assistance Agreements. One commenter recommended that only five (5) year rental assistance agreements should be allowed, thus providing four five-year units for each twenty-year unit now provided. This suggestion was not adopted. However, the appropriation act which authorizes rental assistance limits the life of the agreements entered into or extended in Fiscal Year 1983 to five years.

9. Borrower Responsibility For Error. One commenter requested that we address borrower responsibility for errors in computation or other unauthorized use of rental assistance. Paragraph VIII F was added requiring repayment of any incorrectly advanced rental assistance funds.

10. Recertification. One commenter requested that we require a new tenant certification when rental assistance is assigned and the present certification is over 90 days old. This request was considered but not adopted. It was felt that it would place an undue burden on borrowers and tenants since current regulation requires a recertification every year.

11. Rental Assistance Servicing On Delinquent Accounts. Two commenters requested stricter control of rental assistance payments on delinquent accounts or accounts with other types of default. These suggestions were not adopted. The Agency is presently designing a new accounting system for multiple family housing. Stricter controls will be considered in the design of the new system.

12. Rental Assistance For Ineligible Tenants. Four commenters objected to taking rental assistance from ineligible tenants once it was assigned. This requirement has been removed. Ineligible tenants who receive rental assistance are now addressed in paragraph II A 3 c.

13. Rental Assistance Assigned to Wrong Household. There were three responses to paragraph XII regarding the right of the tenant who received rental assistance in error; two against our proposal and one in favor. This paragraph has been rewritten, giving the tenant appeal rights under Subpart L of Part 1944.

14. Terminating Rental Assistance Agreements. There were two responses to paragraph XIV, requesting more specific guidance on when and how rental assistance agreements may be terminated. The previous paragraph XIV B 2 has been deleted and two new paragraphs have been added dealing specifically with voluntary conveyance and accelerated accounts.

15. Hardship Criteria. One commenter requested that we establish specific criteria for issuing rental assistance units to States for hardship cases. This request was considered but not adopted. This criteria is established administratively each year, based on availability of rental assistance units and nationwide survey of tenant need for rental assistance.

CFDA Numbers and Title: 10.405, Farm Labor Housing Loans and Grants; 10.415, Rural Rental Housing Loans; and 10.427, Rural Rental Assistance Payment.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Low- and moderate-income housing—rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—housing and community development, Low- and moderate-income housing—rental, Mortgages, Nonprofit organizations, Migrant labor, Rent subsidies, Grant programs—housing and community development, Rural housing.

Accordingly, Subpart C of Part 1930 and Subparts D, E and L of Part 1944, Chapter XVIII, Tile 7, Code of Federal Regulations are amended as follows:

PART 1930—GENERAL

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

1. Add to the table of contents after Exhibit C-1 "Exhibit D—Reserved" and "Exhibit E—Rental Assistance Programs."

§ 1930.141 [Amended]

2. In § 1930.141, paragraph (d) is revised to read "Exhibit E of this Subpart."

3. In § 1930.141, paragraph (f)(4) is amended by changing the reference from "Form FmHA 444-7" to "Form FmHA 1944-7."

4. In § 1930.141, paragraph (f)(5) is amended by changing the reference from "Form FmHA 444-29" to "Form FmHA 1944-29."

Exhibit B—[Amended]

5. In Exhibit B, "Multiple Housing Management Handbook," paragraph III B 4, lines two and three are amended by changing the reference "Exhibit C to Subpart E to Part 1944 of this Chapter" to "Exhibit E to this Subpart."

6. In Exhibit B, paragraph IV E 1, line five is amended by changing the reference from "Form FmHA 444-29." to "Form FmHA 1944-29."

7. In Exhibit B, paragraph V B 5 a (3), line four is amended by changing the reference "Form FmHA 444-29." to "Form FmHA 1944-29."

8. Exhibit B is amended by adding paragraph V D 3 which reads as follows:

Exhibit B—Multiple Housing Management Handbook

* * * * *

V. *Renting Procedure:*

* * * * *

D. Maintenance of Waiting List.

* * * * *

3. No applicant may be given preference for occupancy because he or she qualifies for rental assistance and the project has rental assistance available except as required in paragraph XI A of Exhibit E to this subpart.

* * * * *

9. In Exhibit B pargraph VII B 2 lines three and four are amended by changing the reference "Exhibit C of Subpart E of Part 1944 of this Chapter" to "Exhibit E to this Subpart."

10. In Exhibit B paragraph XI B 1 b line one is amended by changing the reference "Form FmHA 444-29." to "Form FmHA 1944-29."

Exhibit B-3—[Amended]

11. In Exhibit B-3 "Suggested Housing Management Agreement for FmHA Multiple Family Housing Projects" paragraph 16a(4)(b)(2) line three is amended by changing the reference "Form FmHA 444-29." to "Form FmHA 1944-29."

Exhibit B-6—[Amended]

12. In Exhibit B-6 "Monthly Reports" line three in the first column and line three in the sixth column are amended by changing the reference "Form FmHA 444-29." to "Form FmHA 1944-29."

Exhibit B-8—[Amended]

13. In Exhibit B-8 "Miscellaneous Report or Submittals" line two in the first column is amended by changing the

reference from "Form FmHA 444–25" to "Form FmHA 1944–25."

14. In Exhibit B–8 lines one and two in the sixth column are amended by changing the reference from "Exhibit C to Subpart E, Part 1944" to "Exhibit E to this Subpart."

Exhibit C—[Amended]

15. In Exhibit C, paragraph II, line thirty-one is amended by changing the reference from "paragraph II D of Exhibit C Part 1944 Subpart E" to "paragraph II B of Exhibit E to this Subpart."

16. In Exhibit C paragraph III A 1 line two is amended by changing the reference from "Form FmHA 444–25." to "Form FmHA 1944–25."

17. In Exhibit C paragraph IV A 3 line two is amended by changing the reference from "Form FmHA 444–29." to "Form FmHA 1944–29."

Exhibit D—[Reserved]

18. Exhibit D is reserved.

Exhibit C—[Revised and Redesignated as Exhibit E]

19. Exhibit C to Subpart E of Part 1944 is revised and redesignated as Exhibit E to Subpart C of Part 1930 and reads as follows:

Exhibit E—Rental Assistance Program

[FmHA Instruction 1930–C]

I. *General.* The objective of the rental assistance program is to reduce rents paid by low-income households. This Exhibit sets forth the policies and procedures and delegates authority under which rental assistance (RA) will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) projects financed by FmHA. This Exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public Agency. Rental assistance will supplement the benefits available to tenants under the interest credit program outlined in Exhibit B to Subpart E of Part 1944 of this chapter.

II. *Definitions.* A. *Eligible Tenants.* Any low-income household, handicapped person, or senior citizen meeting the following requirements:

1. The household adjusted annual income must not exceed the low income limit established for the area as indicated in Exhibit C to Subpart A of Part 1944 of this chapter.

2. The household must be unable to pay the approved rental rate plus utility allowance within 25 percent of their adjusted monthly income.

3. The household must meet the occupancy standard stated in Exhibit B to this Subpart and in the borrower's RA agreement, except:

a. Tenants occupying an inappropriate size unit, who are covered by paragraph V B 1 h of Exhibit B to this Subpart, are considered eligible tenants for RA provided they agree, in writing, to move at their own expense to the next available unit of appropriate size. If the project does not contain a unit of appropriate size, the tenant may occupy an inappropriate size unit and receive RA.

b. Tenants who initially occupied an apartment unit prior to November 14, 1977, and who were determined eligible for occupancy at that time under guidelines then in effect, may remain in that apartment for an indefinite period and receive RA (and interest credit benefits) even though they do not meet the present occupancy standards, as long as they remain in the same unit and are income eligible under current FmHA regulations. Such tenants may receive RA if it becomes available to them without meeting the present occupancy standard.

c. Ineligible tenants, with State Director approval, who are income eligible but occupancy ineligible, may receive RA as long as they are permitted to occupy a unit as an ineligible tenant.

B. *Eligible Project.* 1. All projects must operate under Interest Credit Plan II RA to be eligible to receive RA, except LH loans, direct RRH, and insured RRH loans approved prior to August 1, 1968, which must operate under Plan RA. To be eligible for RA the project must have a:

a. RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, including Senior Citizen Housing (SCH), or

b. RRH insured loan to an individual or organization who has or will execute a Loan Resolution or Loan Agreement agreeing to operate the housing on a limited profit basis as defined in § 1944.205(r) of Subpart E to Part 1944 of this chapter, or

c. RCH insured or direct loan, or

d. LH loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local public Agency.

2. Borrowers may utilize HUD's Section 8 Housing Assistance Payments Program for existing housing and FmHA RA for other eligible households in the same project.

3. Projects with all or a part of the rental units under contract with the Department of Housing and Urban Development (HUD) developed under the Section 8 program for new construction or rehabilitation, by either the dual or single track processing procedures will not be considered an eligible project for RA.

C. *Operational Project.* Any FmHA financed project which has been occupied by tenants for at least 90 days. This may also include newly constructed projects in which a diligent effort has been made to rent the units and at least some units have been occupied.

D. *New Project.* Any FmHA financed, newly constructed project or a project which meets the definition of major rehabilitation in § 1944.212 of Subpart E of Part 1944 of this chapter.

E. *Rental Assistance.* Rental assistance (RA), as used in this Exhibit, is the difference between 25 percent of the household's adjusted monthly income and the approved rental rate (including the approved utility allowance, when applicable) for the rental unit being occupied by the household. When the household's adjusted monthly income is less than the approved utility allowance which is billed directly to and paid by the tenant, the owner will pay the household that difference according to paragraph IX A 2 of this Exhibit. Rental assistance is further defined as:

1. For projects operating on Interest Credit Plan II RA, the difference between 25 percent of the household's adjusted monthly income and the basic rent, including utilities for the rental unit.

2. For projects operating on Plan RA, the difference between 25 percent of the household's adjusted monthly income and the approved market rental rate, including utilities for the rental unit.

F. *Approved Rental Rate.* The approved rental rates (basic and/or market rent) are those shown on the budget for the year and approved according to § 1930.124 of this Subpart plus utility allowances, when required, which have been determined and approved according to Exhibit A–5 to Subpart E of Part 1944 of this chapter. Any increase in rental rates or utility allowance must be processed according to Exhibit C to this Subpart.

G. *Utility Allowances.* The allowance approved by FmHA according to Exhibit A–5 to Subpart E of Part 1944 of this chapter, to cover the cost of utilities which are payable directly by the households.

H. *Replacement Units.* RA units which replace RA units in RA agreements expiring because obligated funds have been fully disbursed.

III. *Utilization of Rental Assistance.* All borrowers with eligible projects as defined in paragraph II B of this Exhibit are encouraged to utilize the RA program and receive RA payments on behalf of low-income tenants. Generally, the borrower, or the borrower's approved management agent, will initiate the processing of a RA application.

IV. *Priority of Rental Assistance Applications.* The National Office may establish a State quota on the number of RA units that may be approved and obligated in any fiscal year. The State Director will limit the approval of RA to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of RA units for operational projects and the number of RA units to be used for new construction. Priority in allocating RA units will be as follows:

A. *Allocation to Projects Within a State.* The State Director will distribute any RA units allocated to the State according to any specific guidance established by the National Office. When no specific guidance is established by the National Office the State Director will approve requests for RA to projects according to the provisions of this Exhibit.

1. *Replacement Units:* The State Director will distribute or reserve RA units and give priority to projects needing replacement units before any initial or additional units are allocated to other new or operational projects. The State Director should ascertain

how many RA units are expected to expire in each District Office during the current fiscal year and the first quarter of the following fiscal year.

2. *Operational Housing:* The State Director will distribute any remaining RA units allocated to the State for initial or additional units in operational RRH, RCH, and LH projects based on Forms FmHA 1944-25, "Request for Rental Assistance," that have been submitted by eligible borrowers. Priority will be given to projects based on the earliest date that Form FmHA 1944-25 and other information is received by the State Director in acceptable form. The number of RA units granted in any project will be based on the number of households in the project eligible for RA up to the maximum allowed, including exceptions granted by the State Director and National Office. The National Office will notify the State Director each year of any specific date by which all requests for RA must be submitted to FmHA for consideration.

3. *New Housing:* Any RA units allocated to the State for new construction will be distributed on a priority basis in the following order:

a. RRH or RCH projects to be provided in areas where HUD Section 8 units under the FmHA set-aside are not available.

b. Applications for RRH and RCH loans where the market survey information indicates that without RA, a large percentage of the prospective tenants will be paying in excess of 25 percent of their adjusted monthly income for rent including utilities. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those projects located in areas identified as having the greatest housing needs and selected for funding in accordance with § 1944.231(c) of Subpart E of Part 1944 of this chapter.

c. For LH projects, RA units will be allocated by the National Office on a case-by-case basis at the time the projects are considered for funding at the National Office level.

4. *Limitation on number of units of rental assistance in each project:* The maximum number of rental units in a project to obtain RA is limited to the following:

a. No limitation for eligible LH loan and grant projects.

b. No limitation for RRH, RCH or SCH projects designed and limited to housing for the senior citizen or handicapped, except that the State Director may limit the percentage of RA units granted to no more than 40 percent of the number of rental units if it appears that the number of RA units distributed to the State will not be adequate to approve all requests for RA.

c. An RCH or RRH project designed and/or primarily occupied by low- and moderate-income households will be limited to not more than 40 percent of the total number of rental units in the project.

d. An RCH or RRH project originally planned and designed for a mix of senior citizen or handicapped persons and low- and moderate-income households will be limited to not more than 40 percent of the total number of rental units designed for low- and moderate-income households but there will be no limitation on the rental units designed for and occupied by senior citizens or handicapped persons.

B. *Granting Exceptions.* 1. *State Directors Authority.* An exception to the 40 percent limitation indicated in paragraphs IV A 4 c and d of this Exhibit may be granted by the State Director for up to 70 percent of the rental units in any particular project. (Number of units × 70 percent = number of RA units rounded to the next higher whole number.) However, the total number of units of RA granted by the State Director, including exceptions, cannot exceed the number of RA units allocated to that State. Exceptions will be granted only when RA units are available, or can be made available, and the following conditions exist:

a. When more than 40 percent of the rental units are occupied by households who are paying more than 25 percent of their adjusted income for rent, including utilities, and such units are no larger than needed to meet the household's need, or

b. Other tenants in a project that is being assisted at the 40 percent level experience a hardship as a result of an income decrease or a rental increase and must obtain RA to remain in the project, or

c. The project is located in or is being developed in an area or community having a low median per capita income based on the county data from the most recent census. Also, the majority of the proposed tenants are now or will be paying in excess of 25 percent of their income for rent including utilities.

2. *Replacement Agreements.* The State Director may approve RA agreements for replacement units which exceed his/her approval authority, provided the units were initially authorized in writing by the National Office.

3. *National Office Authority.* The National Office may authorize the State Director to approve RA up to 100 percent of the rental units in family and mixed projects on a case-by-case basis. The project must be located in or proposed in an area or community having a low median per capita income based on the county data from the most recent census. Also, the majority of the tenants are now, or will be, paying in excess of 25 percent of their income for rent including utilities. Exception requests must be submitted to and approved by the National Office prior to approving the loan or requesting obligation of rental assistance for more than 70 percent of the rental units in the project.

C. *Processing Exception Requests.* A request for an exception to the 40 percent limitation will be submitted by the borrower to the District Director. After reviewing the request for completeness, accuracy, and sufficient documentation to fully support the request, the District Director will submit the request with the documentation and recommendations to the State Office by memorandum for approval. Included in the memorandum will be the number and percentage of rental units in excess of the 40 percent limit and justification for the approval. When National Office authorization is required to exceed the 70 percent limitation, the State Director will request this authorization by memorandum and will submit the following:

1. Operational Projects—

a. Form FmHA 1944-25,

b. Form FmHA 1944-29, "Project Worksheet for Interest Credit and Rental Assistance," with all columns completed for each tenant in the project,

c. A copy of the project's waiting list for occupancy identifying eligible prospective tenants on the top of the waiting list whose incomes have been verified and who are willing to occupy vacant units if an exception to the 70 percent limitation is made,

d. A copy of any existing RA agreement and modifications thereto which may be in effect on the project,

e. The comments of the District Director, and

f. The comments and recommendations of the State Director.

2. New Projects—

a. Form FmHA 1944-25,

b. Complete data and documentation on the rental housing market,

c. Complete data and documentation on the income of the households likely to be served,

d. The comments of the District Director, and

e. The comments and recommendations of the State Director.

V. *Processing of Rental Assistance Applications.* All requests for RA will be processed according to this paragraph and may be approved by the State Director.

A. *Operational Projects.* 1. A borrower with an eligible project in which there are tenants paying in excess of 25 percent of their adjusted income for rent is encouraged to file Form FmHA 1944-25 with the District Director. A separate Form FmHA 1944-25 will be submitted for each project. The borrower should include the following with each request.

a. Form FmHA 1944-29, with all columns completed for each tenant in the project. (All Forms FmHA 444-8, "Tenant Certification," must be current.)

b. Approved or proposed budget for the year on Form FmHA 1930-7, with Exhibit A-5 to Subpart E of Part 1944 of this chapter attached, when applicable.

2. Prior to the full disbursement of obligated funds on any agreement, a borrower or approved management agent may submit a request for replacement RA units. This request should contain all the material requested in paragraph V A 1 of this Exhibit and should be submitted no later than three (3) months prior to the expected full disbursement of obligated funds, to allow time for processing the request. The number of replacement units may not exceed the number of units that are expiring. Once replacement units have been requested, additional units may not be requested until Form FmHA 1944-26, "Request For Obligation of Rental Assistance", is received obligating the replacement units. Form FmHA 1944-26 requesting the additional units must be coded sequentially as required in paragraph V C 5.

3. The District Director will review the budget, Exhibit A-5, Form FmHA 1944-29, and Form FmHA 1944-25 submitted by the

borrower to assure that the items are complete and accurate. The District Director will complete Form FmHA 1944-25 and submit all data provided by the borrower to the State Director with appropriate comments and recommendations.

B. *Projects to be Funded.* 1. Applicants requesting funding for new projects who are planning to utilize the RA program, should submit a completed Form FmHA 1944-25 to the County Supervisor or District Director, as appropriate, when submitting a preapplication or application for funding.

2. The number of units of RA requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.

C. *State Director Action on Requests for Rental Assistance.* Only the State Director or delegated members of the State Office staff may approve or disapprove rental assistance requests.

1. *Approval of Actions.* When the State Director determines that RA can be granted or replaced, or a change in the number of RA assisted rental units is needed, Form FmHA 1944-26, will be prepared and distributed according to the Forms Manual Insert (FMI). *Form FmHA 1944-27, "Rental Assistance Agreement," will not be executed until Form 1944-26, has been returned from the Finance Office indicating that the requested number of RA units and funds have been obligated for the project.*

2. *Initial or Replacement Agreements.* Once the initial or replacement request for RA has been obligated by the Finance Office, a copy of the Form FmHA 1944-26 indicating the date and amount of obligation will be forwarded to the District Director. The District Director will prepare an original and two copies of Form FmHA 1944-27. When the project has not had RA previously an original and three copies of Form FmHA 1944-7, "Interest Credit and Rental Assistance Agreement", will be prepared. The original and three copies of Form FmHA 1944-7 and the original and two copies of Form FmHA 1944-27 will be executed by the borrower and District Director. The forms will be distributed according to the appropriate FMI.

3. *Modification of an Existing Agreement.* After any request for a change in the amount of RA has been obligated by the Finance Office, the Form FmHA 1944-27 will be prepared, signed and distributed according to the FMI. A new Form FmHA 1944-7 is not required.

4. *Denial of Rental Assistance Request.* If RA cannot be provided, the State Director will inform the borrower, in writing, of the reasons. The borrower will be given appeal rights according to Subpart B of Part 1900 of this chapter in all cases except when RA is not available from the State's allocation or the National Reserve.

5. *Assigning Rental Assistance Agreement Numbers.* The borrower's initial RA agreement will be coded 01-00. Associated modifications will be coded 01-01, 01-02, etc. Replacement RA agreements and associated modifications to those agreements will be coded sequentially beginning with 02-00. The State Director will assign the appropriate agreement number when preparing Form FmHA 1944-26.

VI. *Terms of the Rental Assistance Agreement.* A. *Effective Date.* Each "Rental Assistance Agreement" will be effective the first day of the month in which it is executed. If assistance is granted to a project under an appeal according to paragraph XVI of this Exhibit, the effective date will be retroactive to the first day of the month in which the assistance was denied, provided the borrower agrees to make any appropriate refunds to tenants who would have been entitled to RA during the retroactive period.

B. *Term.* 1. *Twenty (20) Year Agreement.* Twenty (20) year agreements are restricted to new projects or modifications of existing twenty (20) year agreements. The agreement shall be effective for twenty (20) years from the effective date of the agreement. This agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in Section 1 of the agreement are fully disbursed. This can be any time before or after the end of the 20-year term. Upon expiration of the agreement, a replacement agreement may be executed. If a replacement agreement is considered, it will be for a five (5) year period.

2. *Five (5) Year Agreement.* Five (5) year agreement may be used for operational projects, or for new projects when twenty (20) year units are not available. The agreement shall be effective for five (5) years from the effective date of the agreement. This five (5) year agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in Section 1 of the agreement are fully disbursed. This can be any time before or after the end of the five (5) year period.

3. *Modification of Agreements.* Modification of the number of RA units assigned to any project will be limited to units of the same term as the original agreement.

4. *Amendment of Agreements.* Any existing RA agreement executed prior to (final rule), which will have a remaining obligation balance at the end of the 5-year or 20-year expiration date stated in Section 9, "Term of the Agreement," may be modified by the use of Form FmHA 444-27A, "Amendment to Rental Assistance Agreement". The amended agreement will expire when the obligated funds are fully disbursed.

5. *Replacement Agreements.* Replacement RA agreements for either 5-year or 20-year agreements will be for a five (5) year period. All requirements in paragraphs VI B 2 and 3 of this exhibit apply. Expiring RA agreements and replacement RA agreements may run concurrently for one month so any undisbursed obligation balance on the expiring RA agreement can be liquidated.

VII. *Recordkeeping Responsibilities.* A. The State Director will maintain Form FmHA 444-28, "Record of Rental Assistance Agreements." Any changes which are made in the number of rental units assisted will be recorded on Form FmHA 444-28.

B. The District Director will maintain a record of each borrower's use of RA according to Exhibit E-1 of this Subpart. Exhibit E-1 will be inserted in the fold of Form FmHA 1905-6, "Management System Card—Multi-Family Housing," for each project. At the end of each twelve month period, Exhibit E-1 will be filed in Position 2 of the project case file and maintained indefinitely.

C. The District Director will notify the borrower to apply for replacement RA units when the RA Undisbursed Balance on Exhibit E-1 reaches a level sufficient to cover approximately 6 months of RA requests. This figure will be based on the project's average monthly request for RA.

D. Information on FmHA Rental Assistance on Form FmHA 2033-42, "Multi-Family Housing Information Status Tracking and Retrieval System," (MISTR) regarding balance of RA funds must be updated annually at the end of each fiscal year by the District Director and State Director.

VIII. *Responsibilities of Borrower in Administering the Rental Assistance Program.* The borrower and management agent for each project receiving RA should fully understand the responsibilities and requirements of carrying out the program. The following guidelines will be followed:

A. RA payments will not be made directly to eligible tenants receiving RA except as specified in paragraph IX A. The borrower will maintain an accurate accounting of each tenants's utility allowance and payments made to tenants. All other RA payments will be recorded as a credit to the tenant's monthly rental payment.

B. The borrower must submit Form FmHA 444-8 for each tenant as required in paragraph VI E of Exhibit B to this Subpart (Management Handbook).

C. The incomes reported by the tenants must be verified by the borrower in accordance with paragraph VI of Exhibit B to this Subpart (Management Handbook).

D. Borrowers utilizing RA must comply with § 1930.124 of this Subpart. RA will not be approved for a project until the operating budget has been approved by the FmHA State Office or the District Director. District Directors, with assistance from the State Office, must closely supervise and assist borrowers in complying with all accounting and management requirements.

E. A borrower participating in the RA program must have an FmHA approved lease with the assisted household. All leases must comply with the provisions of paragraph VII of Exhibit B to this Subpart (Management Handbook).

F. The borrower will be responsible to FmHA for any errors made in the administration of the RA program which are made by the borrower or the borrower's authorized management agent. Errors in computation or other unauthorized use of RA will require, at a minimum, the repayment of any incorrectly advanced RA funds. If the error or unauthorized use of RA appears to be deliberate or intentional, the State Director will refer the case to the Office of Inspector General according to Subpart B of Part 2012 (available in any FmHA Office).

IX. *Handling Utility Allowances.* A. *Payment of Utilities.* 1. When the tenant is billed directly for utilities, rent paid by the tenant receiving RA will be the difference

between the established utility allowance and 25 percent of the household's adjusted monthly income.

2. When utilities are paid by the household receiving RA and 25 percent of the household's monthly adjusted income is less than the allowance for utilities, the borrower will pay the household the difference between the utility allowance and 25 percent of the household's adjusted monthly income.

3. In a project where the owner pays all utilities, the tenant rent will be the full 25 percent of the adjusted monthly income up to approved rent for the rental unit being occupied.

B. *Determining the Allowance.* The utility allowance will be determined and recorded by the use of Exhibit A-5 to Subpart E of Part 1944 of this chapter.

C. *Changes in Allowances.* The utility allowance should be reviewed annually and adjusted if there are substantial changes in utility and public service rates. Normally, allowances will be adjusted on an annual basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in increased rent paid by tenants will be presented according to Exhibit C to this Subpart.

X. *Method of Payment of Rental Assistance to Borrower.* A. The borrower will prepare a separate Form FmHA 1944-29 for each project according to the FMI. This information will be used by the District Director in preparation of Form FmHA 1944-9, "Multiple Housing Certification and Payment Transmittal." Any requested RA payment will be mailed by the Finance Office directly to the borrower. The District Director should verify that the borrower's address on Forms FmHA 440-47, "Acknowledgement of Obligated Funds/Check Request," and FmHA 450-14, "Actual Statement of Loan Account," is correct. When the address shown on these forms is not correct, the District Director will complete Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," correcting the borrower's address, and mail with the request for payment of RA following the same procedure specified in paragraph B 1 below. When a borrower has more than one project within a county, all checks must be sent to the same address.

B. When a project loan account is delinquent, the District Director should counsel with the borrower and develop a servicing plan in accordance with § 1965.85(b) of Subpart B of Part 1965 of this chapter. This plan should incorporate detailed provisions for continuing operation of the project and paying the account current.

1. As part of this servicing plan, the District Director may process a Form FmHA 450-10 to change the borrower's address to the District Office address so RA checks are delivered to the District Office. The Form FmHA 450-10 should be forwarded to the Finance Office Multiple Family Housing Unit. If a RA payment is being requested at the same time, Form FmHA 1944-9 should be attached to the Form FmHA 450-10. Only those data fields on the Form FmHA 1944-9 applicable to the RA checks request should be completed.

2. The RA check may be released to the borrower according to the servicing plan. The District Director may require that all or a portion of the RA check be applied to the delinquent loan account.

3. At the District Director's discretion, another Form FmHA 450-10 may be processed changing the address back to the borrower's mailing address so the check will be mailed directly to the borrower. The procedure in paragraph X B 1 should be followed.

C. All RA payment requests will be based on actual occupancy as of the first day of the month, except for the initial month of rent-up in a new project. During the initial month of participation by a new project in the RA program the borrower will request RA on a prorata basis for eligible tenants occupying the project. This initial RA request may be submitted at the end of the initial month.

XI. *Assigning Rental Assistance to Tenants:* A. *New Project.* Applications for occupancy should be accepted during the construction phase of the project and placed on a waiting list. During initial rent-up period the following priorities will apply:

1. Until all the RA units have been assigned, a number of apartment units in the project equal to the number of RA units will be initially reserved for applicant households who qualify for RA as defined in paragraph II A of this Exhibit. Applications qualifying for RA will be considered on a first come, first served basis, by-passing those applicants on the waiting list whose income is above the low-income limit for the area. The balance of the apartment units will be rented simultaneously to other tenants on a first come, first served basis. The District Director may grant a written waiver to this requirement when review of the borrower's method of advertising the rental units satisfactorily demonstrates that households eligible for RA are not available or do not desire occupancy.

2. If there are still vacant units, those applicants by-passed because they did not qualify for RA will be considered for occupancy on a first-come first-served basis.

3. After the project is fully occupied, or when the District Director determines that the initial rent-up period is ended, the priority procedures in paragraph XI B for operational projects will be followed.

B. *Operational Project. To determine priority for assigning an available RA unit in an operational project, the latest Form FmHA 1944-29 must be updated as of the date the unit is available, assuring that columns 3 through 9 are current and accurate.*

1. Priority for assigning RA is as follows:

a. *Eligible tenant in project. First priority* will be given to eligible households in residence paying the highest percentage of annual adjusted income for rent plus utilities.

b. *Eligible applicants from waiting list. Second priority* will be given to eligible applicants on the waiting list. All tenants will be selected on a first come, first served basis as provided in paragraph V D of Exhibit B to this Subpart (Management Handbook). No eligible household occupying a rental unit in the project may be required to move from the project to allow an applicant on the waiting list who is eligible for RA, to move in.

c. *Ineligible tenants: Third priority* for RA will be given to occupancy ineligible households living in the project with State Director approval. The requirement of paragraph II A 3c of this Exhibit must be met.

2. When the project has vacancies and RA is not available, an applicant who is eligible for RA may elect to accept occupancy without the benefit of RA. After occupancy, the household will be considered for RA according to paragraph XI B 1 of this Exhibit. If the applicant elects not to accept occupancy because RA is not available, their application will retain its priority date on the waiting list according to paragraph V D of Exhibit B to this Subpart.

3. Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for rental assistance and there is a RA agreement in effect.

c. *Assigning Rental Assistance Other Than The First of The Month:*

1. When a tenant receiving RA vacates before the end of the month, the RA unit should be immediately assigned to another tenant, using the priority given above, since the borrower has collected RA for the vacating tenant for the full month. The rent credit for the new RA recipient will be determined as follows:

a. Determine the tenant's new monthly rent with the RA benefit. Prorate the tenant's new rent for the balance of the present month.

b. Prorate the rent the tenant paid this month.

c. Subtract a from b.

c. Refund the balance or credit the balance toward the tenant's rent for the following month.

2. No adjustments will be made on Form FmHA 1944-29 to request additional RA payment or to refund any excess RA payment and/or overage.

XII. *Rental* Assistance Assigned to Wrong Household: When the tenant has correctly reported income and household size, but RA was assigned to a household in error, that tenant's RA benefit should be cancelled and reassigned. Incidents involving incorrect reporting are addressed in paragraph VIII C of Exhibit B to this Subpart (Management Handbook).

A. Before the borrower notifies the tenant, the borrower or management agent shall review the case with the District Director. If the District Director verifies that an error has been made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice that the unit was assigned in error and that the RA benefit will be cancelled effective on the next monthly rental payment due date after the end of the 30 day notice period. The tenant will also be notified in writing that:

1. The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant.

2. The RA granted in error will not be recaptured.

3. The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the facts are accurate and the tenant cannot produce further evidence proving eligibility for RA,

there will be no appeal from the decision. If the tenant feels there is justification for further review the borrower must give the tenant appeal rights under Subpart L of Part 1944 of this chapter.

B. Reassigning rental assistance:

1. The RA unit will be reassigned to the household which was erroneously denied the RA unit. The assignment will be based on the Form FmHA 1944-29 from which the original priority was established, when the unit was erroneously assigned. The RA will not be retroactive unless the reassignment was based on an appeal by the tenant. Retroactive RA may not exceed the project's remaining RA obligation balance.

2. If the originally denied household now has RA, or is no longer a resident, the RA will be assigned based on a current Form FmHA 1944-29 and the priorities in paragraph XI of this Exhibit.

XIII. *Rental Assistance Payment Cancellation:* When a RA check must be cancelled, the following procedure will be followed:

A. *Return of the original rental assistance Treasury check:* The District Office will prepare Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation", as specified in the FMI.

B. *Return of a portion of the monthly rental assistance payment or refund of rental assistance previously advanced:* A check from the borrower made payable to Farmers Home Administration will be submitted to the Finance Office as specified in the FMI for Form FmHA 1944-9.

2XIV. *Terminating Existing Rental Assistance Agreements Obligated in Prior and/or Current Fiscal Years.*

A. When obligated Funds are Fully Disbursed:

1. RA agreements will be automatically terminated when all obligated funds shown on the agreement are fully disbursed to the borrower. The District Office will enter a "final payment" code on Form FmHA 1944-9 when the last RA payment request is processed.

B. Prior to Full Disbursement of Obligated Funds.

1. Only the State Director is authorized to terminate RA agreements prior to full disbursement of obligated funds.

2. When current year RA agreements are terminated, the undisbursed funds for the RA obligation will be returned to the current fiscal year obligation authority.

3. When prior fiscal year RA agreements are terminated the undisbursed funds (unliquidated balances for those obligations) cannot be reused and are lost. To ensure effective utilization of RA funds, it is imperative that RA agreements not be unnecessarily terminated prior to the full disbursement of obligated funds.

4. When a project receiving RA is voluntarily conveyed to the Government, liquidated through sale outside of the program, or the loan is paid in full, the RA agreement will immediately be cancelled by the State Director. This cancellation will be effective upon recordation of the deed of conveyance or the receipt of payment in full. No appeal rights will be given to the tenants but they will be notified according to the requirements of § 1965.90 of Subpart B of Part 1965 of this chapter.

5. When servicing a project account according to § 1965.85 of Subpart B to Part 1965 of this chapter and the account is accelerated, the RA payments to the borrower may be suspended but not terminated. The RA payments may be reinstated when the defaults are corrected and the State Director reinstates the borrower's account. Upon expiration of all appeals and any redemption period, the RA agreement should be cancelled. In all cases not subject to redemption rights under State law, The RA agreement should be cancelled when Form FmHA 465-6, "Advice of Mortgaged Real Estate Acquired", is forwarded to the Finance Office.

XV. *Transferring Existing Rental Assistance Agreements.* When a loan is transferred to an eligible borrower, the transferee may assume the transferor's RA agreement provided the eligibility requirements of Paragraph II are met. The RA agreement will be described on the Assumption Agreement (Form FmHA 460-5 or FmHA 460-9) giving date executed, number of units, term of agreement and remaining obligation balance as required in § 1965.65 (c) (14) of Subpart B of Part 1965 of this chapter.

XVI. *Rights for Appeal if Rental Assistance is not Granted or is Cancelled by Farmers Home Administration.*

A. Borrowers who have requested RA in writing and are denied such assistance (whether in whole or in part) by Farmers Home Administration, or when RA is cancelled, will be notified in writing of the specific reasons why they have been denied RA as specified in Subpart B of Part 1900 of this chapter.

B. If at any time a borrower or a household is granted RA under an appeal, the borrower or household will receive the next available RA unit.

C. Borower denial of RA to tenants will be handled according to Subpart L of Part 1944 of this chapter.

XVII. *Forms and Exhibits.* Exhibit A-5 to Subpart E of Part 1944 of this chapter and Form FmHA 1944-7 are to be used in determining the amount of rental assistance to be provided.

BILLING CODE 3410-07-M

PAYMENT AND RENTAL ASSISTANCE TRACKING FORM

FmHA Instruction 1930-C
Exhibit E-1
Page 1

BORROWER :
CASE NUMBER :
LOAN CODE :
LOAN AMOUNT :
DATE OF NOTE :
INTEREST RATE :
YEARS :
INTEREST CREDIT EFFECTIVE DATE:
INTEREST CREDIT PLAN :
INTEREST ONLY PAYMENT :

INSTALLMENT DUE DATE. :
INTEREST CREDIT PAYMENT: Monthly
Annual
NOTE RATE PAYMENT : Monthly
Annual
RENTAL ASSISTANCE: ( ) 5 Year ( ) 20 Year
Total Unit :
Obligation Amount:
RA Agreement Number:

BEGINNING RENTAL ASSISTANCE UNDISBURSED BALANCE:

DATE	AMOUNT DUE	TOTAL PAYMENT MADE	PAID ON INSTALLMENT	OVERAGE - - - - - SURCHARGE	ACCOUNT STATUS		RA USED CURRENT MONTH	DATE RA CHECK ISSUED	RA UNDISBURSED BALANCE
					MONTHLY	ANNUAL			
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Instructions for Use "Payment and Renalt Assistance Tracking Form"

I. *General.* These instructions are for completing Exhibit E-1, which is a form for recording borrower's loan payments and requests for rental assistance (RA). The objective is for the District Office (DO) to maintain a constant status of the undisbursed balance of the RA obligation so RA disbursements do not exceed obligated funds. Exhibit E-1 should also be used to monitor a borrower's loan account status; as a servicing tool when working with a delinguent borrower; and, as an audit form when requesting account corrections by the Finance Office (FO).

II. *Uses for the Exhibit.* A. *Tracking rental assistance.*

1. When and execute Form FmHA 1944-26, "Request for Obligation of Rental Assistance," is returned by the FO, each obligation or deobligation of RA (including modifications) will be recorded on Exhibit E-1.

2. Each request for payment of RA on Form FmHA 1944-9, "Multiple Housing Certification and Payment Transmittal," must be recorded on Exhibit E-1 and the "Rental Assistance Undisbursed Balance" must be brought current. When Form FmHA 451-26 "Transaction record," is received the amount of the RA check issued must be verified against the requested amount shown on Exhibit E-1. If no Form FmHA 451-26 is received within 30 days from date of request, the DO should contact the Multiple Family Housing (MFH) Unit in the FO by telephone to determine if the check has been issued. If the amount of a check received differs from the amount requested, the DO should contact the MFH Unit in FO immediately by telephone.

B. *Monitoring Loan Account Status.*

1. The date and amount of each payment due should be entered monthly and the Account Status columns brought current.

2. The date and amount of each payment submitted to the FO on Form FmHA 1944-9 and the applications to installment and overage/surcharge, should be entered in the appropriate columns. The current account status should be entered.

3. When Forms FmHA 451-26 are received they should be verified against the entries made from Form FmHA 1944-9. If there is an error, copies of documentation relating to the error and the DO guidance on needed corrections should be forwarded to the State Office (SO) with a request that they contact the FO.

4. If forms FmHA 451-26 are not received on payments or overage within 30 days after Form FmHA 1944-9 is sent to the FO, the SO should be contacted immediately.

5. The SO is responsible for follow-up with the FO. However, the SO may instruct the DO to contact FO directly if the contact can be made more efficiently by the DO.

C. *Auditing Borrower Accounts.*

1. If the DO feels the account status shown by the FO is incorrect, Exhibit E-1 should be used to record a transaction-by-transaction audit of the borrower's account from the initial date of the loan. This audit can be used to demonstrate to a borrower why the account is delinquent. The audit can also be used to identify where corrections should be made in FO records.

2. A request for action by the FO should be forwarded through the SO to the MFH Unit in the FO, "Open Addressee Only". The request should include a copy of the audit; copies of input and output documents showing the errors made and necessary corrections; and, a memorandum from the DO requesting correction of the account.

3. The FO will use the material submitted to research the account and to make necessary corrections.

III. *Completing the Exhibit.* A. *Heading.*

1. For routine tracking the DO may complete only those items necessary to identify the borrower.

2. For audit purposes, and/or to send to FO, all items in the heading must be completed. Heading items should be verified as part of the audit procedure.

B. *Beginning Rental Assistance Undisbursed Balance.* This is the initial obligation for the rental assistance agreement or the balance carried forward from a previous year.

C. *Columns.*

1. *Date*—Due date of payment or transaction date.

2. *Amount Due*—Scheduled payment from promissory note or payment reduced by interest credit.

3. *Total Payment Made*—Amount of payment submitted by borrower including overage or surcharge.

4. *Paid on Installment*—Amount of total payment to be credited to scheduled note installment.

5. *Overcharge/Surcharge*—Amount of total payment which is applied as overage or surcharge.

6. *Account Status*—

a. *Monthly*—Status of the account after the amount paid on installment is applied. Show the amount of the monthly installment which is ahead (A) or behind (B) schedule as required by the promissory note and interest credit agreement. If the account is neither ahead nor behind schedule, indicate the account is even (E). If the account is ahead or behind schedule at the beginning of the tracking period, indicate the amount and status on the first line of the column and adjust the status with each succeeding entry.

b. *Annual*—Annual payment shown on annual promissory note or twelve times the monthly payment required by a monthly promissory note. The payment will be modified if the borrower has an interest credit agreement. Indicate on the first line any amount due by the date shown in the "Minimum Amount Due" box on Form FmHA 451-26. Include any carryover from a previous due date. Amount will be reduced with each payment made on the installment. This reduced figure should correspond to the "Minimum Amount Due" on Form FmHA 451-26. If these figures do not agree, further investigation is warranted to determine if there is an error and appropriate action should be taken to make the necessary corrections.

7. *R.A. Used Current Month*—Fill in dollar amount of rental assistance requested. The number of rental assistance units used this month should be inserted in ( ).

8. *R.A. Undisbursed Balance*—This amount is determined by subtracting the dollar amount of RA requested from the R.A. Undisbursed Balance for the previous month. Additional obligations, deobligations or refunds must be entered in this column and the proper balance adjustment must be made.

9. *Date R.A. Check Issued*—The FO RA balance is based on the date the RA check is issued. Enter the date the RA check was issued as shown on Form FmHA 451-26 under "Date Prepared."

PART 1944—HOUSING

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

§ 1944.182 [Amended]

20. In § 1944.182, lines three and four are amended by changing the references from "Exhibit C of Subpart B of Part 1944" to "Exhibit E to Subpart C of Part 1930."

Subpart E—Rural Rental Housing Loan Policies, Procedures and Authorizations

§ 1944.215 [Amended]

21. In § 1944.215, paragraph (g)(2), lines three and four are amended by changing the reference "Exhibit C of this Subpart" to "Exhibit E to Subpart C of Part 1930."

Exhibit B—[Amended]

22. In Exhibit B, "Interest Credits on Insured RRH and RCH Loans," paragraph II B, line six is amended by changing the reference "Form FmHA 444-7" to "Form FmHA 1944-7."

23. In Exhibit B, paragraph IV B 2 d line six is amended by changing the reference "Form FmHA 444-29" to "Form FmHA 1944-29."

24. In Exhibit B, paragraph VI D lines seven and eleven are amended by changing the reference "Form FmHA 444-7" to "Form FmHA 1944-7."

25. In Exhibit B, paragraph VI D line eleven is amended by changing the reference "Exhibit C" to "Exhibit E to Subpart C of Part 1930" of this chapter.

26. In Exhibit B, paragraph VI E line two is amended by changing the reference "Exhibit C or H" to "Exhibit H of this Subpart or Exhibit E to Subpart C of Part 1930 of this chapter."

27. In Exhibit B, paragraph VIII A line thirteen is amended by changing the reference "Form FmHA 444-7" to "Form FmHA 1944-7."

28. In Exhibit B, paragraph VII C line six is amended by changing the reference "Form FmHA 444-7" to "Form FmHA 1944-7."

29. In Exhibit B, paragraph IX line three is amended by changing the reference "Form FmHA 444-29" to "Form FmHA 1944-29."

30. In Exhibit B, paragraph IX line five is amended by changing the reference "Form FmHA 444-9" to "Form FmHA 1944-9."

31. In Exhibit B, paragraph IX A 2 line three is amended by changing the reference "Form FmHA 444-29 and Form FmHA 444-9" to "Form FmHA 1944-29 and Form FmHA 1944-9."

Exhibit C—[Removed and Reserved]

32. Exhibit C is removed and reserved.

Exhibit H—[Amended]

33. Exhibit H, "RRH Loan and the HUD Section 8 Housing Assistance Payments Program (New Construction)" paragraph IV A lines seven and eight are amended by changing the reference "Form FmHA 444-7" to "Form FmHA 1944-7."

Subpart L—Farmers Home Administration Tenant Grievance and Appeals Procedures

§ 1944.551 [Amended]

34. Section 1944.551 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

35. Section 1944.554 is amended by renumbering paragraph (a)(6) to paragraph (a)(7) and adding a new paragraph (a)(6) which reads as follows:

§ 1944.554 Reasons for grievance and appeal.

(a) * * *

* * * * *

(6) Denials of rental assistance.

* * * * *

PART 1965—REAL PROPERTY

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.65 [Amended]

36. Section 1965.65(c)(14) is amended by changing the reference from "Exhibit C of Subpart E of Part 1944" to "Exhibit E to Subpart C of Part 1930 of this chapter."

(42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70)

Dated: January 28, 1983.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 83-4084 Filed 2-14-83; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

[Docket No. 83-4]

Bank Service Corporations, Transactions With Affiliates, Borrowing Limits, Visitation; Correction

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule concerning bank service corporations, transactions with affiliates, borrowing limits, and visitation that appeared at page 3936 in the **Federal Register** of Friday, January 28, 1983 (48 FR 3936). This action is necessary to correct a typographical error in that final rule.

EFFECTIVE DATE: January 15, 1983.

FOR FURTHER INFORMATION CONTACT: Moira Donohue, Attorney, Legislative Counsel, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447-1632.

PART 7—[AMENDED]

Accordingly, FR Doc. 83-2492 of January 28, 1983, 48 FR 3936 is corrected as follows:

1. The Authority citation for Part 7 reads as follows:

Authority: RS 324 et seq.; as amended; 12 U.S.C. 1 et seq., unless otherwise noted.

§§ 7.7390, 7.7361, 7.7518 [Removed]

2. Sections 7.7390, 7.7361 and 7.7518 are removed.

Dated: February 3, 1983.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 83-4014 Filed 2-11-83; 8:45 am]

BILLING CODE 4810-33-M

CIVIL AERONAUTICS BOARD

14 CFR Part 254

[ER-1305-A; Economic Regulations Docket No. 40366, 38621]

Domestic baggage liability; Stay of Effective Date of Final Rule

AGENCY: Civil Aeronautics Board.

ACTION: Stay of effective date of final rule.

SUMMARY: The CAB is staying the effective date of its domestic baggage liability rule in order to more fully consider issues raised in a petition by certain members of the Air Transport Association to repeal the rule prior to its effective date. Pending completion of this new rulemaking, the currently effective baggage orders (without their tariff-filing requirement) will remain in effect.

DATES: Adopted: February 8, 1983. Effective: February 8, 1983.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

Accordingly, the Civil Aeronautics Board suspends the February 22, 1983, effective date of 14 CFR Part 254, issued as ER-1305, 47 FR 52987, November 24, 1982. Currently effective baggage orders, but without tariff-filing requirements, will remain in effect until further notice.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-3810 Filed 2-14-83; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3102]

Heatcool, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires a Eugene, Oregon manufacturer and seller of plastic storm windows, among other things, to cease making false or unsubstantiated representations concerning the insulating properties of Heatcool plastic storm windows or any insulating or energy savings device. Further, the company would be required to: (1) notify its distributors that Heatcool plastic storm windows do not insulate better than comparable glass windows and that the window's insulating value is R-1.93; and, (2) include this information in all advertising and promotional literature for a period of one year. The company is also required to recall promotional and advertising materials which represent the insulating value of Heatcool storm window systems.

DATES: Complaint and order issued Feb. 1, 1983.[1]

[1] Copies of the Complaint and the Decision and Order filed with the original document.

FOR FURTHER INFORMATION CONTACT: George J. Zweibel, Acting Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, WA 98174. (206) 442-4655.

SUPPLEMENTARY INFORMATION: On Monday, Nov. 22, 1982, there was published in the **Federal Register**, 47 FR 52468, a proposed consent agreement with analysis In the Matter of Heatcool, Incorporated, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objection regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to crease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleading; § 13.20 Comparative data or merits; § 13.170 Qualities or properties of product or service; § 13.170-48 Insulating; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-53 Recall of merchandise, advertising material, etc. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1710 Qualities or properties; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts. Subpart—Offering Unfair, Improper and Deceptive Inducements To Purchase or Deal: § 13.2063 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Energy savings, Storm windows.

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

Carol M. Thomas,

Secretary.

[FR Doc. 83-4017 Filed 2-14-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-3101]

Southern Maryland Credit Bureau, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires a LaPlata, Md. consumer credit reporting agency, among other things, to cease failing to require customers, such as private investigative agencies, detectives or attorneys, who do not extend credit as part of their normal business, to certify the purpose for which credit information is sought; that use of the information will be restricted to that purpose; and that the customer understands that anyone obtaining credit information under false pretenses is subject to a fine and/or imprisonment under Federal law. The credit bureau is further required to compile a list of detectives and attorneys from the yellow pages of the telephone book in the area where the requesting party does business, and consult the list to determine whether certification must be provided. Additionally, the firm must require prospective customers to identify themselves and comply with certification requirements; and to withhold credit reports from parties it has reason to believe would use the information for improper purposes.

DATES: Complaint and Order issued Jan. 26, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/PD, Charlyn J. Buss, Washington, D.C. 20580. (202) 724-1175.

SUPPLEMENTARY INFORMATION: On Wednesday, Nov. 10, 1982, there was published in the **Federal Register**, 47 FR 50922, a proposed consent agreement with analysis In the Matter of Southern Maryland Credit Bureau, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having being received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order filed with the original document.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Collecting, Assembling, Furnishing or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing or utilizing consumer reports; 13.382-1 Confidentiality, accuracy, relevancy and proper utilization; 13.382-1(a) Fair Credit Reporting Act; 13.382-5 Formal regulatory and/or statutory requirements; 13.382-5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-37 Formal regulatory and/or statutory requirements.

List of Subjects in 16 CFR Part 13

Consumer credit reports.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128-36; 15 U.S.C. 1681-1681t)

Carol M. Thomas,

Secretary.

[FR Doc. 83-4018 Filed 2-14-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket No. RM82-10-000; Order No. 282]

Revision of Form No. 12, Power System Statement

Issued: February 7, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) revises Form No. 12, "Power System Statement" and the corresponding regulations at 18 CFR 141.51. The changes eliminate certain data requirements from the form, reduce by about one third the number of electric utilities that must complete the form, and reduce from six to four the number of copies of the form that must be filed with the Commission. The revisions are part of the Commission's ongoing program to review and evaluate its filing requirements, to eliminate the reporting of information that is not used for decisionmaking in the regulatory process, and to reduce unnecessary reporting burdens.

DATE: This final rule is effective March 17, 1983, for filings due on or before September 1, 1983.

FOR FURTHER INFORMATION CONTACT: Daniel G. Lewis, Federal Energy

Regulatory Commission, Office of Electric Power Regulation, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 376-9227

Cathy Ciagol, Federal Energy Regulatory Commission, Office of General Counsel, 825 North Capitol Street, N.E. Washington, D.C. 20426, (202) 357-8033

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising Form No. 12, "Power System Statement",[1] and the regulations at 18 CFR 141.51 that require the form. The revisions are part of the Commission's ongoing program to review and evaluate its filing requirements, to eliminate the reporting of information that is not used for decisionmaking in the regulatory process, and to reduce unnecessary reporting burdens. This final rule (1) eliminates from the form five entire schedules and data elements from eight other schedules that are unnecessary to the Commission's regulatory responsibilities; (2) raises the reporting threshold for entities required to file the form to eliminate unnecessary filings; (3) provides that the form shall be required for 1981 collections only, that it shall be due on or before September 1, 1983 instead of May 1st of each year as is currently required, and that it will be replaced by a new Form EIA-714 for collection of data for 1982 and years following; (4) reduces the number of required copies of the form from six to four; and (5) makes corresponding changes to the regulations that prescribe the form. These changes reduce the number of electric utilities that are required to file the requested data by approximately 33 percent, and decrease the number of data elements in the form by over 20 percent.

II. Background

Form No. 12 is an annual form filed by 623 public and private entities which operate facilities for the generation, transmission, or distribution of electric energy. The form collects information about the electric power systems of those entities including their generating and transmission facilities and transactions with other electric utility systems.[2] The information is used to analyze the details of utility operations in resolving wholesale electric rate cases and hydroelectric licensing proceedings, to determine the prudency of utility operations and investments and the value of equivalent electric energy, and to understand and make decisions respecting the electrical network made up of jurisdictional and non-jurisdictional entities.

This final rule was preceded by a Notice of Proposed Rulemaking issued January 11, 1982 (47 FR 2329, January 15, 1982). The notice proposed the following: (1) Changing the reporting threshold in the form so that the only entities required to filed the form would be those with systems which generate all or part of the system requirements, have an owned operable generating capacity of over 25 megawatts, and for which the sum of net energy for system plus firm sales for resale exceeds 100 megawatt-hours per year; (2) deleting four schedules from the form and data elements from three other schedules because they provide information that the Commission considered unnecessary or duplicative;[3] (3) reducing the number of copies of the form to be submitted from six to four; (4) providing that the filing date for the form would be May 1, 1982 and that this would be a one-time only filing; and (5) amending § 141.51 of the Commission's regulations to reflect the changes made to Form No. 12 in the rulemaking and to more accurately describe the requirements for filing the form.

The January 11, 1982 notice represented the first phase of revisions to the Form No. 12 to be effective only for the filing of 1981 data, and further revisions and reductions were planned for a later second phase. The Commission used this two-phase approach because it was unable to complete the entire review of data required in the form in time for the 1981 data collection. However, certain data could be eliminated in the first phase, resulting in a significant burden reduction for reporting companies. In fact, the Commission estimated that the first phase revisions to the form should result in about 33 percent fewer entities filing the form and should reduce by about 14 percent the amount of information that each respondent would have to file.[4]

During the time since the notice was issued, the Energy Information Administration (EIA) of the U.S. Department of Energy had begun the development of a new form entitled, Form No. EIA-714, "Power System Statement". That form would integrate the Commission's requirements for system data with similar requirements of EIA. The EIA-714 should be approved for use beginning in 1983 to collect 1982 calendar year data and data in the years following 1982. The EIA-714 is also being designed to eliminate the duplication that now exists between Form No. 12 and other Commission requirements, most notably, several schedules in the Form No. 1, "Annual Report of Electric Utilities, Licensees and Others (Class A and Class B)". The Commission supports the implementation of the EIA-714. Because the Form No. 12 will be incorporated into the EIA-714 and because any duplication in reporting that still exists between the Form No. 12 and other reporting requirements should be eliminated during the development of EIA-714, the Commission no longer needs to proceed with a separate second-phase revision of Form No. 12.

III. Summary and Analysis of Comments

The Commission received thirty-three comments in response to the notice to revise the Form No. 12, primarily from entities which file the form.[5] The overall

[1] The Form No. 12 (Appendix) is not being printed in the Federal Register. Blank copies of the form including all instructions are available at the Commission's Division of Public Information, 825 North Capitol Street, Room 1000, Washington, D.C. 20426, (202) 357-8055.

[2] The Commission is authorized under section 4(a) and (d) of the Federal Power Act (16 U.S.C. 797(a), (d)) to collect and publish data concerning the utilization of water resources, and the water power industry. The Commission is also authorized to regulate electric utilities engaged in interstate commerce under Part II of the Federal Power Act (16 U.S.C. 792-828c). The authority in these provisions was transferred to the Commission from its predecessor, the Federal Power Commission, under section 402 of the Department of Energy Organization Act (42 U.S.C. 7172). In addition, the Commission collects information in Form No. 12 under sections 304, 307 and 311 of the Federal Power Act (16 U.S.C. 825c, 825f, 825j) pursuant to a delegation of authority from the Secretary of Energy to the Commission (Delegation Order No. 0204-1 (1977)).

[3] These data deletions are as follows: Schedule 5, "Steam-Electric, Including Nuclear Plant Data"—Part E, "Station Step-Up Transformers"; Schedule 7, "Internal-Combustion Engine and Gas-Turbine Plant Data"—Part D, "Station Step-Up Transformers"; Schedule 10, "Energy Delivered to Ultimate Customers"; Schedule 11, "Energy Transferred to or Across a State Line or International Boundary During the Year"; Schedule 13, "Demand on Generating Plants, Power Received and Power Delivered for Resale, at the Time of System Peak Load of the Year"; Schedule 16, "System Dependability and Assured Capacity"—Part A, "Capacity at End of Year Covered by this Report"; and Schedule 19, "Summer and Winter Peak Month and Calendar Year Load Estimates".

[4] On March 24, 1982, the Commission issued an "Order Suspending Filing of the Form No. 12, 'Power System Statement'" which provided that the filing of 1981 calendar year data that was due May 1, 1982 was suspended until after a final rule revising the Form No. 12 was issued (47 FR. 13324, March 30, 1982).

[5] The commenters were: Alabama Power Co.; Alpena Power Co.; American Electric Service Corp.; Atlantic City Electric Co.; Central Power & Light Co.; Commonwealth Edison Co.; Edison Electric Institute (EEI); El Paso Electric Co.; Energy Information Administration; Georgia Power Co.; Iowa Power and Light Co.; Iowa Southern Utilities Co.; Madison Gas and Electric Co.; Middle South

response to the notice was very favorable. Most of the commenters simply said that they approved of the proposed changes and looked forward to further revisions and deletions to Form No. 12. Eight commenters offered suggestions for additional changes to the form.

A. Authority to Collect the Form

One commenter said that publicly-owned electric utilities should not be required to file the Form No. 12. The commenter stated that the Commission can legally require reports only from privately-owned entities over which the Commission exercises jurisdictional authority.[6]

Contrary to the commenter's arguments, the Commission is authorized to collect data from non-jurisdictional entities, including publicly-owned entities under sections 4(a), 4(d), 307(a), and 311 of the Federal Power Act.[7] The Commission needs both operational and statistical data from nonjurisdictional entities which are interconnected with jurisdictional privately-owned systems to gain an adequate understanding of the entire electrical network created by such interconnections. The Commission cannot understand the characteristics and functions of the network with data from only the jurisdictional systems. In addition, the Commission needs the data for its interconnection and wheeling orders under sections 202(b), 210, 211 and 212 of the Federal Power Act (16 U.S.C. 824a(b), 824i, 824j, 824k) concerning transactions that may affect both jurisdictional and non-jurisdictional entities. Thus, the information in Form No. 12 that is collected from publicly-owned systems is essential to the efficient conduct of the Commission's business. The Commission may also use these data to respond to Congressional inquiries about power systems.

The Commission notes that, as in the case of individual data elements in the form, the requirements for those who file the form will be subject to examination in developing the EIA-714. It is possible that a revision to these requirements could be made in conjunction with that proceeding.

B. Further Reductions in Reporting Requirements

Three of the commenters questioned the need for any of the schedules in Form No. 12, contending that the data are already included in other reports or could be included in other reports. Another commenter recommended that all of the data relating to plant operations should be combined into a single form.

The Commission recognizes that the notice did not propose to eliminate all of the duplication in the form. The duplication issue should have been resolved in the planned second-phase revision. As previously noted, there will now be no second-phase revision of the Form No. 12 because of the development of the EIA-714. The Commission, however, has eliminated certain other duplicative and unnecessary data from the form as part of this final rule. (*See below* at *Additional Changes To Form No. 12.*) Any remaining duplication that may exist between Form No. 12 and other requirements should be eliminated during the development of the EIA-714, or as part of a separate Commission proceeding relating to Form No. 1.

Two commenters said that data in the form that do not necessarily change every year should only be reported when they do change, so as to eliminate repetitive reports. However, contrary to the assumption underlying this comment, the revisions to form No. 12 in this rulemaking are made for the filing of 1981 data only. Moreover, most schedules in Form No. 12 had previously required the filing of data only as they changed, and a complete filing of the form had been required only once every five years.

Some of the commenters offered suggestions for changes to individual schedules. One commenter suggested that Schedule 3, "Plant Data—Small Plants" be eliminated; or in the alternative, that the requirement for reports every fifth year for internal combustion engine and gas turbine plants under 5 megawatts be changed to reports every tenth year because more frequent reporting does not necessarily provide more accurate data. The commenter also suggested that the schedule collect data from plants with combustion turbine units having a nameplate rating per unit of 25 megawatts or less (instead of the currently-required 5 megawatt capacity) regardless of the number of units that may be located at a particular plant site. This is because a 25 megawatt combustion unit is a small unit by any fair measure of analysis, according to the commenter.

The Commission cannot delete the schedule entirely because the data are needed for comparing the operations of the electric companies that file the form as part of the Commission's ratemaking process. However, the Commission has revised the instructions in Schedule 3 to show that this schedule is required for 1981 only. The Commission notes that any issues about increasing the interval for requiring a complete filing of this schedule and changing the threshold size of the combustion unit for which a report is required will be considered during the development of the permanent Form EIA-714.

Three commenters recommended the deletion of Schedule 4, "Hydroelectric Plant Data"—Part E, "Station Step-Up Transformers", and Schedule 4-A, "Pumped Storage Plant Data"—Part E, "Station Step-Up Transformers." According to the commenters, these deletions are necessary to be consistent with the Commission's proposal to

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Services, Inc.; Mississippi Power & Light Co.; Montana Dakota Utilities Co.; New England Power Co.; Northeast Utilities Co.; Oklahoma Gas and Electric Co.; Pacific Power and Light Co.; Philadelphia Electric Co.; Portland General Electric Co.; Public Service Co. of Oklahoma; Public Service Electric and Gas Co.; Public Works Commission of Fayetteville, N.C. (PWC); Salt River Project; Southern California Edison Co. (Edison); Southwestern Public Service Co.; Tampa Electric Co.; Town of Wallingford, CT; Virginia Electric and Power Co. (Vepco); Wisconsin Electric Co.

[6] The commenter also objected to the filing of data with the Commission merely for statistical purposes.

[7] Section 4 (16 U.S.C. 797) provides in pertinent part that the Commission is authorized:

(a) To make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water power industry and its relation to other industries and to interstate or foreign commerce, and concerning the location, capacity, development costs, and relation to markets of power sites, and whether the power from Government dams can be advantageously used by the United States for its public purposes, and what is a fair value of such power, to the extent the Commission may deem necessary or useful for the purposes of this Act.

(d) To make public from time to time the information secured hereunder and to provide for the publication of its reports and investigations in such form and manner as may be best adapted for public information and use.

Section 307(a) (16 U.S.C. 825f(a)) provides in pertinent part that:

The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provisions of this Act or any rule, regulation or order thereunder, or to aid in the enforcement of the provisions of this Act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this Act relates.

Section 311 (16 U.S.C. 825j) provides in pertinent part that:

In order to secure information necessary or appropriate as a basis for recommending legislation, the Commission is authorized and directed to conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions, whether or not otherwise subject to the jurisdiction of the Commission, including the generation, transmission, distribution, and sale of electric energy by any agency, authority, or instrumentality of the United States, or of any State or municipality or other political subdivision of a State.

delete Schedule 5, "Steam-Electric Including Nuclear, Plant Data"—Part E, "Station Step-Up Transformers" and Schedule 7, "Internal-Combustion Engine and Gas Turbine Plant Data"—Part D, "Station Step-Up Transformers".

The Commission has retained in the 1981 report the transformer data for hydroelectric projects in Schedules 4 and 4–A because they are necessary for transmission line analyses and for determining which transmission facilities should be included within new and amended hydroelectric project licenses issued by the Commission. A similar data base is not needed in the case of steam-electric plants or internal combustion engine and gas turbine plants because these data were collected as part of a national defense inventory and are duplicated in other reports.

One commenter also suggested the entire deletion of Schedule 7, "Internal-Combustion Engine and Gas Turbine Plant Data" and Schedule 9, "System Energy Accounting for the Year". The Commission will retain Schedule 7 in Form No. 12 because it requires a description of peaking capabilities necessary to the Commission's evaluation of the operations of those plants. However, the Commission implements the deletions from schedule 7 that were proposed in the notice and also eliminates three additional line items from the schedule. Finally, the Commission eliminates Schedule 9 in its entirety. The data from Schedule 7 and all of Schedule 9 can be deleted because similar data are provided elsewhere in the form. (*See below* at *Additional Changes To Form No. 12.*)

The commenter also recommended the deletion of Schedule 8, "Itemized Accounting of Energy Transfer with Other Electric Utility Systems and Industrial Companies During the Year". In lieu of Electric Utility eliminating this schedule, the commenter recommended that Instruction 2 in Part B of the schedule, which was proposed for revision in the notice, should be further revised so as to correspond to Schedule 9.

Schedule 8 will be retained because it is the Commission's only record of individual categories of exchange transactions, most of which are carried out under Commission approved rate schedules. However, the Commission has deleted Column 3, "Coordination, Location or Symbol on Map" from the schedule because the information is not necessary to the Commission's regulatory responsibilities. Instruction 2 in Part B will not be revised to correspond to Schedule 9 because Schedule 9 has, itself, been deleted in this final rule.

Another commenter recommended the following clarifications and revisions to the instructions in Schedule 6: (1) Changing the proposed definition of "firm sales for resale" as "energy for which the utility assumes long-term supply responsibility" to a definition that recognizes that some firm contracts may be for a short term; (2) deleting Column 4, "Firm or Nonfirm Transfer" and the corresponding instruction, because these data are already reported elsewhere in the form; (3) providing that Instruction 1 of Part A should relate to Column 5, "Energy Received," in addition to Column 6, "Energy Delivered"; (4) providing that Instruction 1 on Part A and Instruction 2 on Part B should include reports of all energy received from or delivered to another system and received from industrial companies, instead of just reports of firm sales for resale or energy delivered for resale.

The Commission makes the following responses to these suggestions:

(1) The proposed definition of firm sales will not be change because most contracts reported in this schedule are long-term. These reports are sufficient for Commission purposes in this one-time filing.

(2) Column 4 will not be deleted because it requires descriptive data only, is not a burdensome requirement, and is useful to a proper understanding of the rest of the schedule.

(3) Instruction 1 of Part A will not be revised further to refer to both "Energy Received" and "Energy Delivered". Information about "Energy Received" is currently reported in Part B of Schedule 8 and it would be too confusing to relocate that requirement in Part A just for this one-time filing.

(4) Only reports of firm sales for resale or energy delivered for resale will be required in these instructions because that information is sufficient for the Commission's understanding of these energy transfers. The added requirement to report all sales would not provide such valuable information as to justify the new reporting burden.

Two commenters suggested the deletion of Schedule 17, "Distribution of Systems Load in Service Area" because the reporting of data on the schedule requires a substantial commitment of resources by the respondents and because the data do not appear to be of significant use to the Commission. Schedule 17 will be retained by the Commission because it provides information that is essential to an understanding of a utility's operation of its generation and transmission facilities. The information is used to resolve issues concerning the ability of a utility to serve wholesale customers within a service area, the need to strengthen internal transmission (between subsidiary entities) to support wheeling, the possibility of including transmission approvel within a hydroelectric project license, and the effect of a utility's operations on wholesale transactions under review by the Commission. However, the Commission has deleted Columns (4) through (10) and (13) [8] from the schedule because similar data are available in other Commission requirements.

Three commenters recommended the elimination of Schedule 18–B, "High Voltage Line Data", alleging that the information prescribed in this schedule is not needed. One of the commenters said that this schedule is not useful because electric systems that are adjacent to each other rarely experience the same monthly system peaks, and, as a result, it is impossible to follow power flows across the systems. The commenter added that real-time loading is not used for planning, and that the lead time needed for the construction of transmission lines requires that power system analyses be done several years into the future. The commenter said that Schedule 18–B is not helpful in providing this information. Finally, the commenter added that computers are now able to monitor and study the system constantly to prevent line overloads and other problems, and that Schedule 18–B is not really necessary to aid in tracking these problems.[9]

The Commission will retain Schedule 18–B because it provides the only information about transmission line usage and power flows that are available to the Commission. While the data may not show simultaneous load flows in the interconnected systems, they do reflect the way a system is operated at peak loads and at other times. The Commission uses this information in its rate and transmission cases. For example, these data aid staff in determining whether specific load flow studies are necessary for particular case proceedings.

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[8] *See below* at *Additional Changed To Form No. 12.*

[9] Another of the commenters said that if Schedule 18–B is, somehow, useful to the Commission, it should be consolidated with FPC Form No. 12–F, "Power Line Construction Data" which reqires much of the same data as Schedule 18–B. However, Form No. 12–F was discontinued by the Commission in a final rule issued May 28, 980 ("Order Discontinuing Reporting requirements", Order No. 87, Docket No. RM80–16 (45 FF 137420, June 3, 1980).

One commenter said that the Commission should require high voltage line data only for April, October and for summer and winter monthly system peaks. The Commission will not adopt this suggestion, nor otherwise change the current requirement to report April, August, October, December and annual peak data. This is because the Form No. 12 is filed on a calendar year basis. Thus, the peak for January in a calendar year might exceed the following December peak; however, because the report is based on the calendar year, the peak data for that *year* would not be for the same winter *season*. In order to collect peak data within the calendar year, therefore, the Commission will retain the schedule in its present format. Of course, the requirements of this schedule are subject to review in the formulation of EIA-714.

One commenter stated that most of the information it files for Schedule 18-B and for Schedule 18, "System Maps and Diagrams" is repeated from year to year because that information does not change frequently. The commenter requested that these filing requirements be relaxed to eliminate such repetitious reporting. The commenter added that it did not understand the Commission's need for these data, and that it knows of no instance when its response to these schedules was ever used by staff or intervenors in a wholesale electric rate case or in a licensing or other proceeding.

The Commission will not make these revisions for the following reasons. First, Instruction 8 in Schedule 18 already provides that system maps and diagrams need not be supplied if previous submissions remain correct. Second, although data in Schedules 18 and 18-B may not have been introduced as evidence in particular cases, this fact alone is not a measure of their usefulness. These schedules provide information which staff uses to gain an understanding of system characteristics and these data can obviate the need for time-consuming interrogatories and speed the completion of case work. Finally, the Commission repeats that the revised Form No. 12 is only effective for the filing of 1981 data. The requirements in each of the schedules is subject to review in the development of the new form, EIA-714.

B. Recommended Additions to the Form

Only one commenter recommended the retention of information in Form No. 12 that was proposed for deletion. The Energy Information Administration (EIA), said that Schedule 10, "Energy Delivered to Ultimate Consumers" should be retained. EIA said that although the Commission proposed deleting the schedule because similar information is reported in the FERC Form No. 1, the classification of energy delivered to ultimate consumers in the Form No. 1 is different from the classification in Schedule 10; therefore, some information about energy deliveries would be lost if Schedule 10 was deleted. EIA also stated that the Department of Energy's Environmental Protection Safety and Energy Preparedness (EP) Form 714 "Power System Emergency Report" (the predecessor of EIA-714) has annually collected data comparable to that requested in Form No. 12 from utility systems with energy requirements that are less than those of systems required to report on Form No. 12. In order to complement the data reported in the Form 714, EIA suggested that the Commission retain Schedule 10 in the Form No. 12. By doing this, the Commission would reduce the reporting burden without eliminating necessary information, according to EIA.

The Commission does not believe that data respecting the classification of energy delivered to ultimate consumers is needed in Schedule 10 as long as such a classification is available in Form No. 1. Use of classification data in Schedule 10 may provide somewhat different information than the Form No. 1 classification; however these differences are not significant for the Commission's regulatory purposes. Furthermore, the Form No. 12 should collect data only for Commission needs in the 1981 filing, because the form is being sponsored only by the Commission. The integration of the EIA's and Commission's requirements into EIA-714 will include a review of these other specific data elements. Thus, to the extent that EIA has need for these data, they may be included in the new form under EIA sponsorship for collection in 1982 and afterwards, even though they are not required by the Commission.

The Commission is also retaining in Form No. 12 Schedule 19, "Summer and Winter Peak Month and Calendar Year Load Estimates". This schedule was proposed for deletion in the notice because the data are reported in Form No. EIA-119A, "Annual Projection of System Changes". However, in certain cases, the companies that file Form No. 12 may not file the EIA-119A. To assure that these peak data are reported either in the EIA-119A or in the Form No. 12, the Commission has retained this schedule with the instructions to report on it only if the EIA-119A has not been filed for 1981.

The Commission does not believe that retaining this schedule will create an undue reporting burden. In addition, the Commission has simplified the schedule by eliminating Column 5, "Load Factor (Percent)" from the schedule because this column provides totals that may be calculated from other data in the schedule.

In summary, the Commission has adopted the changes to the Form No. 12 that were proposed in the notice,[10] except as modified and provided for in this final rule. This includes the changes made in response to the comments, and other modifications, and the deletions that the Commission has determined are appropriate because certain data are no longer essential to the Commission's regulatory responsibilities. As a result of these additional changes to the form, the number of data elements in the form is reduced by a total of over 20 percent. Following is a summary list of these additional revisions to various schedules in the form that the Commission makes in this final rule

Additional Changes to Form No. 12

"General Information": Eliminates Line 8, requiring a list of subsidiaries.

Schedule 1, "Capacity and Output of System Generating Plants": Eliminates Columns (2) Location of plant; (4) Total of main generating units; (5) Total of auxiliary or house units; (6) Gross generation; (7) Plant use; and (9) Installed capacity connected to load.

Schedule 2, "System Hydroelectric Data," Part A, "Aggregate Dependable Hydroelectric Capacity and Potential Energy": Eliminates requirement to furnish notation about previously reported data.

Schedule 3, "Plant Data—Small Plants": Revises the instructions to reflect the fact that the form is a one-time only filing; [11] and eliminates requirement to report the post office of the plant.

Schedule 5, "Steam-Electric, Including Nuclear, Plant Data": Eliminates Part C, "Plant Net Capability Under Specified Conditions".

Schedule 7, "Internal Combustion Engine and Gas-Turbine Plant Data": Eliminates Lines (4) Post Office; (22) Manufacturer of generator; and (29) Manufacturer of prime mover.

Schedule 8, "Itemized Accounting of Energy Transfer with Other Electric Utility Systems and Industrial

[10] *See* Part II of this final rule.

[11] This revision is also made to the instructions in Schedule 4, "Hydroelectric Plant Data"; 4-A, "Pumped Storage Plant Data"; 5, "Steam-Electric, Including Nuclear, Plant Data"; and 7, "Internal Combustion Engine and Gas-Turbine Plant Data".

Companies During the Year", Part A, "Energy Deliveries to Specified Systems and Energy Transactions with Border-Line Customers": Eliminates Column (3) "Coordinate, Location or Symbol on Map".[12]

Schedule 9, "System Energy Accounting for the Year": Deletes whole schedule.[13]

Schedule 14, "Net Generation, Energy Received and Delivered, and System Peaks by Months for the Year": Eliminates Columns (8) Net energy for system; (9) Net energy for load; and (13) Load factor.

Schedule 16, "System Dependable and Assured Capacity": Eliminates whole schedule.

Schedule 17, "Distribution of System Load in Service Area": Eliminates Columns (4) Estimated Distribution—Farm; (5) Estimated Distribution—Nonfarm residential; (6) Estimated Distribution—Commercial; (7) Estimated Distribution—Industrial; (8) Estimated Distribution—Other; (9) Estimated Distribution—"In loads"; (10) Estimated Distribution—Losses; and (13) Annual load factor.

In addition to these revisions, the filing date for the Form No. 12 has been changed to September 1, 1983. This date should give the affected entities sufficient time to prepare and submit the revised form.

The Commission has also adopted the revisions to its regulations at 18 CFR 141.51 that were proposed in the notice, except for (1) changing of the filing date from "May 1st of each year for the previous calendar year, beginning with a filing by May 1, 1982", to "September 1, 1983", (2) deleting Schedules 9 and 16 from the list of schedules, (3) eliminating the list of schedules in the form because it is not necessary to the requirement, and (4) making minor reorganizational changes.

V. Certification of no Significant Economic Impact

The Regulatory Flexibiity Act (RFA),[14] requires certain statements, descriptions, and analyses of proposed rules that will have a "significant economic impact on the substantial number of small entities".[15]

Pursuant to section 605(b) of the RFA, the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Over 95 percent of the entities that are currently required to file Form No. 12 are large entities having annual operating revenues over $1 million. In addition, this rule should result in an overall reduction in the filing burden because the revisions involve a deletion of several schedules, an increase in the filing threshold, and a decrease in the number of required copies. Finally, this form will require the collection of data for calendar year 1981, only.

VI. Effective Date

This final rule is effective 30 days after publication in the **Federal Register** for calendar year 1981 reports that are due on September 1, 1983.

List of Subjects in 18 CFR Part 141

Electric power, statement and reports (Schedules), Reporting and recordkeeping requirements.

(Federal Power Act, as amended, 16 U.S.C. 792–828c; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142.)

In consideration of the foregoing, the Commission amends Form No. 12 as discussed above and as set forth in the Appendix [16] and amends Part 141 of Chapter I, Title 18 of the Code of Federal Regulations as set forth below, effective 30 days after publication in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 141—[AMENDED]

Section 141.51 is revised to read as follows:

§ 141.51 FERC Form No. 12, Power system statement.

(a) *Who must file.* Each corporation, person, agency, authority or other legal entity or instrumentality, whether public or private, which operates facilities for the generation or transmission or distribution of electric energy, whose system generates all or part of system requirements, who has an owned operable generating capacity of more than 25 megawatts, and for whom the sum of net energy for system plus firm sales for resale exceeds 100,000 megawatt-hours per year, must prepare and file with the Commission an original and conformed copies of Form No. 12, "Power System Statement" pursuant to the General Instructions set out in that form.

(b) *When to file.* The completed form must be filed on or before September 1, 1983 for the 1981 calendar year.

[FR Doc. 83-3863 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[12] Instruction 9 of Schedule 8 is also deleted. It requires the reporting of certain sums on Schedule 9. However, Schedule 9 is deleted in this final rule; therefore, that instruction is no longer needed.

[13] The definition of "net energy for system" on page 2 has also been revised to eliminate a reference to the now deleted Schedule 9.

[14] 5 U.S.C. 601–612.

[15] 5 u.S.C. 605(b).

[16] The Form No. 12 (Appendix) is not being printed in the **Federal Register.** Blank copies of the form including all instructions are available at the Commission's Division of Public Information, 825 North Capitol Street, Room 1000, Washington, D.C. 20426, (202) 357–8055.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 81F-0210]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of elemental iodine, *alpha*-[*p*-(1,1,3,3-tetramethylbutyl)-phenyl]-*omega*-hydroxypoly(oxyethylene) and *alpha*-alkyl(C_{12}-C_{15})-*omega*-hydroxy [poly(oxyethylene)poly(oxypropylene)] as components of a sanitizing solution used on food-contact surfaces. This action is based on a petition filed by the Diversey Wyandotte Corp.

DATES: Effective February 15, 1983; objections by March 17, 1983.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia McLaughlin, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SE., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 18, 1981 (46 FR 41862), FDA announced that a petition (FAP 1H3561) had been filed by the Diversey Wyandotte Corp., 1532 Biddle Ave., Wyandotte, MI 48192, proposing that the food additive regulations be amended to provide for the safe use of elemental iodine, *alpha*-[*p*-(1,1,3,3-tetramethylbutyl)-phenyl]-*omega*-hydroxypoly(oxyethylene) and *alpha*-alkyl(C_{12}-C_{15})-*omega*-hydroxy [poly(oxyethylene)poly(oxypropylene)] as components of a sanitizing solution to be used on food-contact surfaces.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting this finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives; Food packaging; Sanitizing solutions.

PART 178—[AMENDED]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 178 is amended in § 178.1010 by adding new paragraphs (b)(24) and (c)(19) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(24) An aqueous solution containing elemental iodine (CAS Reg. No. 7553–56–2), *alpha*-[*p*-(1,1,3,3-tetramethylbutyl)-phenyl]-*omega*-hydroxypoly(oxyethylene) produced with one mole of the phenol and 4 to 14 moles ethylene oxide, and *alpha*-alyl(C_{12}-C_{15})-*omega*-hydroxy[poly(oxyethylene) poly(oxypropylene)] (having an average molecular weight of 965.

* * * * *

(c) * * *

(19) Spolutions identified in paragraph (b)(24) of this section shall provide, at least 12.5 parts per million and not more than 25 parts per million of titratable iodine. The adjuvants used with the iodine will not be in excess of the minimum amounts required to accomplish the intended technical effect.

Any person who will be adversely affected by the foreging regulation may at any time on or before March 17, 1983, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection for which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective February 15, 1983.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348).)

Dated: February 9, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-3973 Filed 2-14-83; 8:45 am]
BILLING CODE 4160-01-M

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21 CFR Part 182

[Docket No. 80N-0108]

GRAS Status of Ethyl Acrylate and Methyl Acrylate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is not affirming ethyl acrylate and methyl acrylate as generally recognized as safe (GRAS) indirect human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency. The agency is not affirming ethyl acrylate and methyl acrylate as GRAS because there is no evidence that the monomers are used in the manufacture of paper and paperboard products except as components of polymers that are covered under current food additive and prior-sanctioned regulations.

EFFECTIVE DATE: March 17, 1983.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, 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 July 9, 1982 (47 FR 29963), FDA published a proposal not to affirm that ethyl acrylate and methyl acrylate are GRAS for use as indirect human food ingredients. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients. The agency proposed not to affirm ethyl acrylate and methyl acrylate as GRAS because there is no evidence that the monomers are used in the manufacture of paper and paperboard products except as components of polymers that are covered under current food additive and prior-sanctioned regulations.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review and the report of the Select Committee on GRAS Substances (the Select Committee) on ethyl acrylate and methyl acrylate are available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents have also been made available for public purchase from the National Technical Information Services as announced in the proposal.

In addition to proposing not to affirm the GRAS status of ethyl acrylate and methyl acrylate, FDA gave public notice that it was unaware of any other prior-sanctioned food uses for these ingredients other than those identified in the proposal. 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 any prior-sactioned uses could be determined. That notice was also an opportunity to have other prior-sanctioned uses of ethyl acrylate and methyl acrylate recognized by issuance of an appropriate regulation 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 other prior-sanctioned uses for ethyl acrylate and methyl acrylate were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of ethyl acrylate and methyl acrylate under conditions different from those identified in the proposal has been waived.

No comments were received in response to the agency's proposal on ethyl acrylate and methyl acrylate. The agency is therefore issuing the proposal as a final rule without change.

The agency has previously 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. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency has previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, the agency has previously considered the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by that Order. FDA has not received any new information or comments that would alter its previous determination.

The agency's finding of no major economic impact and not significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 182

Spices and flavorings.

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.90 [Amended]

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), Part 182 is amended in § 182.90 *Substances migrating to food from paper and paperboard products* by removing "Methyl and ethly acrylate" from the list of substances.

Effective date. This regulation shall be effective March 17, 1983.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)).)

Dated: January 24, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-3902 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Parts 206, 207, and 209

Fishing, Hunting, and Navigation Regulations; Removal and Amendment of Obsolete Provisions

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is revoking obsolete regulations in 33 CFR Part 206 regarding hunting and fishing and amendming 33 CFR Parts 207 regarding navigation and 209 regarding administrative procedures by deleting obsolete and unnecessary sections.

EFFECTIVE DATE: March 16, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard, Office of the Chief of Engineers, DAEN–CWO–N, Washington, D.C. 20314 or call (202) 272–0200.

SUPPLEMENTARY INFORMATION: On 20 July 1982, the Corps of Engineers published a Notice of Proposed Rulemaking in the **Federal Register** (47 FR 31405–31407) soliciting comments on the proposal to delete certain regulations in Parts 206, 207 and 209. No objections were received and accordingly, the regulations in 33 CFR Parts 206, 207, and 209 are deleted as follows:

1. *Part 206 Fishing and Hunting Regulations* (revoked and reserved.)

2. *Part 207 Navigation Regulations.*

207.37 Jamaica Bay, Long Island, N.Y., Seaplane restricted area.

207.90 Delaware River, Pa.; use of Government landing pier at Marcus Hook.

207.280 White River, Ark.; use, administration and navigation of locks in upper White River.

207.290 Current River above Van Buren, Mo.; logging.

207.400 Duluth—Superior Harbor, Minn., and Wis.; use, administration and navigation, and bridge regulations.

207.410 Keweenaw Waterway, Mich.; use, administration and navigation.

207.490 Cheboygan River, Mich.

207.611 St. Lawrence River from Tibbets Point to Raquette River, excluding the section between Eisenhower Lock and Snell Lock, N.Y.; use, administration and navigation in U.S. Waters.

207.613 Pacific Ocean; U.S. Navy restricted area in vicinity of Scripps Institution of Oceanography Pier, La Jolla, Calif.

207.655 Rogue River, Oregon; logging.

207.660 Coquille River, Oregon, logging on North Fork between its mouth and Gravel Ford, at the junction of the North and East Forks.

207.663 South Fork of Coos River, Oreg.; logging in tidal section.

207.720 Willapa Bay and tributaries, Wash.; logging.

207.730 Grays Harbor and tributaries, Wash.; logging.

207.770 Snoqualmie and Snohomish Rivers, Wash.; logging.

207.780 Sammamish River, Wash.; logging.

3. The following regulations in Part 207 are amended to remove obsolete and unnecessary requirements.

207.180 All waterways tributary to the Gulf of Mexico (except the Mississippi River, its tributaries, South and Southwest Passes and the Atchafalaya River) from St. Marks, Fla., to the Rio Grande; use, administration and navigation. Revise paragraph (d)(5) to change VHF Channel from 16 to 14.

207.187 Gulf Intracoastal Waterway, Tex.; special floodgate lock and navigation regulations. In paragraph (c) (1) and (2) change 1.5 miles per hour to 2 miles per hour, add reference to head differential at the Colorado River Locks in (2) and in paragraph (c)(6)(i) delete 2738 kilocycles and replace with "VHF–FM Channels 12, 13, 14 and 16."

207.476 The Inland Route—lock in Crooked River, Alanson, Mich., use, administration and navigation. Paragraph (c) is amended to read "Operation—The lock operating season will commence and close as determined by the district engineer, Corps of Engineers in charge of the locality, depending on conditions and

the need for lockage services. Public notices will be issued announcing the opening and closing dates at least 15 days in advance of such dates". Paragraph (g) is deleted and paragraph (h) is redesignated as (g).

207.614 Pacific Ocean off the east coast of San Clemente Island, Calif., Naval restricted areas. In paragraph (a) *The Area.* The reference to "the Naval Restricted Anchorage Area, as described in 202.218 (Anchorage Regulations) of this chapter", is changed to "* * * the restricted anchorage area described in 110.218 of this chapter * * *"

207.640 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River and connecting waters, Calif. Delete paragraph (d) San Francisco Bay at South San Francisco, seaplane restricted area.

4. *Part 209 Administrative Procedures* is amended with respect to 209.330 Lake Survey office which is obsolete.

Accordingly, the Department of the Army is amending 33 CFR Parts 206, 207 and 209 as set forth below:

Note.—The Department of the Army has determined that this document does not contain a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices. The Department of the Army has also determined that this proposed rule will not have a significant economic impact on a substantial number of entities and thus does not require the preparation of a regulatory flexibility analysis.

Dated: January 24, 1983.

Approved:

Robert K. Dawson,

Deputy Assistant Secretary of the Army (Civil Works).

PART 206 [REMOVED AND RESERVED]

1. 33 CFR Part 206—Fishing and Hunting Regulations is removed and reserved.

PART 207—NAVIGATION REGULATIONS

§ 207.37 [Removed]

2. Section 207.37 *Jamaica Bay, Long Island, N.Y., seaplane restricted area* is removed.

§ 207.90 [Removed]

3. Section 207.90 *Delaware River, Pa.; use of Government landing pier at Marcus Hook* is removed.

4. Paragraph (d)(5) in § 207.180 is revised to read as follows:

§ 207.180 All waterways tributary to the Gulf of Mexico (except the Mississippi River, its tributaries, South and Southwest Passes and the Atchafalaya River) from St. Marks, Fla., to the Rio Grande; use, administration and navigation.

* * * * *

(d) Locks and floodgates. * * *

(5) *Radiophone.* Locks will monitor continously VHF—Channel 14 ("Safety and Calling" Channel) and/or AM-2738 kHz for initial communication with vessels. Upon arrival at a lock, a vessel equipped with radio-phone will immediately advise the lock by radio of its arrival so that the vessel may be placed on proper turn. Information transmitted or received in these communications shall in no way affect the requirements for use of sound signals or display of visual signals, as provided in paragraphs (d) (3) and (4) of this section.

5. Paragraphs (c)(1), (c)(2) amd (c)(6) of § 207.187 are revised to read as follows:

§ 207.187 Gulf Intracoastal Waterway, Tex.; special floodgate, lock and navigation regulations.

* * * * *

(c) *Operation of floodgates and locks*—(1) *Unlimited passage.* The floodgates and locks shall be opened for the passage of single vessels and towboats with single or multiple barges when the current in the river is less than 2 miles per hour and the head differential is less than 0.7 foot. When the head differential is less than 0.7, the Colorado River locks shall normally be operated as floodgates, using only the riverside gates of each lock.

(2) *Limited passage.* When the current in either river exceeds 2 miles per hour or the head differential at the Brazos River floodgates is between the limits of 0.7 foot and 1.8 feet, both inclusive, or the head differential at the Colorado River locks is 0.7 foot or greater, passage shall be afforded only for single vessels or towboats with single loaded barges or two empty barges. When two barges are rigidly assembled abreast of each other and the combined width of both together is 55 feet or less, they shall be considered as one barge. Each section of an integrated barge shall be considered as one barge, except when it is necessary to attach a rake section to a single box section to facilitate passage, the two sections shall be considered as one barge. It shall be the responsibility of the master, pilot or other person in charge of a vessel to determine whether a safe passage can be effected, give due consideration to the vessel's power and maneuverability, and prevailing current velocity, head differential, weather and visibility. If conditions are not favorable, passage shall be delayed until conditions improve and a safe crossing is assured.

* * * * *

(6) *Communication*—(i) *Radio.* The floodgates and locks are equipped with short wave radio equipment transmitting and receiving on VHF—FM Channels 12, 13, 14 and 16. Call letters for the floodgates are WUI 411 and for the locks are WUI 412.

(ii) *Telephone.* The floodgates and locks are equipped with telephone facilities. The floodgates may be reached by phoning Freeport, Tx, 713-233-1251; the locks may be reached by phoning Matagorda, Tx, 713-863-7842.

* * * * *

§ 207.280 [Removed]

6. *Section 207.280 White River, Ark.; use administration, and navigation of locks in upper White River* is removed.

§ 207.290 [Removed]

7. Section 207.290 *Current River above Van Buren, Mo.; logging* is removed.

§ 207.400 [Removed]

8. Section 207.400 *Duluth-Superior Harbor, Minn. and Wis.; use, administration, and navigation, and bridge regulations* is removed.

§ 207.410 [Removed]

9. Section 207.410 *Keeweenaw Waterway, Mich.; use, administration, and navigation* is removed.

10. In § 207.476, paragraph (c) is revised, paragraph (g) is removed, and paragraph (h) is revised and redesignated as (g) to read as follows:

§ 207.476 The Inland Route—Lock in Crooked River, Alanson, Mich., use, administration and navigation.

* * * * *

(c) *Operation.* The lock operating season will commence and close as determined by the district engineers, Corps of Engineers in charge of the locality, depending on conditions and the need for lockage services. Public notices will be issued announcing the opening and closing dates at least 15 days in advance of such dates.

* * * * *

(g) *Precedence at lock.* The craft arriving first at the lock shall be first to lock through; but precedence will be given to craft belonging to the United States or other local government entities, such as state, county, or municipality. Arrival posts may be established above and below the lock. Craft arriving at or opposite such posts or markers will be considered as having

arrived at the locks within the meaning of this paragraph.

§ 207.490 [Removed]

11. Section 207.490 *Cheboygan River, Mich,* is removed.

§ 207.611 [Removed]

12. Section 207.611 *St. Lawrence River from Tibbets Point to Raquette River, excluding the section between Eisenhower Lock and Snell Lock, N.Y.; use, administration, and navigation in U.S. waters* is removed.

§ 207.613 [Removed]

13. Section 207.613 *Pacific Ocean; U.S. Navy restricted area in vicinity of Scripps Institution of Oceanography Pier, La Jolla, Calif.* is removed.

14. Paragraph (a) of § 207.614 is revised to read as follows:

§ 207.614 Pacific Ocean off the east coast of San Clemente Island, Calif. naval restricted areas.

(a) *The area.* The waters of the Pacific Ocean within an area extending easterly from the east coast of San Clemente Island, California, described as follows: The northerly boundary to be a continuation, to seaward of the existing southerly boundary of the restricted anchorage area, as described in 110.218 of this chapter, to latitude 33°00.3'N., longitude 118°30.0' W.; thence to latitude 32°57.9' No., longitude 118°31.1'W.; thence to latitude 32°58.6'N., longitude 118°31.3'W on the shoreline; thence northerly along the shoreline to the point of beginning.

* * * * *

15. Paragraph (d) regarding San Francisco Bay at South San Francisco; seaplane restricted area in § 207.640 is removed and reserved.

§ 207.640 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and connecting waters, Calif.

* * * * *

(d) [Removed and reserved]

* * * * *

§ 207.655 [Removed]

16. Section 207.655 *Rogue River, Oregon; logging* is removed.

§ 207.660 [Removed]

17. Section 207.660 *Coquille River, Oregon; logging on North Fork between its mouth and Gravel Ford, at the junction of the North and East Forks* is removed.

§ 207.663 [Removed]

18. Section 207.663 *South Fork of Coos River, Oreg.; logging in tidal section* is removed.

§ 207.720 [Removed]

19. Section 207.720 *Willapa Bay and tributaries, Wash.; logging* is removed.

§ 207.730 [Removed]

20. Section 207.730 *Grays Harbor and tributaries, Wash.; logging* is removed.

§ 207.770 [Removed]

21. Section 207.770 *Snoqualmie and Snohomish Rivers, Wash.; logging* is removed.

§ 207.780 [Removed]

22. Section 207.780 *Sammamish River, Wash.; logging* is removed.

PART 209—ADMINISTRATIVE PROCEDURE

§ 209.330 [Removed]

23. Section 209.330 *U.S. Lake Survey Office* is removed.

[FR Doc. 83-3738 Filed 2-14-83; 8:45 am]
BILLING CODE 3710-92-M

PANAMA CANAL COMMISSION

35 CFR Parts 103, 113, 119, and 123

Revised Shipping and Navigation Rules for the Panama Canal

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: Panama Canal Commission is today approving certain changes in the shipping and navigation rules for the Panama Canal in order to conform to International Maritme Organization (IMO) rules and federal regulations concerning the carriage of hazardous cargo.

EFFECTIVE DATE: February 15, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, (202) 724-0104, or Mr. Dwight A. McKabney, General Counsel, Panama Canal Commission, telephone in Balboa Heights, Republic of Panama, 52-7511.

SUPPLEMENTARY INFORMATION: On December 1, 1982, a notice of proposed rulemaking was published in the **Federal Register** (47 FR 54105) setting forth several substantive changes to the shipping and navigation rules for the Panama Canal.

Interested parties were given the opportunity to submit comments by January 3, 1983. During that time period, no comments were received by the agency; accordingly, the only changes made were corrections of typographic errors. The substantive changes adopted by this document are as follows:

Section 103.27 is revised to require a bow steering light on all vessels over 100 meters in length, in order to make night-time navigation of such vessels safer and easier. Section 113.24 is revised to comply with regulations issued by the International Maritime Organization (IMO) concerning certain nuclear fuels and materials. Section 113.25 which permitted a limited waiver of certain requirements concerning nuclear fuels and materials is incorporated in § 113.24, and § 113.25 is revoked. Section 113.42 is modified to incorporate by reference the Department of Transportation regulations concerning dangerous cargoes not permitted to be transported by water.

In addition, § 119.141(a)(3) is revised to specify that persons applying for a Panama Canal pilot's license on the basis of experience on Commission vessels of 1,000 horsepower or over must have served at least 520 eight-hour watches while holding a Panama Canal license as Master of Steam and Motor vessels. This change merely clarifies the present rule, which requires two years of experience on such a vessel.

Finally, § 123.3, paragraphs (d) and (e) are revised to restrict the use of certain radio frequencies on the radiotelephones that must be carried aboard vessels while in Panama Canal waters, in order to be consistent with internationally accepted practices, particularly as defined by the IMO and the U.S. Coast Guard. Specifically, § 123.3, paragraph (d) is revised to limit the use of Channel 13, radio frequency 156.650 MHz, to bridge-to-bridge navigational communication, and § 123.3, paragraph (e) is revised to restrict the use of Channel 16, radio frequency 156.800 MHz, to distress, urgency, safety and calling purposes.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are first, that the rule, when implemented would not have an annual effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation of the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the Commission has determined that this proposed rule is not subject to the requirements of section

603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects

35 CFR Part 103

Vessels.

35 CFR Part 113

Cargo vessels, Hazardous materials transportation.

35 CFR Part 119

Administrative practice and procedure.

35 CFR Part 123

Radio, Vessels.

Accordingly, 35 CFR Parts 103 and 113, 119 and 123 are amended as follows:

PART 103—[AMENDED]

1. Section 103.27(b) is revised to read as follows:

§ 103.27 Clear view forward from the bridge and steering light requirement for certain vessels.

* * * * *

(b) All vessels over 100 meters (328 feet) in length shall have installed, at or near the stem, a steering range equipped with a fixed blue light which shall be clearly visible from the bridge along the centerline. If said range and light so placed would be partially or completely obstructed, then two such ranges and lights must be installed at an equal distance from the centerline and shall be clearly visible from the bridge along lines parallel to the keel.

* * * * *

PART 113—[AMENDED]

2. Section 113.24 is revised to read as follows:

§ 113.24 Irradiated fuel elements and special nuclear materials; shipments not originating in or destined to a port of the United States.

A vessel carrying irradiated fuel elements or special nuclear marterials not originating in, or destined to, a port of the United States shall comply with all regulations issued by the International Maritime Organization (IMO), as contained in the International Maritime Dangerous Goods Code (IMDG Code), with regard to the packaging, handling, stowage, storage and movement of Class 7-Radioactive substances; or, in the absence of compliance with the IMDG Code, shall not transit the Canal or enter Canal waters unless prior permission has been obtained. In addition, the following requirements apply to the carrying of such cargo by such a vessel:

(a) IMDG Code vessel:

(1) A vessel carrying such cargo must obtain in advance approval from the Panama Canal Commission.

(2) Any cask containing irradiated fuel elements, or special nuclear materials, together with any attachments thereto, may not weigh more than 150 tons.

(3) Upon arrival at the Canal of a vessel carrying such cargo, the Master shall deliver to the boarding officer transport documents issued by the appropriate country, or, if no such loading certificate is available, a declaration of Irradiated Fuel Elements or Special Nuclear Materials carried, similar to that contained in § 113.23(c), shall be executed.

(b) Non-compliance vessels:

(1) A vessel carrying such cargo may not transit the Canal or enter Canal waters unless prior permission therefor has been obtained from the Canal authorities. Such permission may not be granted without adequate provision for indemnity covering public liability and loss to the United States or any agency thereof, comparable in general scope to the protection afforded under section 170 of the United States Atomic Energy Act of 1954, as amended, 68 Stat. 919.

§ 113.25 [Removed]

3. Section 113.25, Certification by Commission, is removed.

4. Section 113.42(b) is revised to read as follows:

§ 113.42 Other dangerous cargo.

* * * * *

(b) Certain dangerous cargoes identified by 49 CFR 172.101 are prohibited from being transported over water. These cargoes are also not permitted aboard vessels in Panama Canal waters.

PART 119—[AMENDED]

5. Section 119.141(a)(3) is revised to read as follows:

§ 119.141 Pilot, Panama Canal, qualifications.

(a) * * *

(3) He must have served at least 520 eight-hour watches as Master of Panama Canal Commission vessels of 1,000 horsepower or over while holding a Panama Canal license as Master of Steam and Motor Vessels; or

* * * * *

PART 123—[AMENDED]

6. Section 123.3 (d) and (e) are revised as follows:

§ 123.3 Radiotelephones required.

* * * * *

(d) A vessel of a type described in paragraph (a) of this section shall maintain a continuous watch on Channel 13 when under way in Panama Canal waters for bridge-to-bridge navigational communications only. One watt maximum power shall be used on that frequency, except that in emergencies or unusual circumstances more power may be used. When such vessels have a Panama Canal pilot aboard, Channel 13 may be used only by the pilot or at his direction for navigational communications.

(e) The Signal Stations on Flamenco Island and in Cristobal may be called on Channel 12 or 16. Channel 16, however, is reserved for cases of distress, urgency, safety and calling only. Once radio contact is established on Channel 16, another channel should be selected for routine communications.

D. P. McAuliffe,

Administrator.

[FR Doc. 83-3914 Filed 2-14-83; 8:45 am]

BILLING CODE 3640-01-M

ENVIRONMENTAL PROTECTION AGENCY

41 CFR Part 15-1

[OA-FRL 2305-3]

Individual Conflicts of Interest Involving Current or Former Agency Employees

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document establishes final rules for the Environmental Protection Agency (EPA) procurement regulations to add policy and procedures to control conflicts of interest involving current or former EPA employees. It is designed to prevent Agency contract awards from being affected by favoritism to or import influence by current or former EPA employees. It provides a mechanism for identifying the proposed use of current of former EPA employees and procedures for proper treatment of contract proposals in these situations.

DATE: This regulation is effective February 15, 1983.

FOR FURTHER INFORMATION CONTACT: Grafton E. Young, Jr., Procurement and

Contracts Management Division (PM-214), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382-5032.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on page 17581 of the **Federal Register** on April 23, 1982, and invited comments for 21 days ending May 14, 1982. Comments were received from three business sources.

Policy

It was suggested that the rule be amended to include subcontractors. Controls relating to subcontractors were included in the proposed rule. Offerors responding to solicitations must identify in their proposals current or former EPA employees who are proposed as consultants or subcontractors. When the subcontracts create an "employer-employee" relationship, the full restrictions of the subpart apply. Whenever the EPA contracting officer has reason to believe that a contract award is biased in favor of current or former EPA employees, the rule requires that action be taken to protect the EPA from improper contract award.

General

The remaining two comments received related to contracting procedures employed by state and local governments and procedures relating to conflicts of interest in Federal assistance programs. These areas are outside of the scope of the proposed rule. The final rule, except for editorial revisions, remains unchanged from the proposed rule.

This regulation amends 41 CFR 15-1 to add a new subpart to control contract awards involving conflicts of interest with current or former EPA employees.

List of Subjects in 40 CFR Part 15-1

Administrative practice and procedure, Air pollution control, Government contracts, Grant programs—environmental protection, Loan programs—environmental protection, Reporting and recordkeeping requirements, Water pollution control.

(Sec. 205(c), 63 Stat. 390, as amended; 40 U.S.C. 486(c))

Dated: November 5, 1982.

John P. Horton,

Assistant Administrator, Office of Administration.

PART 15-1—[AMENDED]

41 CFR Part 15-1 is amended by adding a new Subpart 15-1.55, reading as follows:

Subpart 15-1.55—Prevention of Conflicts of Interest in Contracts Involving current or Former Employees of the Environmental Protection Agency (EPA)

§ 15-1.5500 Scope of subpart.

This subpart sets forth EPA policy and procedures for identifying and dealing with conflicts of interest and improper influence or favoritism in connection with contracts involving current or former EPA employees. This subpart does not apply to agreements with other departments or agencies of the Federal Government, nor to contracts awarded to State or local units of government.

§ 15-1.5501 Definitions.

(a) "Regular employee" means any officer or employee of EPA who is employed or appointed, with or without compensation, to serve more than 130 days during any period of 365 consecutive days, including regular officers of the Public health Service Commissioned Corps and reserve officers of the Public Health Service Commissioned Corps while on active duty.

(b) "Special employee" means an officer or employee of EPA who is retained, designated, appointed or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis for not more than 130 days during any period of 365 consecutive days and who acutally served more than 60 days during such 365 day period.

§ 15-1.5502 Limitations on award of noncompetitive negotiated contracts.

(a) No contract may be awarded without competition to a current regular or special EPA employee or to a former regular or special EPA employee whose employment terminated within 365 calendar days before submission of a proposal to EPA. No contract shall be awarded without competition to a firm which employs, or proposes to employ a current regular or special EPA employee or a former EPA regular or special employee whose employment terminated within 365 calendar days before submission of a proposal to EPA if either of the following conditions exists:

(1) The current or former EPA regular or special employee is or was involved in developing or negotiating the proposal for the prospective contractor.

(2) The current or former EPA regular or special employee will be involved directly or indirectly in the management, administration, or performance of the contract.

(b) Waiver—The foregoing restriction may be waived in writing by the Deputy Administrator if the award would not involve an violation of 18 U.S.C. 203, 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, EPA regulations at 40 CFR Part 3, or the Federal Procurement Regulations at 41 CFR 1-1.302-3 and if the award would be in the best interests of the Government. The Deputy Administrator will consult with the Designated Agency Ethics Official before making such a determination.

§ 15-1.5503 Treatment of competitive contracts.

(a) Contract awards based on competition must not involve violation of 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, or 41 CFR 1-1.302-3 and must not be based on improper influence or favoritism arising out of an EPA employee's current or former EPA employment.

(b) When any part of the disclosure required under § 15.1.5505 is affirmative, or when the contracting officer has reason to believe that an award may be prohibited by this subpart, no award may be made without the written approval of an official at a level above that of the Head of the Procuring Activity (see § 15-1.206) indicating that award would be consistent with § 15.-1.5503(a). The official will consult with the Designated Agency Ethics Official before making such a determination.

§ 15-1.5504 Subcontracts.

This subpart does not apply to subcontracts; that is, agreements by which a subcontractor agrees to undertake part of the work as an independent contractor. However, where subcontracts essentially create an "employer-employee" relationship, the restrictions apply. In determining whether such a relationship exists, the contracting officer will be generally guided by the standards of Chapter 304, Subchapter 1-4 of the Federal Personnel Manual (distinguishing between employees and independent contractors).

§ 15-1.5505 Solicitation disclosure provision.

The following provision shall be included in all EPA requests for proposals (RFP's): Current/Former Agency employee Confict of Interest Certification. The offeror certifies that:

(a) The offeror is ☐ is not ☐ a current regular or special EPA employee or a former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this proposal.

(b) The offeror does ☐ does not ☐ employ or propose to employ a current regular or special EPA employee or a former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this proposal and who has been or will be involved, directly or indirectly, in developing or negotiating this proposal for the offeror; or in the management, administration or performance of any contract resulting from this proposal.

(c) The offeror does ☐ does not ☐ employ or propose to employ as a consultant or subcontractor under any contract resulting from this proposal a current regular or special EPA employee or a former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this proposal.

(d) A current regular or special EPA employee or a former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this proposal or such employee's spouse or minor child does ☐ does not ☐ hold a controlling interest in the offeror firm.

[FR Doc. 83-3898 Filed 2-14-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 11

Technical Corrections

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This document corrects an error in citation and changes an address in the FEMA Tort Claims regulation.

DATE: Effective February 15, 1983.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, D.C. 20472; telephone number (202) 287-0377.

Accordingly, Part 11 of Title 44, Code of Federal Regulations, is amended as follows:

1. Section 11.11(b) is amended as follows:

§ 11.11 Administrative claim; when presented; appropriate FEMA office.

* * * * *

(b) Remove "1725 I Street, NW"

* * * * *

2. Section 11.15(a) is amended as follows:

§ 11.15 Authority to adjust, determine, compromise and settle.

(a) Change "Title 18" to "Title 28".

* * * * *

Dated: February 1, 1983.

George Jett,

General Counsel.

[FR Doc. 83-3999 Filed 2-14-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5923]

Letter of Map Amendment for City Of Las Vegas, Nev.; 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 Las Vegas, Nevada. 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 Las Vegas, Nevada, 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: February 15, 1983.

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: 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. 325276, Panel 0020B, published on September 30, 1980, in 45 FR 69451, indicates that any structures to be located on an Amended Independent Square, a resubdivision of Charleston Heights Tract No. 51-1, recorded as Instrument No. 1109841 in Book 25, page 41 of Plats, Official Records Book No. 1150 of the Clark County, Nevada Records, are located within the Special Flood Hazard Area.

Map No. 325276, Panel 0020B is hereby corrected to reflect that any structures to be located on the above-mentioned property are not within the Special Flood Hazard Area identified on September 30, 1980. Any stuctures built on the property will be 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; Executive Order 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: January 25, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83-4002 Filed 2-14-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for Unincorporated Areas of Trempealeau County, Wis.; Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; Map amendment.

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 Tremplealeau County, Wisconsin. 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 Trempealeau County, Wisconsin, 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: February 15, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Anderson, Regional Director, Federal Emergency Management Agency, 300 South Wacker Drive, 24th Floor, Chicago, Illinois 60606, (312) 353-1500.

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), 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 555585A, Panel H&I 37 published on October 6, 1980, in 45 FR 66090 indicates that Part of the SW quarter of the SW quarter of Section 3, Township 19 North, Range 8 West, Trempealeau County, Wisconsin, consisting of 1.0 acre, and described as follows: Commencing at the 2-inch pipe monumenting the South Quarter corner of said Section 3, Township 19 North, Range 8 West; thence South 69°22′ West 1,100.00 feet; thence North 46°38′ West 509.5 feet to a point of intersection of the existing property line fence on the South line of said Section 3, Township 19 North, Range 8 West and the Westerly right-of-way line of U.S. Highway 53; thence South 88°35′ West along 460.10 feet along said South line to the point of beginning of this description: thence continuing South 88°35′ West along said South line 199.25 feet; thence North 20°22′ West 202.00 feet to the point of beginning is located within the Special Flood Hazard Area. The above described parcel is unrecorded as such being a portion of Part of the SW quarter of Section 3, Township 19 North, Range 8 West, recorded as document No. 178196, Volume 134 of Deeds, Pages 229 and 230, in the office of the Register of Deeds for Trempealeau County.

Map Number 555585A, Panel H&I is hereby corrected to reflect that the above-mentioned property is not located within the Special Flood Hazard Area identified on March 26, 1976. The property is located in Zone C.

Pursuant to the provisions of 5 USC 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 routing 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, Floodplains.

(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; Executive Order 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: January 21, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83-4003 Filed 2-14-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-6124]

Letter of Map Amendment for City of Allentown, Pennsylvania 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 Allentown, Pennsylvania. 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 Allentown, Pennsylvania, 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: January 27, 1982.

FOR FURTHER INFORMATION CONTACT: Brian R. Mrazik, Ph.D, 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(a):

Map No. FIRM 420585, Panel 0005A, published on January 27, 1982 in FR Vol. 47, No. 18, page 3782 and 3783, indicates that 234 Wabash Street, as described in

Deed Book Volume 1239, pages 1038 to 1040, of Lehigh County, Pennsylvania, is located within the Special Flood Hazard Area.

Map No. FIRM 420585, Panel 0005A, is hereby corrected to reflect that the existing structure located at 234 Wabash Street of the above-mentioned property is not within the Special Flood Hazard Area identified on June 1, 1982. This structure is in Zone C.

Pursuant to the provisions of 5 USC 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; Executive Order 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support.)

Issued: January 26, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83–4044 Filed 2–14–83; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 70

[Docket No. FEMA-6116]

Letter of Map Amendment for Somerset County, Maryland 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 Somerset County, Maryland. 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 Somerset County, Maryland, that certain property is not with 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: June 15, 1981.

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: 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(a):

Map No. FIRM 240061, Panel 0275A, published on January 26, 1981 in FR Vol. 46, No. 140 Page 37653 indicates that District 8, Block 17, Parcel 2 as described in Book Number 293, Folio 638 on the Land Records for Somerset County, Maryland, is located within the Special Flood Hazard Area.

Map No. FIRM 240061, Panel 0275A, is hereby corrected to reflect that the existing structure located in District 8, Block 17, Parcel 2 of the above-mentioned property is not within the Special Flood Hazard Area identified on June 15, 1981. This structure should be in Zone B.

Pursuant to the provisions of 5 USC 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 entites. 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 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; Executive Order 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support.)

Issued: February 4, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83–4045 Filed 2–14–83; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 70

[Docket No. FEMA-6354]

Letter of Map Amendment for Tehama 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 Tehama 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 Tehama 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: February 15, 1983.

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: 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(a):

Map No. 065064, Panel 0825B, published on July 13, 1982, in 47 FR 30294, indicates that any structures to be located on the property described as follows: Beginning at the Northeast Corner of Section 4, T23N, R2W, MDB&M, Tehama County, California, thence along said Section Line 1320 feet to the true point of beginning, in the centerline of Dakota Avenue, at the Southeast Quarter of the Northeast Quarter of Section 4, which is the Northwest Corner of the property. Thence east 400 feet, thence south 200 feet, thence west 400 feet, thence north 200 feet to the beginning point of the property, would be located within the Special Flood Hazard Area.

Map No. 065064, Panel 0825B is hereby corrected to reflect that any structures to be located on the above-mentioned lot are not within the Special Flood Hazard Area identified on July 13, 1982. These structures are 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 authroity has ben 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; Executive Order 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: January 25, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83-4046 Filed 2-14-83; 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 City of Scottsdale, Arizona, 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 Scottsdale, Arizona. 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 Scottsdale, Arizona, 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: February 15, 1983.

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: If a property owner was required to purchase flood insurance as a condition of Federal of 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. 045012A, Panel H & I 24, published on October 6, 1980, in 45 FR 66116, indicates that the existing structure located on Lot 366, Continental Villas East Unit Two Amended, according to Book 141 of Maps, page 22, in the Records of Maricopa County, Arizona, is located within the Special Flood Hazard Area.

Map No. 045012A, Panel H & I 24 is hereby corrected to reflect that the existing structures located on the above-mentioned lot are not within the Special Flood Hazard Area identified on January 9, 1976. 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 rules 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; Executive Order 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: January 25, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83-4047 Filed 2-14-83; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5923]

Letter of Map Amendment for City of Las Vegas, Nevada 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 Las Vegas, Nevada. 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 Las Vegas, Nevada, 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: February 15, 1983.

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: 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(a):

Map No. 325276, Panel 0020B, published on October 21, 1980, in 45 FR 69451, indicates that any structures to be located on Charleston Heights Tract No. 50-E3, recorded as Instrument No. 877021 in Book 22, page 48 of Plats, Official Records Book No. 918 of the Clark County, Nevada Records, are located within the Special Flood Hazard Area.

Map No. 325276, Panel 0020B is hereby corrected to reflect that any structures to be located on the above-mentioned property are not within the Special Flood Hazard Area identified on October 21, 1980. Any structures built on the property will be 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 USC 4001-4128; Executive Order 12127, 44 FR 1936; delegation of authority to Associate Director, State and Local Programs and Support)

Issued: January 25, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83-4048 Filed 2-14-83; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 30209-24]

Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule related notice; final fishery specifications.

SUMMARY: This notice announces the final 1983 management specifications for groundfish caught off the coasts of Washington, Oregon, and California. This notice identifies the acceptable biological catch, the optimum yield, and the distribution of the optimum yield among domestic and foreign fishing operations as required in the regulations implementing the Pacific Coast Groundfish Fishery Management Plan.

EFFECTIVE DATE: February 10, 1983.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, Director, Northwest Region, National Marine Fisheries Service, at 206-527-6150 or Alan Ford, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved by the Assistant Administrator for Fisheries, NOAA, on January 4, 1983. The FMP and its implementing regulations at 50 CFR Part 663 (47 FR 43974) state that management specifications for five species (Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, and widow rockfish) will be evaluated each calendar year, preliminary specifications will be published in the **Federal Register**, public comment will be requested and considered with the most recent scientific data, and final specifications for the succeeding calendar year will be published. Management specifications for each species are made for the acceptable biological catch (ABC), an estimate of the annual catch that could be taken without jeopardizing a resource's productivity, and the optimum yield (OY), based on socio-economic as well as biological factors. The OYs for these five species are the maximum amounts of fish (in round weight) that may be taken and retained or landed each year from the fishery conservation zone and the territorial sea off Washington, Oregon, and California.

The OY for each of these five species is comprised of several components that will be reassessed near July 1. The domestic annual harvest (DAH), which consists of estimates of domestic annual processing (DAP) and joint venture processing (JVP), is verified by surveys of the fishing industry in November and June. The total allowable level of foreign fishing (TALFF) is the remainder, if any, of OY after domestic needs, i.e. DAH, have been confirmed. A reserve is established for Pacific whiting, which is currently the only species for which foreign fishing is allowed, in order to accommodate any underestimates in DAH.

The OYs and ABCs may be changed as appropriate during the year under the conditions and procedures outlined in the regulations at 50 CFR 663.22.

The preliminary specifications for 1983 were reviewed and approved by the Pacific Fishery Management Council (Council) and received public comment at the Council's November 17-18, 1982, meeting in Monterey, CA. The preliminary management specifications were published in the **Federal Register** on December 29, 1982 (47 FR 57977) and public comment was requested through January 13, 1983. No comments were received.

One substantive and two technical changes have been made to the preliminary specifications. The first change is the reduction of ABC for Canary rockfish in the Vancouver area (Table 1) from 4,000 metric tons (mt) to 800 mt. More recent catch and effort data indicate that the earlier biomass estimate given in the FMP, and the preliminary ABC which was based on that biomass estimate, were too high. Given the economic value of the species, landings and catch per unit of effort have been inexplicably low, especially since the earlier biomass estimate was the largest for any species of rockfish in the Vancouver area. This species is obvioulsy not abundant in the area and is primarily caught incidentally to other target fisheries. ABC is therefore adjusted to 800 mt, the highest catch of record and the total Canary rockfish ABC is adjusted accordingly from 5,900 mt to 2,700 mt. Further adjustment may result from status of stock analyses expected in 1983. The second change is correction of a typographical error; in Table 1, the reference to footnote 2 next to the Pacific whiting OY is added. The third change, in footnote 3 of Table 1 and footnote 1 of Table 2, adds a parenthetical specification of the coordinates that define Monterey Bay for sablefish management.

The 1983 final management specifications are given in the following tables. A discussion of the specifications for each species or species complex is found in the **Federal Register** notice announcing the preliminary specifications, published on December 29, 1982 (47 FR 57977).

TABLE 1.—FINAL SPECIFICATIONS OF ABC FOR 1983

[In thousands of metric tons]

Species/areas	Vancouver	Columbia	Eureka	Monterey	Conception	Total
Groundfish:						
Lingcod	1.0	4.0	0.5	1.1	0.4	7.0
Pacific cod	2.2	0.9	(1)	(1)	(1)	3.1
Pacific whiting						(2) 175.5
Sablefish				[3] 2.5		[2] 13.4
Rockfish:						
Pacific ocean perch	0.6	0.95	(1)	(1)	(1)	1.55
Shortbelly						[2] 10.0
Widow	0.4	[4] 6.5	1.5	2.1	(5)	10.5
Other rockfish: [6]						
Bocaccio	(1)	(1)	(1)	4.1	2.0	6.1
Canary	0.8	1.3	0.6	(1)	(1)	2.7
Chilipepper	(1)	(1)	(1)	1.3	1.0	2.3
Yellowtail	1.4	1.5	0.3	(1)	(1)	3.2
Remaining rockfish	2.0	2.5	1.9	4.3	3.3	14.0
Flatfish:						
Dover sole	1.0	4.0	8.0	5.0	1.0	19.0
English sole	0.6	2.0	0.8	0.9	0.2	4.5
Petrale sole	0.6	1.1	0.5	0.8	0.2	3.2
Other flatfish (except arrowtooth flounder)	0.7	3.0	1.7	1.8	0.5	7.7
Other fish: [7]						
Jack mackerl						[8] 12.0
Others	3.0	7.0	2.0	2.0	2.0	16.0

[1] These species are not common or important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "other fish" category for the areas footnoted, and rockfish species are included in the "remaining rockfish" category for the areas footnoted only.
[2] Total all areas.
[3] Monterey Bay only (37°00′ to 36°30′ N. latitude).
[4] 1,600 metric tons for that portion of the Columbia subarea north of Cape Lookout (45°20′ N. latitude), and 4,900 metric tons for that portion of the Columbia subarea south of Cape Lookout.
[5] Insufficient data available to estimate ABC.
[6] "Other rockfish" means rockfish species, listed in § 663.2, which do not have a numerical OY.
[7] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, arrowtooth flounder, and, in the Eureka, Monterey, and Conception areas, Pacific cod. "Other fish" is part of the "other species" category listed in § 663.2.
[8] North of 39°00′ N. latitude.

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1983

[In thousands of metric tons]

Species	Total OY	DAH	DAP	JVP	Reserve	TALFF
Pacific whiting	175.5	105.0	5.0	100.0	35.0	35.5
Sablefish	[1] 17.4	17.4	17.4	[2] 0.0	0.0	[2] 0.0
Pacific ocean perch	[3] 1.55	1.55	1.55	[2] [4] 0.0	0.0	[2] 0.0
Shortbelly rockfish	10.0	10.0	6.0	[2] [4] 4.0	0.0	[2] [4] 0.0
Widow rockfish	10.5	10.5	10.5	[2] [4] 0.0	0.0	[2] [4] 0.0
Other species	(5)	(5)	(5)	[2] [6] 0.0	0.0	[2] [6] 0.0

[1] Of this 17,400 metric tons, 2,500 metric tons is from Monterey Bay (37°00′ to 36°30′ N. latitude). See § 663.21(a)(2).
[2] Incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173%, Pacific ocean perch 0.062%, rockfish excluding Pacific ocean perch 0.738%, flatfish 0.1%, jack mackerel 3.0%, and other species 0.5%. See footnotes 4 and 6 of this table. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture operations.
[3] Of this 1,550 metric tons, 600 metric tons is for the Vancouver subarea and 950 metric tons is for the Columbia subarea. Pacific ocean perch from other subareas are included in the OY for " other species." See § 663.21(a)(3).
[4] In foreign trawl and joint venture processing operations, shortbelly and widow rockfishes are included in the category "rockfishes excluding Pacific ocean perch."
[5] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 663. See § 663.2 for species listing.
[6] In foreign trawl and joint venture processing operations, "other species" means all species, including non-groundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species.

Classification

These final specifications for 1983 are made under the authority of 50 CFR 663.24. This action is taken in compliance with Executive Order 12291 and is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fish, Fisheries, Fishing.

Dated: February 10, 1983.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 83-4050 Filed 2-10-83; 4:52 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 32
Tuesday, February 15, 1983

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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A-REA Bulletins; Proposed Withdrawal of REA Specification for Direct Burial Telephone Cable (Air Core), PE-23

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend Appendix A-REA Bulletins by withdrawing Bulletin 345-14, REA Specification for Direct Burial Telephone Cable (Air Core); PE-23. As the product is no longer produced in significant quantities, and rural telecommunications systems are no longer using it, withdrawal of this specification will permit a reduction in government paperwork with virtually no impact on the private sector.

DATE: Public comments must be received by REA no later than April 18, 1983.

ADDRESS: Submit written comments to Joseph M. Flanigan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Harry M. Hutson, Chief, Outside Plant Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-8667. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 *et seq.*), REA proposes to amend Appendix A-REA Bulletins by withdrawing REA Bulletin 345-14, REA Specification for Direct Burial Telephone Cable (Air Core), PE-23. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs 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 or productivity and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act and is not subject to OMB Circular A-95 review. This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees.

All written submissions made pursuant to this action will be made available for public inspection during regular business hours, above address.

Background

While useful in the past, the product covered by this specification has little or no utility in today's modern telecommunication system because of the increasing use of filled cables in similar applications. As the product is no longer produced in significant quantities, and rural telecommunications systems are no longer using it, withdrawal of this specification will permit a reduction in government paperwork with virtually no impact on the private sector.

List of Subjects in 7 CFR Part 1701

Loan programs—communications, Telecommunications, Telephone.

Dated: February 3, 1983.

Jack Van Mark,
Acting Administrator.

[FR Doc. 83-3586 Filed 2-14-83; 8:45 am]
BILLING CODE 3410-15-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

Clarification of Regulations Respecting Payment of Interest on Deposits Situated Outside of the Continental United States

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rulemaking.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation ("Board", "FDIC") proposes to amend the provisions of FDIC's interest rate regulations with respect to payment of interest on deposits situated outside of the States of the United States and the District of Columbia. Under present regulations, deposits payable only at a bank's office which is located outside of the States of the United States and the District of Columbia are not subject to the provisions of FDIC's regulations regarding payment of interest on deposits including regulations establishing rate ceilings. This proposed amendment to FDIC's regulations would subject any deposit, even though by its terms payable solely outside of the United States and the District of Columbia, to interest rate ceilings where the deposit may be accessed either through an account maintained within the United States or the District of Columbia or through instruction for payment by any person who is *not* a resident of the extraterritorial sovereignty, possession or territory where the deposit account is maintained.

DATES: Comments should be submitted by March 2, 1983.

ADDRESSES: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550-17th Street NW., Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: F. Douglas Birdzell, Counsel or Barbara Messe', Attorney (202) 389-4171, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Section 329.0 of FDIC's regulations (12 CFR 329.0) provides that the provisions of Part 329 do not apply to any deposit in a bank located outside of, or payable *only at*, a bank's office which is located outside of the States of the United States and the District of Columbia. The provisions of Part 329, among other things, impose interest rate restrictions on deposits at banks supervised by FDIC. Recently, some question has arisen concerning the application of Part 329 to accounts payable only at overseas offices but integrated with domestic accounts.

The principal confusion has arisen where a deposit may be accessed within the United States through a domestic account even though the account accessed is established outside of the United States. For example, one insured State nonmember bank has offered and is still offering an account relationship structured essentially as follows: A savings account is established at a branch of the bank situated outside of the United States with funds being transferred automatically from the savings deposit when a check is drawn on a domestic checking account within the United States. It has been the staff position that this account is payable within the United States by virtue of the automatic transfer link between the savings account and checking account, and is hence subject to interest rate ceilings as well as other applicable provisions of Part 329. The bank in question is, however, asserting that the deposit is, by its terms, payble solely outside of the United States, and is therefore paying interest in excess of the maximum payable on passbook savings accounts.

In part to correct this situation, and in part to prevent further abuses based upon misconstructions of FDIC regulations, the FDIC proposes to amend § 329.0 of Part 329 of its regulations to provide that the accessing of a deposit by any means or device whatsoever by a check, draft or order drawn upon an account maintained at any domestic office of the same institution is ineligible for the extraterritorial exemption from interest rate ceilings. The FDIC further proposes to amend 329.0 to exclude from the extraterritorial exemption any account maintained outside of the United States which may be accessed from within the United States by instruction for payment (*e.g.* withdrawal slip, negotiable order of withdrawal) by a depositor whose residence is other than within the possession, territory or sovereignty outside of the 50 States of the United States and the District of Columbia where the deposit account is maintained.

The FDIC considers it appropriate to solicit public comment on this matter because current abuses of the regulation are, so far, limited to one bank and it is felt that the appropriate method of correction of the problem is by a rule of general applicability and legal effect, to not only correct the current situation, but also avoid similar situations arising in the future. The Board of Directors has established a 30-day period for public comment instead of the 60 days usually required by FDIC policy, because the public interest will be served by obtaining clarification and amplification of existing regulatory provisions at the earliest reasonable time.

In submitting comments on the proposal, commenters should be advised that the purpose of the extraterritorial exemption is to place foreign branches of domestic banks on competitive parity with foreign entities. It is not intended as a device to enable domestic customers of a bank having branches outside of the continental United States or the District of Columbia to achieve the benefit of preferred interest rate treatment on insured deposits.

The FDIC requests that in submitting comments particular attention should be devoted to certain questions regarding the scope of the proposal.

As drafted, the proposed amendment has two separate components. The first of these pertains to the situation where two accounts are maintained, one outside the 50 States of the United States and the District of Columbia (*i.e.*, the extraterritorial account) and the other within the 50 States of the United States or the District of Columbia (*i.e.*, the domestic account), the latter account accessing the former. The second component involves transactions within only one account (*i.e.*, the extraterritorial account which is accessed by order domestically).

The FDIC would be interested particularly in comments on whether the second component of the proposed restriction pertaining to single accounts accessed domestically is necessary and appropriate. We raise this issue in light of the fact that the bank would have to show that the account holder is a resident of the extraterritorial jurisdiction where the account is maintained in order to establish exemption from this section. The FDIC believes that implementation of this residence requirement for banks wishing to open high interest-paying extraterritorial deposit accounts will not impose additional information collection requests or paperwork requirements since it is presumed that all banks currntly maintain account records indicating the name and address of each depositor. Nevertheless, the FDIC would appreciate comments addressing any tangential administrative burdens imposed by the second component of this proposed amendment.

In addition, the FDIC wishes public comment on the propriety of allowing those accounts which have already been opened under existing programs to continue, and, if so, under what terms and conditions.

Regulatory Analyses

The Board hereby certifies that this action will not have a significant economic impact on a substantial number of small entities since only a very few banks have the potential to establish either this form of integrated account or any other account situated outside the United States but accessible domestically. Accordingly, the requirements of the Regulatory Flexibility Act for initial and final regulatory flexibility analyses are not applicable (5 U.S.C. § 605(b)). For the same reason, the Board has determined that it is not feasible to prepare cost-benefit analyses, including a small bank impact statement, which would otherwise be required by the FDIC's policy.

List of Subjects in 12 CFR Part 329

Banks, banking; Interests on deposits; Interest rates; State nonmember banks.

As discussed above, it is proposed that chapter III of title 12 of the Code of Federal Regulations be amended as follows:

PART 329—INTEREST ON DEPOSITS

1. The authority citation for Part 329 reads as follows:

Authority: Secs. 9 and 18, Pub. L. No. 797, 64 Stat. 881, 891 (12 U.S.C. 1819 and 1828); sec. 303, Pub. L. No. 96-221, 94 Stat. 146 (12 U.S.C. 1832(a)).

2. In § 329.0 footnote 1 remains unchanged and the text of the section is revised to read as follows:

§ 329.0 Scope.

The provisions of this Part 329 apply to the advertisement and payment of interest or dividends on deposits in insured nonmember banks.[1] The provisions of this Part 329 do not apply to any deposit in a bank outside of, or payable only at a bank's office which is located outside of, the States of the United States and the District of Columbia, unless the deposit is accessible either (1) directly or indirectly through any domestic office of a bank by any means or device whatsoever by a check, draft, or order drawn upon an account maintained at any domestic office of the same institution payable within the United States, or (2) by instruction for or request for payment by means of transfer of funds or credits to any such office for payment by a person whose residence is other than within the possession, territory or sovereignty outside of the 50 States of the United States and the District of Columbia where the deposit account is

maintained, irrespective of the location of the office or branch from which the transfer is made. Except for §§ 329.7, 329.8 and 329.10, and except as may be specifically stated otherwise in this Part 329, the provisions of this Part 329 do not apply to (a) mutual savings banks; (b) guaranty savings banks operating in the State of New Hampshire or stock savings banks in the States of Washington and Maine so long as such banks operate substantially under, and pursuant to the laws of their respective States pertaining to mutual savings banks and do not engage in commercial banking; or (c) corporations operating in the Commonwealth of Massachusetts as banking companies pursuant to the provisions of chapter 172A of the General Laws of the Commonwealth of Massachusetts.

By order of the Board of Directors, February 7, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 83-3997 Filed 2-14-83; 8:45 am]

BILLING CODE 6714-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Revision of Rules Relating to Reparation Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of Proposed Rulemaking and request for Public Comment.

SUMMARY: On January 12, 1983, Section 14(b) of the Commodity Exchange Act, 7 U.S.C. 18(b), was amended to authorize the Commodity Futures Trading Commission to "promulgate such rules, regulations and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section." The Commission is seeking public comment on changes in the existing reparations procedure to produce greater efficiency in the review and processing stages of a reparation proceeding and to expedite final disposition of reparation claims. The Commission is also seeking public comment on changes in the existing reparation rules which would streamline and simplify those regulations to make the reparation procedure more accessible and understandable to persons seeking relief for violations of the Act.

The Commission invites public comment on any suggested changes that would simplify the Reparation Rules and improve or expedite the reparations procedure, and it is particularly interested in public comment upon the specific changes contemplated by the Commission (as set forth under the subheading "Supplementary Information.").

DATE: Comments must be received on or before March 17, 1983.

ADDRESS: Interested persons should submit comments to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, Attention of the Secretariat. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Raisler, Deputy General Counsel, or Edward S. Geldermann, Attorney, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254-9880.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures, Reparations.

SUPPLEMENTARY INFORMATION: In a recent amendment to Section 14(b) of the Commodity Exchange Act, Congress authorized the Commission to:

> Promulgate such rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing, and service of pleadings or orders, * * * hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.

Futures Trading Act of 1982, Pub. L. No. 97-444, § 231, 96 Stat. 2294 (1983).[1]

Congress conferred this broad discretion upon the Commission "[t]o enable the Commission to simplify its rules of procedure regarding reparations and streamline the process." H.R. Rep. No. 565, 97th Cong., 2d Sess. 55 (1982). In addition, the amendments to Section 14(b) were intended to authorize the Commission "to use its best judgment in fashioning appropriate procedures that will be both fair and efficient." *Id.*

Pursuant to this grant of authority, the Commission has been considering, and invites public comment on, making changes to its reparation procedure in the following respects:

1. Instituting a Voluntary Decisional Procedure

The Commission is considering instituting a low-cost, voluntary decisional procedure, analogous to commercial arbitration, that will result in an expeditious final, unappealable decision. Parties could avail themselves of this procedure only by unanimous consent. All parties would have the opportunity to elect this procedure regardless of the amount of damages claimed. The procedure would require only a nominal filing fee (e.g., $25).

Under the voluntary decisional procedure, no oral hearing rights would be afforded to the parties. Proof in support of claims and defenses may be submitted by the parties only in documentary form. Where credibility issues are of cricual importance in the proceeding, the decisionmaker would be allowed to conduct oral examination of the parties in Washington, D.C., or by telephonic conference call. No examination by the parties will be permitted.

The decisionmaker would be expected to render a final, unappealable decision, not accompanied by a statement of findings and conclusions, awarding or denying the reparations claim. Awards could not exceed the amount of damages claimed unless the parties otherwise agreed. A party ordered to pay a reparation award under this procedure would not be assessed prejudgment interest or costs.

This procedure should result in a much faster final determination of reparations claims than would occur under the Commission's other procedures. It is expected that a claim under this procedure will be decided within 180 days of the filing of the complaint.

[1] Another major change to Section 14 of the Act made by Section 231 of the Futures Trading Act of 1982 was to limit the class of persons subject to claims in reparations to those who have registered under the Commodity Exchange Act. Prior to the enactment of the new legislation, reparations actions could be maintained against those who, although not registered under the Act, had engaged in activities requiring them to be registered. In so limiting the Commission's jurisdiction to those who are registered, Congress was aware that:

> [U]nregistered firms and individuals often file in bankruptcy, are destitute, or have disappeared by the time a claim is asserted, resulting in uncollectible reparations awards. In these circumstances, the reparations process actually operates as a disservice to those who have already been harmed, by apparently promising recovery, which as a practical matter cannot be had. Moreover, these types of claims have served to delay the entire reparations process, thereby deferring the completion of cases where recovery is possible.

H.R. Rep. No. 565, 97th Cong., 2d Sess. 56 (1982). *See also* S. Rep. No. 384, 97th Cong., 2d Sess. 48 (1982).

2. Summary Procedure: Granting the Decisionmaker Limited Authority To Conduct Oral Examination of the Parties and Raising the Monetary Ceiling for the Procedure

Under the Commission's existing summary proceedings rules, 17 CFR 12.91–12.95, oral hearings are not available and all proof in such proceedings must be supplied in documentary form. The Commission recognizes that even where credibility determinations are crucial to the outcome of such a case, the parties do not have an opportunity to present oral testimony, and the decisionmaker cannot observe the demeanor of those who would testify orally. Therefore, the Commission is considering granting authority to the decisionmaker to conduct examination of the parties in Washington, D.C., or by telephone conference call, in proceedings where issues of credibility are crucial. However, no examination by the parties or their counsel would be permitted.

The Commission also recognizes that proceedings conducted under its summary proceedings rules have generally been far less time-consuming than those in which oral hearings have been conducted. In the 1982 legislation, Congress removed the $5,000 ceiling for damage claims eligible for summary proceedings. 7 U.S.C. 18(b); S. Rep. No. 384, 97th Cong. 2d Sess. 48–49 (1982). To increase the number of cases that would qualify for this more expeditious procedure, the Commission is considering raising the monetary ceiling for this procedure so that cases in which the amount of damages claimed did not exceed $10,000 would be conducted according to such procedure.

Because the summary procedure allows for an appeal and requires the decisionmaker to prepare limited findings and conclusions, it is expected that the summary procedure would be more time-consuming than the voluntary decisional procedure (e.g., a party would expect an initial decision under the summary procedure 240 days after filing the complaint). It is also contemplated that the summary procedure would require a higher filing fee (e.g., $100) than required under the voluntary procedure to cover some of the increased cost of the procedure to the Commission.

3. Creation of the Position of "Proceedings Officer"

In proceedings where the parties have not elected the voluntary procedure, and the amount of damages claimed exceeds $10,000, the Commission is considering utilizing a "proceedings officer," which would be a new position to be occupied by an employee of the Commission, to remove some of the burdens on the Administrative Law Judges. The proceedings officer would be granted powers and duties somewhat analogous to those performed by United States magistrates in preparing the record of a proceeding for a hearing. In addition, a proceedings officer would be authorized to issue orders in default, orders of dismissal not affecting the merits of the parties' claims, orders pertaining to discovery, and orders to submit additional documentary proof as the proceedings officer deemed relevant or material. An Administrative Law Judge could reconsider any order of a proceedings officer.

The proceedings officer would also be authorized to make recommendations to the Administrative Law Judge concerning the need for an oral hearing to resolve credibility issues that were of critical importance in the proceeding. Where an oral hearing was not necessary, the proceedings officer would be authorized to make recommendations of findings of fact and conclusions of law concerning the parties' claims. The Administrative Law Judge would be free to accept or reject, in whole or in part, any such recommendations by the proceedings officer.

The Commission's goal for a case submitted for decision by an Administrative Law Judge is that an initial decision would be issued by the Judge within one year of the filing of the complaint. The additional expense of a proceeding conducted by an Administrative Law Judge would warrant a higher filing fee (e.g., $250).

4. Dismissal of Proceedings or Respondents Because of Pendency of Parallel Proceedings

The Commission is considering amendments to its reparation procedure which would effectuate a change in its policy with regard to reparation proceedings in which the claims made by customers are the subject of parallel proceedings before other tribunals. The current stated policy of the Commission is to stay such reparation proceedings pending a decision by an arbitration tribunal or court. *See* 41 FR 3994 (January 27, 1976). Under consideration would refuse to consider any reparatation complaint or claim which, when filed with the Commission, was the subject of a pending arbitration or civil court proceeding based on the same facts and against one or more of the same parties. This proposed change would not affect Commission Regulation 180.3(b)(3), 17 CFR 180.3(b)(3) (1982), so that a customer who is notified of his broker's intention to invoke arbitration under a pre-dispute agreement would still have forty-five days in which to elect to proceed in reparations.

The Commission also is considering a change of policy concerning respondents in reparations proceedings who are the subject of a receivership. Instead of staying such reparations proceedings, when a receivership commences prior to the filing of an initial decision on the merits of a reparation claim, and such receivership would result in the resolution of customer claims against the subjects of the receivership, the Commission would dismiss, without prejudice, from the reparation proceeding those respondents who were the subject of the receivership.

The Commission also is considering changes in policy with respect to respondents in reparations proceedings who are also debtors in bankruptcy proceedings. A respondent who became a debtor prior to the filing of an initial decision adjudicating the merits of a reparation claim would be dismissed, without prejudice, from a reparation proceeding. The Commission, however, is considering staying reparation proceedings as to a debtor in the case of an involuntary petition filed pursuant to 11 U.S.C. 303 of the Bankruptcy Code until the petition has been dismissed or relief is ordered. Also, the Commission is considering staying, as opposed to dismissing, any reparation claim which would be an exception to discharge in the bankruptcy proceeding. *See* 11 U.S.C. 523.

The Commission is aware that in certain situations dismissal of a claim from a reparation proceeding may create undue prejudice to a particular customer or respondent. It is contemplated that the rules implementing such a policy would allow any party an opportunity to seek a different result in a particular case.

The Commission is considering applying the dismissal policy under consideration, and the rules which would implement that policy, to all reparation claims which have yet to result in an initial decision on the merits of the Complaint. The Commission specifically requests public comment as to the proposed effect of such rules on reparation proceedings pending at the time any rules are adopted.

In view of the foregoing, the Commission hereby gives notice of its request for comment on the specific changes to its reparations procedure that are discussed above, as well as any other suggestions for simplifying its reparation rules and streamlining the reparations process. Persons interested

in submitting views or arguments on these matters should send their comments by [Thirty days from date of publication] to Ms. Jane K. Stuckey, Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

Issued in Washington, D.C. on February 9, 1983 by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-3874 Filed 2-14-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 83N-0011]

Whey Cheeses; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard of Identity

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the "Recommended International General Standard for Whey Cheeses" (Codex Standard No. A-7) and to comment on the desirability of and need for a U.S. standard of identity for these foods. The Codex standard was submitted to the United States for consideration of acceptance by the Food and Agriculture Organization/World Health Organization's Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, a subsidiary body of the Codex Alimentarius Commission. If the comments received do not support the need for a U.S. standard of identity for these foods, FDA will not propose a standard.

DATE: Comments by April 18, 1983.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane. Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Bureau of Foods (HFF-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. Codex standards for milk and milk products, including the general standard for whey cheeses, are developed by the FAO/WHO Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, a subsidiary body of the Codex Alimentarius Commission. Under the FAO/WHO program, a large number of food standards have been developed and submitted to governments for acceptance.

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: Full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country which concludes that it will not accept a Codex standard is requested to indicate the ways in which the requirements of the nonaccepting country differ from the recommended international standard. Member nations of the FAO/WHO Codex Alimentarius Commission are requested to notify the Technical Secretary, Committee on the Code of Principles Concerning Milk and Milk Products, Animal Production and Health Division, FAO, Rome, Italy, of their decision. Should a sufficient number of governments accept the standard, the Secretariat of the Committee will notify the Codex Alimentarius Commission and request the publication of the standard by the Codex Alimentarius Commission as a worldwide standard in light of acceptances received.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a U.S. standard under authority of section 401 of the act (21 U.S.C. 341), or to revise an existing standard to incorporate the provisions within the U.S. standard. At present, there is no U.S. standard of identity for whey cheeses.

Under the procedure prescribed in § 130.6(b)(3) (21 CFR 130.6(b)(3)), FDA is providing an opportunity for review and informal comment on (1) the desirability of and need for a U.S. standard of identity for whey cheeses, (2) the specific provisions of the Codex standard, (3) additional or different requirements that should be in the U.S. standard of identity, if established, and (4) any other pertinent points.

FDA advises that, if comments received do not support the need for a U.S. standard of identity for these foods, no standard will be proposed. If this decision is reached, the Technical Secretary for the Committee on the Code of Principles Concerning Milk and Milk Products will be informed that imported foods which comply with the requirements of the Codex standard may move freely in interstate commerce in this country, providing they comply with the applicable U.S. laws and regulations.

Because of the large number of countries, often with diverse food regulations, that are associated with the development of Codex standards, certain provisions of the Codex standards may not be consistent with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, certain basic labeling requirements such as declaration of the net quantity of contents, name of manufacturer, and country of origin, and other factors. These factors are not considered a part of U.S. food standards under section 401 of the act; rather, they are dealt with under the authority of other sections of the act.

The Codex general standard for whey cheeses specifies analytical methods by which compliance with certain provisions is to be determined. As stated in 21 CFR 2.19, FDA's policy is to employ the methods in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any U.S. standard of identity proposed pursuant to this notice.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry, academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meeting or discussions

that have been held with other groups.

List of Subjects in 21 CFR Part 133

Cheese; Food standards.

The Codex standard under consideration is as follows:

Recommended International General Standard for Whey Cheeses [Codex Standard No. A-7]

1. Scope

This standard does not apply to whey cheese made from sheep's milk whey

2. Definitions

2.1 Whey cheeses are the products obtained by the concentration of whey and the moulding of the concentrated whey, with or without the addition of milk and milk fat.

2.2 The dry matter of the whey cheeses includes the water of crystallization of lactose.

3. Essential Composition and Quality Factors

3.1 *Creamed whey cheese:*

3.1.1. *Minimum* milk fat content: 33% m/m calculated in the dry matter.

3.2 *Whey cheese:*

3.2.1 *Minimum* milk fat content: 10% m/m calculated in the dry matter.

3.3 *Skinned whey cheese:*

3.3.1 Maximum milkfat content: less than 10% m/m calculated in the dry matter.

4. Food Additives—Maximum level

4.1 Sorbic acid and its sodium and potassium salts: 1000 mg/kg calculated as sorbic acid.

5. Labelling

In addition to sections 1, 2, 4 and 6 of the General Standard for the Labelling of Prepackaged Foods (Ref. No. CAC/RS 1-1969), the following specific provisions apply:

5.1 *The Name of the Food:*

5.1.1 The name of the product shall be (a) "Creamed whey cheese" or "Full fat whey cheese" or (b) "Whey cheese" or (c) "Skimmed whey cheese", as appropriate.

5.1.2 Where milk, and/or whey from milk, other than cow's milk is used for the manufacture of the product or any part thereof, a word or words denoting the animal or animals from which the milk has been derived should be inserted immediately before or after the designation of the product except that no such insertion need be made if the consumer would not be misled by its omission.

5.1.3 The minimum fat content in the dry matter shall be declared on the label.

5.2 *Net Contents:*

5.2.1 The net contents shall be declared by weight in either the metric ("Systéme International" units) or avoirdupois or both systems of measurement as required by the country in which the food is sold.

5.3 *Name and Address:*

5.3.1 The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the food shall be declared.

5.4 *Country of Origin (Manufacture):*

5.4.1 The country of manufacture of the food shall be declared except that foods sold within the country of manufacture need not declare the country of manufacture.

6. Methods of Sampling and Analysis

6.1 Sampling: according to FAO/WEO Standard 3.1 "Sampling Methods for Milk and Milk Products".

(6.2 Determination of the fat content: according to FAO/WEO Standard 3.10 "Determination of the Fat Content of Whey Cheeses" (Method being developed).)

6.3 Determination of the dry matter: according to FAO/WEO Standard 3.11 "Determination of Dry Matter in Whey Cheese".

Interested persons may, on or before April 18, 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. Each comment should identify the title of the Codex standard and 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.

Any comments submitted in support of establishing a U.S. standard of identity for whey cheeses should be supported by appropriate information and data regarding impact on small businesses consistent with the provisions of the Regulatory Flexibility Act (Pub. L. 96-354). (Executive Order 12291 does not apply to regulations subject to the procedures for formal rulemaking in the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption.)

Dated: February 3, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-3974 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-236-81]

Credit for Increasing Research Activities; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to credit for increasing research activities.

DATES: The public hearing will be held on April 19, 1983, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by March 25, 1983.

ADDRESSES: 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 requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-236-81), 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 is proposed regulations under section 44F of the Internal Revenue Code of 1954. The proposed regulations appeared in the Federal Register for Friday, January 21, 1983 (48 FR 2790).

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 rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject by March 25, 1983.

Each speaker will be limited to 10 minutes for an 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,

Director, Legislation and Regulations Division.

[FR Doc. 83-4086 Filed 2-14-83; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 456]

Fiddletown Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms; Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in the Amador County, California, to be known as "Fiddletown." This proposal is in response to a petition from Fiddletown Wine Grape Growers in Fiddletown, California. The establishment of the "Fiddletown" viticultural area will allow wineries to label and advertise wines as originating in this specific grape-growing area and will aid the public by identifying wines originating in this area.

DATE: Written comments must be received by March 2, 1983.

ADDRESS: Send written comments to—Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Attention: Notice No. 456).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at the ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: James A. Hunt at (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) which allows the establishment of definite viticultural areas under 27 CFR Part 4—Labeling and Advertising of Wine. This final rule also allows the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 56692) which added 27 CFR Part 9—American Viticultural Areas—to provide for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e) of 27 CFR Part 4 defines a viticultural area as a delimited, grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Furthermore, § 4.25a(e)(2) requires any interested person to petition ATF for the establishment of a grape-growing region as a viticultural area and to provide the following information in support of the petitioned for viticultural area:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United Staters Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

Under the terms of 27 CFR 4.25a, ATF has received a petition from the Fiddletown Wine Grape Growers proposing an area about 45 miles east of Sacramento, California, in Amador County as a viticultural area to be known as "Fiddletown." Fiddletown is an agricultural area with 14 commercial wine grape growers farming 310 acres of vineyards in the 11,500 acre proposed viticultural area.

The petitioner furnished information that (a) the name of the viticultural area is locally and nationally known, (b) the proposed boundaries of the viticultural area are correct, and (c) the geographical features of the area have growing conditions which distinguish the proposed area from surrounding areas. The petitioner based these claims on the following:

(a) That the name "Fiddletown" is well known because of its inclusion in a story by Bret Harte. It is the name given to an Amador County community at its settlement during the 1850 gold rush. The town's name was changed to "Oleta" for a brief period and then restored to "Fiddletown" in 1920. Several nationally known wines have been distributed bearing the Fiddletown area name since the early 1970's.

(b) That the boundaries of the proposed "Fiddletown" viticultural area may be found on four U.S.G.S. 7.5 minute topographic quadrangle maps; "Fiddletown Quadrangle California," "Amador City Quadrangle California," "Aukum Quadrangle California" and "Pine Grove Quadrangle California."

(c) That the proposed area differs from the neighboring proposed Shenandoah Valley region because of its higher elevations of 1500 to about 2500 feet, colder nighttime temperatures and a higher rainfall of 30 to 40 inches per year. The area surrounding the north and east boundaries is above 2500 feet and for the most part, to rugged a terrain and too cold for growing grapes.

The summer daytime temperatures range from the eighties to one hundred degrees and nights are cool from breezes from the surrounding mountains. The grapes are grown without any irrigation and vines produce from 1½ to 3 tons per acre. Most of the grapes are grown on the southern and western rolling slopes of the hills in the area where the soil is a deep loam of decomposed granite. The soil of the proposed area are Sierra-Ahwahee and Sites series which are deep, moderately well drained and consist of loams or sandy loams.

Grapes in the proposed Fiddletown viticultural area will not reach the high sugar level of the neighboring proposed Shenandoah Valley and the total acidity is higher due to slower maturity caused by the higher elevation and cool nights.

(d) That the specific boundaries of the proposed viticultural area are based on features found on U.S.G.S. maps. (A copy of the U.S.G.S. maps with the boundaries prominently marked are on file with ATF.)

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this

proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. Since the benefits to be derived from using a new viticultural area appellation of origin are intangible, ATF cannot conclusively determine what the economic impact will be on the affected small entities in the area. However, from the information we currently have available on the proposed Fiddletown viticultural area, ATF does not feel that the use of this appellation of origin will have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not major since it will not result in—

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

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

Public Participation

ATF requests comments on this proposed viticultural area from all interested persons. Furthermore, while this document proposes certain boundaries for the Fiddletown viticultural area, comments concerning other possible boundaries for this proposed viticultural area will be considered.

The proposed area of 11,500 acres contains only 310 acres of vineyards. ATF requests comments on whether the petitioned area could be reduced in size.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments are subject to disclosure to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is also not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on the proposed viticultural area should submit his or her request, in writing, to the Director within the 30-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative Practice and Procedure, Viticultural Areas, Consumer Protection, and Wine.

Drafting Information

The principal author of this document is James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

Accordingly, under the authority contained in 27 U.S.C. 205, the Director proposes to amend 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The table of sections in 27 CFR Part 9, subpart C, is amended to add § 9.81 as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.81 Fiddletown.

2. Subpart C is amended by adding § 9.81 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.81 Fiddletown.

(a) *Name.* The name of the viticultural area described in this section is "Fiddletown."

(b) *Approved map.* The approved maps for the Fiddletown viticultural area are the U.S.G.S. maps entitled "Fiddletown Quadrangle California," "Amador City Quadrangle California," "Aukum Quadrangle California," and "Pine Grove Quadrangle California," 7.5 minute series (topographic), 1949–1962.

(c) *Boundaries.* The Fiddletown viticultural area is located in Amador County, California. The boundaries are as follows:

(1) From the beginning point at the north boundary where Fiddletown Shenandoah Road crosses Big Indian Creek in Section 28, Township 8 N, Range 11 E, proceed in a southwesterly direction following Big Indian Creek through the southeast corner of Section 29, crossing the northwest corner of Section 32 to where it meets Section 31;

(2) Then in a southerly direction follow the Section line between Sections 31 and 32, Township 8 N, Range 11 E, into Sections 5 and 6, 7 and 8, Township 7 N, Range 11 E, to where the Section line meets the South Fork of Dry Creek;

(3) Then following the South Fork of Dry Creek in an easterly direction crossing the lower portions of Sections 8, 9, 10, 11, 12 and into Township 8 N, Range 12 E, at Section 7 and across Section 7 to where it meets Section 8;

(4) Then north following the Section line between Sections 7 and 8, 5 and 6 into Township 8 N, Range 12 E, between Sections 31 and 32, to Big Indian Creek; and

(5) Then following Big Indian Creek in a northwesterly direction through Sections 31, 30, 25, 26 and 27, returning to the point of beginning.

Approved: February 9, 1983.

Stephen E. Higgins,

Acting Director.

[FR Doc. 83-4071 Filed 2-14-83; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket No. AH017VA; A-FRL-2280-7]

Proposed Approval of Revisions to Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce and Resources has submitted several revisions to the Virginia State Implementation Plan to the Environmental Protection Agency including a proposed relaxation of the sulfur dioxide (SO_2) emission standards. This Notice proposes approval of the (SO_2) revision as submitted.

The proposed revision allows an increase in the sulfur dioxide emissions from fuel burning sources in State Region VII (the Virginia portion of the National Capital Interstate Air Quality Control Region) in that § 4.51(b) of the Virginia Regulations is being changed to allow an increase in the sulfur content of coal from .75% to 1%. Approval of this revision will provide for greater use of available coal, rather than oil, while having a minimal impact on air quality.

DATE: Comments must be submitted on or before March 17, 1983.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs & Energy Branch (3AW13), Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: Ms. Eileen M. Glen

Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, Virginia 23219, Attn: Mr. John M. Daniel, Jr.,

All comments on the proposed revision submitted within 30 days of publication of this Notice will be considered and should be directed to Mr. James E. Sydnor, Chief of the West Virginia, Virginia Section at the EPA, Region III address. Please reference the EPA Docket Number found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen M. Glen at the Region III address stated above or telephone 215–597–8187.

SUPPLEMENTARY INFORMATION: On September 20, 1978, the Commonwealth of Virginia submitted numerous revisions to its State Implementation Plan (SIP) EPA has acted on all but one of the proposed revisions. The remaining revision deals with a change to Section 4.51(b) of Virginia's regulations and provides for an increase in the allowable sulfur dioxide emissions from coal burning sources in State Region VII (the Virginia portion of the National Capital Interstate Air Quality Control Region). This Notice will address only the revision to Section 4.51(b).

On May 21, 1980, EPA published a Proposed Rulemaking (45 FR 34018, 34019) stating that the Administrator proposed to disapprove the proposed revision because the Commonwealth had failed to submit a control strategy demonstration, as required by 40 CFR 51.13, showing the effect of this emissions relaxation on sulfur dioxide levels in the National Capital Interstate AQCR.

As a result of the Proposed Rulemaking, EPA received three comments regarding Section 4.51(b). First, a letter from the Commonwealth of Virginia dated June 16, 1980, stated that the required control strategy demonstration was being prepared and would be submitted by October 1, 1980. Second, a letter from Potomac Electric Power Company dated June 20, 1980, urged EPA to suspend action rather than disapprove the proposed revision pending submittal of the required control strategy demonstration. Third, a letter dated June 20, 1980 from the District of Columbia's Bureau of Air and Water Quality stated that they had not received 30-day notice of the public hearings as required by 40 CFR 512.5(b)(5); that they concurred with the proposed disapproval of Section 4.51(b); and that should a control strategy demonstration be submitted, such material must be subject to a public comment period before being approved by EPA.

As a result of these comments and the Commonwealth's agreement to submit a control strategy demonstration, EPA published a final rulemaking (45 FR 66789) on October 8, 1980, suspending further action on this revision pending receipt of the demonstration.

After several meetings and conversations with representatives of the Commonwealth, it was decided that EPA would perform the necessary modeling analysis and control strategy demonstration.

Region III performed the modeling study and the MPTER model was used, with one year of meteorological data, for all grids except Quantico and Pepco Potomac River. Since only one year of data was used, the highest rather than second-highest estimated concentrations were used to determine if the NAAQS will be attained. Five major receptor grids were analyzed, one for each of the five major sources affected by the SIP revision. Each grid was a polar grid having 180 receptors and specifically designed to analyze the maximum impacts from the specific source, although emissions from all fourteen sources were included in each model run. Because of the very different nature of the Vepco Possum Point turbines, a sixth grid was developed specifically for those emissions.

The following soures were modeled at 1.0% sulfur fuel (as per the proposed SIP revision) and maximum capacity: Pepco Potomac River, Virginia Heat and Refrigeration, Department of Correction, Vepco Possum Point, and the Quantico Marine Base.

Other sources were modeled at actual 1979 emissions: Pepco Chalk Point, Pepco Dickerson, Pepco Benning Point, Pepco Buzzard Point, Capital Power, GSA West, GSA Central, Walter Reed, and Howard University.

The ISCST and Valley models were used to estimate air quality impacts in the vicinity of the Quantico Marine Base. The ISCST model predicts air quality at a specified array of receptor locations around the source. Aerodynamic downwash is accounted for by that model and was accounted for in this modeling analysis. The Valley model was also applied because the effluent plume may intercept terrain. The standard Valley screening assumptions were made: F stability, 2.5 m/sec wind speed, six hours of persistent meteorological conditions.

In the ISCST modeling analysis, five years of meteorological data were used (1967–1971 Quantico surface data and Sterling Dulles upper air data). Using five years of data permits the use of the highest second-high predicted SO_2 concentrations for determining compliance with NAAQS.

In the Spring of 1981, the Potomac Electric Power Company requested a temporary variance to burn 2% sulfur coal during the coal strike. Although the strike ended before the Commonwealth processed the variance, Pepco had performed a control strategy demonstration in support of the variance request and this modeling analysis was submitted to EPA on March 30, 1982 in support of the proposed SO_2 relaxation.

As the Commonwealth had already reviewed and approved this analysis, EPA decided not to perform a second in-depth analysis for the Pepco grid but simply to review the material on-hand and determine its acceptability.

Pepco applied the EPA CRSTER model. EPA reviewed the model inputs and found the modeling approach to be consistent with EPA guidelines.

The modeling analyses are discussed in detail in the Technical Support Document. These in-depth modeling analyses have demonstrated that no violation of the sulfur dioxide NAAQS will result from the approval of the proposed SIP revision. A table summarizing the modeling results is presented below.

Modeling Summary

The following table summarizes the results of the modeling analyses of the impact of the proposed SO_2 revision.

MODELING SUMMARY

Grids	Total predicted concentrations ($\mu g/m^3$)		
	3-hour	24-hour	Annual
Quantico	737.0	319.0	74.0
PEPCO	503.0	216.2	39.3
VA Heat & Ref	642.0	240.0	80.0
Dept. of Correction	590.0	170.0	43.0
VEPCO Possum Point	(1)	(1)	(1)

[1] Included in the Quantico Grid.

Notes.—1. SO_2 Standards: 3 hour, 1300 μg/m³; 24 hour, 365 μg/m³; annual, 80 μg/m³.
2. Background concentrations are included in the above figures.

Public Comments

Of the three comments received during the initial public comment period and summarized above, only the comment from the District requires response at this time. The District's comment that it did not receive 30 days notice of the Public Hearing does not appear valid. The Commonwealth submitted a Certification of Public Hearing dated August 15, 1978, stating that letters were sent on or about June 12, 1978 to the District of Columbia, Maryland, Tennessee, and the Environmental Protection Agency notifying them of the proposed SIP revision and the Public Hearing dates. Also, the hearings were advertised in the *Richmond Times—Dispatch* on June 14, 1978 and in at least one paper of general circulation in Virginia's seven Air Quality Control Regions. Public Hearings were held on July 14, 1978 in Richmond and on July 17, 1978 in each of the other six AQCR's.

EPA does agree that a 30-day comment period, as requested by the District, on the control strategy demonstration is necessary and is hereby publishing a proposed approval notice and requesting comments.

Conclusion

The Regional Administrator's decision to propose approval of the revision is based on a determination that the amendment meets the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

The public is invited to submit, to the address stated above, comments on whether the proposed amendment to the commonwealth of Virginia's air pollution control regulations should be approved as a revision to the Commonwealth's SIP.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals under Section 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 Fed. Reg. 8709 (January 27, 1981). The action, if promulgated, constitutes a SIP approval under Sections 110 and 172 within the terms of the January 27, 1981 certification.

List of Subject in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(42 U.S.C. 7401–7642)

Dated: December 30, 1982.

Stephen R. Wassersug,

Acting Regional Administrator.

[FR Doc. 83-4008 Filed 2-14-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-8-FRL 2267-6]

Designation of Areas for Air Quality Planning Purposes; Section 107—Attainment Status Designations—Colorado

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: As requested by the Governor of Colorado, EPA is proposing to change the attainment status of the Denver 3–C Urbanized Area. This area is to be redesignated to "Better than National Standards" for the primary and secondary nitrogen dioxide standards. This redesignation would allow the construction of major stationary sources of nitrogen oxides.

DATES: Comments due March 17, 1983.

ADDRESSES: Written comments should be addressed to: Robert R. DeSpain, Chief, Air Programs Branch, Environmetnal Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following office:

Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Dale Wells, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837–3763.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, **Federal Register** (43 CFR 81.306) the Denver 3–C Urbanized Area was designated as not attaining the standards for nitrogen dioxide (NO_2). On September 9, 1982, public hearings were held by the Colorado Air Quality Control Commission to consider the redesignation of the Denver 3–C Urbanized Area, which consists of the City and County of Denver, and portions of Adams, Arapahoe, Boulder, Douglas, and Jefferson Counties. On October 11, 1982, the Governor requested the Regional Administrator of EPA, Region VIII, to redesignate the area.

The area is presently designated as nonattainment for the NO_2 ambient air quality standards. This designation was based on measured data for the year 1977. Four additional years of ambient air quality data have been collected (1978–1981) with no violations of the NO_2 standards, 100 micrograms per cubic meter annual average for both the primary and secondary standards.

It is EPA's policy to redesignate areas to "Better than National Standards" with eight quarters of monitored data showing no violations. Therefore, EPA is proposing to so reclassify the Denver 3–C Urbanized Area.

The primary effect of this document would be that major sources of nitrogen oxides such as natural gas pumping stations would not have to demonstrate in order to obtain a permit to construct that there are offsetting emission reductions greater than their estimated emissions. Such sources would still have to demonstrate that the National Ambient Air Quality Standards would not be violated.

Under 5 U.S.C. 605b, I certify that SIP approvals/redesignations do 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 81

Air pollution, National parks, Wilderness areas.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407).)

Dated: November 29, 1982.

Steven J. Durham,

Regional Administrator.

[FR Doc. 83-3637 Filed 2-14-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 123

[W-4-FRL 2306-8]

State Program Requirements; North Carolina; Proposed Modification of NPDES Memorandum of Agreement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed policy.

SUMMARY: The State of North Carolina and the Environmental Protection Agency (EPA), Region IV have executed a proposed modification to the Memorandum of Agreement (MOA),

which establishes the North Carolina/EPA terms, responsibilities and procedures in which North Carolina will administer its National Pollutant discharge Elimination System (NPDES) permit program. This MOA will replace the MOA dated October 19, 1975, which was approved by the Administrator as part of the State's NPDES permit program. This notice provides for a comment period on the proposed MOA modification. Under EPA regulations, the Administrator shall approve or disapprove the MOA after taking into consideration all comments received.

DATE: Comments must be submitted on or before March 17, 1983. Interested persons may also request a public hearing on the MOA. If there is significant public interest expressed in the comments received to have a public hearing, EPA will schedule such a hearing. In the event EPA determines to hold a public hearing on the MOA, prior notice of the date, time, and location of such hearing will be given. All requests for a public hearing on the MOA must be submitted on or before March 17, 1983.

ADDRESSES: Copies of the Memorandum of Agreement are available from:

U.S. EPA, Region IV, Water Management Division, 345 Courtland Street NE., Atlanta, Georgia 30365, Attn: Earline Hanson

North Carolina Department of Natural Resources and Community Development, Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611, Attn: Forrest Westall or Bill Mills.

A single copy will be provided to each request without charge. All comments and hearing requests should be directed to: Earline Hanson, U.S. EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Earline Hanson, U.S. EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 881-4316.

SUPPLEMENTARY INFORMATION: On October 19, 1975, the Administrator of EPA (Administrator) authorized North Carolina to administer its own NPDES permit program. The approval was made pursuant to Section 402(b) of the Federal Water Pollution Control Act. On the same date the Administrator executed the North Carolina/EPA MOA which set forth the responsibilities of both North Carolina and EPA concerning the State's administration of the NPDES program. The MOA also provided for periodic modification as agreed in writing by EPA and North Carolina to simplify and refine the procedures contained in the MOA. In accordance with this mandate, North Carolina and EPA Region IV have executed an MOA which replaces the MOA dated October 19, 1975. The MOA contains provisions describing the general purpose of the MOA, the State/EPA principles upon which North Carolina's administration of the NPDES program is premised, procedures for permit review and issuance including issuance of permits to federal facilities, procedures for compliance monitoring and enforcement, pretreatment requirements, requirements for reporting and transmittal of information and procedures for EPA review of North Carolina administration of the NPDES program.

The Administrator's decision to approve or disapprove the MOA will be based on the comments received, including those submitted at any public hearing, and a determination of whether the MOA meets the applicable requirements of 40 CFR Part 123. According to 40 CFR 123.6, the MOA does not become effective until approved by the Administrator.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12292.

Dated: February 2, 1983

Charles R. Jeter,

Regional Administrator, EPA Region IV.

[FR Doc. 83-3900 Filed 2-14-83; 8:45 am]

BILLING CODE 6560-50-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Part 51-4

Workshop Responsibilities

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Rule.

SUMMARY: The Committee proposes to amend its regulations (a) to require workshops to comply with the applicable compensation and employment standards prescribed by the Secretary of Labor and (b) to clarify the requirement that workshops must pay to their central nonprofit agencies the fee specified in § 51-3.5.

DATES: Comments must be received on or before April 15, 1983.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: Workshops which produce commodities or provide services to the Government under the Committee's program are subject to a number of laws relating to the pay and working conditions of their blind and other severely handicapped employees. The primary laws involved are the Fair Labor Standards Act, the Service Contract Act, and the Walsh-Healey Public Contracts Act. In each case, the Secretary of Labor has issued regulations implementing those Acts. Those regulations set certain compensation and employment standards which the workshops are required to meet.

The Committee's regulations currently require participating workshops to "comply with the applicable occupational health and safety standards prescribed by the Secretary of Labor" (41 CFR 51-4.3.(a)(5)). It is proposed to include the applicable compensation and employment standards prescribed by the Secretary of Labor as well. This will permit the Committee to take appropriate action within its authority when a workshop does not comply with compensation or employment standards set by the Secretary of Labor. For example, the continued failure of a workshop to pay its blind or other severely handicapped workers in accordance with the standards prescribed by the Secretary of Labor could result in Committee's limiting or withdrawing that workshop's authorization to produce commodities or provide services to the Government under the Committee's program.

The second change would add a new paragraph (a)(8) in § 51-4.3 "Responsibilities" to clarify the requirement that workshops must pay to their central nonprofit agency the fee specified in § 51-3.4 "Fees".

Since 1938 when the Wagner-O' Day Act was enacted, workshops participating in the program have returned to their central nonprofit agency a percentage of the value of their sales to the Government under the program. Those fees have provided the primary means of financial support for the central nonprofit agencies so that they could assist all interested workshops in expanding participation in the program. Historically, one of the basic concepts of this program has been that of self-help. The fees which the workshops have returned to their central nonprofit agencies is the practical implementation of that concept.

A workshop currently participating in the Committee's program has questioned

the requirement to pay the fees since such payment is not listed as one of the responsibilities of each participating workshop under § 51–4.3. In the past, the Committee considered that the wording of § 51–3.2 established the requirement that participating workshops must pay the fee to its central nonprofit agency. The proposed change would clarify this point, remove any questions regarding the meaning and intent of § 51–3.5, and be consistent with the practice in this regard for over 40 years.

I certify that this is not a major rule under Executive Order 12291 and would not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 41 CFR Part 51–4

Government procurement.

PART 51–4—[AMENDED]

It is proposed to amend 41 CFR 51–4 as follows:

1. Section § 51–4.3 is amended by revising (a)(5) and adding a new paragraph (a)(8) to read:

§ 51–4.3 Responsibilities

(a) * * *

(5) Comply with the applicable compensation, employment, and occupational health and safety standards prescribed by the Secretary of Labor.

* * * * *

(8) Upon receipt of payment by the Government for commodities produced or services provided under the Act, pay to the central nonprofit agency the fee specified by § 51–3.5.

* * * * *

(41 U.S.C. 46–48c)

C. W. Fletcher,

Executive Director.

[FR Doc. 83–3787 Filed 2–14–83; 8:45 am]

BILLING CODE 6820–33–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 64, 65, and 70

[Docket No. 6486]

National Flood Insurance Program; Elimination of Documents; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule, correction.

SUMMARY: On January 31, 1983 at 48 FR 4296–4298 the Federal Emergency Management Agency (FEMA) published proposed changes to 44 CFR Parts 64, 65 and 70 which would allow for the elimination of certain documents in the **Federal Register** that are currently published for the National Flood Insurance Program. The last paragraph of the January 31 publication, which begins "(b) In addition, FEMA. . . .", is incorrectly shown as paragraph (b) of § 70.7. The last paragraph of the January 31 publication correctly belongs in the Supplementary Information section of the notice. Paragraph (b) of § 70.7 is not being changed.

Also, the January 31 publication indicates that changes to the format of Part 67 notices and rules will be made. In fact, these changes have occurred and are in effect.

Dated: February 7, 1983.

George Jett,

General Counsel.

[FR Doc. 83–3998 Filed 2–14–83; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA-6243]

National Flood Insurance Program; Proposed Flood Elevation Determinations

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 3381 on January 25, 1982. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate map for the City of Keene, Cheshire County, New Hampshire.

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 Keene, Cheshire County, New Hampshire, previoulsy published at 47 FR 3381 on January 25, 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 amended 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
Ashuelot River	Upstream of State Route 12A.	*481
Beaver Brook	Upstream of Stone Dam.	*791
	Approximately 5,000' upstream of Stone Dam.	*793

(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; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: January 28, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83–4001 Filed 2–14–83; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 22, 23, 74, 78, 81, 87, 90, 94 and 150

[General Docket 82-334; FCC 83-2]

Spectrum Utilization Policy for Fixed and Mobile Services in the 947 MHz-40 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission proposes to establish a spectrum utilization policy for the fixed and mobile services in the 947 MHz–40 GHz band. The Commission recognizes that the lower portion of this band is heavily used while the upper portion has remained largely undeveloped. In addition, the Commission in its Direct Broadcasting Satellite proceeding (General Docket 80–603 July 21, 1982; 47 FR 31555) indicated the need for allocating spectrum to accommodate displaced microwave operations in the 12.2–12.7 GHz band. A review of the regulations and technical standards for use of this spectrum is therefore necessary to encourage future development and satisfy growing spectrum demands. The proposed standards will result in more efficient use of the spectrum allocated to the fixed and mobile services and facilities the reaccommodation of private fixed service users who may be displaced from the 12 GHz band.

DATES: Comments must be received on or before March 25, 1983.

Reply comments must be received on or before April 25, 1983.

ADDRESS: Comments may be addressed to the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Donald Draper Campbell, Office of Science and Technology, Spectrum Management Division, Telephone: (202) 653–8177.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 21

Point-to-point microwave.

47 CFR Part 22

Mobile radio service.

47 CFR Part 23

Radio.

47 CFR Part 74

Radio.

47 CFR Part 78

Communications equipment radio.

47 CFR Part 81

Communications equipment radio.

47 CFR Part 87

Communications equipment.

47 CFR Part 90

Mobile services.

47 CFR Part 94

Radio.

47 CFR Part 150

Technical standards.

Adopted: January 13, 1983.

Released: January 13, 1983.

Introduction

1. On 23 June 1982, the Commission adopted a *Notice of Inquiry (NOI)* in this proceeding to examine spectrum allocations and technical standards for certain fixed and mobile services' bands between 17.7 and 40 GHz. The intention was to determine whether existing regulations are appropriate for current and expected uses of the bands.[1] In the *NOI*, the Commission pointed out that the existing standards for use of fixed service bands between 17.7 and 40 GHz had been largely determined in the early 1970's and that since then the bands have remained largely undeveloped. The Commission solicited comments on a number of topics in order to develop guidelines for the future use of the bands which would encourage development in a rational and efficient manner. These topics included spectrum needs of foreseen applications by the fixed and mobile and other allocated radio services, appropriate technical standards, and licensing considerations.

2. On the same day, the Commission adopted a *Report and Order (Order)* authorizing Direct Broadcasting Satellite (DBS) services in the 12.2–12.7 GHz band (12 GHz band).[2] In that *Order*, the Commission instructed the staff to prepare a Notice of Proposed Rule Making to make spectrum available for private fixed service users who might be displaced from the 12 GHz band by the DBS services. The Commission noted that many of the 12 GHz users could be accommodated at 18 GHz or higher frequencies. While the Commission recognized that many 12 GHz fixed operations could be supported at frequencies of 18 GHz and higher, it tentatively identified other spectrum that could also support some of them. In particular, it noted that the bands at 6525–6875 MHz and 12.7–13.25 GHz might be used with significantly lower costs than those associated with the 18 GHz band.

3. When it instructed the staff to develop a rulemaking, the Commission stated that it intended to include a considerable amount of sharing or pooling of microwave spectrum among the broadcast auxiliary, cable television relay (CARS) and private operational fixed (POFS) services. Among other issues that it intended to address were (1) the need for minimum path length criteria for the use of each of the available bands, (2) bandwidth requirements and appropriate channeling plans for the bands, (3) feasibility of continued private fixed use of the 12.2–12.7 GHz band on a secondary basis, and (4) coordination and loading practices needed to ensure efficient use of the spectrum.[3]

4. In this *Notice of Proposed Rule Making (Notice)* we are expanding the scope of this docket to include consideration of certain bands between 947 MHz and 40 GHz and we are proposing specific rules and policies for fixed and mobile services use of certain frequencies in that portion of the spectrum. These proposals are designed first of all to provide for reaccommodation of fixed service users who may be displaced from the 12 GHz band. In particular, this *Notice* addresses the use of the 6525–6875 MHz (6 GHz band), 12.7–13.25 GHz (13 GHz band) and 17.7–19.7 GHz (18 GHz band) bands which had been identified for supporting displaced 12 GHz users. This includes consideration of issues and proposals concerning technical standards and coordination procedures. The proposals would lead to a considerable amount of sharing among various types of fixed service users (i.e., broadcast auxiliary, CARS, POFS). By opening up lower bands through interservice sharing, opportunities are created to reaccommodate displaced 12 GHz users at less cost than would occur if they were restricted to move only to bands at 18 GHz and higher. Some reaccommodation of 12 GHz private users can be accomplished in the lower bands with existing standards through case-by-case waivers of restricting rules. Additionally, we believe it would be beneficial in the long term to develop a utilization policy which takes into account the affected fixed and mobile microwave users. This policy should embrace, as much as possible, standards

[1] *Notice of Inquiry* (FCC 82–286) in General Docket 82–334, released 9 July 1982.

[2] *Report and Order* (FCC 82–285) in General Docket 80–603, released 14 July 1982.

[3] *Order*, paragraphs 62–65.

based on electromagnetic compatibility of particular uses in order to make efficient use of the spectrum.

5. The Commission has stated its intention to take action by September 1983 on a Report and Order which would allocate additional frequencies for displaced 12 GHz private fixed service licensees and to perform reaccommodation at minimal cost to them. Although this is our immediate objective, the proposals in this *Notice* go beyond the immediate task of reaccommodating the displaced licensees to also address changes which we expect may yield more efficient use of the identified spectrum. Accordingly, it should not be expected that the September 1983 Report and Order will resolve all of the issues and proposals contained in this *Notice*. In September we will resolve the matter of reaccommodating the 12 GHz fixed service licensees within the proposals given here. The comments received in response to this *Notice* will be considered along with those received in response to the *NOI* in developing a broad spectrum utilization plan for the identified fixed and mobile bands between 947 MHz and 40 GHz.

Background

6. The fixed and mobile services allocation policy of the Commission has been to allocate according to the type of regulatory entity (i.e., common carrier, private, cable, broadcast) that will be using the spectrum, rather than according to the technical characteristics of the transmitted signal (e.g., voice, data, video—long-haul, short-haul) that the spectrum is to support. This policy has led to a situation where, for a variety of reasons, a full complement of options is not available to some licensees. For example, broadcast and common carrier entities currently have access to more bands than do private and cable entities (cable licensees have access to only one band, 12.7–13.2 GHz). Users in the private business radio service are not permitted to use spectrum at 2 and 6 GHz which is otherwise allocated for private use. Further, channeling plans provide wider bandwidths for the private services only in bands above 6 GHz. If there is a need for wider channels, private licensees must use the higher bands regardless of the communications path length to be covered. Thus some licensees are required to use spectrum which may not best suit their communications requirements.

7. We believe that application of a rational set of technical standards based on electromagnetic compatibility along with relaxation of eligibility restrictions for users of certain bands will correct some of the problems noted above. The technical standards would be based on a consideration of suitable channel capacities, path lengths and traffic types for each band. Once these are applied, prospective licensees, regardless of entity type, would have access to the spectrum best suited to serve their needs. This "interservice" sharing would be carried out by providing for coordination of prospective and existing communications systems like that done now between some private and common carrier services. This approach, including the shared use of the undeveloped 18 GHz band, will also facilitate the reaccommodation of private fixed service users who may be displaced from the 12 GHz band.

8. The following discussions refers to proposed standards given in Appendix A. The proposals are based on the policy of greater "interservice" sharing and provide for pooling of the microwave spectrum between broadcast auxiliary, CARS, and POFS in certain bands between 2 GHz and 31 GHz. Currently, common carriers are permitted limited access to the broadcast auxiliary bands at 2, 6 and 13 GHz to provide support service to broadcasters. (Common carriers also have coequal access to the 13.20–13.25 GHz band.) This provision would be continued. Spectrum above 18 GHz is already co-equally shared by common carrier and private entities; these proposals would also provide for its use by broadcast and cable entities. The eligibility requirements would remain in Parts 21, 22, 74, 78, 81, 87 and 90, while the technical standards could be moved to a new rule part, *Part 150—Microwave Technical Standards for the Fixed and Mobile Services in Certain Bands*. This would ensure consistency between the various users. Alternatively, the proposed standards could be incorporated into each of the existing rule parts (i.e., 21, 22, 74, 78, 81, 87, 90 and 94). Comments regarding this alternative are requested. Recognizing that different protection ratios exist according to the technical characteristics of transmitted signals (i.e., voice, data and video), we have proposed restrictions on the use of certain bands (e.g., emissions in certain bands are restricted to FM video). We believe that these are necessary to insure efficient use; however, comments are requested on this policy.

Discussion and Proposals

Reaccommodation Procedure

9. The Commission is considering giving some form of priority to those who must vacate the 12 GHz band. There are several ways in which this could be done. One would be to place a freeze on applications in particular bands, or band segments, until the 12 GHz users are reaccommodated. Another would be to give preferential treatment to displaced 12 GHz users in the licensing process. Of course, both of these examples have drawbacks. The freeze would be disruptive and might impede the delivery of services to the public. Preferential treatment could result in a disservice to other applicants and might lead to difficult settlements involving a complicated web of legal, technical and economic issues. On the other hand, some time-limited preference may be necessary to assure that present 12 GHz licensees will be accommodated. We seek comments on these suggestions as well as any other proposals or suggestions which may assist the Commission in resolving this issue.

Business Radio Service

10. Currently, the Commission's Rules (§ 94.61) prohibit access to both the 1850–1990 and 6525–6875 MHz by entitles whose basis for eligibility is established under § 90.75(a)(1), i.e., commercial activity in the business radio service. Thus, if this class of entity requires bandwidths in excess of 1.6 MHz, frequencies at 12.2 GHz and above must be used.

10. This restriction was originally imposed because of concern that business users would occupy too much of these bands. It appears to be artificial and inappropriate today and may encourage inefficient use of the spectrum. Therefore, we propose to delete this restriction. This will enable greater use of the bands and provide spectrum for some of the business operations which may be removed from the 12 GHz band.

1990–2110 GHz Band

12. This band is allocated co-equally to the fixed and mobile services and is used by broadcast entities for the transmission of frequency modulated video (i.e., 525 line NTSC video plus accompanying FM audio signal) (C3F) [4]

[4] The emission designators adopted at the 1979 WARC have not yet been included in the present Commission Rules and Regulations. Although the new emission designators are used in this item, they are subject to change. We intend to address the matter of implementing the new emission designators in a separate proceeding in the future.

between studio and transmitter sites (fixed operations), between remote locations and broadcast transmitter sites (mobile operations) as provided for by §§ 74.601–74.683. This 120 megahertz is channellized into one 18 MHz and six 17 MHz channels, however; no antenna standards are imposed.

13. We propose (1) that the current channelling plan be revised to accommodate three 20 MHz channel pairs, which would also be available on an unpaired basis if required, (2) that antenna standards which would parallel those imposed on the 1850–1990 MHz band be imposed, (3) that emissions be restricted to frequency modulated video, (4) that minimum path length requirements be imposed, and (5) that private, cable, and broadcast entities be permitted equal access to this band. Common carrier entities would also have access, but only to provide service to cable and broadcast entities. Stations licensed under current technical standards would be permitted to continue operating on a primary basis for 10 years, after which they would be secondary to stations employing the then current technical standards.

14. These proposed changes would permit private and other entities operating video distribution systems to make use of the lower frequencies and where long circuit distances are involved, to minimize the number of radio links and discrete frequencies employed. The minimum path length requirement would insure that systems covering short circuit distances would use higher, more appropriate, frequencies. By imposing antenna standards, greater use of this spectrum can be made since the probability of interference due to excessive sidelobe radiation is reduced.

6525–6875 MHz Band

15. This band is allocated to the fixed service and is used by private entities for the transmission of frequency modulated, frequency division modulated voice signals (F3E) and amplitude and frequency modulated digital signals (FID and AID) between fixed points. This 350 megahertz is channellized to accommodate thirty-four 10 MHz channels pair and fifteen 5 MHz channel pairs. One of the 10 MHz channel pairs, 6535/6575 MHz, is only available for emergency restoration, maintenance, bypass, or other temporary fixed purposes; such uses are authorized on a non-interference basis to other fixed operations in this band.

16. In this *Notice*, we propose to (1) create six 20 MHz channel pairs by combining 10 MHz channel pairs together, (2) create five 1 MHz channel pairs from the bank segments 6525–6530 MHz and 6870–6875 MHz, (3) revise the 5 MHz channelling pairing plan, (4) impose minimum path length requirements, and (5) permit access by all entities except common carriers. The transmission of video signals (C3F/F3E or F3F) would not be permitted.

17. By creating the 20 MHz channel pairs, the option of using 6 GHz spectrum will also be available to long-haul wide-band users. Since the band segments 6525–6530 and 6870–6875 MHz have been used primarily as guard bands, we feel that better use could be made of this valuable spectrum. Thus we are proposing to divide it into 1 MHz channels which would be useful to support the interconnection of radio broadcast studios and transmitters. Since many of the current 5 MHz channels would have the same center frequency as the proposed new 20 MHz channels, the impact of the 20 MHz channel plan would be reduced. Therefore, we are proposing to rearrange the 5 MHz channeling plan.

6875–7125 MHz Band

18. This band is allocated co-equally to the fixed and mobile services and is used by broadcast entities for the transmission of frequency modulated television signals between studio and transmitter sites (fixed operations), and between remote locations and broadcast transmitter sites (mobile operations) as provided for by §§ 74.601–74.682. This 250 megahertz is channellized into ten 25 MHz channels; however, no antenna standards are imposed.

19. We propose (1) that the current channelling plan be revised to provide pairing of these channels into five 25 MHz channel pairs which would also be available on an unpaired basis if required, (2) that antenna standards which would parallel those imposed on the 6525–6875 MHz band be imposed, (3) that emissions be restricted to frequency modulated video, (4) that minimum path length requirements be imposed, and (5) that private, cable, and broadcast entities be permitted equal access to this band. Common carrier entities would also have access, but only to provide service to broadcast entitie. Stations licensed under present technical standards would be permitted to continue operating on a primary basis for 10 years after which they would be secondary to stations employing the then current technical standards

20. These proposed changes would permit private and other entities operating video distribution systems to make use of the lower frequencies and where long circuit distances are involved, to minimize the number of radio links and discrete frequencies employed. The minimum path length requirement would insure that systems covering short circuit distances would use higher, more appropriate, frequencies. By imposing antenna standards, greater use of this spectrum can be made since the probability of interference due to excessive sidelobe radiation is reduced.

12.7–13.25 GHz Band

21. This band is allocated to the fixed and mobile services and is used by broadcast and cable entities for the transmission of frequency (12.5 and 25.0 MHz channels) and amplitude (6.0 MHz channels) modulated television signals between studio and transmitter sites, between cable head ends (fixed operations), and between remote locations and broadcast transmitter sites and cable ends (mobile operations) as provided for by §§ 74.601–74.682, § 78.18 and §§ 78.101–78.115. This 350 megahertz is channellized into 6.0, 12.5 and 25.0 MHz channels.

22. We propose (1) that the current channelling plan be revised to provide pairing of these channels into 12.5 and 25 MHz channel pairs, which would also be available on an unpaired basis if required, (2) that minimum path length requirements be imposed, and (3) that private, cable and broadcast entities be permitted equal access to this band. Common carrier entities would also have access, but would be restricted in the band segment 12.7–13.2 GHz to provide service to broadcast entitie only. Stations licensed under present technical standards would be permitted to continue operating on a primary basis for 10 years after which they would be secondary to stations employing the then current technical standards. The current 6 MHz channelling plan would be expanded upward to 13.25. GHz.

23. These proposed changes would permit the existing private fixed occupants of the 12.2–12.7 GHz band to relocate to an adjacent band which may be less costly than moving upward or downward in the spectrum. The number of 6 MHz channels for C3F/F3E emission would also be expanded. The minimum path length requirement would insure that systems covering short circuit distances would use higher, more appropriate, frequencies. Minimum path lengths maybe pose a problem to cable entities who use the 12.7–13.2 GHz band for point-to-multipoint service, since due to power splitting some paths may be less than the minimum path length criterion. Comments on this are requested.

17.7–19.7 GHz Band

24. This band is allocated to the fixed service as well as several space services and is used by private (18.36–19.04 GHz) and common carrier (17.7–19.7 GHz) entities for the transmisssion of frequency modulated digital signals (FID and AID) between fixed points. There is mimimum use being made of this band at present; less than a dozen 220 MHz common carrier assignments, and something less than a hundred 20 MHz private assignments now exist.

25. In Docket 79–188, the Commission proposed to (1) establish a formal (5, 10, and 20 MHz) channelling plan for the band segment 18.46–18.94 GHz, (2) make this spectrum available to private, common carrier, and broadcast entities on a co-equal basis, (3) restrict use to point-to-point applications, and (4) prescribe minimum antenna standards. Also in this same proceeding, the Commission proposed to provide for the operation of digital point-to-multipoint systems (DTS) by common carrier and private entities in the band segments 18.36–18.46 and 18.94.19.04 GHz. The proposals did not, however, address several other issues, such as spectrum for cable entities and minimum path length requirements.[5]

26. The *NOI* in this proceeding addressed a variety of technical standards issues and included consideration of the 17.7–19.7 GHz band (a summary of the comments and reply comments to the *NOI* is given at Appendix C).

27. Comments in this proceeding and in Docket 79–188 indicated that there is a need to provide an expanded choice of channelling plans (6, 10/20 and 40/80 MHz) to support video, voice and data requirements, and to expand eligibility access to this band. Because Docket 79–188 is concerned mainly with Digital Termination Systems, it is addressing only some of these issues; we are proposing to address them further in this proceeding.

28. In this *Notice* we propose to (1) provide a 6 MHz channelling plan (18.18–18.36 and 19.52–19.70 GHz), (2) provide a 40/80 MHz channelling plan (17.7–18.18 and 19.04–19.52 GHz), (3) revise the pairing scheme for the 220 MHz channel pairs, (4) establish minimum path length requirement for all point-to-point 18 GHz spectrum, i.e., 17.7–18.36, 18.46–18.94 and 19.04–19.7 GHz, and (5) permit all entities access to this 18 GHz spectrum. These proposals respond to the comments received in the Docket 79–188 and/or the *NOI* which we think are in the public interest and should be implemented.

31.0–31.2 GHz Band

29. A number of comments received in the *NOI* proceeding stated that there is a need for a spectrum allocation which would have greatly reduced licensing/coordination requirements. Suggested frequency bands were the 22 and 31 GHz bands. Both the Government and non-Government sectors have equal access to the 22 GHz band for fixed and mobile operations, while only the non-Government sector has access for fixed and mobile operations in the 31 GHz band (31.0–31.2 GHz).[6] At present there are no licensed operations in the 31 GHz band. The Commission feels that this 31 GHz spectrum may be the most appropriate place to locate fixed and mobile stations whose operation is only regulated with respect to certain technical operating standards. The coordination procedure would not be applied here; however, it appears prudent to maintain a licensing procedure which would serve to register operations with the Commission.

30. In this *Notice* we propose to (1) provide a 12.5/25.0 MHz channelling plan (this proposal assumes expansion of the band to 31.0–31.3 GHz), (2) place no restriction on the type of emission which may be employed, and (3) permit all entities, including individuals, access to this spectrum. No interference protection will be afforded to fixed and mobile stations operating in this band. We believe the proposed restrictions on power and antenna characteristics at this frequency range will make the probability of harmful interference very small. We ask specific comments on whether the standards for use of this spectrum could be relaxed further while still providing for uncoordinated operations.

Other Technical Standards

31. The principal underlying thought of this proceeding and the rule changes proposed in this *Notice* is that use of the microwave radio spectrum should be governed by type of use rather than type of licensee. Along this line, we are proposing to establish technical criteria (i.e., channel loading, path length, type of emission, etc.) which will determine which bands or band segments may be used by the various entities seeking access to the radio spectrum. However, we recognize that because of special patterns of use in bands now allocated to common carriers, it may not be feasible to extend the underlying principles of this proceeding to those bands.

32. To assure efficient use of the affected spectrum, we are proposing to establish minimum path length requirements. The methodology used to derive the minimum path length values contained in the proposals is presented and discussed in Appendix B. This is based on a straightforward analysis of available equipment and propagation characteristics at the bands of interest. Appendix B also lists the assumptions used in the analysis. We request comments on the applicability of this methodology and the derived values.

33. The proposed Rules call for the use of high performance antennas in congested areas. In 1976, the Commission developed a methodology for computing congested areas for private entity use of the microwave spectrum. In 1981, the American Petroleum Institute (API) petitioned the Commission seeking revision on this methodology and proposed a new methodology. This request was addressed in Docket 82–373; however, no definitive action was taken.[7] Because that proceeding dealt exclusively with the private use of microwave spectrum, and since this proceeding deals with the shared use of the spectrum, we are re-addressing the methodology for computing congested areas. The Commission would like comments on whether the 1976 methodology, the proposed API methodology or some other methodology should be employed in determining congested areas. (A copy of the API petition has been placed in the Docket file of this proceeding).

Coordination Procedures

34. The Commission's Rules currently require that an applicant assure the Commissioin that his proposed use of a frequency will not adversely affect existing users. Each of the four groups (private, cable, broadcast and common carrier) has a coordination procedure designed to accomplish this task to varying degrees. Although existing coordination procedures appear to have worked successfully, we believe it may be desirable to experiment with a single coordination procedure for all services sharing the affected bands. The procedure could address the several fixed and mobile bands in slightly different ways, e.g., mobile versus fixed, 6 MHz versus 25 MHz.

35. For this purpose, we propose to merge parts of both the private (§ 94.63)

[5] *Further NPRM* (FCC 81–388) adopted 4 August 1981, 46 FR 34635, 14 Sep.

[6] If the proposals in the 1979 WARC domestic implementation proceeding (*NPRM*; FCC 82–507, adopted 18 November 1982) are adopted, then the band could be expanded to include 31.2–31.3 GHz.

[7] *Report and Order* (FCC 82–541) adopted 8 December 1982.

and common carrier (§ 21.100) procedures. The common carrier procedure lays out the administrative process of coordination but leaves the technical issues to the applicants and licensees to work out. The private procedure prescribes a less detailed administrative process, but details the technical standards which must be followed, since there are many more private than common carrier entities.

36. It appears wise to adopt the administrative procedures currently used by the common carriers along with the private entities' concept of specifying interference criteria for calculating interference in the Commission's Rules and apply this combined procedure to all—private, common carrier, broadcast and cable entities sharing the affected bands. This proposed procedure lays out in detail how coordination is to take place, thus placing all applicants and licensees on an equal footing and will assure efficient use of the spectrum.

37. It would appear that the interference criteria should address both dynamic and static, short, medium and long-haul telecommunications systems. In the past, the common carrier criteria were based on the need to handle dynamic circuits (i.e., circuits in a switched telecommunications network), while the private criteria were based on the need to handle static circuits (i.e., circuits not in a switched telecommunications network). Comments are solicited as to where such interference criteria should be maintained—should they be in the Commission's Rules, or left for industry to develop and administer as needed? If the criteria should be contained in the Rules, what values should be adopted, taking into consideration the above discussion (see § 150.2(b) at Appendix A)?

38. The coordination process also requires the consideration of all potential sources of interference. Currently, the coordination zone is a circle with a radius of about 200 km. Since propagation at the higher bands is greatly reduced, it would appear appropriate to have a coordination radius which is more frequency dependent. Comments on this concept and applicable values are requested (see § 150.(a)(12) at Appendix A).

Channel Loading

39. Given the amount of spectrum available for fixed and mobile use and the numbers of competing users it seems prudent to prescribe a minimum channel loading criteria to assure efficient use of the spectrum. It does not seem reasonable to permit a 20 MHz F3F (FM-FDM) channel to be loaded to only 24 voice channels when it is capable of supporting over 1200 voice channels, nor does it seem reasonable to permit a 20 MHz F8D (FM-digital) channel to be loaded to only 1.554 Mb/s when it can be loaded to over 40 Mb/s.[8] Comments are requested as to the appropriateness of having a loading requirement and if so applicable values (see § 150.3(d) at Appendix A).

Regulatory Flexibility Initial Analysis

I. Reason for Action

40. When broadcasting satellites are operational at 1.2–12.7 GHz, it will be necessary to remove private fixed service operations, which cause interference to the satellite service. In order to reaccommodate them, spectrum must be provided in other frequency bands. Further, it is important to provide guidelines which will increase spectrum utilization efficiency in order to accommodate increased use by the fixed and mobile service.

II. The Objective

41. The Commission proposes to change its Rules pertaining to the fixed and mobile services' use of certain bands in order to provide additional frequencies for private fixed service licensees, while also ensuring that allocated spectrum is used in an efficient manner by the fixed service licensees. Furthermore, the Commission intends to accomplish this objective at the lowest feasible cost to present users of the 12.2–12.7 GHz band in particular and also in other bands.

III. Legal Basis

42. Legal action as proposed is in furtherance of Sections 1, 4(i), 303(c) and (r), and 403 of the Communications Act of 1934, as amended.

IV. Description, Number and Potential Impact of Small Entities Affected

43. At this time, we cannot estimate the number or types of Commission licensees that are small entities and would be affected by this action. The proposals of this instant *Notice* are broad in scope and have the potential to affect all entities, both large and small, that use of manufacture equipment for microwave services. It is anticipated that these new rules will affect entities, both large and small, in a generally positive manner as they will provide increased opportunities for both manufactures and users of the spectrum to use, and to develop new applications for use of, the radio frequency spectrum. In general, these proposed rules remove restrictions now placed on use of fixed service spectrum. It is our opinion that most prospective fixed service users, as well as private fixed service users who may be displaced from the 12 GHz band, will be affected positively by these new rules. There will be some costs to existing users to implement the proposed rules; however, these will be minimized by providing a transition period. We anticipate no severely adverse impact from these proposals.

V. Reporting, Recordkeeping and other Compliance Requirements

44. According to our proposed rules, fixed service applicants will have to coordinate their proposed use of the spectrum with existing users and will have to submit application to the Commission for operating authority. These provisions already apply and we believe they are in keeping with the requirements of the service.

VI. Federal Rules which Overlap, Duplicate, or Conflict With These Rules

45. To our knowledge, there are no other Federal rules that overlap, duplicate or conflict with those contained in the *Notice*.

VII. Specific Alternatives Consistent With the Objective Which Would Minimize Impact on Small Entities

46. We do not believe that there is any alternative to our proposals which would have less effect on small entities.

VIII. Comments

47. The Commission seeks public comments on the initial regulatory flexibility analysis. We particularly seek comment from small entities (i.e., small business, small organizations, and small jurisdictions under the Regulatory Flexibility Act) as to how the proposed rules will affect them and how they might be modified to impose less stringent requirements on small entities and still adequately protect the public interest.

Administrative

48. The Commission has stated its intention to take action by September 1983 on a final *Report and Order* allocating additional frequencies for displaced 12 GHz private fixed service licensees. Since appropriate rule changes will affect frequency bands now used by licensees of other services, it is important that the proposed

[8] In the near future even higher efficiencies may be attainable, see: Heiichi Yamamoto "Advanced 16-QAM techniques for digital microwave radio", *IEEE Communications Magazine*, vol. 19, no. 3 (May 1981); and Paul R. Hartmann, "Digital radio technology: present and future", *IEEE Communications Magazine*, vol. 19, no. 4 (July 1981).

changes be notified to the public as soon as possible. Furthermore, due to the urgency of allocating alternative spectrum 12 GHz for private fixed users, the Commission does not expect to grant extensions of the filing dates in this proceeding. Accordingly pursuant to the authority contained in section 4(i) and 303 of the Communications Act of 1934, as amended, a *Notice of Proposed Rule Making* is adopted in the above captioned matter.

49. Interested parties may file comments on or before 25 March 1983 and reply comments on or before 25 April 1983. Section 1.419 of the Commission's Rules requires that an original and five copies of all statements, briefs or comments be filed in response to this *Notice*. All relevant and timely filed comments and reply comments in this proceeding will be considered. The Commission may also take into account other information before it, in addition to the specific comments and reply comments elicited by this *Notice of Proposed Rule Making*. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

50. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. 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 for the proceeding must prepare a written summary of that presentation; on the day of 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. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available for the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

51. It is ordered, that a copy of this Notice shall be sent to the Chief Council for Advocacy of the Small Business Administration.

52. The point of contact on this matter is Donald Draper Campbell (202) 653-8177.

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

Federal Communications Commission.[9]

William J. Tricarico,

Secretary.

Appendix A

Chapter I of Title 47 of the *Code of Federal Regulations* is amended by adding a new Subchapter E to include a New Part 150 to read as follows:

SUBCHAPTER E—OTHER SERVICES

PART 150—MICROWAVE TECHNICAL STANDARDS FOR THE FIXED AND MOBILE SERVICES IN CERTAIN BANDS

Sec.

150.1 Applicability.
150.2 Frequency coordination.
150.3 Frequencies.
150.4 Frequency tolerance.
150.5 Power limitations.
150.6 Emission limitations.
150.7 Antenna limitations.
150.8 Pointing restrictions in bands coequally shared with the Fixed-Satellite Service (earth-to-space).

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

§ 150.1 Applicability.

(a) The Technical standards of this part shall govern, effective 1 October 1983, the issuance of authorizations for new stations and changes in authorized stations requiring license modifications for the frequencies specified in paragraph (b) of this section. Stations authorized prior to this date not meeting the provisions of this part may continue to be authorized for operation under previous technical standards until 1 October 1993.

(b) Frequencies in the following bands are available for assignment to fixed and mobile stations:

1.99–2.110 GHz
6.525–7.125 GHz
12.7–13.25 GHz
17.7–19.7 GHz
31.0–31.2 GHz

§ 150.2 Frequency coordination.

(a) All applicants for fixed and mobile facilities using the bands listed in § 150.1(b) shall, before filing an application or a major amendment to a pending application coordinate the proposed frequency usage with existing users in the area and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposals in terms of frequency interference. In coordinating frequency usage with stations in the fixed-satellite service, applicants shall also comply with the requirements of § 21.706(c)–(d). In engineering a system or modification thereto, the applicant shall by appropriate studies and analyses select sites, transmitters, receivers, antennas and frequencies that will avoid harmful interference to other users. All applicants, permittees and licensees shall cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. The applicant shall identify in the application all entities with which the technical proposal was coordinated. In the event that technical problems are not resolved or if the existing licensee, permittee or applicant does not respond to coordination efforts within 30 days after notification, an explanation shall be submitted with the application. The following guidelines are applicable to the coordination procedure.

(1) Coordination involves two separate elements: Notification and response. Both or either may be oral or in written form. To be acceptable for filing, all applications and major technical amendments must certify that coordination, including response, has been completed. The name of the party with which coordination was accomplished must be specified.

(2) Notification must include relevant technical details of the proposal. At minimum, this should include, as applicable, the following:

Transmitting station name.
Transmitting station location (coordinates plus geographic location, i.e., city, county, state).
Frequencies and polarizations to be added or changed.

[9] Commissioner Quello concurring in the result. Commissioner Jones concurring and issuing a statement. Commissioner Dawson issuing a statements.

Transmitting equipment manufacturer and model number, its stability, actual output power, and emission designator.
Transmitting antenna manufacturer and model number, and if required, a typical pattern and maximum gain.
Transmitting antenna height above ground level and ground elevation above mean sea level.
Receiving station name.
Receiving station location (coordinates plus geographic location, i.e., city, county, state).
Receiving equipment manufacturer and model number.
Receiving antenna manufacturer and model number and, if required, a typical pattern and maximum gain.
Receiving antenna height above ground level and ground elevation above mean sea level.
Path azimuth and distance.

(3) For transmitters employing digital modulation techniques (i.e., F1D, A1D, etc.), the notification should clearly identify the type of modulation. Upon request, additional details of operating characteristics of equipment shall be furnished.

(4) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Every reasonable effort should be made by licensees and applicants to eliminate all problems and conflicts. If no response to notification is received within 30 days, the applicant will be deemed to have made reasonable efforts to coordinate and may file his application without a response.

(5) The 30-day notification period is calculated from the date of receipt by the licensee and applicants being notified. If notification is by mail, this date may be ascertained by: (i) The return receipt on certified mail, (ii) the enclosure of a card to be dated and returned by the recipient, or (iii) a conservative estimate of the time required for the mail to reach its destination. In the latter case, the estimated date when the 30-day period would expire should be stated in the notification.

(6) All technical problems that come to light during coordination must be resolved unless a statement is included with the application to the effect that the applicant is unable or unwilling to resolve the conflict and briefly the reason therefore.

(7) Where a number of technical changes becomes necessary for a system during the course of coordination, an attempt should be made to minimize the number of separate notifications for these changes. Where the changes are incorporated into the completely revised notice, the items that were changed from the previous notice should be identified.

(8) Where subsequent changes are not numerous or complex, the licensee or applicant receiving the changed notification should make an effort to respond in less than 30 days. Where the notifying applicant believes a shorter response time is reasonable and appropriate, it may be helpful for him to so indicate in the notice and perhaps suggest a response date.

(9) If it is determined that a subsequent change would have no impact on some licensees or applicants receiving the original notification, it is not necessary to coordinate the change with such licensees or applicants. However, these licensees or applicants should be advised of the change and of the opinion that coordination is not required for said change.

(10) Applicants should keep other licensees and applicants with which they are coordinating advised of deletions or changes in plans for facilities previously coordinated. If applications have not been filed 6 months after coordination was completed, licensees and other applicants may assume, unless notified otherwise, that such frequency use is no longer desired.

(11) In the event interference problems develop between licensed facilities, the last facility authorized (i.e., the last radio link), that is a party to the interference, will be required to resolve the problem. The provisions of this paragraph apply to both coordinated and uncoordinated frequencies.

(12) Coordination radius.

Frequency band (GHz)	Distance (km)

(b) The interference protection criteria for fixed and mobile stations are as follows:

Frequency band (MHz)	Interfered with type of emission	Maximum cumulative allowable interference level per exposure from all sources					
		Dynamic systems			Static systems		
		Short-haul	Medium-haul	Long-haul	Short-haul	Medium-haul	Long-haul

(c) Applying the Criteria: (1) The criteria specified in paragraphs (b) and (c) of this section shall be applied by calculating the ratio on dB between the desired (carrier) signal and the undesired (interfering) signal (C/I ratio) appearing at the input to the receiver under investigation (victim receiver).

(2) The development of the C/I ratios from the criteria and methods employed to perform path calculations shall follow generally acceptable good engineering practices. Procedures as may be developed by the Electronics Industries Association (EIA), the Institute of Electrical and Electronics Engineers (IEEE), the American National Standards Institute (ANSI) or any other recognized authority will be acceptable to the Commission.

(3) Parties may agree to accept higher interference levels for particular exposures without prejudice to their position vis-a-vis other applicants or licensees.

§ 150.3 Frequencies.

(a) Use of bands listed in § 150.1(b) by stations in the fixed and mobile services shall be in accordance with the provisions of paragraphs (b), (c), and (d) of this section.

(b) *Channelling plan.* Unless otherwise provided for mobile operations are secondary to fixed operations; however, in the band segments 1.99–2.11 GHz and 31.0–31.3 GHz, fixed and mobile operations are co-equal.

Transmit (or receiver) (MHz)	Receive (or transmit) (MHz)	Maximum channel bandwidth (kHz)	Permitted classes of emission	Class of station	Notes
1,999.0	n/a	18,000	F3F	FX FB MO	1
2,000.0	2,060.0	20,000	F3F	FX FB MO	2

Transmit (or receiver) (MHz)	Receive (or transmit) (MHz)	Maximum channel bandwidth (kHz)	Permitted classes of emission	Class of station	Notes
2,016.5	n/a	17,000	F3F	FX FB MO	2
2,033.5	n/a	17,000	F3F	FX FB MO	1
2,020.0	2,080.0	20,000	F3F	FX FB MO	2
2,040.0	2,100.0	20,000	F3F	FX FB MO	2
2,050.5	n/a	17,000	F3F	FX FB MO	1
2,067.5	n/a	17,000	F3F	FX FB MO	1
2,084.5	n/a	17,000	F3F	FX FB MO	1
2,101.5	n/a	17,000	F3F	FX FB MO	1
6,525.5	6,870.5	1,000	F8E F1D A1D	FX	2, 4
6,526.5	6,871.5	1,000	F8E F1D A1D	FX	2, 4
6,527.5	6,872.5	1,000	F8E F1D A1D	FX	2, 4
6,528.5	6,873.5	1,000	F8E F1D A1D	FX	2, 4
6,529.5	6,874.5	1,000	F8E F1D A1D	FX	2, 4
6,532.5	n/a	5,000	F8E A8E F1D A1D	FX	3, 4
6,535.0	6,575.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,537.6	n/a	5,000	F8E A8E F1D A1D	FX	3, 4
6,542.5	6,712.5	5,000	F8E A8E F1D A1D	FX	3, 4
6,545.0	6,715.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,547.5	6,717.5	5,000	F8E A8E F1D A1D	FX	3, 4
6,552.5	6,722.5	5,000	F8E A8E F1D A1D	FX	3, 4
6,555.0	6,725.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,557.5	6,727.5	5,000	F8E A8E F1D A1D	FX	3, 4
6,562.5	6,732.5	5,000	F8E A8E F1D A1D	FX	3, 4
6,565.0	6,735.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,567.5	6,737.5	5,000	F8E A8E F1D A1D	FX	3, 4
6,572.5	n/a	5,000	F8E A8E F1D A1D	FX	3, 4
6,577.5	n/a	5,000	F8E A8E F1D A1D	FX	3, 4
6,582.5	6,742.5	5,000	F8E A8E F1D A1D	FX	3, 4
6,585.0	6,745.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,587.5	6,747.5	5,000	F8E A8E F1D A1D	FX	3, 4
6,595.0	6,755.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,600.0	6,760.0	20,000	F8E A8E F1D A1D	FX	2, 3, 4
6,605.0	6,765.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,615.0	6,775.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,620.0	6,780.0	20,000	F8E A8E F1D A1D	FX	2, 3, 4
6,625.0	6,785.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,635.0	6,795.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,640.0	6,800.0	20,000	F8E A8E F1D A1D	FX	2, 3, 4
6,645.0	6,805.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,655.0	6,815.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,660.0	6,820.0	20,000	F8E A8E F1D A1D	FX	2, 3, 4
6,665.0	6,825.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,675.0	6,835.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,680.0	6,840.0	20,000	F8E A8E F1D A1D	FX	2, 3, 4
6,685.0	6,845.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,695.0	6,855.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,700.0	6,860.0	20,000	F8E A8E F1D A1D	FX	2, 3, 4
6,705.0	6,865.0	10,000	F8E A8E F1D A1D	FX	3, 4
6,887.5	7,012.5	25,000	F3F	FX FB MO	2, 4
6,912.5	7,037.5	25,000	F3F	FX FB MO	2, 4
6,937.5	7,062.5	25,000	F3F	FX FB MO	2, 4
6,962.5	7,087.5	25,000	F3F	FX FB MO	2, 4
6,987.5	7,112.5	25,000	F3F	FX FB MO	2, 4
12,703.5	n/a	6,000	C3F/F3E	FX	3
12,706.25	12,931.25	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,709.5	n/a	6,000	C3F/F3E	FX	3
12,712.5	12,937.5	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,715.5	n/a	6,000	C3F/F3E	FX	3
12,718.75	13,943.75	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,721.5	n/a	6,000	C3F/F3E	FX	3
12,725.0	12,950.0	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,727.5	n/a	6,000	C3F/F3E	FX	3
12,731.25	12,956.25	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,733.5	n/a	6,000	C3F/F3E	FX	3
12,737.5	12,962.5	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,739.5	n/a	6,000	C3F/F3E	FX	3
12,743.75	12,968.75	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,745.5	n/a	6,000	C3F/F3E	FX	3
12,750.0	12,975.0	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,751.5	n/a	6,000	C3F/F3E	FX	3
12,756.25	12,981.25	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,762.5	12,987.5	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,757.5	n/a	6,000	C3F/F3E	FX	3
12,763.5	n/a	6,000	C3F/F3E	FX	3
12,768.75	12,993.75	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,769.5	n/a	6,000	C3F/F3E	FX	3
12,775.0	13,000.0	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,775.5	n/a	6,000	C3F/F3E	FX	3
12,781.25	13,006.25	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,781.5	n/a	6,000	C3F/F3E	FX	3
12,787.5	13,012.5	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,787.5	n/a	6,000	C3F/F3E	FX	3
12,793.5	n/a	6,000	C3F/F3E	FX	3
12,793.75	13,018.75	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,799.5	n/a	6,000	C3F/F3E	FX	3
12,800.0	13,025.0	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,895.5	n/a	6,000	C3F/F3E	FX	3
12,806.25	13,030.25	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,811.5	n/a	6,000	C3F/F3E	FX	3
12,812.5	13,037.5	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,817.5	n/a	6,000	C3F/F3E	FX	3
12,818.75	13,042.75	12,500	F3F F8E A8E F1D A1D	FX	2, 3

Transmit (or receiver) (MHz)	Receive (or transmit) (MHz)	Maximum channel bandwidth (kHz)	Permitted classes of emission	Class of station	Notes
12,823.5	n/a	6,000	C3F/F3E	FX	3
12,825.0	13,050.0	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,829.5	n/a	6,000	C3F/F3E	FX	3
12,831.25	13,055.25	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,835.5	n/a	6,000	C3F/F3E	FX	3
12,837.5	13,062.5	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,841.5	n/a	6,000	C3F/F3E	FX	3
12,843.75	13,057.75	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,847.5	n/a	6,000	C3F/F3E	FX	3
12,850.0	13,075.0	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,853.5	n/a	6,000	C3F/F3E	FX	3
12,856.25	13,080.25	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,859.5	n/a	6,000	C3F/F3E	FX	3
12,862.5	13,087.5	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,865.5	n/a	6,000	C3F/F3E	FX	3
12,868.75	13,092.75	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,871.5	n/a	6,000	C3F/F3E	FX	3
12,875.0	13,100.0	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,877.5	n/a	6,000	C3F/F3E	FX	3
12,881.25	13,105.25	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,883.5	n/a	6,000	C3F/F3E	FX	3
12,887.5	13,112.5	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,889.5	n/a	6,000	C3F/F3E	FX	3
12,893.75	13,117.75	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,895.5	n/a	6,000	C3F/F3E	FX	3
12,900.0	13,125.0	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,901.5	n/a	6,000	C3F/F3E	FX	3
12,906.25	13,130.25	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,907.5	n/a	6,000	C3F/F3E	FX	3
12,912.5	13,137.5	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,913.5	n/a	6,000	C3F/F3E	FX	3
12,918.75	13,142.75	12,500	F3F F8E A8E F1D A1D	FX	2, 3
12,919.5	n/a	6,000	C3F/F3E	FX	3
12,925.0	n/a	25,000	F3F F8E A8E F1D A1D	FX	2, 3
12,925.5	n/a	6,000	C3F/F3E	FX	3
12,931.5	n/a	6,000	C3F/F3E	FX	3
12,937.5	n/a	6,000	C3F/F3E	FX	3
12,940.5	n/a	6,000	C3F/F3E	FX	3
12,943.5	n/a	6,000	C3F/F3E	FX	3
12,945.5	n/a	6,000	C3F/F3E	FX	3
12,955.5	n/a	6,000	C3F/F3E	FX	3
12,961.5	n/a	6,000	C3F/F3E	FX	3
12,967.5	n/a	6,000	C3F/F3E	FX	3
12,973.5	n/a	6,000	C3F/F3E	FX	3
12,979.5	n/a	6,000	C3F/F3E	FX	3
12,985.5	n/a	6,000	C3F/F3E	FX	3
12,991.5	n/a	6,000	C3F/F3E	FX	3
12,997.5	n/a	6,000	C3F/F3E	FX	3
12,003.5	n/a	6,000	C3F/F3E	FX	3
13,009.5	n/a	6,000	C3F/F3E	FX	3
13,015.5	n/a	6,000	C3F/F3E	FX	3
13,021.5	n/a	6,000	C3F/F3E	FX	3
13,027.5	n/a	6,000	C3F/F3E	FX	3
13,033.5	n/a	6,000	C3F/F3E	FX	3
13,039.5	n/a	6,000	C3F/F3E	FX	3
13,045.5	n/a	6,000	C3F/F3E	FX	3
13,051.5	n/a	6,000	C3F/F3E	FX	3
13,057.5	n/a	6,000	C3F/F3E	FX	3
13,063.5	n/a	6,000	C3F/F3E	FX	3
13,069.5	n/a	6,000	C3F/F3E	FX	3
13,075.5	n/a	6,000	C3F/F3E	FX	3
13,081.5	n/a	6,000	C3F/F3E	FX	3
13,087.5	n/a	6,000	C3F/F3E	FX	3
13,093.5	n/a	6,000	C3F/F3E	FX	3
13,099.5	n/a	6,000	C3F/F3E	FX	3
13,105.5	n/a	6,000	C3F/F3E	FX	3
13,111.5	n/a	6,000	C3F/F3E	FX	3
13,117.5	n/a	6,000	C3F/F3E	FX	3
13,123.5	n/a	6,000	C3F/F3E	FX	3
13,129.5	n/a	6,000	C3F/F3E	FX	3
13,135.5	n/a	6,000	C3F/F3E	FX	3
13,141.5	n/a	6,000	C3F/F3E	FX	3
13,147.5	n/a	6,000	C3F/F3E	FX	3
13,150.0	n/a	25,000	F3F	FX MO	3, 4, 5
13,153.5	n/a	6,000	C3F/F3E	FX MO	3, 4, 5
13,155.25	n/a	12,500	F3F	FX MO	3, 4, 5
13,159.5	n/a	6,000	C3F/F3E	FX MO	3, 4, 5
13,162.5	n/a	25,000	F3F	FX MO	3, 4, 5
13,165.5	n/a	6,000	C3F/F3E	FX MO	3, 4, 5
13,167.75	n/a	12,500	F3F	FX MO	3, 4, 5
13,171.5	n/a	6,000	C3F/F3E	FX MO	3, 4, 5
13,175.0	n/a	25,000	F3F	FX MO	3, 4, 5
13,177.5	n/a	6,000	C3F/F3E	FX MO	3, 4, 5
13,180.25	n/a	12,500	F3F	FX MO	3, 4, 5
13,183.5	n/a	6,000	C3F/F3E	FX MO	3, 4, 5
13,197.5	n/a	25,000	F3F	FX MO	3, 4, 5
13,189.5	n/a	6,000	C3F/F3E	FX MO	3, 4, 5
13,193.75	n/a	12,500	F3F	FX MO	3, 4, 5
13,195.5	n/a	6,000	C3F/F3E	FX MO	3, 4, 5
13,200.0	n/a	25,000	F3F	FX MO	3, 4, 5
13,206.25	n/a	12,500	F3F	FX MO	3, 4, 5
13,212.5	n/a	25,000	F3F	FX MO	4, 5, 8

Transmit (or receiver) (MHz)	Receive (or transmit) (MHz)	Maximum channel bandwidth (kHz)	Permitted classes of emission	Class of station	Notes
13,218.75	n/a	12,500	F3F	FX MO	4, 5, 8
13,225.0	n/a	25,000	F3F	FX MO	4, 5, 8
13,231.25	n/a	12,500	F3F	FX MO	4, 5, 8
13,237.5	n/a	25,000	F3F	FX MO	4, 5, 8
13,244.25	n/a	12,500	F3F	FX MO	4, 5, 8
17,720.0	19,060.0	40,000	F8E A8E F1D A1D	FX	4
17,740.0	19,080.0	80,000	F8E A8E F1D A1D	FX	4
17,760.0	19,100.0	40,000	F8E A8E F1D A1D	FX	4
17,800.0	19,140.0	40,000	F8E A8E F1D A1D	FX	4
17,810.0	19,150.0	220,000	F1D A1D	FX	4
17,820.0	19,160.0	80,000	F8E A8E F1D A1D	FX	4
17,840.0	19,180.0	40,000	F8E A8E F1D A1D	FX	4
17,880.0	19,220.0	40,000	F8E A8E F1D A1D	FX	4
17,900.0	19,240.0	80,000	F8E A8E F1D A1D	FX	4
17,920.0	19,260.0	40,000	F8E A8E F1D A1D	FX	4
17,960.0	19,300.0	40,000	F8E A8E F1D A1D	FX	4
17,980.0	19,320.0	80,000	F8E A8E F1D A1D	FX	4
18,000.0	19,340.0	40,000	F8E A8E F1D A1D	FX	4
18,030.0	19,370.0	220,000	F1D A1D	FX	4
18,040.0	19,380.0	40,000	F8E A8E F1D A1D	FX	4
18,060.0	19,400.0	80,000	F8E A8E F1D A1D	FX	4
18,080.0	19,420.0	40,000	F8E A8E F1D A1D	FX	4
18,120.0	19,460.0	40,000	F8E A8E F1D A1D	FX	4
18,140.0	19,480.0	80,000	F8E A8E F1D A1D	FX	4
18,160.0	19,500.0	40,000	F8E A8E F1D A1D	FX	4
18,183.0	19,523.0	6,000	C3F/F3E	FX	2, 4
18,189.0	19,529.0	6,000	C3F/F3E	FX	2, 4
18,195.0	19,535.0	6,000	C3F/F3E	FX	2, 4
18,201.0	19,541.0	6,000	C3F/F3E	FX	2, 4
18,207.0	19,547.0	6,000	C3F/F3E	FX	2, 4
18,213.0	19,553.0	6,000	C3F/F3E	FX	2, 4
18,219.0	19,559.0	6,000	C3F/F3E	FX	2, 4
18,225.0	19,565.0	6,000	C3F/F3E	FX	2, 4
18,231.0	19,571.0	6,000	C3F/F3E	FX	2, 4
18,237.0	19,577.0	6,000	C3F/F3E	FX	2, 4
18,243.0	19,583.0	6,000	C3F/F3E	FX	2, 4
18,249.0	19,589.0	6,000	C3F/F3E	FX	2, 4
18,250.0	19,590.0	220,000	F1D A1D	FX	4
18,255.0	19,595.0	6,000	C3F/F3E	FX	2, 4
18,261.0	19,601.0	6,000	C3F/F3E	FX	2, 4
18,267.0	19,607.0	6,000	C3F/F3E	FX	2, 4
18,273.0	19,613.0	6,000	C3F/F3E	FX	2, 4
18,279.0	19,619.0	6,000	C3F/F3E	FX	2, 4
18,285.0	19,625.0	6,000	C3F/F3E	FX	2, 4
18,291.0	19,631.0	6,000	C3F/F3E	FX	2, 4
18,297.0	19,637.0	6,000	C3F/F3E	FX	2, 4
18,303.0	19,643.0	6,000	C3F/F3E	FX	2, 4
18,309.0	19,649.0	6,000	C3F/F3E	FX	2, 4
18,315.0	19,655.0	6,000	C3F/F3E	FX	2, 4
18,321.0	19,661.0	6,000	C3F/F3E	FX	2, 4
18,327.0	19,667.0	6,000	C3F/F3E	FX	2, 4
18,333.0	19,673.0	6,000	C3F/F3E	FX	2, 4
18,339.0	19,679.0	6,000	C3F/F3E	FX	2, 4
18,345.0	19,685.0	6,000	C3F/F3E	FX	2, 4
18,351.0	19,691.0	6,000	C3F/F3E	FX	2, 4
18,357.0	19,697.0	6,000	C3F/F3E	FX	2
18,465.0	18,705.0	10,000	F8E A8E F1D A1D	FX	4
18,470.0	18,710.0	20,000	F3F F8E A8E F1D A1D	FX	4
18,475.0	18,715.0	10,000	F8E A8E F1D A1D	FX	4
18,485.0	18,725.0	10,000	F8E A8E F1D A1D	FX	4
18,490.0	18,730.0	20,000	F3F F8E A8E F1D A1D	FX	4
18,495.0	18,735.0	10,000	F8E A8E F1D A1D	FX	4
18,505.0	18,745.0	10,000	F8E A8E F1D A1D	FX	4
18,510.0	18,750.0	20,000	F3F F8E A8E F1D A1D	FX	4
18,515.0	18,755.0	10,000	F8E A8E F1D A1D	FX	4
18,525.0	18,765.0	10,000	F8E A8E F1D A1D	FX	4
18,530.0	18,770.0	20,000	F3F F8E A8E F1D A1D	FX	4
18,535.0	18,775.0	10,000	F8E A8E F1D A1D	FX	4
18,545.0	18,785.0	10,000	F8E A8E F1D A1D	FX	4
18,550.0	18,790.0	20,000	F3F F8E A8E F1D A1D	FX	4
18,555.0	18,795.0	10,000	F8E A8E F1D A1D	FX	4
18,565.0	18,805.0	10,000	F8E A8E F1D A1D	FX	4
18,570.0	18,810.0	20,000	F3F F8E A8E F1D A1D	FX	4
18,575.0	18,815.0	10,000	F8E A8E F1D A1D	FX	4
18,585.0	18,825.0	10,000	F8E A8E F1D A1D	FX	4
18,590.0	18,830.0	20,000	F3F F8E A8E F1D A1D	FX	4
18,595.0	18,835.0	10,000	F8E A8E F1D A1D	FX	4
18,605.0	18,845.0	10,000	F8E A8E F1D A1D	FX	4
18,610.0	18,850.0	20,000	F3F F8E A8E F1D A1D	FX	4
18,615.0	18,855.0	10,000	F8E A8E F1D A1D	FX	4
18,625.0	18,865.0	10,000	F8E A8E F1D A1D	FX	4
18,630.0	18,870.0	20,000	F3F F8E A8E F1D A1D	FX	4
18,635.0	18,875.0	10,000	F8E A8E F1D A1D	FX	4
18,642.5	18,882.5	5,000	F8E A8E F1D A1D	FX	4
18,645.0	18,885.0	10,000	F8E A8E F1D A1D	FX	4
18,647.5	18,887.5	5,000	F8E A8E F1D A1D	FX	4
18,650.0	18,890.0	20,000	F3F F8E A8E F1D A1D	FX	4
18,652.5	18,892.5	5,000	F8E A8E F1D A1D	FX	4
18,655.0	18,895.0	10,000	F8E A8E F1D A1D	FX	4
18,657.5	18,897.5	5,000	F8E A8E F1D A1D	FX	4
18,665.0	18,905.0	10,000	F8E A8E F1D A1D	FX	4
18,662.5	18,902.5	5,000	F8E A8E F1D A1D	FX	4

Transmit (or receiver) (MHz)	Receive (or transmit) (MHz)	Maximum channel bandwidth (kHz)	Permitted classes of emission	Class of station	Notes
18,667.5	18,907.5	5,000	F8E A8E F1D A1D	FX	4
18,670.0	18,910.0	20,000	F3F F8E F1D A1D	FX	4
18,672.5	18,912.5	5,000	F8E A8E F1D A1D	FX	4
18,675.0	18,915.0	10,000	F8E A8E F1D A1D	FX	4
18,677.5	18,917.5	5,000	F8E A8E F1D A1D	FX	4
18,682.5	18,922.5	5,000	F8E A8E F1D A1D	FX	4
18,685.0	18,925.0	10,000	F8E A8E F1D A1D	FX	4
18,687.5	18,927.5	5,000	F8E A8E F1D A1D	FX	4
18,690.0	18,930.0	20,000	F3F F8E A8E F1D A1D	FX	4
18,692.5	18,932.5	5,000	F8E A8E F1D A1D	FX	4
18,695.0	18,935.0	10,000	F8E A8E F1D A1D	FX	4
18,697.5	18,937.5	5,000	F8E A8E F1D A1D	FX	4
31,006.25	31,156.25	12,500		FX FB MO	2, 6, 7
31,012.5	31,162.5	25,000		FX FB MO	2, 6, 7
31,018.75	31,168.75	12,500		FX FB MO	2, 6, 7
31,031.25	31,181.25	12,500		FX FB MO	2, 6, 7
31,037.5	31,187.5	25,000		FX FB MO	2, 6, 7
31,043.75	31,193.75	12,500		FX FB MO	2, 6, 7
31,056.25	31,206.25	12,500		FX FB MO	2, 6, 7
31,062.5	31,212.5	25,000		FX FB MO	2, 6, 7
31,062.75	31,218.75	12,500		FX FB MO	2, 6, 7
31,031.25	31,231.25	12,500		FX FB MO	2, 6, 7
31,087.5	31,217.5	25,000		FX FB MO	2, 6, 7
31,093.75	31,243.75	12,500		FX FB MO	2, 6, 7
31,106.25	31,256.25	12,500		FX FB MO	2, 6, 7
31,112.5	31,262.5	25,000		FX FB MO	2, 6, 7
31,118.75	31,262.75	12,500		FX FB MO	2, 6, 7
31,131.25	31,281.25	12,500		FX FB MO	2, 6, 7
31,137.5	31,287.5	25,000		FX FB MO	2, 6, 7
31,143.75	31,293.75	12,500		FX FB MO	2, 6, 7

Notes:

1. No new assignments will be made on this particular frequency after 1 October 1984; stations licensed on this particular frequency prior to this date may continue to operate; however, after 1 October 1993; use will be on a secondary basis to all other uses.
2. Frequencies may be used on a non-paired basis.
3. Common carrier usage is *not* permitted on these frequencies except to provide mobile interconnect facilities (F3F emission only) to feed broadcast stations.
4. Frequencies shared with the fixed-satelite service, see Part 25.
5. The use of F3F modulation by mobile stations is restricted to bandwidths of 12.5 MHz or less, unless the path length is greater than 20 km, in which case, bandwidths up to 25.0 MHz may be employed.
6. There are no restrictions on the type of emission.
7. No interference protection will be afforded to stations operating in this band.
8. Common carriers usage is permitted on these frequencies; however only F3F emission is permitted.

(c) *Minimum path length requirement.* All fixed and mobile stations shall employ the highest frequency which will support the communications path length requirement which must be met. Unless otherwise provided for in this section, all usage must meet or surpass the following:

Zone	Minimum path length (km)			
	Frequency band (GHz)			
	2	6	12	18
1	44	32	21	3
2	44	32	17	2
3	44	32	9	2
4	44	32	19	3
5	32	24	21	3
6	32	24	17	2
7	32	24	14	2
8	32	24	11	2
9	32	24	9	2
10	32	22	14	2
11	32	24	19	3
12	34	24	9	2
13	34	22	6	2
14	36	26	11	3
15	36	26	9	2
16	36	22	6	2
17	22	17	9	2
18	22	17	11	2
19	22	17	9	2
20	22	17	6	2
21	26	20	19	3

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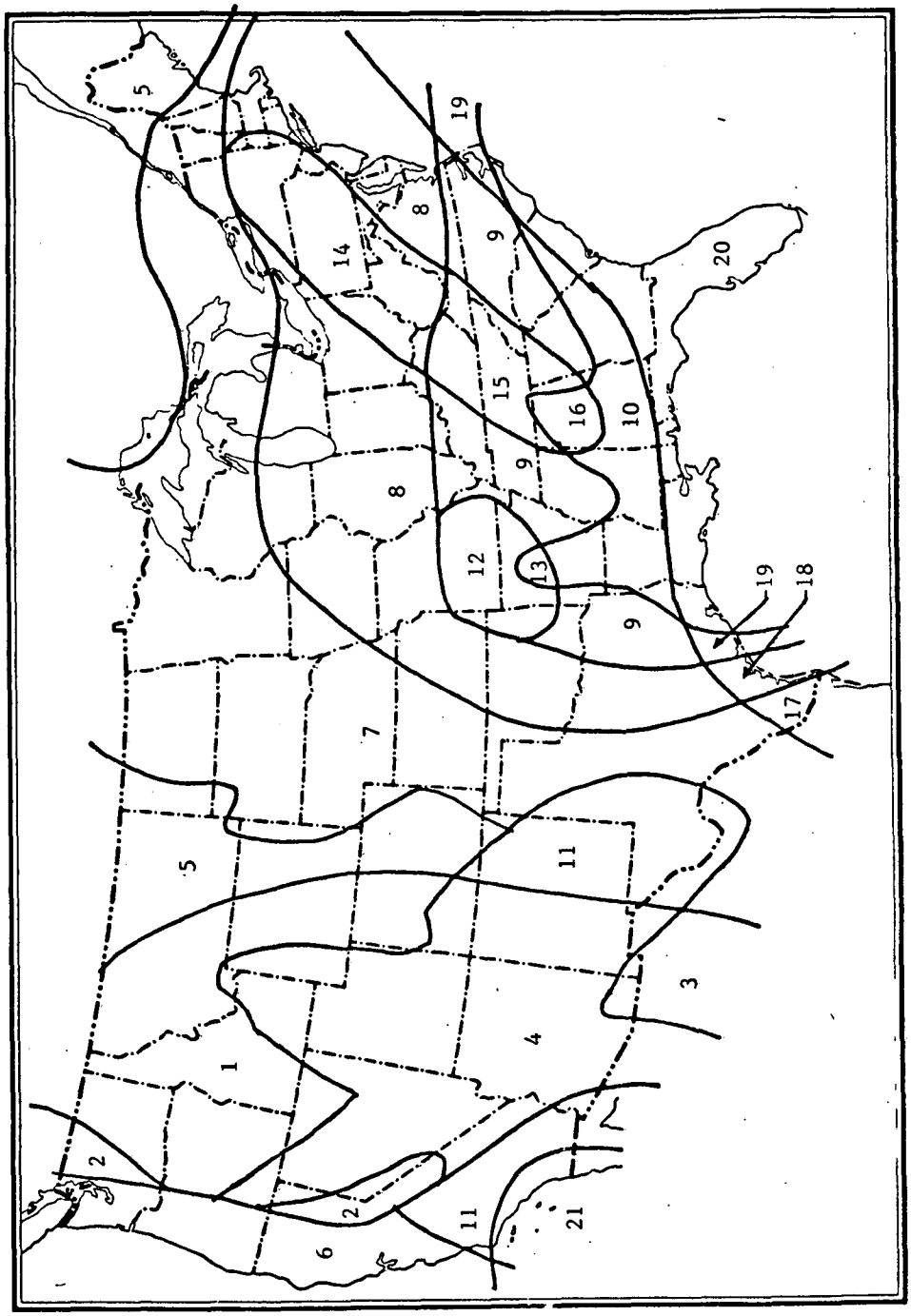

Propagation Zones

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(d) *Minimum channel loading requirements.* All fixed and mobile station shall use the least amount of spectrum required to support the communication requirements that must be met.

Bandwidth (MHz)	Class of Emission	Minimum Loading Level

§ 150.4 Frequency tolerance.

Stations in the fixed and mobile services shall maintain the carrier frequency of each authorized transmitter to within the following percentage of the assigned frequency.

Frequency band (MHz)	Transmitter frequency tolerance		
	FX (%)	FB(%)	MO (%)
1,990–2,110	0.001	0.001	0.001
6,525–6,875	0.005	n/a	n/a
6,875–7,125	0.005	0.005	0.005
12,700–13,250	(1)		
	0.005	0.005	0.005
17,700–19,700	0.003	n/a	n/a
31,000–31,200	0.003	0.003	0.003

Note: (1) Except C3F emission, 0.0005%.

§ 150.5 Power limitations.

On any authorized frequency, the average power delivered to an antenna in the fixed and mobile services shall be the minimum amount necessary to carry out the communications desired. In no event shall the transmitter output power or the effective isotropically radiated power (EIRP) exceed the values specified below.

Frequency band (MHz),	Maximum transmitter power			Maximum station EIRP		
	FX (W)	FB (W)	MO (W)	FX (dBW)	FB (dBW)	MO(dBW)
1,990–2,110	20.0	20.0	12.0	50.0	50.0	50.0
6,525–6,875	20.0	n/a	n/a	50.0	n/a	n/a
6,875–7,125	20.0	20.0	12.0	50.0	50.0	50.0
12,700–13,250	5.0	5.0	1.5	50.0	50.0	50.0
17,700–19,700	10.0	n/a	n/a	50.0	n/a	n/a
31,000–31,200	0.05	0.05	0.05	n/a	n/a	n/a

§ 150.6 Emission limitations.

(a) The mean power of emission for stations using the frequencies listed in Section 150.1(b) shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) When using transmissions other than those employing digital modulation techniques (i.e., F8E, F3F, A8E, C3F/F3E, etc.):

(i) On any frequency removed from the assigned frequency by more than 50% up to and including 100% of the authorized bandwidth, at least 25 dB.

(ii) On any frequency removed from the assigned frequency by more than 100% up to and including 250% of the authorized bandwidth, at least 35 dB.

(iii) On any frequency removed from the assigened frequency by more than 250% of the authorized bandwidth, at least $43+10\ \mathrm{Log}_{10}$ [mean output power in watts] dB, or 80 dB, whichever is the lesser attenuation.

(2) When using transmissions employing digital modulation techniques (i.e., F1D, A1D, etc.):

(i) For operating frequencies below 15.0 GHz, in any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 50% up to and including 250% of the authorized bandwidth: As specified by the following equation but in no event less than 50 dB (attenuation greater than 80 dB is not required)

$$A=35+0.8(P-50)+10\log 10B$$

where:

A = attenuation (in dB) below the mean output power level

P = Percent removed from carrier frequency

B = Authorized bandwidth (in MHz).

(ii) For operating frequencies above 15.0 GHz, in any 1 MHz band, the center frequency of which is removed from the assigned frequency by more than 50% up to and including 250% of the authorized bandwidth: As specified by the following equation but in no event less than 11 dB (attenuation greater than 56 dB is not required)

$$A=11+0.4(P-50)+10\log 10B$$

(iii) In any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 250% of the authorized bandwidth: At least 43 + log10 [mean output power in watts] dB, or 80 dB, whichever is the lesser attenuation.

(b) When a spurious emission results and causes harmful interference, the Commission may require the appropriate technical changes in equipment to alleviate the interference.

(c) The emission of an unmodulated carrier (i.e., NON) is prohibited except for test purposes as required for proper station and system maintenance.

(d) When an emisson outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in paragraph (a) of this section.

§ 150.7 Antenna limitations.

(a) Except where omnidirectional or wide coverage operation is specifically provided for under this part, each station in the fixed and mobile services shall employ directional antennas with the center of the major lobe of radiation directed toward the receiving station with which it communicates or if the path employs a passive repeater, to the center of that reflector.

(b) Directional antennas shall meet the performance standards indicated in the following table:

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Frequency Band (GHz)	Standard	Gain (dBi)	Beam-width (°)	Front-to Back (dB)	Minimum Radiation Suppression (dB)						
					5 - 10°	10 - 15°	15 - 20°	20 - 30°	30 - 100°	100 - 140°	140 - 180°
1.99 - 2.11	A	- -	5	n/a	12	18	22	25	29	33	39
	B	- -	8	n/a	5	18	20	20	25	28	36
6.525 - 7.125	A	- -	1.5	n/a	26	29	32	34	38	41	49
	B	- -	2.0	n/a	21	25	29	32	35	39	45
12.7 - 13.25	A	- -	1.0	n/a	23	28	35	39	41	42	50
	B	- -	2.0	n/a	20	25	28	30	32	37	47
17.70 - 18.36	A	38	- -	n/a	25	29	33	36	42	55	55
	B	38	- -	n/a	20	24	28	32	35	36	36
18.46 - 19.7	A	38	- -	n/a	25	29	33	36	42	55	55
	B	38	- -	n/a	20	24	28	32	35	36	36
31 0 - 31.2	LP	n/a	4.0	38	- -	- -	- -	- -	- -	- -	- -

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Note.—Stations in the fixed and mobile services must employ an antenna that meets the performance standards for Standard A, except that, in areas not subject to frequency congestion antennas meeting standards for Standard B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

(c) Applicants shall request, and authorizations for stations in the fixed and mobile services will specify, the polarization of each transmitted signal. When periscope antenna systems or passive repeaters are employed, the applicant shall indicate the expected polarization of the reflected signal.

(d) All forms of polarization are permitted. Polarization designation shall be in accordance with IEEE standard 100—1972 as amended.

(e) New periscope antenna systems will be authorized upon a certificate that the radiation, in a horizontal plane, from an illuminating antenna and reflector combination meets or exceeds the antenna standards of this section and, at locations where multiple periscope antennas are employed, that the cross-coupling between periscope antennas is suppressed by an amount equal to or greater than the radiation suppression specified in the standards for angles from the main beam of 140–180° for the particular band and antenna category selected. In no event will periscope antennas be authorized in frequency bands shared with common carriers.

(f) The provisions of paragraphs (a) and (c) of this section shall also apply to passive repeaters employed to redirect or repeat the signal from a station's directional antenna system.

§ 150.8 Pointing restrictions in bands coequally shared with the fixed-satellite service (earth-to-space).

These limitations are necessary to minimize the probability of harmful interference to reception, on-board geo-stationary space stations in the fixed-satellite service.

(a) The shared bands are as follows: 6.525 to 7.075 GHz, 12.70 to 13.25 GHz.

(b) *In shared bands between 1 and 10 GHz.* The transmitting antenna(s) for a station operating in shared bands between 1 and 10 GHz and employing an equivalent isotropically radiated power (EIRP) exceeding +35 dBW, shall be so oriented that the direction of maximum radiation will be removed at least 2.0° from the geo-stationary orbit, taking into account atmospheric refraction. However, an exception may be authorized in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed, and there is no evidence that such exception would cause interference to the geo-stationary satellite orbit. In such case, a transmission path may be authorized where the maximum value of equivalent isotropically radiated power does not exceed: (1) +47 dBW; or (2) +47 to +55 dBW on a linear decibel scale (8 dB per degree), in any direction within 0.5° and 1.5° of the geo-stationary orbit, taking into accont the effect of atmospheric refraction.

(c) *In shared bands between 10 and 15 GHz.* The transmitting antenna(s) of a station operating in shared bands between 10 and 15 GHz and employing an equivalent isotropically radiated power exceeding +45 dBW, shall be so oriented that the direction of maximum radiation will be removed at least 1.5° from the geo-stationary satellite orbit, taking into account atmospheric refraction.

(d) Methods of calculating azimuths to be avoided may be found in CCIR Report 393 (Green Book), Geneva, 1974; and in "Geo-Stationary Orbit Avoidance Computer Program", FFC Report Number CC-7201, Washington, D.C. 1972.

Note.—The FCC report and a card deck of the computer program itself are available through the National Techinical Information Service, U.S. Department of Commerce, Springfield, VA 22151, as report numbers PB 211-500 and PB 211-501, respectively.

Appendix B

Introduction

In this proceeding the Commission is proposing to establish a minimum path length requirement for the fixed and mobile service's use of spectrum below 19.7 GHz. The propose of this appendix is to describe the methodology used and the assumptions made by the Commission in establishing these minimum path lengths. Although values are only calculated for the bands addressed in the *Notice*, the methodology and assumptions are applicable to all bands between 947 MHz and 40.0 GHz.

The following assumptions were made:

(1) Minimum link reliability of 99.99%.

(2) The minimum receiver threshold level, i.e., the receiver mute point.

(a) For analog radios,

(i) In FM-FDM systems (i.e., F8E), the top slot noise becomes 58 dBrncO (525,000 pWpO or 30 dB S/N flat).

(ii) In 525 line FM video systems (i.e., F3F), the peak-to-peak luminance signal to EIA weighted RMS noise becomes 37 dB. In 625 line video systems, the mute point is 1 dB higher (e.g., 525 line mute point = −76 dBm, 625 line mute point = −75 dBm).

(b) For digital radios (A1D, F1D),

(i) The bit-error-rate (BER) becomes 1 in 10^{-6}.

(3) The use of Standard "B" antennas.

(4) The RF channels fully loaded.

(5) Transmission line length was assumed to be the calculated antenna height above ground, except that for 22 GHz systems, the transceiver was directly attached to the antenna system. The antenna height calculation only provided for midpoint path clearance, an earth curvature of K=4/3 and a 0.6 Fresnel clearance.

(6) Typical values of transmitter output power and receiver threshold level for equipments currently in production, see TABLE 5.

(7) Propagation models of Lin and Craine were used. See discussion below.

(8) Minimum path length, 80% of the maximum calculated usable path length of the next highest frequency band.

Propagation Characteristics

At a minimun there are four mechanisms which should be taken into consideration: free space attenuation, molecular absorption, scattering from hydrometeors and atmospheric multipath. All are frequency (f) and path length (D) dependent. In addition, the latter two are probabilistic and affect desired system usability (i.e., uptime requirements). Each of these mechanisms are discussed in detail in this section.

Free Space Attenuation

Free space attenuation (A_{fs}) can be calculated from the following equation:

$$A_{fs} = 92.4 + 20LOG_{10}(f) + 20LOG_{10}(D), \text{ dB}$$

where,

A_{fs} = attenuation, dB.
f = frequency, GHz.
D = path length, km.

Molecular Absorption

As can be seen in FIGURE 1, attenuation due to absorption by atmospheric gases, water and oxygen (A_g), is an insignificant factor at frequencies below about 12 to 13 GHz, however, at higher frequencies it becomes a significant factor.

Scattering from Hydrometeors (i.e., rain attenuation)

There are several rain attenuation prediction models and each requires the knowledge of the number, type and intensity of rainstorms that traverse the radio path under analysis. Unfortunately, as yet no theoretical basis exists for the calculation of the needed rainfall statistics. They must be obtained empirically, and this has resulted in the development of several prediction models. Each model has certain advantages of use; however, for the purposes of developing appropriate national regulations, the Crane model † appears to be most useful. It is a more general model while the others are more applicable to particular system design situations.

To calculate the effects of rain using the Crane model, the following procedures are followed:

Step 1: Establish surface projected path length D.

† R. K. Crane, "Prediction of Attenuation by Rain", *IEEE Trans. Comm.*, vol. COM-28, no. 9, pp. 1717–1733.

(a) Calculate the distance between er points in kilometers.

Step 2: Determine Rain Rate Distribut R_p.

(a) Locate the path end points on the FIGURE 2 and determine the rain climate region, A through H.

(b) Obtain rain rate distribution R_p from TABLE 1 for desired probability of occurence P, i.e., the probability of exceedin R_p.

(c) If D>22.5 km, then the rain rate distribution R_p will have to be determined for a modified probabilty of occurence P'.

$P' = P(22.5/D)$

Step 3: Determine a and b for the frequency of interest from TABLE 2.

Step 4: Calculate the attenuation A_r from R_p and R_p and D (or R_p' and D).

For D < d

$$A_r = a R_p^B \left[\frac{e^{uBD} - 1}{uB}\right] ; D < d$$

For d ≤ D

$$A_r = a R_p B \left[\frac{e^{uBd} - 1}{uB} - \frac{b^B e^{cBd}}{cB} + \frac{b^B e^{cBD}}{cB}\right] ; d < D$$

For D ≥ 22.5 km

Use the above equation, setting D=22.5 and using $R_p(P')$

where,

$u = LN(be^{cd})/d$

$b = 2.3\ R_p^{-0.17}$

$c = 0.026 - 0.03\ LN(R_p)$

$d = 3.8 - 0.6\ LN(R_p)$

Atmospheric Multipath

Atmospheric multipath can produce significant fades on long point-to-point links. Fades as much as 40 dB have been observed. It has been found that vertical antenna diversity can be employed to mitigate multipath effects, since ray path geometries generally do not occur that can simultaneously cause fading at two antennas spaced in the vertical. A model which can be used to predict the effects of multipath fading has been devised by Vigants.†† Using the Vigants model, signal unavailability U can be described as follows:

$$U = (c)\left(\frac{w}{15.24}\right)^{1.3}\left(\frac{f}{4}\right)\left(\frac{D}{1.609}\right)^{3}(10^{-5})\cdot(10^{\frac{-A_m}{10}})$$

Rearranging, we get,

$$A_m = 10LOG_{10}\left[\frac{c}{U}\left(\frac{w}{15.24}\right)^{1.3}\left(\frac{f}{4}\right)\left(\frac{D}{1.609}\right)^{3}(10^{-5})\right]$$

where,

P=probability of exceeding A_m, %

U=P/100, numeric

c=effect of humidity (see FIGURE 3), where,

= 4.0 for coastal areas;

= 1.0 for average climate; or

= 0.25 for dry climate

w=roughness factor (m), (see FIGURE 4 i.e., standard deviation of the terrain elevation along the radio path using a minimum of 15 equally space terrain heights above a reference level, where typical values are:

= 6.0m for smooth terrain;

= 15.2m for normal terrain

= 43.0m for rough terrain

f=frequency, GHz [2<f<15 GHz].

D=path length, km [22.5<D<65 1m].

A_m=attenuation (power), dB.

Link Analysis Equations

Link Propagation Analysis

Using the propagation models discussed in the previous sections, the propagation viability of a "proposed" radio link can be computed using the following equations. For viability to exist, C_r must be equal to or greater than the receiver's required threshold signal level for the specified emission type.

$P_t - M_t + G_t - A_{fs} - A_g - (A_r \text{ or } A_m) + G_{pr} + G_r - M_r = RSL$

where,

P_t=transmitter output power, in dBm.

M_t=misc. losses at transmitter, i.e., waveguide, etc.

G_t=gain of transmitting antenna, in dBi.

A_{fs}=free space attenuation, in dB.

A_g=attenuation by atmospheric gases, in dB.

A_r=rain attenuation, in dB.

A_m=atmospheric multipath attenuation, in dB.

G_{pr}=gain of passive (far-field) repeater(s), in dBi.

G_r=gain of receiving antenna, in dBi.

M_r=misc. losses at receiver, i.e., waveguide, etc., in dB.

RSL=Received Signal Level, in dBm.

Any link can be tested to determine the highest frequency that will support the required communications.

Figure 5 is a composite representation of figures 2, 3 and 4, and indicate that the continential United States can be divided in to twenty-one unique propagation areas. A computer program based on the above propagation equations was written to calculate the maximum usable path length for each of the twenty areas. This program was run against a representative selection of currently produced equipments. The results of these computations are shown in Table 3.

As can be seen in Table 3, rain has little effect on propagation below 18 GHz, but is the dominent factor above 18 GHz. The minimum path length was calculated to be 80% of the next higher band path length and this minimum path length is presented in Table 4.

TABLE 1.—Point Rain Rate (R_p) Distribution Values (mm/h) Versus Percent of Year Rain Rate is Exceeded†

Percent of year	Rain climate region									
	A	B	C	D_1	D_2	D_3	E	F	G	H
0.001	28	54	80	90	102	127	164	66	129	251
0.002	24	40	62	72	86	107	144	51	109	220
0.005	19	26	41	50	64	81	117	34	85	178
0.01	15	19	28	37	49	63	98	23	67	147
0.02	12	14	18	27	35	48	77	14	51	115
0.05	8	9.5	11	16	22	31	52	8	33	77
0.1	6.5	6.8	7.2	11	15	22	35	5.5	22	51
0.2	4	4.8	4.8	7.5	9.5	14	21	3.8	14	31
0.5	2.5	2.7	2.8	4	5.2	7	8.5	2.4	7	13
1.0	1.7	1.8	1.9	2.2	3	4	4	1.7	3.7	6.4
2.0	1.1	1.2	1.2	1.3	1.8	2.5	2	1.1	1.6	2.8

† R. K. Crane, "Prediction of Attenuation by Rain", *IEEE Trans. Comm.* vol. COM-28, no. 9, pp. 1717-1733.

Table 2.—Parameters for Computing Specific Attenuation: $A = aR^b$, O° C., Laws and Parson Distribution †

Frequency f—GHz	Multiplier a(f)	Exponent b(f)
1	0.00015	0.95
4	0.00080	1.17
5	0.00138	1.24
6	0.00250	1.28
7.5	0.00482	1.25
10	0.0125	1.18
12.5	0.228	1.145
15	0.0357	1.12
17.5	0.0524	1.105
20	0.0699	1.10
25	0.113	1.09
30	0.170	1.075
35	0.242	1.04
40	0.325	0.99
50	0.485	0.90
60	0.650	0.84
70	0.780	0.79
80	0.875	0.753
90	0.935	0.730
100	0.965	0.715

† R.K. Crane, "Prediction of Attenuation by Rain", *IEEE Trans. Comm.*, vol. COM-28, no. 9, pp. 1717-1733.

Table 3.—Results of Calculations

Zone	Humidity	Roughness	Rain	Maximum path length				
				Frequency band (GHz)				
				2	6	12	18	22
1	0.25	43	B	70	55	40	*26	*4
2	0.25	43	C	70	55	40	*21	*3
3	0.25	43	D1	70	55	40	*11	*3
4	0.25	43	F	70	55	40	*24	*4
5	1	15	B	50	40	30	*26	*4
6	1	15	C	50	40	30	*21	*3
7	1	15	D1	50	40	30	*17	*3
8	1	15	D2	50	40	30	*14	*3
9	1	15	D3	50	40	30	*11	*2
10	1	15	E	50	40	*27	*17	*2
11	1	15	F	50	40	30	*24	*4
12	1	20	D3	54	43	30	*11	*2
13	1	20	E	54	43	*27	*7	*2
14	1	30	D2	58	45	33	*14	*3
15	1	30	D3	58	45	33	*11	*2
16	1	30	E	58	45	*27	*7	82
17	4	6	D1	33	28	21	*11	*3
18	4	6	D2	33	28	21	*14	*2
19	4	6	D3	33	28	21	*11	*3
20	4	6	E	33	28	21	*7	*2
21	4	15	F	40	33	25	*24	*4

Note: *Rain limited

†† A. Vigants, "Space-Diversity Engineering", *BSTJ* vol. 54, no. 1 (January 1975), pp. 103-142.

Table 4.—Table of Minimum Path Lengths

Zone	Humid-ity	Rough-ness	Rain	Mimimum Path Length (km)			
				Frequency Band (GHz)			
				2	6	12	18
1	0.25	43	B	44	32	21	3
2	0.25	43	C	44	32	17	2
3	0.25	43	D1	44	32	9	2
4	0.25	43	F	44	32	19	3
5	1	15	B	32	24	21	3
6	1	15	C	32	24	17	2
7	1	15	D1	32	24	14	2
8	1	15	D2	32	24	11	2
9	1	15	D3	32	24	9	2
10	1	15	E	32	22	14	2
11	1	15	F	32	24	19	3

Table 4.—Table of Minimum Path Lengths—Continued

Zone	Humid-ity	Rough-ness	Rain	Mimimum Path Length (km)			
				Frequency Band (GHz)			
				2	6	12	18
12	1	20	D3	34	24	9	2
13	1	20	E	34	22	6	2
14	1	30	D2	36	26	11	3
15	1	30	D3	36	26	9	2
16	1	30	E	36	22	6	2
17	4	6	D1	22	17	9	2
18	4	6	D2	22	17	11	2
19	4	6	D3	22	17	9	2
20	4	6	E	22	17	6	2
21	4	15	F	26	20	19	3

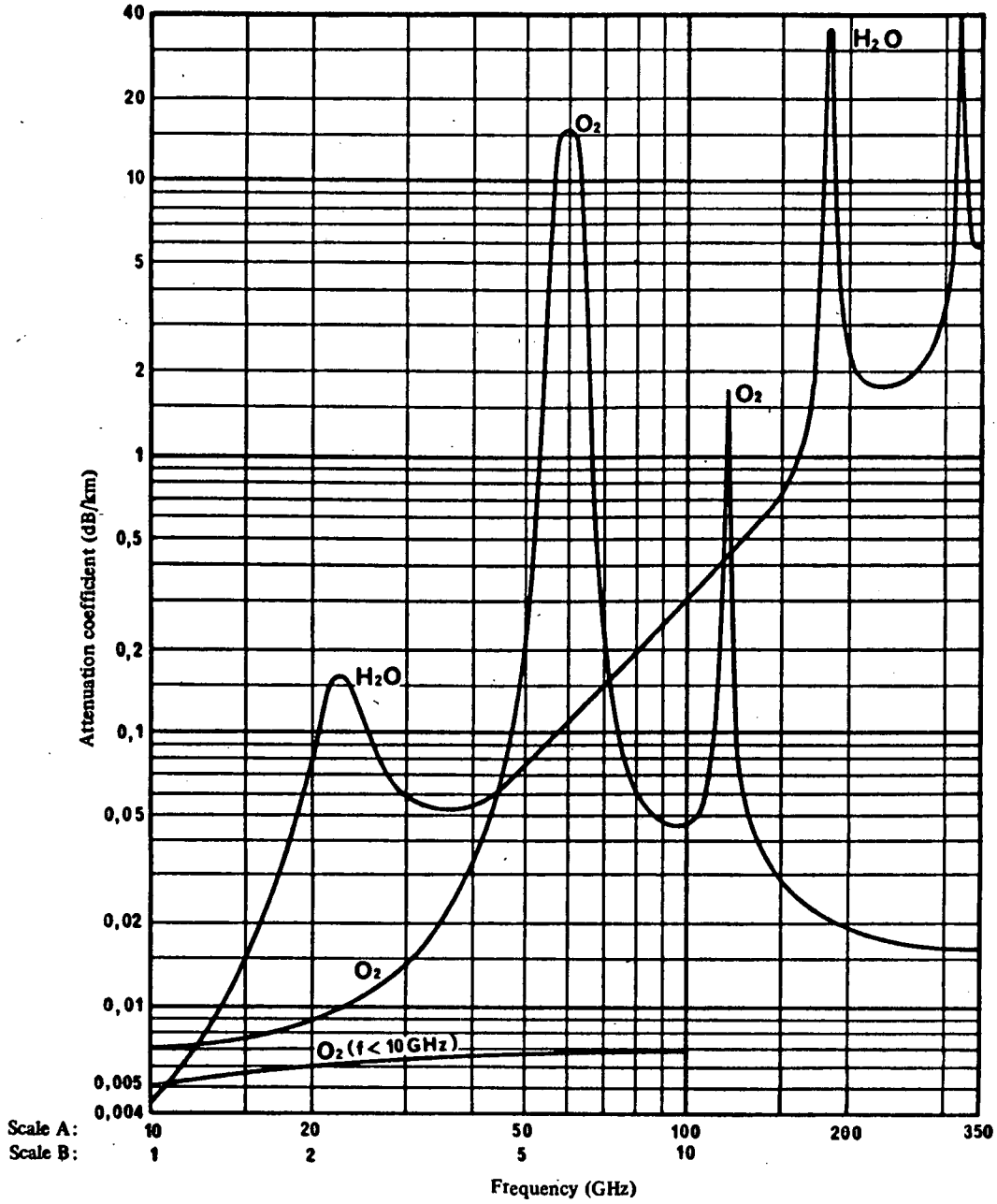
TABLE 5.—Equipments Used in Making Calculations

MFG	Model	Emission	Traffic	Frequency Band		Out Pwr (dBm)	Rec Thsld (dBm)
				From (GHZ)	To (GHZ)		
LEN	78F2	17000F9	525 Video	1.99	2.11	36.0	−75.0
CLL	MVR-2S	17000F9	525 Video	1.99	2.11	35.5	−83.1
FRN	FL1-6	10000F9	600 VC	6.525	6.875	27.0	−79.5
LEN	78B3	25000F9	525 Video	6.875	7.125	30.0	−78.0
CLL	MVR-6S	25000F9	525 Video	6.875	7.125	30.0	−82.5
LEN	78E3	19300F9	1260 VC	12.2	12.7	25.0	−69.0
CLL	MDR-12-5	20000F9Y	45.501 MB/S	12.2	12.7	36.0	−70.0
CLL	MVR-12P	20000F9	525 Video	12.2	12.7	26.0	−82.5
FRN	DM12-4A-45	20000A9Y	44.736 MV/S	12.2	12.7	33.0	−72.0
SNC	DMR-12	19500F9Y	18.528 MB/S	12.2	12.7	26.0	−74.0
FRN	SS12000	20000F9	1200 VC	12.2	12.7	27.5	−71.5
LEN	78E3	25000F9	525 Video	12.7	13.25	25.0	−75.0
CLL	MVR-12V	25000F9	525 Video	12.7	13.5	26.0	−82.5
CLL	MVR-12V-1N	12500F9	525 Video	12.7	13.25	24.0	−80.5
HGH	AML-STX-141	5750A5C	525 Video	12.7	13.25	20.0	−65.0
FRN	DM18	20000A9Y	6.312 MB/S	18.36	19.04	18.0	−74.0
SNC	DMR-18A	19500F9Y	18.528 MB/S	18.36	19.04	21.0	−72.0
GE	LSD-112A	16000A9Y	3.152 MB/S	21.8	23.2	13.0	−58.0

BILLING CODE 6712-01-M

FIGURE 1

Specific Attenuation by Atmospheric Gases



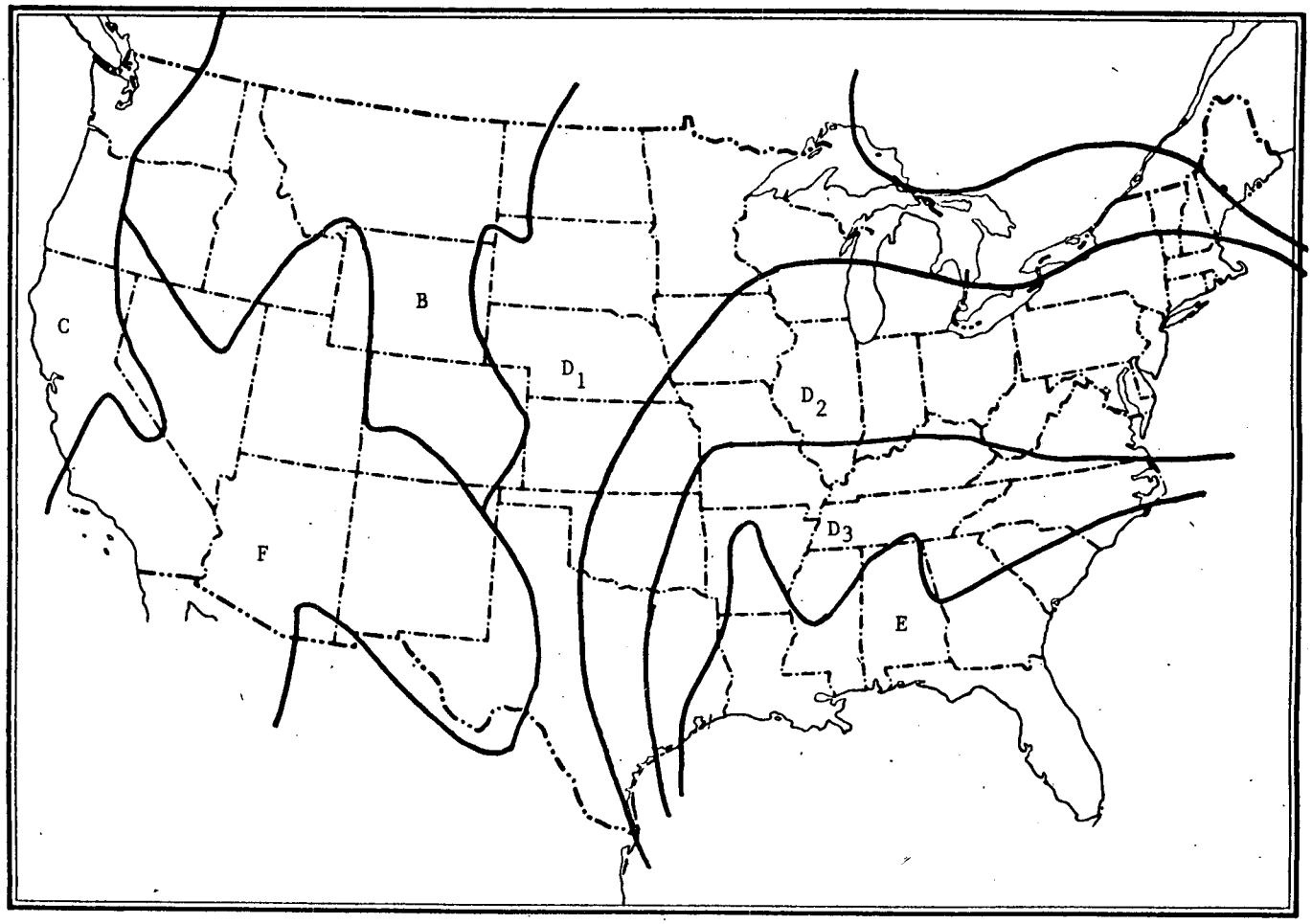
NOTES: (1) Use Scale B for oxygen absorption below 10 GHz.
(2) Pressure 1 atm (1013.6 mb), temperature: 20 °C, and water vapour density: 7.5 g/m^3.

SOURCE: CCIR Report 719, 1978.

FIGURE 2

Rain Rate Climate Regions for the Continental United States

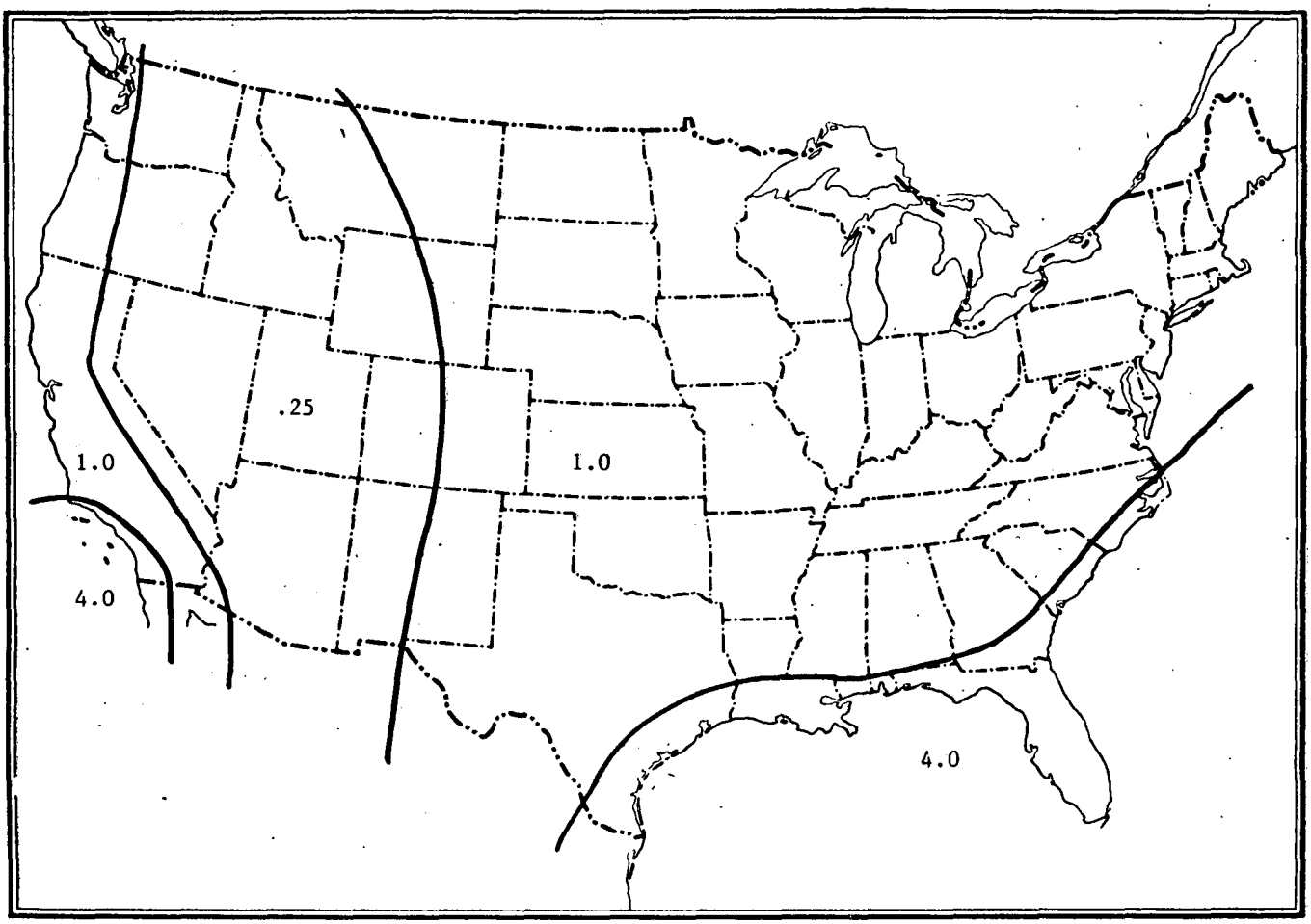
Showing the Subdivisions of Region D †/



†/R.K. Crane, "Prediction of Attenuation by Rain", IEEE Trans. Comm., vol. COM-28, no. 9, pp. 1717-1733.

FIGURE 3

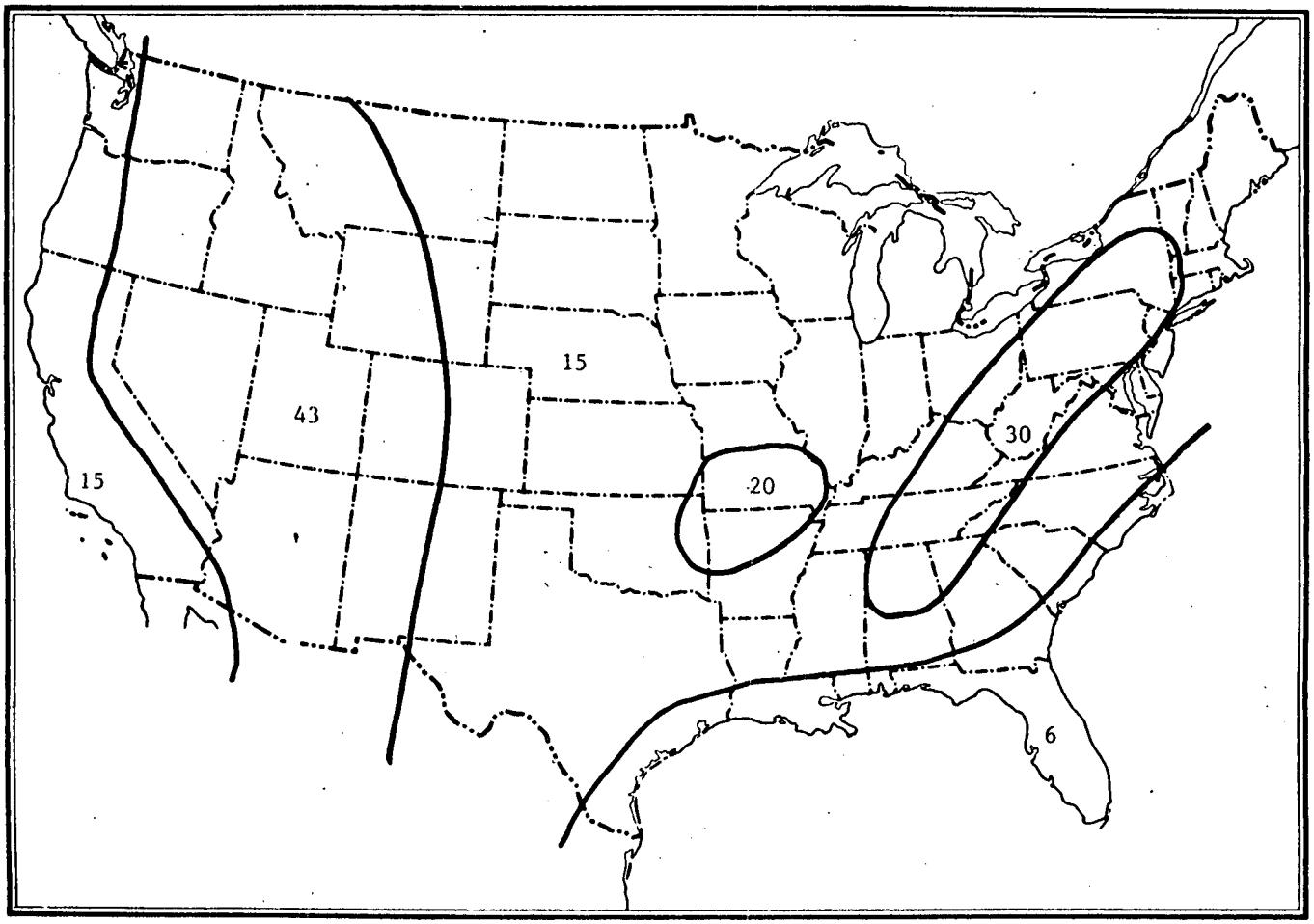
Humidity Regions for the Continental United States †/



†/A. Vigants, "Space-Diversity Engineering", BSTJ, vol. 54, no. 1 (January 1975), pp. 103-142.

FIGURE 4

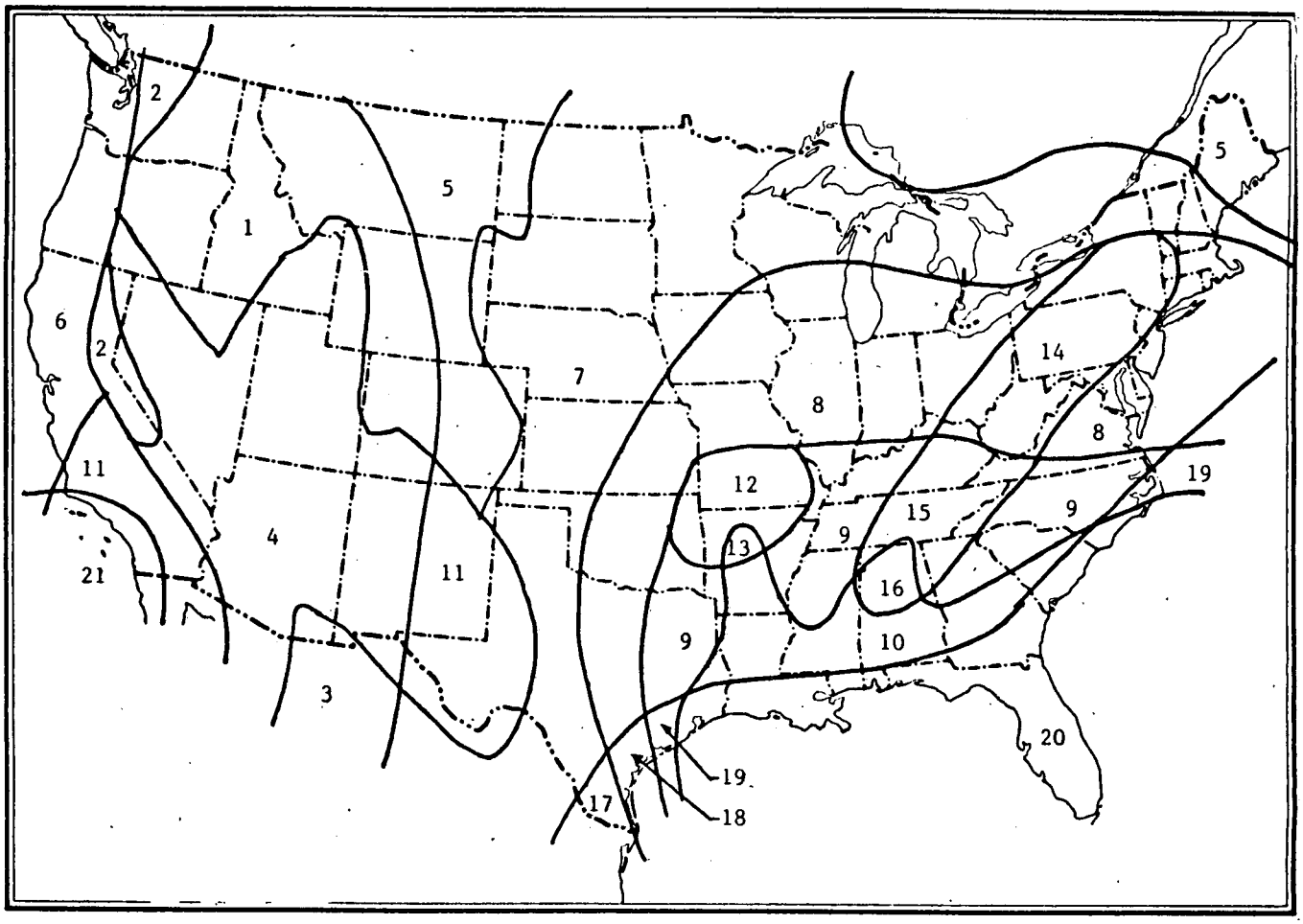
Roughness Factor Regions for the Continental United States †/



†/Derived from: U.S. Department of the Interior, Geological Survey, Land-Surface Form, Separate Sales Edition, Sheet Number 62, 1969.

FIGURE 5

Composite Propagation Zones



BILLING CODE 6712-01-C

Zone	Humidity	Roughness	Rain
1	0.25	43	B
2	0.25	43	C
3	0.25	43	D1
4	0.25	43	F
5	1	15	B
6	1	15	C
7	1	15	D1
8	1	15	D2
9	1	15	D3
10	1	15	E
11	1	15	F
12	1	20	D3
13	1	20	E
14	1	30	D2
15	1	30	D3
16	1	30	E
17	4	6	D1
18	4	6	D2
19	4	6	D3
20	4	6	E
21	4	15	F

[FR Doc. 83-2253 Filed 2-15-83; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Certain Petitions and Reviews of Status for Several Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings on certain petitions and reviews of status.

SUMMARY: The Service reports the initial findings that have been made on substantiality of information for some petitions pending on October 13, 1982, and other petitions received subsequently, as required by the Endangered Species Act Amendments of 1982. Reviews of status for several species commence with this notice.

DATE: Comments may be submitted until further notice.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Associate Director—Federal Assistance, U.S. Fish and Wildlife Service (OES), Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this notice are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982, requires that the Service make a finding whether a petition to list or delist a species presents substantial scientific or commercial information that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. Similarly, Section 4(b)(3)(D)(i) of the Act requires a finding within 90 days on a petition to revise Critical Habitat, with prompt publication of the finding. When a positive finding is made on a petition to list or delist a species, the Service is required to promptly commence a review of the status of the species.

Furthermore, Section 2(b)(1) of the 1982 amendments (P.L. 97-304) to the Endangered Species Act requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This makes such past petitions subject to the new requirements of Section 4(b)(3), but provides that such new procedural requirements "shall be deemed to be complied with" if similar pre-amendment requirements were satisfied before the enactment of P.L. 97-304; see Section 2(b)(1). The Service has recently conducted an analysis to consider all pending petitions. We have used the criteria in 50 CFR 424.14 to define and evaluate petitions and to distinguish them from comments. December 28, 1973, when the 1973 Endangered Species Act was enacted, is our starting date for the petition analysis.

Most petitions have already had findings made on the substantiality of their information and status reviews have been initiated when the finding was positive. For example, the December 15, 1980, notice of review (45 FR 82479-82569) is a comprehensive assessment of those native vascular plants that are considered candidates for the Act or that do not qualify. The majority of these plants were in the petitions of the Smithsonian Institution House Document 94-51, 1975, and E. S. Ayensu and R. A. DeFilipps, Endangered and Threatened Plants of the United States, Smithsonian Institution and World Wildlife Fund, 1978). With respect to requirements of the new Section 4(b)(3)(A), positive findings already have been made for the petitioned taxa in categories 1 and 2 of the 1980 notice, and findings of lack of substantial information have been made for taxa in category 3.

Below is a list of those pending petitions for which findings required by Section 4(b)(3)(A) or 4(b)(3)(D)(i) had not already been made: the administrative record for these findings was completed by January 11, 1983, and the findings are indicated for each taxon. Also listed are several petitions submitted after October 13, 1982, and our findings for them.

EVALUATION OF CERTAIN PETITIONS

Species	Action	Petitioner	Date	Substantial information
Graham's harvestman *Banksula grahami*	List	G. H. Meral	4/07/75	No.
Melones harvestman *Banksula melones*	do	do	4/07/75	No.
All Appendix II CITES species	do	S. P. Ross, D. Whittlesey and M. Klepper; Fund for Animals.	5/22/75	No.
Black bear in Pennsylvania *Ursus americanus*—Pa. population.	do	L. I. Cohen, E. C. Fishman and C. A. Branigan; Fund for Animals.	9/76	No.
Higgins eye pearly mussel, *Lampsilis higginsi*	Designate critical habitat	Wisconsin Department of Natural Resources	10/06/80	Yes.
Sheath-tailed bat *Emballonura semicaudata*	List	P. M. Calvo, Governor of Guam	12/14/81	No.
Rufous—fronted fantail, *Rhipidura rufifrons uraniae*	List with critical habitat	do	12/14/81	Yes.
Micronesian starling, *Aplonisopaca guami*	do	do	12/14/81	No.
Ufa-halomtano *heritiera longipetiolata*	do	do	12/14/81	No.
Hayun lagu *Serianthes nelsonii*	do	do	12/14/81	Yes.
Tsatsa, *Cyathea lunulata*	do	do	12/14/81	No.
Ozark cavefish *Amblyopsis rosae*	List	A. V. Brown	9/09/82	Yes.
Alabama beach mouse *Peromyscus polionotus ammobates*	do	D. C. Holliman	10/26/82	Yes.
Southern sea otter *Enhydra lutris nereis*	Reclassify from threatened to endangered.	L. van de Velde	11/07/82	No.
Three kangaroos *Macropus rufus, M. giganteus,* and *M. fuliginosus.*	Delist	Australian Government	11/10/82	Yes.
San Francisco tree lupine moth *Grapholitha edwardsiana*	List	R. A. Arnold and J. A. Powell	11/28/82	Yes.
Larch Mountain salamander *Plethodon larselli*	do	AKI	12/08/82	No.

For three taxa in this list the required status reviews began with our December 30, 1982, vertebrate notice of review (47 FR 58454–58460); these taxa are *Rhipidura rufifrons uraniae, Amblyopsis rosae,* and *Peromyscus polionotus ammobates*. The reviews of status for the plant *Serianthes nelsoii* (Guam, Rota; category 1; Fabaceae), the moth *Grapholitha edwardsiana* (California), and the three listed kangaroos (50 CFR 17.11) commence with this notice; the December 15, 1980, notice of review on plants (45 FR 82479) is supplemented with the addition of *Serianthes nelsonii.*

The Service hereby solicit data concerning these five species now under notice of review. Especially sought is information regarding taxonomy, distribution, any recommended Critical Habitat for the native species, and threats to the five species. Comments received will be considered in any future actions for the taxa.

By October 13, 1983, the Service must decide whether the petitioned action is warranted for petitions that were pending on October 13, 1982, and for which findings of substantial information have been made, in accord with Sections 4(b)(3)(B) and 4(b)(3)(D)(ii) of the Act, as amended. For such petitions received since October 13, 1982, the decision required within 12 months of the receipt of the petition.

The notice was prepared by Dr. Bruce MacBryde in the Service's Office of Endangered Species in Washington (703/235–1975), with evaluations by appropriate staff biologists in the Washington Office and Endangered Species Program staff of the Service's Regional Office and Field Stations.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Part 17 Authority

This notice is published under the authority contained in the Endangered Species Act of 1973, as amended:

(Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*))

Dated: February 8, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83–3983 Filed 2–14–83; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 48, No. 32
Tuesday, February 15, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Exploration/Research) to the National Council on the Arts will be held on March 1, 1983 from 9:00 a.m.–6:00 p.m. in room 1422, Columbia Plaza Office Building, 2401 E Street, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 83–4016 Filed 2–14–83; 8:45 am]

BILLING CODE 7537-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Pig Iron From Brazil; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on pig iron from Brazil. The review covers the period November 26, 1979 through December 31, 1980. As a result of the review, the Department has preliminarily determined the amount of the net subsidy to be 20.72 percent of the f.o.b. invoice price of the merchandise for the period November 26, 1979 through December 6, 1979, and 5.52 percent for the period December 7, 1979 through December 31, 1979, and 4.39 percent for the period January 1, 1980 through December 31, 1980. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 15, 1983.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or Larry T. Hampel, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 26, 1979, the Department of the Treasury ("Treasury") published in the **Federal Register** (44 FR 67554) a final countervailing duty determination concerning pig iron from Brazil. Effective that date, Treasury suspended liquidation of entries of the merchandise.

On April 4, 1980, the Department of Commerce ("the Department") published in the **Federal Register** (45 FR 23045) a countervailing duty order on the merchandise. The Department continued the suspension of liquidation and required a cash deposit of estimated countervailing duties on subsequent entries.

The Department published in the **Federal Register** of March 16, 1981 (46 FR 16921) a notice of intent to conduct administrative reviews of all outstanding countervailing duty orders, including Brazilian pig iron, not listed in any previous intent to review notice. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted an administrative review of the countervailing duty order on pig iron from Brazil.

Scope of the Review

The merchandise covered by the review is merchant pig iron of basic, foundry, malleable, and low phosphorous grades, imported directly or indirectly from Brazil. Such imports are currently classifiable under item 606.1300 of the Tariff Schedules of the United States Annotated.

The review covers the period November 26, 1979 through December 31, 1980 and four programs found countervailable in the original investigation: preferential financing for exports, income tax exemptions for export earnings, the IPI export credit premium, and export financing under Resolution 331. The review also covers seven additional programs that Treasury found were not used during the original investigatory period.

The Brazilian government provided insufficient information for the period November 26, 1979 through December 31, 1979. The Department therefore relied on information presented for the period January 1, 1980 through December 31, 1980 as the best information available. There were 22 known Brazilian exporters of this merchandise to the United States in 1980. The review is based on information covering 15 of those exporters, whose shipments represented 80 percent of Brazilian exports to the United States during 1980.

Analysis of Programs

(1) *Preferential Financing for Exports.* Under this program companies are declared eligible by the Department of Foreign Commerce of the Banco Central do Brasil ("CACEX") to receive working capital loans. These loans have a duration of up to one year. Each firm producing pig iron can obtain preferential financing for up to 20 percent of the value of its previous year's exports.

We calculated the subsidy under this program for 1980 by multiplying the value of loans outstanding under the program during 1980 by the differential between the commercial interest rate and the preferential interest rate for each loan. For loans granted prior to the period, only that portion extending past January 1, 1980 was included in our Calculation. We similarly prorated loans extending past December 31, 1980. For the period November 26, 1979 through December 31, 1979, we calculated the subsidy by multiplying the loan utilization rate for 1980 by the weighted-average loan rate differentials in effect during the period November 27, 1978 through December 31, 1979.

The commercial rate for short-term working capital is the rate established by the Banco do Brasil for discounting sales of accounts receivable. We chose this as the benchmark rate because information provided by the Government of Brazil indicates that working capital is normally raised within the Brazilian financial system through the sale of accounts receivable. The commercial rate includes the tax on financial transactions, from which loans under the preferential financing program are exempt, and varied from 25.08 to 37.98 percent during the period November 27, 1978 through December 31, 1980.

During 1980, firms exporting pig iron had loans outstanding under Resolutions 515 (effective February 8, 1979), 583 (effective December 7, 1979), 602 (effective March 5, 1980), and 641 (effective October 22, 1980) of the Banco Central do Brasil. The effective annual rate for loans taken out under these resolutions ranged from 8.70 percent to 31.75 percent, and the differential between the commercial and preferential rates ranged from 3.50 percent to 17.50 percent. We calculated the benefit conferred by the program for the period November 26, 1979 through December 31, 1979 to be 3.49 percent *ad valorem* and 2.36 percent *ad valorem* for 1980.

With the publication of successor Resolution 674, effective January 22, 1981, there was an increase in potential benefits under the program. The effective rate of interest for loans under this resolution is 44 percent. The comparable rate for discounting sales of accounts receivable is 59.60 percent plus the 6.90 percent tax on financial transactions. The differential is 22.50 percent.

To estimate the potential benefit and cash deposit of estimated countervailing duties for this program, we summed the prorated value of loans outstanding during 1980, and found an actual utilization rate of 21.84 percent. We then multiplied the differential between the new benchmark commercial and preferential interest rates by the loan utilization rate to find a potential benefit under this program of 4.91 percent *ad valorem*.

(2) Income Tax Exemptions for Export Earnings. Exporters of pig iron are eligible under this program for exemption from income tax of the percentage of profit attributable to export revenue. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. The benefit equals the product of the amount of tax-exempt profit and the prevailing 35 percent corporate income tax rate. We preliminarily determine the benefit from this program to be 2.03 percent *ad valorem* for the period.

(3) IPI Export Credit Premium. The Brazilian government eliminated the IPI export credit premium on December 7, 1979, but reinstated it on April 1, 1981. Therefore, this program provided no benefit during the period December 7, 1979 through December 31, 1980. For the period November 26, 1979 through December 6, 1979, however, we preliminarily determine the benefit to be 15.2 percent *ad valorem*, the rate established for this program in the final countervailing duty determination. Currently, the Government of Brazil collects a tax on exports of pig iron to the U.S. which fully offsets the benefit received under this program. Therefore, for purposes of the cash deposit of estimated countervailing duties, the potential subsidy under this program is zero percent.

(4) Export Financing Under Resolution 331. Resolution 331 is a set of rules and regulations established by the Brazilian government enabling banks, for export transactions, to discount accounts receivable denominated in foreign currency. Beyond establishing these enabling rules, the government has no further involvement. The rules do not affect the setting of discount rates on such loans. Banks that act as intermediaries in export transactions operate under the rules if they choose to do such discounting.

In the final determination Treasury found that this program was a subsidy by comparing the discount rate for foreign currency accounts receivable to the discount rate for cruzeiro-denominated accounts receivable. The facts before us now indicate that such a comparison is inappropriate. Cruzeiro rates are not a proper basis for judging whether discount rates for hard currency receivables confer any benefit. Market rates for the hard currency in question provide the correct basis for comparison.

The Government of Brazil provides no funds to banks to enable them to discount such receivables, nor does it establish the discount rates. The rate of discount reflects commercial considerations of the banks themselves. As such, we preliminarily determine that the discounting of foreign exchange accounts receivable under the rules of Resolution 331 does not constitute a subsidy.

(5) Other Programs. Treasury found seven additional programs were not used during the original investigatory period. We preliminarily find that those programs were not used during the review period. The programs are:

(1) Excessive remission on export of indirect taxes other than IPI.

(2) Preferential export financing provided under Resolution 68.

(3) Preferential financing provided for the storage of goods under Resolution 330.

(4) Special tax credits available to firms located in Brazil's less developed regions.

(5) Accelerated depreciation for plant and equipment manufactured in Brazil.

(6) Exemption from payment of duties and value-added taxes on plant and equipment imported for the production of pig iron for export.

(7) Benefits under the "Entreposto Aduaneiro" system, which permits small producers of manufactured products to receive both a remission of the IPI tax and tax credits immediately upon the sale of a product to licensed trading companies, rather than at the time of export.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the aggregate net subsidy conferred during the period November 26, 1979 through December 6, 1979, is 20.72 percent *ad valorem*, 5.52 percent *ad valorem* for the period December 7, 1979 through December 31, 1979, and 4.39 percent *ad valorem* for the period January 1, 1980 through December 31, 1980. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 20.72 percent of the f.o.b. invoice price on all shipments of Brazilian pig iron entered, or withdrawn from warehouse, for consumption on or after November 26, 1979, and exported prior to December 7, 1979. For merchandise exported on or after December 7, 1979 through December 31, 1979, and for merchandise exported on or after January 1, 1980 through December 31, 1980, the

Department will instruct the Customs Service to assess countervailing duties of 5.52 and 4.39 percent, respectively, of the f.o.b. invoice price.

Further, as provided by section 751(a)(1) of the Tariff Act, we intend to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 6.94 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the current review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclsoure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: February 10, 1983.

Judith H. Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-4055 Filed 2-14-83; 8:45 am]

BILLING CODE 3510-25-M

Preliminary Affirmative Countervailing Duty Determination; Galvanized Steel Wire Strand From South Africa

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary Affirmative Countervailing Duty Determination.

SUMMARY: We have preliminarily determined that there is reason to believe or suspect that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in South Africa of galvanized steel wire strand, as described in the "Scope of Investigation" section of this notice. We estimate the amount of the benefits to be 23 percent of the f.o.b. value of the merchandise.

Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond in the amount equal to the estimated bounties or grants.

If this investigation proceeds normally, we will make our final determination by April 26, 1983.

EFFECTIVE DATE: February 15, 1983.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we have preliminarily determined that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in South Africa of galvanized steel wire strand, as described in the "Scope of Investigation" section of this notice. We find the net bounty or grant to be 23 percent *ad valorem*, consisting of the following benefit amounts:

- Export incentive program—category A—0.0%
- Export incentive program—category B—0.0%
- Export incentive program—category D—3.5%
- Iron/Steel Export Promotion Scheme—19.5%

Case History

On November 17, 1982, we received a petition from counsel for Bethlehem Steel Corporation, Florida Wire and Cable Company, and Indiana Steel and Wire Company. These companies produce galvanized steel wire strand. The petition alleged that manufacturers, producers, or exporters in South Africa of galvanized steel wire strand receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. We found the petition to be sufficient, and on December 7, 1982, we initiated a countervailing duty investigation (47 FR 55986).

Since South Africa is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise under investigation is dutiable, 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 the U.S. industry in question.

We presented a questionnaire in Washington, D.C., to the South African government on December 17, 1982. We received its response on January 17, 1983.

Scope of Investigation

For the purpose of this investigation, the term "galvanized steel wire strand" includes aluminum conductor steel reinforced (ACSR) core strand (except stainless) and other zinc coated steel wire strand currently provided for in items 642.1142 and 642.1144 of the *Tariff Schedules of the United States Annotated.*

Haggie Limited is the only known producer and/or exporter of the galvanized steel wire strand exported to the United States from South Africa.

Analysis of Programs

The period for which subsidization is being measured is the corporate fiscal year ending December 31, 1982. In its respose to our questionnaire, the government of South Africa and Haggie Limited provided data for three quarters of this period.

Based upon our analysis to date of the response and petition, we have preliminarily determined the following:

I. *Programs Preliminarily Determined To Confer Bounties or Grants to Manufacturers, Producers, or Exporters of Galvanized Steel Wire Strand.* We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in South Africa of galvanized steel wire strand under the programs listed below:

Export Incentive Program

The South African Department of Industries, Commerce and Tourism has a four-part general export incentive program, three parts of which Haggie Limited used in 1982. These three are described below.

Category A. This program consists of a 50 percent deduction from income tax for the customs duty paid on imported raw materials used in the production of exported merchandise. Apparently there are dutiable imported raw materials used in the production of galvanized steel wire strand manufactured in South Africa because Haggie has applied for a benefit on exports to the U.S. of this material. Whether this program provides a benefit which constitutes a bounty or grant depends on whether or not the

potential benefits exceed the duties paid. In the current absence of information on this point, we must assume that they do. Therefore, we preliminarily determine that the government of South Africa through this Category A tax credit program provides a benefit which constitutes a bounty or grant. For programs involving income tax benefits, the Department generally determines the value of the bounty or grant by the value of the benefit received during the period for which subsidization is being measured. Haggie Limited has applied for, but not yet received any benefits under this program. Therefore, although we preliminarily determine the program to confer a bounty or grant, we find the estimated net bounty or grant for the period for which we are measuring subsidization to be 0.0 percent *ad valorem.*

Category B. This program consists of a credit against income taxes of 10 percent of the value-added component of the exported merchandise if there is a South African import duty on such merchandise. There is an import duty on galvanized steel wire strand. The value-added component is calculated by taking the average f.o.b. sales price per ton, increasing it by the rebate received under the Iron/Steel Export Promotion Scheme (see below), and subtracting the average raw materials costs. This figure is then multiplied by 10 percent to obtain the amount of the credit. We preliminarily determine that the government of South Africa through this Category B tax credit program provides a benefit which constitutes a bounty or grant. For programs involving income tax benefits, the Department generally determines the value of the bounty or grant by the value of the benefit received during the period for which subsidization is being measured.

Haggie Limited has applied for, but not yet received any benefits under this program. Therefore, although we preliminarily determine the program to confer a bounty or grant, we find the estimated net bounty or grant for the period for which we are measuring subsidization to be 0.0 percent *ad valorem.*

Category D (Export Marketing Assistance Program). This program consists of a deduction from taxable income of between 175 and 200 percent of export market development expenses. In a previous investigation of steel wire rope, we found that Haggie Limited was eligible for the full deduction of 200 percent. We preliminarily determine that the government of South Africa through this Category D tax deduction program provides a benefit which constitutes a bounty or grant. In this case, the measure of the benefit is three quarters of the deduction credited to Haggie in 1982 for 1980 marketing expenses allocable to sales made to the United States. This figure was divided by the total value of exports of galvanized steel wire strand to the United States in the first three quarters of 1982. The result is a benefit of 3.5 percent *ad valorem.*

Iron/Steel Export Promotion Scheme

The Iron/Steel Export Promotion Scheme rebates a fixed percentage of the f.o.b. value of exports containing rolled, drawn, or forged steel to secondary producers if the exported product meets a value-added criterion. It is administered by the South African Iron and Steel Industrial Corporation. The Department considers the scheme to have provided an export subsidy, and therefore a countervailable bounty or grant under section 303(a)(1) of the Act. Section 771(5) of the Act equates "subsidy" with "bounty or grant" and provides illustrative examples of subsidies. In the legislative history of the Act, the Senate Finance Committee in discussing section 771(5) said: "As under current law . . . a subsidy may be provided either by a government or governmental entity, subdivision, or customs union, or by a private party or group of private parties."

Primary steel producers in South Africa manage a special fund levied at a rate of 4 Rand per ton of steel sold in the domestic market. The South African government does not contribute to this fund. Direct payments from the fund are provided to exporters of fabricated articles containing iron or steel. The current value of the assistance is 19.5 percent of the f.o.b. value of the exported fabricated steel products. We have determined that the Iron/Steel Export Promotion Scheme provides a benefit which constitutes a bounty or grant. We have found that Haggie Limited takes full advantage of this program on its exports of galvanized steel wire strand.

II. *Programs Preliminarily Determined Not to Confer Bounties or Grants to Manufacturers, Producers, or Exporters of Galvanized Steel Wire Strand.* We preliminarily determine that no bounties or grants are being provided to manufacturers, producers or exporters in South Africa of galvanized steel wire strand under the programs listed below:

Employee Training Programs

The South African Department of Manpower certifies training programs to the taxing authority which allow businesses to deduct 200 percent of qualified training expenses for income tax purposes. The Department of Manpower has demonstrated that all qualified training programs are available to all companies and industries and that they are neither restricted to certain sectors of the economy nor preferential to exporters. Therefore, the training programs are preliminarily determined not to confer bounties or grants.

Bounties or Grants to the South African Iron and Steel Corporation (ISCOR)

In the investigation of "Certain Steel Products from South Africa", we determined that ISCOR receives bounties or grants within the meaning of the countervailing duty law (47 FR 39379). In our "Final Affirmative Countervailing Duty Determination on Certain Steel Products from Germany", we wrote:

> As we stated in Appendix B to "Preliminary Affirmative Countervailing Duty Determinations, Certain Steel Products from Belgium" reached on June 10 (47 FR 26309), benefits bestowed upon the manufacturer of an input do not flow down to the purchaser of that input if the sale is transacted at arm's length. In an arm's length transaction, the seller generally attempts to maximize its total revenue by charging as high a price and selling as large a volume as the market will bear (47 FR 39351).

Haggie purchases its steel rod at arm's length from ISCOR, to which it is not related. Therefore, subsidies to ISCOR are preliminarily determined not to confer bounties or grants.

III. *Programs Preliminarily Determined Not To Be Used By Manufacturers, Producers, or Exporters of Galvanized Steel Wire Strand.* We preliminarily determine that the following programs are not used by the manufacturers, producers or exporters in South Africa of galvanized steel wire strand.

- Reduced railroad rates
- Beneficiation allowances for base mineral processing, and
- Homeland development.

IV. *Programs Preliminarily Determined To Be No Longer In Existence.* We preliminarily determine that the following program is no longer in existence.

Export Incentive Program—Category C (Finance Charges Aid Scheme)

The South African government provided for a tax-free rebate to certain firms increasing the value of their exports of manufactured goods. The rebate was equal to 25 percent of the interest costs for financing exports.

Haggie Limited benefitted from this program in 1981. However, the program was discontinued on April 1, 1982. There is little likelihood that there are any exports of the subject merchandise shipped prior to that date, but not yet entered. Therefore, the benefit that Haggie received for this program in the first quarter of 1982 is not included in the calculation of total estimated bounties or grants.

No other programs alleged in the petition were found to constitute bounties or grants.

Verification

In accordance with section 776(a) of the Act, we will verify the information relied upon for our final determination.

Suspension of Liquidation

We are directing the U.S. Customs Service to suspend liquidation of all entries of galvanized steel wire strand from South Africa which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond in the amount equal to 23 percent of the f.o.b. value of the merchandise.

Public comment

In accordance with section 355.35 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on March 16, 1983, at the U.S. Department of Commerce, Room 3080, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by March 9, 1982. Oral presentations will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 355.43, within thirty days of this notice's publication, at the above address and in at least ten copies.

Dated: February 9, 1983.

Judith H. Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-3977 Filed 2-14-83; 8:45 am]

BILLING CODE 3510-25-M

Incentives/Disincentives Subcommittee of the President's Export Council; Open Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The President's Export Council was initially established by Executive Order 11753 of December 20, 1973. The Council was reconstituted by Executive Order 12131 of May 4, 1979, and continued by Executive Order 12258 of December 31, 1980 and 12399 of December 31, 1982. The Council's purpose is to advise the President on matters relating to United States export trade. The Incentives/Disincentives Subcommittee was formed by the Council to study, and make recommendations on, incentives and disincentives to export trade.

TIME AND PLACE: March 1, 1983, from 10:00 a.m.–2:30 p.m. The meeting will be held at the Department of Commerce, 14th & Constitution Avenue NW., Room 4830, Washington, D.C. 20230.

AGENDA: Opening Remarks. Reports on: Extraterritoriality, DISC, Current trade legislation. discussion on future subcommittee projects and current trade issues.

PUBLIC PARTICIPATION: The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Writtern statements may be submitted at any time before or after the meeting.

FOR FURTHER INFORMATION OR COPIES OR THE MINUTES CONTACT: Elisabeth Vermily, Room 3213. U.S. Department of Commerce, Washington, D.C. 20230. Telephone: (202) 377-1125.

Dated: February 10, 1983.

Henry Misisco.

Acting Director, Office of Policy and Coordination.

[FR Doc. 83-3978 Filed 2-14-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration National Marine Fisheries Service; Notice of Issuance of Permit

On January 1, 1983, Notice was published in the **Federal Register** (48 F.R. 478), that an application had been filed with the National Marine Fisheries Service by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, for a permit to take up to 120 northern elephant seals (*Mirounga angustirostris*) for the purpose of scientific research.

Notice is hereby given that on February 8, 1983, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Scientific Research Permit to the Southwest Fisheries Center for the above taking subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 8, 1983.

R. B. Brumsted,

Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83-4070 Filed 2-14-83; 8:45 am]

BILLING CODE 3510-22-M

United States Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on March 3, 1983, at 10:00 am in Room 6802 of the Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Public Law 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans. A detailed agenda will be published in

the Federal Register in advance of the meeting.

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Christine Hathaway, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, D.C. 20230 (telephone: 202/377-0136) will respond to public request for information about the meeting.

Peter McCoy,

Under Secretary for Travel and Tourism.

[FR Doc. 83-4052 Filed 2-14-83; 8:45 am]

BILLING CODE 3510-11-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Chief of Engineers Environmental Advisory Board Meeting

ACTION: Notice of Open Meeting.

SUMMARY: Under Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463) this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB) Meeting. The meeting is to be jointly chaired by Mr. Gerald J. McLindon, Chairman, EAB, and Lieutenant General J. K. Bratton, Chief of Engineers, U.S. Army. The meeting is open to the public.

DATE: The meeting will be held from 8:15 a.m., Tuesday, 1 March 1983, to 10:00 a.m., Thursday, 3 March 1983.

PLACE: The meeting will be held at the Casey Building, Ft. Belvoir, Virginia 22060

FOR FURTHER INFORMATION CONTACT: Lieutenant Coloinel Thomas H. Magness, III, Assistant Director of Civil Works for Environmental Programs, or 1st Lieutenant Kevin A. Doxey, Office of the Chief of Engineers, Washington, D.C. 20314, (202) 272-0103.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the Environmental Advisory Board meeting is:

1 March—Tuesday—A.M. Session

8:15—Meeting convened—opening remarks
9:00—Old business
10:30—Overview of dredging program
11:30—Overview of legislation and trends

P.M. Session

1:00—Overview of research
1:15—Dredged Material Research Program (DMRP)
1:45—Dredging Operations Technical Support (DOTS) program
2:15—Long-term Effects of Dredging Operations (LEDO)
3:00—Field Verification Program
4:00—Dredging contaminated sediments
4:15—Beneficial uses
5:00—Wrap-up
5:15—Meeting recessed

2 March—Wednesday—A.M. Session

8:15—Overview of workshops
8:30—Workshops convene to discuss beneficial uses of dredged material, field practices and problems, and long-range planning.

P.M. Session

1:00—Workshops continue
3:30—Workshop wrap-up
5:00—Meeting recessed

3 March—Thursday—A.M. Session

8:15—EAB reports to Chief of Engineers
9:15—Chief of Engineers response
10:00—Meeting adjourned

Kevin Doxey,

Executive Director, Environmental Advisory Board.

[FR Doc. 83-4051 Filed 2-11-83; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportaion Allowance Committee, Defense.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 117. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 117 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: February 7, 1983.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of changes in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follow:

CIVILIAN PERSONNEL PER DIEM BULLETIN NUMBER 117

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: TABLE OF MAXIMUM PER DIEM RATES IN LIEU OF SUBSISTENCE FOR UNITED STATES GOVERNMENT CIVILIAN OFFICERS AND EMPLOYEES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTH OF PUERTO RICO AND POSSESSIONS OF THE UNITED STATES

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated 17 August 1966, subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 116 except for the cases identified by an asterisk which rates are effective on the date of this Bulletin.

3. Each Department of Establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$12.60
Anaktuvuk Pass	140.00
Anchorage	89.00
Barrow	169.00
Bethel	114.00
College	97.00

Locality	Maximum rate
Cordova	109.00
Deadhorse	142.00
Dillingham	103.00
Dutch Harbor	82.00
Eielson AFB	97.00
Elmendorf	89.00
Fairbanks	97.00
Ft. Richardson	89.00
Ft. Wainwright	97.00
Juneau	97.00
Ketchikan	96.00
Kodiak	103.00
Kotzebue	109.00
Murphy Dome	97.00
Noatak	109.00
Nome	110.00
Noorvik	109.00
Petersburg	96.00
Point Hope	100.00
Prudhoe Bay	142.00
*Shemya AFB [1]	12.75
Shungnak	109.00
Sitka-Mt. Edgecombe	96.00
Skagway	96.00
Spruce Cape	103.00
Tanana	110.00
Valdez	93.00
Wainwright	79.00
Wrangell	96.00
All Other Localities	83.00
*American Samoa	75.00
Guam M.I.	74.00
Hawaii:	
Oahu	91.00
All Other Localities	67.00
Johnston Atoll [2]	19.10
Midway Islands [1]	12.60
Puerto Rico:	
Bayamon:	
12-16—5-15	119.00
5-16—12-15	88.00
Carolina:	
12-16—5-15	119.00
5-16—12-15	88.00
Fajardo (Including Luquillo):	
12-16—5-15	119.00
5-16—12-15	88.00
Ft. Buchanan (Incl. GSA Service Center, Guaynabo):	
12-16—5-15	119.00
5-16—12-15	88.00
Ponce (Incl. Ft. Allen NCS)	72.00
Roosevelt Roads:	
12-16—5-15	119.00
5-16—12-15	88.00
Sabana Seca:	
12-16—5-15	119.00
5-16—12-15	88.00
San Juan (Incl. San Juan Coast Guard Units):	
12-16—5-15	119.00
5-16—12-15	88.00
All Other Localities	80.00
Virgin Islands of U.S.:	
12-1—4-30	113.00
5-1—11-30	88.00
Wake Island [2]	15.00
All Other Localities	20.00

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals, and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

February 10, 1983.

M. S. Healy,

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

[FR Doc. 83-4065 Filed 2-14-83; 8:45 am]

BILLING CODE 3810-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 23, 1983, beginning at 1:30 p.m. The hearing will be a part of the Commission's regular February business meeting, which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation beginning at 11:00 a.m.

The hearing, meeting and conference will be held in the Rembrandt Peal Room of the Holiday Inn, 18th and Market Streets, Philadelphia, Pennsylvania.

The subjects of the hearing will be as follows:

A. *Current Expense and Capital Budgets.* A proposed current expense budget for the fiscal year beginning July 1, 1983, in the aggregate amount of $1,933,700, and a capital budget for the same period in the amount of $27,000. Copies of the current expense and capital budget are available from the Commission on request.

B. *Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11, and/or Section 3.8 of the Compact:* 1. *Keystone Water Company—Yardley District (D-79-16 CP).* A surface water withdrawal to serve the applicant's distribution system. The proposed maximum diversion will be 4.0 million gallons per day (mgd), an increase of 2.0 mgd over the existing withdrawal. The intake will be located at River Mile 137.28 on the Delaware River in Lower Makefield Township, Bucks County, Pennsylvania. This hearing continues that of January 26, 1983.

2. *Old Craigsville Television Association (D-82-46).* An overhead cable crossing to provide improved television reception for area homes on the East Bank of the Delaware River, near Handsome Eddy, New York. The proposed crossing will extend for a distance of approximately 900 feet from Lumberland Township, Sullivan County, New York, across the Delaware River to Shohola Township, Pike County, Pennsylvania. The crossing will be located approximately three miles downstream from the Town of Barryville, New York, and will be located in the Upper Delaware Wild and Scenic River area. This hearing continues that of January 26, 1983.

3. *Borough of Weatherly (D-80-80 CP).* A well water supply project to augment public water supplies in the Borough of Weatherly, Carbon County, Pennsylvania. Designated as Well No. 3, the new facility is expected to be utilized at an average rate of 95,000 gallons per day.

4. *W. R. Grace & Company (D-82-31).* A well project to supply about 0.13 mgd of water to the W. R. Grace paper manufacturing plant in the Borough of Quakertown, Bucks County, Pennsylvania. The project will relieve the Borough of its need to supply water to the plant. Cooling water will be returned to the ground waters with a separate injection well.

3. *Lackawaxen Water and Sewer Company (D-81-62 CP).* A ground water withdrawal project to provide additional public water supplies at the Masthope Rapids and Falling Waters at Masthope vacation home subdivisions in Lackawaxen Township, Pike County, Pennsylvania. New Well No. 3 and existing Wells Nos. 1 and 4 are expected to supply an average of 0.163 mgd of water within five years.

6. *U.S. Environmental Protection Agency (D-83-2).* A temporary industrial waste treatment project at the abandoned Bridgeport Rental and Oil Service Treatment Facility in Logan Township, Gloucester County, New Jersey. The project is designed to temporarily lower the liquid level in a contaminated oil lagoon, which is in danger of overtopping. The treatment process will recycle contaminants back to the lagoon and will discharge 0.288 mgd of treated effluent to Little Timber Creek in Logan Township, Gloucester County, New Jersey. Temporary lowering of the liquid level will prevent overtopping and facilitate the development of a long-range clean up plan.

Documents relating to these projects may be examined at the Commission's offices. Please contact Mr. David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the date of the hearing.

Susan M. Weisman,

Secretary.

February 8, 1983.

[FR Doc. 83-4015 Filed 2-14-83; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP83-44-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 10, 1983.

Take notice that on January 28, 1983, Algonquin Gas Transmission Company (Algonquin) tendered for filing proposed changes in its FERC Gas Tariff, pursuant to section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations under the Natural Gas Act. Algonquin proposes that the filing take effect on March 1, 1983.

Algonquin asserts that the filing would effectuate an increase in revenue amounting to approximately $6.6 million annually, amounting to eight-tenths of one percent. Algonquin asserts tht the increase in rates is required to meet current, higher costs of operation, including higher expenses, taxes, and capital costs including rate of return.

Algonquin also notes that its filing encompasses a complete tariff volume designated Second Revised Volume No. 1, which when made effective will supersede its existing First Revised Volume No. 1. Algonquin asserts that the revised tariff volume is filed primarily to make changes in format with some modifications of an updating nature. Additionally, Algonquin asserts the tariff tracks a change made by its pipeline supplier, Texas Eastern Transmission Corporation, related to payment of bills and requiring that such payment be by wire transfer of Federal Funds. Finally, Algonquin states that it has increased the unauthorized overrun charge to $25 per MMBTU.

Algonquin states that copies of its filing were served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 835 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211; 385.214). All such petitions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4029 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-54-006]

Colorado Interstate Gas Co.; Filing

February 10, 1983.

Take notice that on January 31, 1983, Colorado Interstate Gas Company (CIG), submitted for filing as part of its FERC Gas Tariff, Original Volume Nos. 1 and 2:

Substitute Replacement Second Alternate Thirteenth Revised Sheet Nos. 7 and 8 (9/29/82)

Substitute Replacement Fourteenth Revised Sheet Nos. 7 and 8 (10/1/82)

Substitute Replacement Alternate Second Revised Sheet No. 463 (9/29/82)

Substitute Replacement Alternate Second Revised Sheet No. 544 (9/29/82)

These sheets are, as required by the Commission's January 10, 1983 letter order in this docket, to be effective, subject to refund, as of September 9, 1982 (for Substitute Replacement Second Alternate Thirteenth Revised Sheet Nos. 7 and 8 and Substitute Replacement Alternate Second Revised Sheet Nos. 463 and 544), and October 1, 1982 (for Substitute Replacement Fourteenth Revised Sheet Nos. 7 and 8).

CIG submits, that since this is a compliance filing, good cause exists for granting whatever waivers may be required for acceptance of this filing in this form.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4030 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-24-000]

Equitable Gas Co.; Proposed Change in Rates

February 9, 1983.

Take notice that Equitable Gas Company (Equitable) on February 1, 1983, tendered for filing with the Commission Sixth Revised Sheet No. 10-G to its FERC Gas Tariff, First Revised Volume No. 1, to become effective March 1, 1983. Equitable Gas Company states that the change in rates results from the applications of the Purchased Gas Cost Rate Adjustment provision in Section 5 of Rate Schedule GS-2 of FERC Gas Tariff, Original Volume No. 1, approved by the Commission in Docket No. CP80-473.

Equitable states that a copy of its filing has been served upon the purchaser and interested state commissions (and upon each party on the service list of Docket No. CP80-473).

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4020 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-388-002]

Florida Gas Transmission Co.; Tariff Filing

February 10, 1983.

Take notice that on January 13, 1983, Florida Gas Transmission Company (Florida Gas) tendered for filing in the above-referenced docket the following sheets:

Second Revised Sheet No. 1-D
Original Sheet Nos. 505 through 536

Florida Gas requests that the Commission waive its regulations to the extent necessary to allow the above-referenced tariff sheets to become effective on November 23, 1982, the date of the certificate of public convenience and necessity was issued.

Copies of the filing were served upon Florida Gas' jurisdictional customers and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4031 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-4-003 (PGA83-2, IPR83-1a)]

Granite State Gas Transmission Inc.; Proposed Changes in Rates Pursuant to Purchase Gas Cost Adjustment Provisions

February 9, 1983.

Take notice that Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, on January 26, 1983, tendered for filing Third Revised Sheet No. 7 and Third Revised Sheet No. 8 in its FERC Gas Tariff, First Revised Volume No. 1, containing proposed changes in rates for effectiveness on February 1, 1983.

Accordingly to Granite State, the revised rates contained on Third Revised Sheet No. 7 reflect the effect on its rates for jurisdictional sales of an increase in the cost of gas purchased from its sole supplier, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) resulting from the general rate increase in Docket No. RP82-125-000 that Tennessee proposes to make effective on February 1, 1983. Granite State further states that the increase in rates is applicable to its jurisdictional sales to its two distribution company affiliates, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). It is stated that the annual effect of the increase is approximately $5,995,000, of which $4,684,330 would be applicable to sales to Bay State and 1,310,557 would be applicable to sales to Northern Utilities.

Granite State requests permission to effect its rate changes concurrent with the effectiveness of Tennessee's general rate increase in Docket No. RP82-125-000 because of the substantial adverse effect that a delay in reflecting the increases will have on Granite State's cash flow. It is stated that if Granite State is delayed in reflecting the Tennessee increase until its next regular purchased gas cost adjustment filing on July 1, 1983, the accumulated deferred gas costs attributable to the Tennessee increase would amount to approximately $2,700,000 exclusive of associated carrying charges.

Granite State further states that the revised rates tendered on Third Revised Sheet No. 8 pertain to a storage service that is rendered for its account by Consolidated Gas Supply Corporation (Consolidated) and storage-related transportation rendered by Tennessee. It is stated that Granite State is authorized to track changes in the rates for these services rendered by Consolidated And Tennessee. Granite State states that the revised rates for its storage service rendered under Rate Schedule GSS tracks the settlement rates proposed by Consolidated in Docket No. RP82-115-000 for its Rate Schedule GSS service and the revised rate for its storage-related transportation service tracks the revised rate filed by Tennessee in Docket No. RP82-125-000 for service under Rate Schedule ISST-NE.

Accordingly to Granite State, copies of the filing were served upon its customers and the regulatory commissions of the State of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4021 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-48-000]

High Island Offshore System; Tariff Revision

February 9, 1983.

Take notice that on January 31, 1983, High Island Offshore System (HIOS) tendered for filing the tariff sheets listed on the attached Appendix A to Volumes Nos. 1 and 2 of its F.E.R.C. Gas Tariff.

HIOS states that the listed tariff sheets have been revised to reflect proposed revisions to Article 2.2 of all Transportation Agreements between HIOS and HIOS' Shippers. Article 2.2 establishes the manner in which a new Shipper's request for capacity is accommodated when all of HIOS' firm capacity is being used by existing Shippers.

HIOS asserts that the purpose of the proposed tariff change is to remove from the existing provision, language which has been described as discrimination in favor of a new Shipper.

HIOS requests a waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets listed on the Appendix A attached hereto be made effective as of February 1, 1983.

HIOS states that it has provided its Shippers with copies of this tariff filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4022 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-8-000]

Kansas-Nebraska Natural Gas Co., Inc.; Informal Settlement Conference

February 10, 1983.

Take notice that on February 24, 1983, at 10:00 a.m., a further settlement conference will convene in the above-captioned docket. The meeting place for this conference will be at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4032 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-46-004]

Kentucky West Virginia Gas Co.; Proposed Change in Rates

February 9, 1983.

Take notice that on January 28, 1983, Kentucky West Virginia Gas Company ("Kentucky West") tendered for filing its Substitute Revised Twenty-Fifth Revised Sheet No. 27 to its FERC Gas Tariff, First Revised Volume No. 1, to become effective November 1, 1982.

Kentucky West has filed its Substitute Revised Twenty-Fifth Revised Sheet No. 27 to its FERC Gas Tariff in compliance with the requirements set out in the Commission's Orders dated October 29, 1982 in this proceeding and December 2, 1982 in Docket No. TA82-2-46. By doing so, Kentucky West does not intend to waive or prejudice its rights to rehearing and/or further appeal of the Commission's Order dated April 30, 1979, in Docket Nos. RP73-97 and RP76-93 (PGA 79-1).

Kentucky West further states that this filing is made under protest since Kentucky West believes the requirements of the Commission's December 2, 1982 Order are unlawful. Further, Kentucky West by this filing does not intend to waive or prejudice its right to continue to prosecute its petition for review with the United States Court of Appeals for the Fifth Circuit of the Commission's Order dated December 2, 1982, denying Kentucky West's application for rehearing of the Order issued April 30, 1982 in Docket Nos. TA82-2-46-001 (PGA-2) (IPR82-2). (*Kentucky West Virginia Gas Company vs. FERC*, Case No. 82-4594—filed December 3, 1982.)

In addition, Kentucky West states that nothing contained in its filing should be construed as a waiver on behalf of Kentucky West of its right to retroactively collect any amounts that are subsequently determined by the Commission and/or the courts to be applicable to a pipeline's own production nor the right to collect carrying charges applicable thereto. Kentucky West states that it is entitled to collect NGPA rates for all of its pipeline production from December 1, 1978 forward and that it is not barred by any rate settlement or otherwise from collecting NGPA prices for such production.

Copies of the filing were served upon the Company's jurisdictional customers or interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4023 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 5765-001, et al.]

Madera Irrigation District, et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: License (5 MW or Less).

b. Project No: 5765-001.

c. Date Filed: September 10, 1982.

d. Applicant: Medera Irrigation District.

e. Name of Project: Madera Canal Mile 24.2 (Dry Creek).

f. Location: Madera County, California; Madera Canal.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. Sections 791(a)—825(r).

h. Contact Person: Mr. Robert L. Stanfield, Manager—Chief Engineer, Madera Irrigation District, 12152 Road 28¼, Madera, California 93637.

i. Comment Date: April 20, 1983.

j. Description of Project: The proposed project would consist of: (1) an 11-foot-high intake structure on the existing Dry Creek Lateral Turnout off the existing Madera Canal owned and operated by the Applicant; (2) a 60-inch-diameter, 330-foot-long penstock; (3) a powerhouse with a total installed capacity of 275 kW; and (4) a tailrace. Applicant estimates that the average annual output would be 833,000 kWh. The power generated by the project would be transmitted by the 12-kV transmission line existing at the site and owned and operated by the Pacific Gas and Electric Company. A preliminary permit was issued to the Applicant for this project on April 27, 1982.

k. Purpose of Project: The power produced by the project would be sold to the Pacific Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A2, B, C and D1.

2a. Type of Application: Exemption from Licensing (5MW or less Capacity).

b. Project No: 6397-001.

c. Date Filed: December 8, 1982.

d. Applicant: Lawrence J. McMurtrey.

e. Name of Project: Helena Creek.

f. Location: on Helena Creek, within Snoqualmie—Mt. Baker National Forest in Snohomish County, Washington.

g. Filed Pursuant to: Energy Security Act of 1980 (16 U.S.C. §§ 2705 and 2708 as amended).

h. Contact Person: Lawrence J. McMurtrey, 12122—196th N.E., Redmond, Washington 98052.

i. Comment Date: March 30, 1983.

j. Competing Application: Project No. 6538. Date Filed: 7/16/82. Notice Issued: 10/19/82.

k. Description of Project: The proposed project would consist of: (1) two 2-foot-high diversion structures on Helena Creek; (2) a 12-inch and a 24-inch-diameter, 600-foot and 13,000-foot-long penstock, respectively; (3) a powerhouse containing a generating unit with a rated capacity of 2.2 MW; and (4) appurtenant facilities. The Applicant estimates a 9.7 GWh average annual energy production.

l. Purpose of Project: Power would be sold to Puget Sound Power and Light.

m. This notice also consists of the following standard paragraphs: A1, B, C, D3a.

3a. Type of Application: Case—specific exemption from licensing for hydroelectric power projects of 5 MW or less capacity.

b. Project No: 6444-000.[1]

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[1] This notice replaces the notice issued January 24, 1983 and published in the Federal Register at 48 FR 3840 (January 27, 1983) as it pertains to Project No. 6444.

c. Date Filed: June 17, 1982.

d. Applicant: Ringo Resources Inc.

e. Name of Project: Cedar Creek Hydroelectric Project.

f. Location: Cedar Creek in Lincoln County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 2705, and 2708 *as amended.*

h. Contact Person: Mr. Bob Dennis, Route 2, Box 717, Libby, Montana 59923.

i. Comment Date: March 28, 1983.

j. Description of Project: The proposed project will be located entirely on Federal land within the Koofenai National Forest and will consist of: (1) a proposed 22-foot-high and 34-foot-long diversion structure, to be built below the existing stream bed and to divert groundwater instead of surface water; (2) a 15,000-foot long penstock with a 14 inch diameter to be buried along an existing U.S. Forest Service trail adjacent to the stream; (3) a proposed powerhouse structure containing two turbine/generator units with a total installed capacity of 1300 kW; (4) a proposed energy dissipator located between the powerhouse and the stream to prevent stream erosion; (5) a proposed 4160 volt underground power line approximately 2 miles in length and interconnecting with the Pacific Power and Light Company; and (6) appurtenant facilities. The Applicant estimates the average annual energy production to be 11.4 MWh.

k. This notice also consists of the following standard paragraphs: A1, B, C, and D3a.

4a. Type of Application: Preliminary Permit.

b. Project No: 6900-000.

c. Date Filed: December 1, 1982.

d. Applicant: City of New Martinsville, West Virginia.

e. Name of Project: Belleville Locks and Dam.

f. Location: on the Ohio River in Wood County, West Virginia and Meigs County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael Francis, City of New Martinsville, Brenner & Francis, P.O. Drawer 98, New Martinsville, West Virginia 26155.

i. Comment Date: April 20, 1983.

j. Description of Project: The proposed project would utilize the existing Corps of Engineer's Belleville Locks & Dam and would consist of: (1) a proposed powerhouse containing two or more generating units having a total rated capacity of 53,000 kW; (2) existing public utility transmission lines; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 325,000,000 kWh.

k. Purpose of Project: The energy derived at the proposed project would be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs: A4a, A4d, B, C and D2.

m. Purpose of Project: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 12 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $300,000.

5a. Type of Application: Preliminary Permit.

b. Project No: 6901-000.

c. Date Filed: December 1, 1982.

d. Applicant: City of New Martinsville, West Virginia.

e. Name of Project: New Cumberland Locks and Dam.

f. Location: on the Ohio River in Hancock County, West Virginia and Jefferson County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael Francis, City of New Martinsville, Brenner & Francis, P.O. Drawer 98, New Martinsville, West Virginia 26155.

i. Comment Date: April 20, 1983.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers' New Cumberland Locks and Dam and would consist of: (1) a proposed powerhouse containing two or more generating units having a total rated capacity of 37 MW; (2) existing public utility transmission lines; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 190 GWh.

k. Purpose of Project: The energy derived at the proposed project would be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs: A4a, A4d, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 12 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies of Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $300,000.

6 a. Type of Application: Preliminary Permit.

b. Project No: 6902-000.

c. Date Filed: December 1, 1982.

d. Applicant: City of New Martinsville, West Virginia.

e. Name of Project: Willow Island Locks and Dam.

f. Location: on the Ohio River in Pleasants County, West Virginia and Washington County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Mr. Michael Francis, City of New Martinsville, Brenner & Francis, P.O. Drawer 98, New Martinsville, West Virginia 26155.

i. Comment Date: April 22, 1983.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers' Willow Island Locks and Dam and would consist of: (1) a proposed powerhouse containing two or more generating units having a total rated capacity of 33 MW; (2) existing public utility transmission lines; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 202 GWh.

k. Purpose of Project: The energy derived at the proposed project would be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs; A4a, A4d, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 12 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $300,000.

7 a. Type of application: Prelimary Permit.

b. Project No: 6922-000.

c. Date filed: December 13, 1982.

d. Applicant: City of Gillette.

e. Name of Project: Trotters Station Power Project.

f. Location: Shoshone River, Park County, Wyoming.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Paul G. Schamp, P.E., City Electrical Engineer, City of Gillette, P.O. Box 3003, Gillette, Wyoming 82716.

i. Comment Date: April 22, 1983.

j. Description of Project: The proposed project would consist of: (1) a proposed 60-foot high and 600-foot long earthfill embankment; (2) a proposed power plant with an installed capacity of 7,210 kW; (3) a proposed switchyard connected to an existing 115 kV transmission line about ¼ mile from the site; and (4) appurtenant facilities. Applicant estimates that the average annual generation would be 37.7 GWh.

k. Purpose of Project: The power generated would be used within the Applicant's electric system.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No: 6928–000.

c. Date Filed: December 13, 1982.

d. Applicant: City of Gillette.

e. Name of Project: Iron Creek Power Project.

f. Location: Shoshone River, Park County, Wyoming.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Paul G. Schamp, P.E., City Electrical Engineer, City of Gillette, P.O. Box 3003, Gillette, Wyoming 82716.

i. Comment Date: April 22, 1983.

j. Description of project: the proposed project would consist of: (1) a proposed 80-foot high and 370-foot long earthfill dam; (2) a proposed power plant with an installed capacity of 7,210 kW (3) a proposed switchyard connected to an existing 115 kV transmission line about 1 mile from the site; and (4) appurtenant facilities. Applicant estimates that the average annual generation would be 37.7 GWh.

k. Purpose of Project: The power generated would be used within the Applicant's electric system.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

9a. Type of Application: Prelimimary Permit.

b. Project No: 6929–000.

c. Date Filed: December 13, 1982.

d. Applicant: City of Gillette.

e. Name of Project: Cody Power Project.

f. Location: Shoshine River, Park County, Wyoming.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Paul G. Schamp, P.E., City Electrical Engineer, City of Gillette, P. O. Box 3003, Gillette, Wyoming 82716.

i. Comment date: April 22, 1983.

j. Description of Project: The proposed project would consist of: (1) a proposed 85-foot high and 420-foot long concrete gravity dam; (2) a proposed powerhouse with an installed capacity of 6,650 kW; (3) a proposed switchyard connected to an existing 34.5 kV transmission line approximately 1.25 miles from the site; and (4) appurtenant facilities. Applicant estimates that the average annual generation would be 34.7 GWh.

k. Purpose of Project: the power generated would be used within the applicant's electric system.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

10a. Type of Application: Exemption of Small Conduit Hydro Facility.

b. Project No: 6941–000.

c. Date Filed: December 17, 1982.

d. Applicant: Hydro Management, Inc.

e. Name of Project: Whitefish Hydro Project.

f. Location: Whitefish, Flathead County, Montana.

g. Filed Pursuant to: Section 30, Federal Power Act, 16 U.S.C. § 823(a).

h. Contact Person: Mr. W. H. Edelman, President, Route 1, Box 169, Ronan, Montana 59864.

i. Comment date: April 1, 1983.

j. Description of Project: The project would consist of: (1) the existing 12-inch conduit which transports water from 3 existing collection points, located on First, Second, and Third Creeks, to the existing, man-made, City Water Reservoir; (2) a new 17,000 foot long, 12 to 15-inch inlet pipeline which would serve as the penstock; (3) a powerhouse with a capacity of 200 kW and an average annual generation of 996,000 kWh; and (4) appurtenant facilities. All power generated would be sold to a local utility company.

k. This notice also consists of the following standard paragraphs: B, C, and D3b.

11a. Type of Application: Preliminary Permit.

b. Project No: 6956–000.

c. Date Filed: December 23, 1982.

d. Applicant: City of St. Anthony, Idaho.

e. Name of Project: Engin Canal Diversion.

f. Location: Henry's Fork of the Snake River, City of St. Anthony, Fremont County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Boyd Yancey, City Council President, 110 West Main, St. Anthony, Idaho 83445.

i. Comment Date: April 18, 1983.

j. Description of Project: The proposed new run-of-river project would be located just downstream of the existing Egin Canal Diversion structure on the right (north) branch of Henry's Fork at Island City Park and would consist of: (1) a 10-foot high diversion structure; (2) a powerhouse along the right bank containing a generating unit having a rated capacity of 650 kW operated under a 10-foot head and at a flow of 900 cfs: (3) a transmission line; and (4) appurtenant facilities.

k. Purpose of Project: Project energy would be sold to Utah Power & Light Company or would be used by Applicant. Applicant estimates that the average annual generation would be 5.12 million kWh.

l. This notice also consists of the following standard paragraphs: A4b, a4c, A4d, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time it would perform studies and would prepare an application for an FERC license. Applicant estimates the cost of the work under the permit would be $43,000.

12a. Type of Application: Exemption Under 5MW.

b. Project No: 6959–000.

c. Date Filed: December 27, 1982.

d. Applicant: Pan-Pacific Hydro, Inc.

e. Name of Project: Weber Flat Project.

f. Location: On West Fork of Trinity Alps Creek, near Weaverville, in Trinity County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. §§ 2705 and 2708 *as amended*.

h. Contact Person: Mr. James B. Thompkins, Pan-Pacific Hydro, Inc., 3357 Jordan Road, Oakland, California 94205.

i. Comment Date: March 28, 1983.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) a 5-foot-high, 20-foot-long, concrete diversion structure; (2) a 3,000-foot-long, 30-inch diameter steel penstock; (3) a powerhouse containing two generating units with a total installed capacity of 750-kW and producing an estimated annual generation of 3.0 GWh; and (4) appurtenant facilities. Project power would be sold to Pacific Gas and Electric Company.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the

project under the terms of the exempton from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. This notice also consists of the following standard paragraphs: A1, B, C, and D3a.

13a. Type of Application: Preliminary Permit.

b. Project No: P-6962-000.

c. Date Filed: December 27, 1982.

d. Applicant: Yankee Hydro Corporation.

e. Name of Project: Dunn/McCarthy Dam.

f. Location: Owasco Lake Outlet in the City of Auburn, Cayuga County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Raymond S. Kusche, P.O. Box 1016, Weedsport, New York 13166.

i. Comment Date: April 20, 1983.

j. Description of Project: The proposed project would consist of the following existing facilities owned by Dunn/McCarthy and the State of New York Auburn Correctional Facility: (1) a 5-foot-high and 100-foot-long stone and concrete dam; (2) a reservoir having a surface area of 1.2 acres and a storage capacity of 4.5 acre-feet at surface elevation 650 feet m.s.l.; (3) a gated intake structure at the left (south) bank; (4) a 30-foot-wide 1,050-foot-long canal; (5) a gated intake structure with trash racks and a by-pass flume; (6) a 72-inch-diameter 140-foot-long steel penstock; (7) a powerhouse; (8) a tailrace; (9) a switchyard; and (10) miscellaneous appurtenances.

Applicant proposes to redevelop the existing facilities and would: (1) repair the dam; (2) repair the intake structure; (3) install a generating unit having a rated capacity of 685-kW operated under a 21-foot head and at a flow of 385 cfs; and (4) construct a transmission line.

k. Purpose of Project: Project energy would be sold to New York State Electric & Gas Corporation. Applicant estimates that the average annual generation would be 2.75 million kWH.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would perform studies and would prepare an application for an FERC license. Applicant estimates the cost of the work under the premit would be $38,000.

14a. Type of Application: Preliminary Permit.

b. Project No: 6973-000.

c. Date Filed: January 3, 1983.

d. Applicant: Kansas Electric Power Cooperative, Inc. (KEPCO).

e. Name of Project: John Redmond Water Power Project.

f. Location: on the Grand (Neosho) River in Coffey County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Charles Ross, Kansas Electric Power Cooperative, Inc., 5315 S.W. 21st Street, P.O. Box 4877, Gage Center Station, Topeka, Kansas 66604.

i. Comment Date: April 18, 1983.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers' John Redmond Dam and Reservoir, and would consist of: (1) a new powerhouse containing two generating units having a total rated capacity of 7,200 kW; (2) a new 6.5-mile, 69-kV transmission line; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 21.6 GWh.

k. Purpose of Project: The most likely market for the energy derived at the proposed project would be local utilities.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of perliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be preformed under the preliminary permit would be from $295,000 to $320,000.

15a. Type of Application: Preliminary Permit.

b. Project No: 7007-000.

c. Date Filed: January 18, 1983.

d. Applicant: City of Hibbing, Minnesota.

e. Name of Project: Mississippi River Lock & Dam No. 5.

f. Location: Winona County, Minnesota.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Mr. Karl E. Marietta, General Manager, Public Utilities Commission, City of Hibbing, 19th Street and 6th Avenue East, Hibbing, Minnesota 55746.

i. Comment Date: April 18, 1983.

j. Description of Project: The proposed project would consist of: (1) a proposed powerhouse containing two generating units having a total installed capacity of 5,800 kW; (2) a proposed 69,000-volt transmission line; and (3) appurtenant facilities. The estimated average annual generation would be 45,000,000 kW. The Applicant would utilize existing lands and dam owned by the U. S. Army Corps of Engineers.

k. Purpose of Project: Power generated at the project would be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, and C.

16a. Type of Application: Preliminary Permit.

b. Project No: 7008-000.

c. Date Filed: January 18, 1983.

d. Applicant: City of Hibbing, Minnesota.

e. Name of Project: Mississippi River Lock & Dam No. 5A.

f. Location: Winona County, Minnesota.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Mr. Karl E. Marietta, General Manager, Public Utilities Commission, City of Hibbing, 19th Street and 6th Avenue East, Hibbing, Minnesota 55746.

i. Comment Date: April 14, 1983.

j. Description of Project: The proposed project would consist of: (1) a proposed powerhouse containing two generating units having a total installed capacity of 6,000 kW; (2) a proposed 69,000-volt transmission line; and (3) appurtenant facilities. The estimated average annual generation would be 30,000,000 kW. The Applicant would utilize an existing dam and lands owned by the U. S. Army Corps of Engineers.

k. Purpose of Project: Energy produced at the project would be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

17a. Type of Application: 5MW Exemption.

b. Project No: 6964-000.

c. Date Filed: December 27, 1982.

d. Applicant: Redlands Water and Power Company.

e. Name of Project: Redlands.

f. Location: Gunnison River in the City of Grand Junction, Mesa County, Colorado.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C.

§§ 2705 and 2708 as amended], and Part I of the Federal Power Act.

h. Contact Person: Mr. Louis Brach, 2209 N 1, Grand Junction, Colorado 81501.

i. Comment Date: March 24, 1983.

j. Description of Project: The project would utilize existing facilities consisting of: (1) a 312-foot long 8.5-foot high concrete buttress-type dam surmounted by 4-foot high flashboards and having two 10-foot by 16-foot radial-type sluice gates; (2) a reservoir with a surface area of 40 acres and a storage capacity of 260 acre-feet at surface elevation 4,575 feet M.S.L.; (3) an intake structure at the left (west) bank having four 6-foot by 14-foot radial-type control gates; (4) a 4.0-mile long 40-foot wide 9-foot deep canal; (5) a powerhouse containing a generating unit having a rated capacity of 1,400 kW operated under a 35-foot head and at a flow of 750 cfs; (6) a tailrace; (7) a 300-foot long 13.2-kV transmission line; and (8) appurtenant facilities.

Applicant proposes to: (1) repair the dam; (2) improve the flashboards; (3) replace the radial gates; (4) rewind and upgrade the generator to a rated capacity of 1,900 kW; (5) replace and uprate associated electrical components; and (6) perform miscellaneous improvements and repairs.

k. Purpose of Project: Project energy would be used by Applicant to operate irrigation pumps or would be sold to Public Service Company of Colorado. Applicant estimates that the average annual generation would be 13,000,000 kWh.

l. This notice also consists of the following standard paragraphs: A1, B, and C and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, developments, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

18a. Type of Application: Exemption (5MW or less).

b. Project No: 6839–000.

c. Date Filed: November 10, 1982.

d. Applicant: Piedmont Camp Fire Council and Lake Vera Mutual Water Company.

e. Name of Project: Camp Fire Project.

f. Location: On Rock Creek and Lake Vera, near Nevada City, in Nevada County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. §§ 2705 and 2708 *as amended.*

h. Contact Person: Bart M. O'Keefe, Mutual Energy Co., 1250 Pine Street, Suite 100, Walnut Creek, California 94596.

i. Comment Date: March 25, 1983.

j. Competing Application: Project No. 6076–000. Dated Filed: March 11, 1982. Notice issue: April 20, 1982.

k. Description of Project: The proposed project would consist of: (1) the existing 10-foot-high, 368-foot-long concrete Lake Vera Dam, impounding; (2) a 15-acre reservoir; (3) a 400-foot-long concrete pipeline; (4) a surge tank; (5) a 1,500–foot-long, 32–inch-diameter steel penstock; (6) a powerhouse containing one generating unit rated at 175 kW; and (7) a 2-mile-long transmission line.The average annual energy generation is estimated to be 590,000 kWh.

l. Purpose of Project: The energy output from the project would be sold to Pacific Gas and Electric Company.

m. This notice also consists of the following standard paragraphs: A1, B, C, D3a.

19a. Type of Application: Preliminary Permit.

b. Project No: 6986–000.

c. Date Filed: January 7, 1983.

d. Applicant: Tranquillity Irrigation District.

e. Name of Project: Griswold Creek Hydroelectric Project.

f. Location: On Griswold Creek, within the Stanislaus National Forest in Tuolumne County, California.

g. Filed Pursuant to: Federal Power Act (16 U.S.C. §§ 791(a)–825(r)).

h. Contact Person: A. Keith Miller, Tranquillity Irrigation District, Post Office Box 365, Tranquillity, California 93668.

i. Comment Date: April 14, 1983.

j. Description of Project: The proposed project would consist of : (1) a 50-foot-high rolled earth dam impounding a forebay with a normal water surface at elevation 3320 feet; (2) a 42-inch-diameter, 3350-foot-long pipeline; (3) a 30- to 42-inch-diameter, 2850-foot-long penstock; (4) a powerhouse containing a turbine generating unit with a rated capacity of 7.1 MW and an average annual output of 19.5 GWh; (5) an afterbay at elevation 2160 feet on the North Fork Stanislaus River; and (6) a 3.4-mile-long transmission line connecting to an existing Pacific Gas and Electric Company line.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. The estimated cost of permit activities in $200,000.

k. Purpose of Project: The Applicant expects to sell project output to the Pacific Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A4b, A4c, A4d, B, C and D2.

Competing Applications

A1. Exemptions for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission or a timely notice of intent allows an interested person to file the competing license application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1982). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d).

A2. Application for License—Anyone desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either the competing application itself (see 18 CFR 4.33 (a) and (d), and Part 16, where applicable) or a notice of intent (see 18 CFR 4.33 (b) and (c)) to file a competing application. Submission 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 to 4.104 (1982).

A3. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for license, exemptions or preliminary permit, or notices of intent to file competing applications, will be accepted for filing in response to this notice (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate). Any application for license or exemption from licensing, or notice of intent to file a license or an exemption application, must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate).

Preliminary Permits

A4a. Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A4b. No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or there are proposed to be major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application (see 18 CFR 4.30 to 4.33 (1982)).

A4c. The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before the specified comment date for the particular application. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate).

A4d. Submission of a timely notice of intent to file an application for preliminary permit allows an interested person to file an acceptable competing application for preliminary permit no later than 60 days after the specified comment date for the particular application.

B. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR §§ 385.210, .211, .214 (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 received on or before the specified comment date for the particular application.

C. *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 the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 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 particular application.

Agency Comments

D1. License applications (5 MW or less capacity)—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 with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. Preliminary permit applications—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Exemption applications (5 MW or less capacity)—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Act, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Exemption applications (Conduit)—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 10, 1983.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4019 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-45-001]

Montana-Dakota Utilities Co.; Filing

February 10, 1983.

Take notice that on January 31, 1983, Montana-Dakota Utilities Company (MDU), submitted for filing Statements L and M of its proposed Rate Schedule X-3 to its FERC Gas Tariff, First Revised Volume No. 2, which was submitted for filing on January 28, 1983, pursuant to Section 4 of the Natural Gas Act and Section 154 of the Commission's Regulations thereunder. Statements L and M were not included in the January 28, 1983 filing due to a clerical error. MDU requests that Statements L and M be attached to MDU's filing of January 28, 1983.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4033 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-126-002]

Mountain Fuel Supply Co.; Filing

February 10, 1983.

Take notice that on January 31, 1983, Mountain Fuel Supply Company (Mountain Fuel), pursuant to Section 4(e) of the Natural Gas Act and § 154.67 of the Commission's Regulations thereunder, moved to effectuate on February 1, 1983, the following tariff sheets:

Substitute Original Sheet No. 2-A—First Revised Sheet No. 407
First Revised Sheet No. 29—First Revised Sheet No. 444
Third Revised Sheet No. 60—First Revised Sheet No. 445
Second Revised Sheet No. 82—Second Revised Sheet No. 544
Second Revised Sheet No. 100—First Revised Sheet No. 598
Second Revised Sheet No. 159—First Revised Sheet No. 599
First Revised Sheet No. 198—First Revised Sheet No. 600
First Revised Sheet No. 199—First Revised Sheet No. 643
First Revised Sheet No. 228—First Revised Sheet No. 644
First Revised Sheet No. 276—First Revised Sheet No. 645
Second Revised Sheet No. 304—First Revised Sheet No. 659
Second Revised Sheet No. 305—First Revised Sheet No. 660
First Revised Sheet No. 306-A—First Revised Sheet No. 672
First Revised Sheet No. 356—First Revised Sheet No. 691

Mountain Fuel has not moved to effectuate any increase in its Compression Redelivery Charge as proposed by the initial filing herein on July 30, 1982. Mountain Fuel states that it does not propose to effectuate that increase until such time as the compresson facilities certificated in Docket No. CP80-7, to be located near Rock Springs, Wyoming, are operational and in service.

Mountain Fuel states that copies of this filing were served on the company's jurisdictional customers and affected state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4034 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-27-000]

North Penn Gas Co.; Proposed Changes In FERC Gas Tariff

February 9, 1983.

Take notice that North Penn Gas Company (North Penn) of February 4, 1983 tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 pursuant to its PGA Clause for rates to be effective March 1, 1983.

Specifically, North Penn has included in its semi-annual PGA, to be effective March 1, 1983, the following:

(a) An increase of 12.162¢ per Mcf computed on a unit of sales basis (Appendix A) to reflect changes in the cost of gas purchased.

(b) A surcharge of 4.073¢ per Mcf (Appendix B) resulting from amounts accumulated in the Unrecovered Purchased Gas Cost Account for the period July 1, 1982 through December 31, 1982; the jurisdictional portion of supplier refunds received by North Penn for the same six-month period; carrying charges computed in accordance with the Commission's Regulations; and a carry-over balance from the surcharge credit effective for the period March 1, 1982 through August 31, 1982.

As part of this filing, North Penn has also included Seventh Revised Sheet No. 15H which reflects no incremental pricing surcharges under Section 15 of the General Terms and Conditions of its tariff.

On August 31, 1982, North Penn filed revised tariff sheets (Docket No. RP82-132) pursuant to Section 4 of the Natural Gas Act and Section 154.63 of the Commission's Regulations to be effective October 1, 1982. These tariff sheets proposed an increase of $2,112,652 in North Penn's rates. North Penn also proposed in this filing a modification to its PGA Clause to permit a unit of sales methodology for recovery of pipeline purchased gas costs. The Commission, by Order issued September 30, 1982, accepted for filing the revised tariff sheets and suspended them, so that they may become effective March 1, 1983.

The FERC Commission Staff, in their Top Sheets in Docket No. RP82-132 supported North Penn's modification of its PGA Clause to reflect a unit of sales methodology conditioned upon North Penn Further modifying its PGA Clause to include the recovery of the cost of field line purchases.

North Penn has adapted its proposed revision of its PGA Clause to include Staff's suggested modification and is submitting as part of this filing the revised tariff sheets to reflect a unit of

sales methodology and recovery of field line purchases through its PGA Clause. The revised tariff sheets being filed to reflect this change are as follows:

(a) Fourth Revised Sheet Nos. 15C, 15D and 15E.

(b) Second Revised Sheet Nos. 15F and 15G.

(c) First Revised Sheet No. 15G(1).

Because the end of the suspension period in Docket No. RP82-132 of March 1, 1983 coincides with North Penn's semi-annual PGA effective date, the rates contained in Seventy-Second Revised Sheet No. PGA-1 reflect the change of rates contained in Docket No. RP82-132 as adjusted to reflect intervening changes in cost of gas purchased on a unit of sales basis including field line purchases.

Prior to March 1, 1983, North Penn will file a motion pursuant to Section 4(e) of the Natural Gas Act to make effective after suspension the rates contained in Seventy-Second Revised Sheet No. PGA-1.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit the tariff sheets contained in this filing to become effective March 1, 1983 as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and interested state commissions, and to all parties in Docket No. RP82-132.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4025 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-114-000]

Northwest Central Pipeline Corp. (formerly Cities Service Gas Co.); Rescheduling of Informal Settlement Conference

February 9, 1983.

Take notice that the informal settlement conference in the above-captioned docket that was scheduled for February 10 and 11, 1983 will be convened instead at 10:00 a.m. on March 1 and 2, 1983, at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in a Commission meeting room to be announced.

All interested parties and Staff will be permitted to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4024 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-56-000]

Northwest Pipeline Corp.; Settlement Conference

February 10, 1983.

Take notice that on February 23, 1983, at 10:00 a.m., a settlement conference will convene in the above-captioned docket. The meeting place for this conference will be at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

All interested parties and Staff will be permitted to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4035 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-6-000]

Sea Robin Pipeline Co.; Filing

February 10, 1983.

Take notice that on January 31, 1983, Sea Robin Pipeline Company (Sea Robin), tendered by letter an answer to the Commission's order issued December 30, 1982, in the referenced docket, requiring the company to file revised rates reflecting the recalculation of interest on transportation revenues in Account No. 191. Sea Robin claims it has recalculated its rate to reflect the ordered revision and the resulting change in the rates set forth on Sea Robin's Thirty-second Revised Sheet No.4 would be .7 mill. In accordance with the purchased gas adjustment provisions of Sea Robin's Tariff, Sea Robin has not prepared a revised tariff sheet for filing because the change in rates would be less than one mill. Sea Robin, however, proposes to adjust the balance in Account No. 191 to reflect the elimination of the interperiod tax allocation effect on its transportation revenues in that account as required by the Commission's order.

Sea Robin states that it has provided additional information relating to this filing pursuant to requests from Commission Staff.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D.C. 20426, in accordance with the Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed or or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4036 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-8-001]

South Georgia Natural Gas Co.; Proposed Changes in FPC Gas Tariff

February 9, 1983.

Take notice that on January 31, 1983, South Georgia Natural Gas Company (South Georgia) tendered for filing Substitute Twentieth Revised Sheet No. 4 to its FPC Gas Tariff, First Revised Volume No. 1. This tariff sheet and supporting information are being filed pursuant to the Commission's December 29, 1982 letter order accepting Twentieth Revised Sheet No. 4, subject to the tracking of any downward modification in the rates of Southern Natural Gas Company (Southern), South Georgia's pipeline supplier.

South Georgia states that the proposed tariff sheet would reduce the rates reflected in Twentieth Revised Sheet No. 4 by $1,044,026 as a result of a reduction in Southern's rates effective January 1, 1983.

Since the proposed tariff sheet would reduce the rates reflected in Twentieth Revised Sheet No. 4, South Georgia requests the Commission to grant such waivers as may be necessary to place

the proposed tariff sheet into effect as of January 1, 1983.

Copies of the filing were served on South Georgia's jurisdictional customers, state commission and other interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211). All such petitions or protests should be filed on or before Feb. 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4026 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-10-001 (PGA83-1)]

Tennessee Natural Gas Lines, Inc.; Proposed Changes in FERC Gas Tariff

February 10, 1983.

Take notice that on January 28, 1983, Tennessee Natural Gas Lines, Inc. (TNGL) tendered for filing First Substitute Forty-first Revised Sheet No. PGA-1 and First Substitute Appendix A to First Revised Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1983.

TNGL states that the sole purpose in this filing is: to reflect in its rates the reduced rates of its sole supplier Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., which will become effective on January 1, 1983.

TNGL states that copies of the filing were served upon its jurisdictional customer, the interested state regulatory commission, its non-jurisdictional customers estimated to be billed for NGPA incremental pricing surcharges, and are available for public inspection at TNGL's offices in Nashville, Tennessee.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4037 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT83-11-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 9, 1983.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on February 7, 1983 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2, the following sheets:

Fourth Revised Volume No. 1

Cover sheet
Fifth Revised Sheet No. 1
First Revised Sheet No. 6D
Fifth Revised Sheet No. 9
Fifth Revised Sheet No. 10
Fourth Revised Sheet No. 11
Fifth Revised Sheet No. 12
Fifth Revised Sheet No. 13
Second Revised Sheet No. 173
Third Revised Sheet No. 174
Fourth Revised Sheet No. 175
Fourth Revised Sheet No. 176
Fourth Revised Sheet No. 177
Second Revised Sheet No. 180
Fourth Revised Sheet No. 182
Second Revised Sheet No. 183
Fifth Revised Sheet No. 184
Second Revised Sheet No. 185
Third Revised Sheet No. 186
Third Revised Sheet No. 187

Original Volume No. 2

First Revised Sheet No. 1H

The purpose of this filing was to update the Table of Contents, System Maps and Index of Purchasers of Fourth Revised Volume No. 1 and the Table of Contents of Original Volume No. 2.

The proposed effective date of these tariff sheets is March 9, 1983.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4027 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-11-001]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

February 10, 1983.

Take notice that Tanscontinental Gas Pipe Line Cprporation (Transco) on January 31, 1983 tendered for filing certain revised tariff sheets to its Second Revised Volume No. 1 of its FERC Gas Tariff. The proposed change would decrease the level of the rates filed by Transco in Docket No. RP83-11 applicable to Transco's E rate Schedules to the equivalent to Transco's 100% load factor rate for contract demand service. Transco proposes an effective date for this change of April 22, 1983, the date on which Transco's rate increase filed in Docket No. PR83-11 is allowed to become effective, subject to refund.

Transco states that the purpose of the instant proposed change is to establish and make effective simultaneously with its rate filing in Docket NO. RP83-11 a revised rate applicable to the E Rate Schedules. Transco states that in its filing in Docket No RP83-11 it inadvertently based the rate for service under the E Rate Schedules on the 80% load factor rate for contract demand service applicable to the G and OG Rate Schedules. In this regard, Transco requests special permission to file the instant rates during the RP83-11 suspension period and to make the rates effective on April 22, 1983 in lieu of the rates originally filed in Docket No. RP83-11.

Copies of the filing were served upon Transco's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 2.14

and Rule 2.11 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are availiable for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4036 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-49-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

February 9, 1983.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on January 31, 1983 tendered for filing certain revised tariff sheets to its Second Revised Volume No. 2 of its FERC Gas Tariff. The proposed changes would revise the minimum bill provisions of Transco's Contract Demand (CD) Rate Schedule to provide for adjustments to customers' Minimum Annual Quantities in circumstances where any customers can show that its total market requirements fall to the level where such customer is unable to purchase gas from Transco at the minimum commodity quantities under its contract with Transco. Where a customer receives gas from other sources than Transco, eligibility for the adjustment to that customer's Minimum Annual Quantity is subject to the condition that it has taken *pro rata* from Transco.

Transco requests a waiver to the Commission's Regulations in order to provide for an immediate effective date for its proposed change in minimum bill provisions and it also requests that the Commission consolidate this filing with Transco's rate case in Docket No. RP82-55-000 for hearing and decision. Under a settlement agreement filed by Transco on October 8, 1982 in Docket No. RP82-55-000, Transco's minimum bill has been reserved for hearing and Transco states that its instant filing conforms to the position taken by Transco in testimony filed January 21, 1983 with the Presiding Judge on the minimum bill question.

Copies of the filing were served upon Transco's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 2.14 and Rule 2.11 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4028 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-11-000]

United Gas Pipe Line Co.; Filing

February 10, 1983.

Take notice that on January 31, 1983, United Gas Pipe Line Company (United), tendered by letter an answer to the Commission's order issued December 30, 1982, in the referenced docket, requiring the company to file revised rates reflecting the recalculation of interest on transportation revenues in Account No. 191. United claims it has recalculated its rate to reflect the ordered revision and the resulting change in the rates set forth on United's Sixty-first Revised Sheet No. 4 would be .7 mill. In accordance with the purchased gas adjustment provisions of United's Tariff, United has not prepared a revised tariff sheet for filing because the change in rates would be less than one mill. United, however, proposes to adjust the balance in Account No. 191 to reflect the elimination of the interperiod tax allocation effect on its transportation revenues in that account as required by the Commission's order.

United also states that it has previously submitted supplemental data relating to the reconciliation of the balances in Account No. 191 and to the volumes of storage injections and withdrawals.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.C., Washington, D.C. 20426, in accordance with the Section 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4039 Filed 2-14-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of January 14 Through January 21, 1983

During the Week of January 14 through January 21, 1983, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: February 8, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARING AND APPEALS

[Week of Jan. 14 through Jan. 21, 1983]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 6, 1983	Winston Refining Co., Fort Worth, Tex	HRD-0103, HRH-0103.	Motion for discovery; request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted in response to the proposed remedial order (Case No. HRO-0099) issued to Winston Refining Company.
Jan. 14, 1983	Atlantic Richfield Co., Washington, D.C	HRZ-0127	Interlocutory order. If granted: Documents identified in the Office of Special Counsel's privilege index of December 15, 1982, would be released to Atlantic Richfield Company.
Do	Gulf Oil Corp., Washington, D.C	HRZ-0128	Interlocutory order. If granted: Documents identified in the Office of Special Counsel's privilege index of December 15, 1982, would be released to Gulf Oil Corporation.
Do	Louisiana Land & Exploration Co., Washington, D.C	HRZ-0129	Interlocutory order. If granted: Documents identified in the Office of Special Counsel's privilege index of December 15, 1982, would be released to Louisiana Land & Exploration Company.
Do	Marathon Oil Co., Washington, D.C	HRZ-0130	Interlocutory order. If granted: Documents identified in the Office of Special Counsel's privilege index of December 15, 1982, would be released to Marathon Oil Company.
Do	Texaco, Inc., Washington, D.C	HRZ-0131	Interlocutory order. If granted: Documents identified in the Office of Special Counsel's privilege index of December 15, 1982, would be released to Texaco, Inc.
Jan. 17, 1983	Burgess Marketing, Inc., Dallas, Tex	HRD-0102	Motion for discovery. If granted: Discovery would be granted to Burgess Marketing, Inc. in connection with the Statement of Objections submitted in response to the September 21, 1982 proposed remedial order issued to Burgess Marketing, Inc. (Case No. HRO-0097).
Do	State of Maryland, Baltimore, Md.	HRD-0101	Motion for discovery. If granted: Discovery would be granted to the State of Maryland in connection with the Statement of Objections submitted in response to the proposed remedial order issued to Crown Central Petroleum Corporation (Case No. HRO-0072).
Do	Stephen M. Shaw, La Jolla, Calif.	HFA-0110	Appeal of an information request denial. If granted: The December 30, 1982, Information Request Denial issued by the Procurement Operations Office would be rescinded, and Stephen M. Shaw would receive access to certain DOE information.
Jan. 19, 1983	Atlantic Richfield Co., Washington, D.C	HRX-0074	Supplemental order. If granted: The Office of Special Counsel would be ordered to release certain documents which it submitted to the Office of Hearings and Appeals for *in camera* review pursuant to the January 5, 1983, Decision and Order issued to Atlantic Richfield Company (Case No. HRZ-0080).
Do	Gulf Oil Corp., Washington, D.C	HRX-0075	Supplemental order. If granted: The Office of Special Counsel would be ordered to release certain documents which it submitted to the Office of Hearings and Appeals for *in camera* review pursuant to the January 5, 1983, Decision and Order issued to Atlantic Richfield Company (Case No. HRZ-0080).
Do	Louisiana Land & Exploration Co., Washington, D.C	HRX-0077	Supplemental order. If granted: The Office of Special Counsel would be ordered to release certain documents which it submitted to the Office of Hearings and Appeals for *in camera* review pursuant to the January 5, 1983, Decision and Order issued to Atlantic Richfield Company (Case No. HRZ-0080).
Do	Marathon Oil Co., Washington, D.C	HRX-0076	Supplemental order. If granted: The Office of Special Counsel would be ordered to release certain documents which it submitted to the Office of Hearings and Appeals for *in camera* review pursuant to the January 5, 1983, Decision and Order issued to Atlantic Richfield Company (Case No. HRZ-0080).
Do	Texaco, Inc., Washington, D.C	HRX-0078	Supplemental order. If granted: The Office of Special Counsel would be ordered to release certain documents which it submitted to the Office of Hearings and Appeals for *in camera* review pursuant to the January 5, 1983, Decision and Order issued to Atlantic Richfield Company (Case No. HRZ-0080).
Jan. 20, 1983	Bryant & Blount Oil Co., Springfield, Mo.	HEE-0058	Exception to the reporting requirements. If granted: Bryant & Blount Oil Company would not be required to file form EIA-9A "No. 2 Distillate Price Monitoring Report."
Do	Dover Energy, Inc., Dover, N.H.	HEE-0059	Exception to the reporting requirements. If granted: Dover Energy, Inc. would not be required to file monthly energy questionnaires.
Do	Thornton Oil Corp., Atlanta, Ga.	HFA-0111	Appeal of an information request denial. If granted: The December 17, 1982, Information Request Denial issued by the Office of Special Counsel would be rescinded, and Thornton Oil Corporation would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

[Week of Jan. 14 through Jan. 21, 1983]

Date	Name of refund proceeding/ name of applicant	Case No.
1/17-21/83.	Amoco refund applications	RF21-92 thru RF21-779; RF21-800 thru RF21-839.
1/20/83	Charter Oil/Pep-O Petroleum Co	RF23-2.

NOTICES OF OBJECTION RECEIVED

[Week of Jan. 14 through Jan. 21, 1983]

Date	Name and location of applicant	Case No.
1/17/83	Duke Heating Oil, Inc., Shamokin, Pa.	HEE-0041.

[FR Doc. 83-3451 Filed 2-14-83; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OLEC-FRL 2301-2]

Findings of Administrator With Regard to Steel Industry Compliance Extension Act of 1981; Sharon Steel Corporation

AGENCY: Environmental Protection Agency.

ACTION: Notice of final findings.

SUMMARY: The Administrator consents to the entry of an amended consent decree permitting extensions of compliance to Sharon Steel Corporation under the Steel Industry Compliance Extension Act of 1981. The Administrator also modifies her preliminary findings of February 12, 1982, 47 FR 6483 (February 12, 1982).

DATE: Effective February 4, 1983.

FOR FURTHER INFORMATION CONTACT: Richard Ostrov, Attorney, Office of Enforcement Counsel (EN-329), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382-2867.

SUPPLEMENTARY INFORMATION: On February 12, 1982 (47 FR 6483), the Administrator announced findings preliminary to the lodging of a consent decree under the Steel Industry Compliance Extension Act of 1981 to

extend certain compliance deadlines for the Sharon Steel Corporation's Farrell, Pennsylvania, steel facility. In the announcement the Administrator gave preliminary consent to the entry of a decree requiring capital expenditures for the pollution control projects in finding number (3). This notice amends finding number (3)(i) by striking "Four-sided" and substituting therefore the following respectively:

(3)(i) BOF vessel No. 3: Three-sided evacuated enclosure to capture and clean furnace emissions.

The Administrator in preliminary finding 4 found that the "phased program of compliance" (as defined in Section 113(e)(2) of the Act) required Sharon to make pollution control capital expenditures for the blast furnace casthouse and the basic oxygen furnace vessel No. 3 on the following schedule:

Cumulative amount required to be expended	Dates by which expenditure required
$4.0 million	By Dec. 31, 1983.
6.0 million	By Dec. 31, 1984.
8.0 million	By Dec. 31, 1985.

This notice amends findings 4 by substituting the following schedule for the "phased program of compliance."

Cumulative amount required to be expended	Dates by which expenditure required
$4.0 million	By Mar. 1, 1984.
6.0 million	By Mar. 1, 1985.
8.0 million	By Dec. 31, 1985.

The Administrator in finding 5 found that the integration of the "qualifying modernization investment" and the "phased program of compliance" schedule, when allowing for the required investments under Section 113(e)(1)(B) of the Act, resulted in the following required schedule of capital expenditures:

Cumulative amount required to be expended	Dates by which expenditure required
At least $8 million in qualifying modernization investment to improve efficiency and productivity.	By July 17, 1983.
At least $4 million for pollution control	By Dec. 31, 1983.
At least $6 million for pollution control	By Dec. 31, 1984.
At least $8 million for pollution control	By Dec. 31, 1985.

This notice amends finding 5 by substituting the following schedule:

Cumulative amount required to be expended	Dates by which expenditure required
At least $8 million in qualifying modernization investment to improve efficiency and productivity.	By July 17, 1983.
At least $4 million for pollution control	By Mar. 1, 1984.
At least $6 million for pollution control	By Mar. 1, 1985.
At least $8 million for pollution control	By Dec. 31, 1985.

Consent

I hereby give notice that the United States of America and Sharon Steel Corporation have successfully negotiated a proposed consent decree amendment complying with the requirements of Section 113(e). I have consented to the entry of a modification which amended the decree entered in the United States District Court for the Western District of Pennsylvania on August 26, 1981, Civil Action Nos. 79-1201 J and 80-869-J: *U.S.* v. *Sharon Steel Corporation.* The superseding decree is to be lodged with the District Court under 28 CFR 50.7 and an appropriate notification of lodging has been or will be published by the Department of Justice at that time, including an indication of how copies of the amended consent decree may be obtained and where public comment, if any, may be addressed.

Dated: February 4, 1983.

Anne M. Gorsuch,

Administrator.

[FR Doc. 83-4010 Filed 2-14-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket FEMA-REP-5-IL-3; FEMA-REP-5-IL-4]

Illinois Plans for Radiological Accidents

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Receipt of Plan.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local government's radiological emergency response plans. Since FEMA has a responsibility for reviewing the State and local government offsite plans, the State of Illinois, by letter of transmittal dated December 15, 1982, submitted its radiological emergency plans to FEMA Region V office. These plans support the Commonwealth Edison Company's Zion Nuclear Power Station located in Lake County and Quad Cities Nuclear Power Station located in Rock Island County.

DATE: Plans Received: Zion, November 30, 1982; Quad Cities, January 3, 1983.

FOR FURTHER INFORMATION CONTACT: John T. Anderson, Regional Director, Region V, Federal Emergency Management Agency, 300 South Wacker Drive, Chicago, Illinois 60606, (312) 353-1500.

SUPPLEMENTARY INFORMATION: In support of the Federal requirement for offsite emergency response plans, FEMA has proposed a Rule describing its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to this proposed FEMA Rule (44 CFR Part 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," 47 FR 36386, the State Plan for Radiological Accidents for the State of Illinois was received by the Region V office, Federal Emergency Management Agency.

Included are plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zones of the nuclear plants. For the Zion plant, plans are included for Lake County; for the Quad Cities plant, plans are included for Rock Island and White Counties.

Copies of the plans are available for review at the FEMA Region V Technological Hazards Branch, Natural and Technological Division, Federal Center, Battle Creek, Michigan 49016. Copies will be made available upon request in accordance with the fee schedule for FEMA Freeedom of Information Act requests, as set out in Subpart C of 44 CFR Part 5. There are 585 pages in the Quad Cities plan and 912 pages in the Zion plan. Reproduction fees are $.10 a page, payable with the request for copy.

Comments on the plan may be submitted in writing to John T. Anderson, Regional Director, at the above address within thirty days of this Federal Register Notice.

FEMA proposed Rule 44 CFR 350.10 also calls for a public meeting prior to approval of the plans. Public meetings were held on the State and local jurisdictional plans for the Zion Nuclear Power Station on August 12, 1981, 7:00 p.m., Holiday Inn, Gurnee, Illinois; and for the Quad Cities Nuclear Power Station on June 17, 1981, 7:00 p.m., Commonwealth Edison Power Plant Information Center, Cordova, Illinois.

Dated: January 24, 1983.

John T. Anderson,

Regional Director, FEMA Region V.

[FR Doc. 83-3982 Filed 2-14-83; 8:45 am]

BILLING CODE 6718-03-M

[FEMA-675-DR]

Louisiana; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-675-DR), dated January 11, 1983, and related determinations.

DATED: January 31, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0501.

NOTICE: The notice of a major disaster for the State of Louisiana dated January 11, 1983, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 11, 1983:

For Public Assistance:

The Parishes of Catahoula, Grant, La Salle, Ouachita, and Rapides.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-3979 Filed 2-14-83; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-676-DR]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA-676-DR), dated January 27, 1983, and related determinations.

DATE: January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0501.

NOTICE: Pursuant to the authority vested in the Director of the Federal Emergency Management Agency by the President under Executive Order 12148, effective July 15, 1979, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of January 27, 1983, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the state of Washington resulting from servere storms, high tides, and flooding beginning on or about December 14, 1982 is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I, therefore, declare that such a major disaster exists in the State of Washingtion.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Public Law 93-288 for public assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and delegated to me by the Director under the Federal Emergency Management Agency Delegation of Authority, I hereby appoint Mr. Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby detemine the following area of the State of Washington to have been affected adversely by this declared major disaster:

Whatcom County for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lee M. Thomas,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-3981 Filed 2-14-83; 8:45 am]

BILLING CODE 6718-02-M

Senior Executive Service; Performance Review Boards; SES Bonus Issuance

The Federal Emergency Management Agency has awarded bonuses to the following senior executive service members. The bonuses recognize the members outstanding performance rating for the period from July 1, 1981 to June 30, 1982. David McLoughlin, Paul Krueger, John Dickey, William Chipman, Jack McGraw, Robert Crawford and Richard Sanderson.

Dated: February 8, 1983.

Joan C. McDonald,

Director of Personnel.

[FR Doc. 83-3980 Filed 2-14-83; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-222]

Citizens Federal Savings and Loan Association of Birmingham, Birmingham, Alabama; Final Action Approval of Conversion Applications

Dated: February 9, 1983.

Notice is hereby given that on February 2, 1983, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Citizens Federal Savings and Loan Association of Birmingham, Birmingham, Alabama, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 83-4057 Filed 2-14-83; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-223]

Commonwealth Federal Savings and Loan Association, Lowell, Massachusetts; Final Action Approval of Post-Approval Amendments to Mutual-to-Stock Conversion Application

Dated: February 9, 1983.

Notice is hereby given that on January , 1983, the General Counsel of the Federal Home Loan Bank Board ("Board"), acting pursuant to authority delegated to him by the Board, approved Post-Approval Amendment No. 1 to the mutual-to-stock conversion application of Commonwealth Federal Savings and Loan Association, Lowell,

Massachusetts ("Association"). The application had been approved by the Board by Resolution No. 81-420, dated July 27, 1981. Copies of the application and all amendments thereto are available for inspection at the Secretariat of the Board, 1700 G Street, N.W., Washington, D.C. 20552, and at the Office of the Supervisory Agent, Federal Home Loan Bank of Boston, P.O. Box 2196, Boston, Massachusetts 02106.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 83-4058 Filed 2-14-83; 8:45 am]

BILLING CODE 6720-01-M

Metropolitan Savings and Loan Association, Farmington Michigan; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Section 406(c)(1)(B) of the National Housing Act, as added by the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320 (October 15, 1982), Section 122(d), 96 Stat. 1469, 1482, to be codified at 12 U.S.C. Section 1729(c)(1)(B), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole Receiver for Metropolitan Savings Association, Farmington, Michigan, effective February 10, 1983.

Dated: February 10, 1983.

J. J. Finn,

Secretary.

[FR Doc. 83-4059 Filed 2-14-83; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[License No. 1150-R]

Independent Ocean Freight Forwarder; American International Forwarders Corp.; Reinstatement of License

By Notice served and published in the Federal Register, Vol. 47, No. 239, page 55729 on December 13, 1982, Independent Ocean Freight Forwarder License No. 1150-R was revoked, effective November 27, 1982, for failure to maintain a valid surety bond on file with the Commission. The Notice of Revocation was served on November 30, 1982.

An appropriate surety bond has been received in favor of American International Forwarders Corp., and compliance pursuant to section 44, Shipping Act, 1916, and § 510.15 of the Commission's General Order 4 has been achieved.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in § 10.01(a) of Commission Order No. 1 (Revised), dated November 12, 1981, Independent Ocean Freight Forwarder License No. 1150-R shall be reissued to American International Forwarders Corp. effective January 28, 1983. A copy of this notice shall be published in the Federal Register and served upon American International Forwarders Corp.

Albert J. Klingel, Jr.,

Director Bureau of Certification and Licensing.

[FR Doc. 83-3995 Filed 2-14-83; 8:45 am]

BILLING CODE 6730-01-M

[License No. 1751]

Independent Ocean Freight Forwarder; P.C. Devine Inc.; Order of Revocation

On January 31, 1983, P.C. Devine Inc., 5 Broadway, Freeport, NY 11520 surrendered its Independent Ocean Freight Forwarder License No. 1751 for revocation.

Therefore by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1751 issued to P.C. Devine Inc. be revoked effective February 4, 1983, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this order be published in the Federal Register and served upon P.C. Devine Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 83-3994 Filed 2-14-83; 8:45 am]

BILLING CODE 6730-01-M

[License No. 2245]

Independent Ocean Freight Forwarder; Transcargo New York, Inc.; Order Of Revocation

On February 1, 1983, Transcargo New York, Inc., One Odell Plaza, Yonkers, NY 10701 surrendered its Independent Ocean Freight Forwarder License No. 2245 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 2245 issued to Transcargo New York, Inc. be revoked effective February 1, 1983, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this order be published in the Federal Register and served upon Transcargo New York, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 83-3905 Filed 2-14-83; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; K.D Pacific; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Kana Dobbs Castleberry (fka Kana Dobbs) and Don Scott, d.b.a. K.D. Pacific, c/o Glad, White & Ferguson, 625 Market Street, 13th Floor, San Francisco, CA 94105

Maarten ven der Biezen, d.b.a. Maarten Intermodal Expeditors, 3942 Pine Circle, North Olmsted, OH 44070

A.O.T. (Europe) Ltd, c/o 254 Edgebrook, Wood Dale, IL 60191, Officers: Rolf Bruns, President; Judith A. Bruns, Secretary; Kenneth F. Hunt, Vice President/Operations.

Dated: February 10, 1983.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-3996 Filed 2-14-83; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. 10464]

Great Lakes Transcaribbean Line and Armada Great Lakes/East Africa Service, Ltd.; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreement No. 10464 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that

preparation of an environmental impact statement is not required.

The agreement provides that Great Lakes Transcaribbean Line (GLTL) and Armada Great Lakes/East Africa Service, Ltd. (Armada) will establish a joint-venture to operate a single new liner service between U.S. and Canadian Great Lakes Ports and East/South African ports. The proposed service operated in this trade during 1981 and 1982 but failed to file the agreement pursuant to section 15 since neither GLTL nor Armada were aware of section 15 requirements. Agreement No. 10464 intends to place them in full compliance with the provisions of the Shipping Act, 1916.

This Finding of No Significant Impact (FONSI) will become final within 20 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 83-4056 Filed 2-14-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Proposed Acquisition of Alpine Mortgage Company; Alpine Bancorp, Inc.

Alpine Bancorp, Inc., Glenwood Springs, Colorado, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Alpine Mortgage Company, Glenwood Springs, Colorado.

Applicant states that the proposed subsidiary would engage in mortgage banking activities. These activities would be performed from offices of Applicant's subsidiary in Glenwood Springs, Colorado, and the geographic area to be served is the area surrounding Glenwood Springs, Colorado. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Borad approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than March 9, 1983.

Board of Governors of the Federal Reserve System, February 9, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-3984 Filed 2-14-83; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by a Bank Holding Company; National Bancshares Corp. of Texas

The company listed in this notice has 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 application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the 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. *National Bancshares Corporation of Texas,* San Antonio, Texas; to acquire 100 percent of the voting shares or assets of First National Bank of Mission, Mission, Texas. Comments on this application must be received not later than March 10, 1983.

Board of Governors of the Federal Reserve System, February 9, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-3985 Filed 2-14-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Shares by a Bank Holding Company; Texas East BanCorp, Inc.

The company listed in this notice has 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 a bank holding company by acquiring voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the 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. **Board of Governors of the Federal Reserve Bank System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Texas East BanCorp, Inc.,* Jacksonville, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank of Jacksonville, Jacksonville, Texas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. Comments on this application must be received not later than March 10, 1983.

Board of Governors of the Federal Reserve System, February 9, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-3986 Filed 2-14-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Union National Corp. et al.

The organization 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 section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh — possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking 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, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Union National Corporation*, Mt. Lebanon, Pennsylvania (underwriting credit life and disability insurance; Arizona): To engage, through its subsidiary, Union National Life Insurance Company, in the activity of underwriting as reinsurer credit life and disability insurance which is directly related to extensions of credit by the banking subsidiaries of Union National Corporation. These activities would be conducted from offices in Arizona serving the Commonwealth of Pennsylvania. Comments on this application must be received not later than March 10, 1983.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President 400 Sansome Street, San Francisco, California 94120:

1. *Western Commercial*, Fresno, California (leasing activities; California): To engage, through it subsidiary, Western Commercial Leasing Company, in the business of leasing personal property, specifically, commercial, industrial and agricultural equipment, in accordance with the Board's Regulation Y. These activities would be conducted from an office in Fresno, California, and would be performed in the Fresno-Clovis metropolitan area and the four California counties of Fresno, Madera, Kings and Tulare. Comments on this application must be received not later than March 9, 1983.

Board of Governors of the Federal Reserve System, February 9, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-3987 Filed 2-14-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83F-0020]

Calgon Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that Calgon Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium polyacrylate as a mineral scale inhibitor in cane sugar and beet sugar evaporators.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, 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 3A3699) has been filed by Calgon Corp., Calgon Center, Box 1346, Pittsburgh, PA 15230, proposing that Part 173 (21 CFR Part 173) be amended to provide for the safe use of sodium polyacrylate as a mineral scale inhibitor in cane sugar and beet sugar evaporators.

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: February 4, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-3452 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83M-0026]

Avicon, Inc.; Premarket Approval of Avitene® (Microfibrillar Collagen Hemostat) Non-Woven Web

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Avitene® (Microfibrillar Collagen Hemostat) Non-Woven Web, sponsored by Avicon, Inc., Fort Worth, TX. After reviewing the recommendation of the General and Plastic Surgery Device Section of the Surgical and Rehabilitation Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by March 17, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Office of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On January 18, 1980, Avicon, Inc., Fort Worth, TX, submitted to FDA an application for premarket approval of the Avitene® (Microfibrillar Collagen Hemostat) Non-Woven Web, an absorbable topical hemostatic agent. The application was reviewed by the General and Plastic Surgery Device Section of the Surgical and Rehabilitation Devices Panel, an FDA advisory committee, which recommended approval of the application for use of the device in surgical procedures as an adjunct to hemostasis when control of bleeding by ligature or conventional procedures is ineffective or impractical. On October 24, 1980, FDA approved the application

by a letter to the sponsor from the Acting Director of the then Bureau of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office.

A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 17, 1983, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 9, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-3988 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83M-0028]

Narco Scientific; Premarket Approval of $TCPCO_2$ Monitoring System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the $TcpCO_2$ Monitoring System sponsored by Narco Scientific, Hatboro, PA. After reviewing the recommendation of the Anesthesiology Device Section of the Respiratory and Nervous System Devices, Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use in neonates as recommended in the submitted labeling.

DATE: Petitions for administrative review by March 17, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Office of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On April 27, 1982, Narco Scientific, Hatboro, PA 19040, submitted to FDA an application for premarket approval of the $TcpCO_2$ Monitoring System for use in monitoring carbon dioxide tension at the skin surface of neonates as an adjunct to other blood gas measurement techniques. The application was reviewed by the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel, an FDA advisory committee, which recommended approval of the application for the use of this device on neonates. On January 24, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices. Use of the device on adults continues to be investigational.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 17, 1983, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 9, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-3992 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83M-0025]

Optech, Inc.; Premarket Approval of FRE-FLEX (Focofilcon A) Soft Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the FRE-FLEX (focofilcon A) Soft Contact Lenses, sponsored by Optech, Inc., Englewood, CO. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by March 17, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Office of medical devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On October 29, 1981, Optech, Inc., Englewood CO, submitted to FDA an application for premarket approval of the FRE-FLEX (focofilcon A) Soft Contact Lenses in both spherical and toric configurations. These lenses range in powers from −20.00 diopters to +20.00 diopters and are indicated for daily wear by aphakic and not aphakic persons with nondiseased eyes. The spherical lenses are indicated for the correction of myopia and hyperopia. The toric lenses are indicated for the correction of myopia, hyperopia, and up to 5 diopters of astigmatism. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On January 7, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), soft contact lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft contact lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses comply with the records and reports provisions of Part 310 (21 CFR Part 310), Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above), and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of the approved contact lenses states that the lenses are to be used only with certain solutions using the chemical (not heat) method for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses. However, the restrictive labeling needs to be updated periodically to refer to new lens solutions that FDA approves for use with approved contact lenses. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 17, 1983, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 9, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-3991 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83N-0015]

Richmond Plasma Corp.; Revocation of U.S. License No. 564

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation on November 19, 1982, of the establishment license and product licenses for the manufacture of Source

Plasma (Human) and Source Leukocytes issued to Richmond Plasma Corp. Because of significant deviations from the requirements for the manufacture of these biological products, the manufacturer requested that the licenses be revoked.

DATE: The revocation of the establishment and product licenses was effective on November 19, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, National Center for Drugs and Biologics (HFN-813), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: In a letter dated November 19, 1982, issued under § 601.5(a) (21 CFR 601.5(a)), FDA revoked the establishment license (U.S. License No. 564) and product licenses for the manufacture of Source Plasma (Human) and Source Leukocytes issued to Richmond Plasma Corp., 1 East Broad St., Richmond, VA 23219. FDA issued the letter of November 19, 1982, following its receipt of a letter of November 1, 1982, from Richmond Plasma Corp. The letter from Richmond Plasma Corp. stated that it has ceased manufacturing Source Plasma (Human) under license. Richmond Plasma Corp. ceased manufacturing the products because of significant deviations from the biological products regulations found by FDA during inspections.

An inspection of Richmond Plasma Corp. on May 6 to 9, 1977, revealed numerous deviations from the requirements of Parts 606 and 640 (21 CFR Parts 606 and 640) of the biological products regulations. These deviations included, but were not limited to: (1) Departures from established standard operating procedures (21 CFR 606.100(b)); and (2) collecting more than the maximum permissible amount of whole blood from donors at one time (21 CFR 640.65(b)(6)).

On August 23 to 25, 1977, a followup inspection of the firm documented continuing deviations, including the overbleeding of donors (21 CFR 640.65(b)(6)). Because these deviations were determined by the agency to constitute a danger to health, the establishment and product licenses held by Richmond Plasma Corp. were suspended on September 2, 1977. After a December 20 and 21, 1977 inspection indicated that the firm had taken appropriate action to correct its deficiencies, FDA reinstated the firm's license on February 8, 1978.

On March 22, 1978, an inspection of the firm was conducted to investigate a reported incident of red blood cells from one donor being mistakenly reinfused into another donor. The inspection revealed continued deviations from established standard operating procedures, including having only one employee rather than two employees check identification of the unit of red blood cells against the donor before reinfusion.

Inspections on November 14 to 22 and December 6 to 8, 1978, revealed significant deviations from applicable standards relating to donor suitability and plasmapheresis procedure requirements (21 CFR 640.60 et seq.). The firm's establishment and product licenses were again suspended on December 11, 1978, because these deviations presented a danger to health. After an April 3 to 5, 1979 inspection indicated that the firm had taken appropriate action to correct its deficiencies, FDA reinstated the firm's license on April 25, 1979.

On March 20 to April 2, 1980, an inspection of the firm revealed numerous deficiencies, including significant deviations concerning the maintenance of accurate and concurrent plasma processing records and equipment standardization records (21 CFR 606.160 (a) and (b)).

An inspection of the firm on July 21 to 23, 1982, documented a second incident of red blood cells from one donor being mistakenly reinfused into another donor. Although the firm had been advised on at least two previous occasions of the importance of following standard operating procedures for donor identification regarding reinfusion of red blood cells, the inspection revealed that the reinfusion error was largely associated with employee failure to follow established procedures.

In summary, the actions of Richmond Plasma Corp. represented: (1) Repeated noncompliance with the provisions of its license for Source Plasma (Human), (2) repeated noncompliance with the applicable standards in Title 21 of the Code of Federal Regulations, and (3) instances of intentional and willful disregard for these requirements. For these reasons, FDA issued a letter informing the firm of the agency's intention to revoke the firm's establishment and product licenses and to publish a notice of opportunity for hearing. Before further regulatory action was taken, in a letter dated November 1, 1982, the firm requested that its establishment and product licenses be revoked and waived the opportunity for a hearing under § 601.5(a). The agency has granted the request.

Accordingly, under § 12.38 (21 CFR 12.38) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Office of Biologics of the National Center for Drugs and Biologics (21 CFR 5.68), U.S. License No. 564 issued to Richmond Plasma Corp. and the product licenses for the manufacture of Source Plasma (Human) and Source Leukocytes were revoked, effective November 19, 1982. This notice of revocation is published under § 601.8 (21 CFR 601.8).

Dated: February 7, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-3989 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0253]

Skull X-Ray Referral Criteria Panel; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the fourth meeting of the Skull X-Ray Referral Criteria Panel. FDA provides logistical support for this Panel, which is convened by the University of California at San Francisco. This notice tells how to submit written data and views to the Panel, how to participate in open sessions of the meeting, and how to review the reports of the Panel.

DATES: Open sessions: March 3, 1983, 8:30 a.m. to 10:15 a.m. and March 4, 1983, 8:15 a.m. to 9:45 a.m.; closed sessions: March 3, 1983, 10:30 a.m. to 5 p.m. and March 4, 1983, 10 a.m. to 12 m.

ADDRESSES: The Panel meeting will be held at the Concord Hilton Hotel, 1970 Diamond Blvd., Concord, CA 94520. The reports of the earlier meetings of this Panel may be reviewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. The report of the fourth meeting will be placed on public display as soon as it is available.

FOR FURTHER INFORMATION CONTACT: Philip M. McClean, National Center for Devices and Radiological Health (HFX-76), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4600.

SUPPLEMENTARY INFORMATION: Through the Office of Radiological Health (formerly the Bureau of Radiological Health) of the National Center for Devices and Radiological Health, FDA conducts and supports research, training, and other activities to minimize unproductive radiation exposure from

diagnostic radiological examinations. One possible source of unproductive radiation exposure is radiological examinations that are not likely to affect patient management. To minimize requests for ineffective examinations, it is important that the referring physician have up-to-date information about when a given radiological study is likely to provide needed diagnostic information. This information, which can take the form of decision guides based on patient signs, symptoms, or history, is termed here "referral criteria."

Under one part of a program designed to facilitate the development and testing by the medical profession of referral criteria for diagnostic radiological examinations, FDA, provides logistical support through a contractor for the convening of small panels of clinical and scientific experts to formulate draft referral criteria or statements of use. A detailed description of the X-ray referral criteria development process was published in the **Federal Register** of June 9, 1981 (46 FR 30568).

This is the fourth meeting of the Skull X-Ray Referral Criteria Panel. The meeting is being called to continue the assessment of the existing state of knowledge regarding the use of plain skull radiography following head trauma and to discuss modifications to the draft referral criteria statement developed at earlier Panel meetings. Anyone interested in specific agenda items to be discussed in the open sessions may determine from the contact person the approximate time of discussion.

Any interested person may submit written data and views to the Panel. Anyone who wishes to request time for oral presentations during the open sessions of the meeting should infom the contact person listed above, either orally or in writing, before the meeting. Any person attending the meeting who does not in advance of the meeting request time will be permitted to make an oral presentation at the conclusion of the open sesions, if time permits, at the chairperson's discretion.

A list of committee members and the meeting agenda or the reports of earlier meetings of the Panel may be reviewed at the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday. The report of the fourth meeting of the Panel will be placed on public display at the Dockets Management Branch as soon as it is available and will contain minutes of the open sessions, copies of written data and views submitted to the Panel in the open sessions, and summaries of the closed sessions. Materials will be filed under the docket number appearing in the heading of this notice.

Dated: February 9, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-3990 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

International Narcotics Control; Delegation of Authority

Notice is hereby given that on January 24, 1983, the Secretary of Health and Human Services delegated to the Assistant Secretary for Health, with authority to redelegate, all the authority vested in the Secretary under Section 481(d) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2291(d)), concerning the authority to monitor the impact on the health of persons who use marijuana sprayed with a herbicide to eradicate such marijuana, excluding the authority to submit reports to the Congress.

Dated: February 7, 1983.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 83-4060 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-17-M

Immigration and Nationality Act Amendments of 1981; Delegation of Authority

Notice is hereby given that on January 28, 1983, the Secretary of Health and Human Services delegated to the Assistant Secretary for Health, with authority to redelegate, all the authority vested in the Secretary under Section 5(e) of Pub. L. 97-116 (8 U.S.C. 1101 note) providing for an evaluation of the exchange programs for graduate medical education of foreign medical graduates, excluding the authority to promulgate regulations and to submit reports to Congress or to a congressional committee.

Dated: February 8, 1983.

Dale W. Sopper,

Assistant Secretary for Management and Budget/OS.

[FR Doc. 83-4061 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-15-M

The Immigration and Nationality Act; Delegation of Authority

Notice is hereby given that on January 28, 1983, the Secretary of Health and Human Services delegated to the Assistant Secretary for Health, with authority to redelegate, the authority wested in the Secretary under Sections 212(a)(32) and 212 (j) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1182(a)), providing for limitations on the entry of foreign medical graduates into the United States as immigrants or exchange visitors, excluding the authority to promulgated regulations and to submit reports to Congress or to a congressional committee.

The June 20, 1977 delegation (42 FR 36311-36312) made by the Secretary to the Assistant Secretary for Health of the above cited authorities under Section 212 of the Immigration and Nationality Act has been superseded. Provision has been made for redelegations made under the Secretary's previous delegation to officials within the Public health Service under Sections 212(a)(32) and 212(j) of the Immigration and Nationality Act to continue if effect for no more than 90 days from the effective date of the delegation to the Assistant Secretary for Health, provided they are consistent with the delegation to the Assistant Secretary for Health.

Dated: February 8, 1983.

Dale W. Sopper,

Assistant Secretary for Management and Budget/OS.

[FR Doc. 83-4062 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-15-M

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 47 FR 13587, March 31, 1982) is amended to (1) revise the functional statement of the Epidemiology Program Office (EPO) to delete the introductory statement referring to the position of Assistant Director for Public Health Practice since the Director, EPO, now reports to the Director, Centers for Diseaser Control, and establish the division-level organizational substructure; (2) change the name of the Laboratory Improvement Program Office (HCJ) to Laboratory Program Office (HCJ); revise the functional statement to reflect more clearly the functions of the Program Office, and establish the division-level organizational substructure; and (3) revise the Order of Succession to delete the title "Assistant Director for Public Health Practice."

Section HC-B, Organization and Functions, is hereby amended as follows:

1. After the heading *Epidemiology Program Office (HCD)*, change the administrative code "(HCD)" to "(HCD)" and delete the introductory statement: "Under the direction of CDC's Assistant Director for Public Health Practice:". After the statement for the *Epidemiology Program Office (HCB)*, insert the following:

Office of the Director (HCB1). (1) Manages, directs, and coordinates the activities of the Epidemiology Program Office (EPO); (2) provides leadership and guidance on policy, program planning, program management, and operations; (3) provides leadership for the implementation of an integrated program of epidemiology and surveillance at CDC, State and local governments, and other agencies, both foreign and domestic; (4) recruits, trains, and coordinates the assignment of Epidemic Intelligence Service (EIS) officers and monitors their performance; (5) publishes the Morbidity and Mortality Weekly Report and other surveillance/program documents; (6) provides liaison with other governmental agencies, international organizations, the Conference of State and Territorial Epidemiologists, and other outside groups; (7) provides administrative management and editorial support services, and coordinates with the appropriate CDC staff offices on program and administrative matters; (8) advises the Director, CDC, on policy matters concerning EPO activities and CDC-wide epidemiologic and surveillance activities.

Division of Field Services (HCB3). (1) Provides epidemiologic assistance and epidemic aid services to State and local health departments through the assignment of epidemiologic generalists to health departments; (2) conducts surveillance and investigations in communities to define disease control strategies and provides recommendations for disease control and prevention for all diseases regardless of etiology; (3) provides technical assistance to other components of CDC in the conduct of disease surveillance and investigations of multi-State disease outbreaks; (4) provides opportunities for mid-level CDC staff epidemiologists to develop their career capacities in preventive medicine, epidemiology, and public health administration; (5) provides consultation to State and local health departments and other nations on the establishment and maintenance of surveillance and epidemiology services and programs; (6) provides epidemiologists for international epidemic aid, upon request, to other nations through the World Health Organization, Pan American Health Organization, or Department of State, or bilaterally upon request from the appropriate health authority.

Division of Surveillance and Epidemiologic Studies (HCB5). (1) Collects, analyzes, and communicates basic surveillance information; (2) develops, evaluates, and implements methods of health surveillance and epidemiology; (3) gathers data and produces the statistical tables for the Morbidity and Mortality Weekly Report and various surveillance reports; (4) analyzes the influence of various factors such as socioeconomic status and demographic characteristics on the incidence and severity of preventable diseases in cooperation with other CDC components; (5) provides consultation on epidemiology and surveillance to other components of CDC, other Federal agencies, State and local health departments, international organizations, and other nations, and coordinates special epidemiologic and statistical activities; (6) develops new and improved methods of communication between CDC and the States, using computer technology.

2. Under the heading *Laboratory Improvement Program Office (HCJ)*, delete the heading and the statement in its entirety and substitute the following:

Laboratory Program Office (HCJ). Under the direction of CDC's Assistant Director For Science: (1) Develops and maintains a national data base and determines baseline information concerning health laboratory practice; (2) provides a consensus development mechanism to define good laboratory practice; (3) develops and publishes guidelines, standards, and prototypes to promote efficient and effective laboratory practice; (4) directs and provides leadership to accomplish goals established for good laboratory practice; (5) collaborates public, private, academic, and voluntary sectors of the health community to identify health laboratory problems and needs; (6) analyzes the laboratory evaluation programs of States, professional associations, and other Federal agencies; (7) identifies, provides, or recommends resources which will enable the laboratory community to provide the appropriate level and quality of service; (8) analyzes policy developments in the field of health and care and disease prevention and recommends synergistic programs and activities for the laboratory community; (9) conducts applied research in laboratory training, evaluation, and management science; (10) administers a proficiency testing program, a national laboratory training and consultation program, and a national laboratory management consultation program for States and other client groups; (11) collaborates with other components of CDC to provide a liaison between the national and international health laboratory community and appropriate CDC programs.

Office of the Director (HCJ1). (1) Provides leadership and guidance on policy, program planning, program management, and operations of the Laboratory Program Office (LPO); (2) plans, directs, coordinates, and evaluates the activities of the LPO and manages a comprehensive nationwide program for improving clinical and public health laboratory services; (3) provides coordination and liaison for collaborative national and international projects with other CDC components; (4) coordinates activities that provide technical and scientific support to the Health Care Financing Administration (HCFA) in its regulation of clinical laboratories; (5) interacts with public, private, academic, and voluntary sectors of the health community to identify the problems and needs of the health laboratory community and provides consultation and assistance in the formulation of solutions.

Division of Laboratory Training and Consultation (HCJ4). (1) Administers a national laboratory training program directed toward transferring current laboratory technologies to State public health laboratories and the Nation's laboratory community; (2) promotes development of active continuing education programs by State and private associations through the support and training of trainers; (3) in collaboration with State public health laboratories and other public and private health organizations and associations, coordinates a laboratory training program directed toward underserved laboratories; (4) identifies, through proficiency testing results and other assessment methods, laboratory problems which can be corrected by training; (5) produces laboratory training materials, including training packages, procedure manuals, and audiovisuals, for use by other laboratory trainers and serves as a national resource for these materialsl (6) provides scientific consultation and on-site scientific and safety review services to local, State, and Federal health laboratories; (7) collaborates with international health

agencies and governments by providing laboratory training and by applying appropriate training materials for use in the international health laboratory community; (8) coordinates a Postdoctoral Program in Microbiology; (9) provides consultation in specialty areas such as tuberculosis, laboratory safety, radiation safety, educational methodology, and manpower development.

Division of Management Development and Consultation (HCJ5). (1) Administers a program of management development and assistance directed toward the laboratory and allied health community; (2) analyzes policy developments in the field of health care and disease prevention, and recommends appropriate programs and activities for scientific laboratories; (3) idenfities problems and needs in the management of health laboratories, and develops and conducts programs of training and consultation to meet those needs; (4) initiates and encourages coordination and joint planning with local, State, and other Federal agencies, professional associations, and other public/private interests in the laboratory community to minimize duplication of services and to improve utilization of laboratory resources; (5) conducts applied research and development on laboratory service, organization, and management prototypes, and works to obtain a consensus in the laboratory community on standards of good management principles as they relate to laboratory practice; (6) develops and maintains a facilities planning program to plan and design medical and medically related laboratories; (7) develops and assists States in implementing a management information system for State and local laboratories, and maintains a national center for health laboratory management information; (8) develops and maintains a data base and determines requirements for health laboratory manpower on a national scale, provides consultation and assistance in development of the labor market, and studies problems related to recruitment and retention of laboratory staff; (9) as required by the Office of the Director of the Laboratory Program Office and/or the CDC Executive Office, provides consultation and conducts management studies for other CDC components.

Division of Technology Evaluation and Assistance (HCJ6). (1) Plans and conducts a national laboratory evaluation program; (2) develops proficiency testing methodology and adminsters a proficiency testing program for licensed clincial laboratories, Federal, State, and local public health laboratories, and selected study groups; (3) evaluates the need for new or revised standards and guidelines applicable to licensed and certified clinical laboratories; (4) assists HCFA in the evaluation of the performance of State agencies and approved accreditation bodies in applying departmental standards applicable to clinical laboratories for effectiveness, uniformity, and efficiency; (5) develops methodology for collection of performance data and assessment of the quality of clinical laboratory services; (6) designs and implements studies to ensure that necessary performance data are identified and obtained for development of national baselines by tests, by type of laboratory, by geographic distribution, and by other evaluative criteria; (7) provides referee testing services for the proficiency testing programs of State and national accrediting bodies; (8) develops and distributes new and updated information on the state of the technology with respect to the quality, accuracy, and efficiency of clinical laboratory testing; (9) maintains liaison with State public health laboratory directors, professional associations, other Federal agencies, and academic institutions to coordinate the acquisition of data base information and to obtain input in the development of proposed or revised standards; (10) assists HCFA by providing training courses and informational materials to State agency surveyors and departmental regional office and central office staffs concerning new or revised clinical laboratory standards, interpretive guidelines, evaluation techniques, and evaluation formats; (11) supports training and consultation efforts within other divisions of the Laboratory Program Office by providing baseline information and performance evaluation data.

Section HC-C Order of Succession, is hereby amended to delete "(3) Assistant Director for Public Health Practice;" and renumber (4), (5), and (6) as (3), (4), and (5).

Dated: February 7, 1983.

Thomas R. Donnelly, Jr.,

Acting Secretary.

[FR Doc. 83-4063 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration; Statement of Organization, Functions, and Delegations of Authority; Correction

In FR Doc. 82-23846, appearing on pages 38409-38424 in the issue Tuesday, August 31, 1982, make the following revisions and corrections:

Under Section HB-10. Organization and Functions

(1) All references to the "Bureau of Health Maintenance Organizations and Resource Development (HBH)," should be "Bureau of Health Maintenance Organizations and Resources Development (HBH)."

(2) In the *Office of the Administrator (HBA):*

a. The title for the "Office of Program Coordination (HBA3)" is changed to the "Office of Policy Coordination (HBA3)," and the reference to "Policy Board" in item (2) of the statement for that Office is changed to "Policy Staff;"

b. In the statement for the *Division of Management Policy and Systems (HBA45),* Items (10) and (11) are deleted and replaced with the following: "(10) approves and clears Agency acquisitions involving ADP, word processing, and telecommuncations; (11) participates in audits of ADP activities to insure compliance with policies and procedures issued by PHS, the Department, OMB, and GSA; (12) provides advice and assistance to the Administrator or the Associate Administrator for Operations and Management, and to HRSA offices and bureaus of ADP activities to support requirements for management information; and (13) provides a focal point for liaison with OASH on ADP-related matters."

c. Item (6) of the statement for the *Division of Grants and Procurement Management (HBA46),* Office of Operations and Management, is deleted and replaced with the following: "(6) coordinates the Administration's positions and actions with respect to the audit of grants and contracts, and also coordinates responses to General Accounting Office audit reports and monitors the implementation of GAO recommendations; (7) provides professional accounting advice relative to the management of grants and contracts;"

d. In the statement for the *Division of Program Planning (HBA62),* Office of Planning, Evaluation and Legislation, "and" is deleted preceding item (9), and the following is added after item (9): "and (10) coordinates the Agency's public use reports clearance function."

e. In item (5) of the statement for the *Division of Evaluation and Analysis (HBA63)*, Office of Planning, Evaluation and Legislation, "compare" is changed to "comparing," and item (10) of the statement for that Division is deleted.

f. In item (8) of the statement for the *Division of Legislation (HBA64)*; Office of Planning, Evaluation and Legislation, "OAS(L)" is changed to "Office of the Assistant Secretary for Legislation."

(3) In the *Bureau of Health Maintenance Organizations and Resources Development (HBH)*:

a. In the general statement for the Bureau, the following is added after the semicolon at the end of item (1): "administers grant programs for the construction of health professions teaching facilities and nurse training facilities under Titles VII and VIII of the PHS Act; and administers the PHS responsibility for facility construction, renovation, and modification as prescribed in interagency memoranda of agreement with other departments of the Federal Government;"

b. In item (9) of the statement for the *Division of Energy Policy and Programs (HBHC5)*, Office of the Associate Director for Health Facilities, the word "Departmental" is added after the word "Federal" and before the word "State".

c. In item (6) of the statement for the *Division of Analysis and Technical Assistance (HBHE2)*, Office of the Associate Director for Health Maintenance Organizations, the semicolon following the words "operating HMOs" is deleted, and a semicolon is added at the end of item (6).

(4) In the *Bureau of Health Professions (HBP)*:

a. In item (1) of the general statement for the Bureau, the last word is changed from "strategies" to "assumptions."

b. In item (7) of the general statement for the Bureau, the work "assuring"is changed to "promoting."

c. The administrative code for the *Office of Program Support*, is corrected from BHP12 to HBP12.

d. The first sentence of the statement for the *Division of Associated and Dental Health Professions (HBP2)* is deleted and replaced with the following: "Serves as a principal focus with regard to health professions education, practice, and service research in the fields of dentistry, optometry, pharmacy, veterinary medicine, public health, health administration, and allied health professions and occupations, including dental hygienists, expanded function auxiliaries, dental assistants, and dental technicians."

e. Item (5) of the statement for the *Division of Associated and Dental Health Professions (HBP2)* is deleted and replaced with the following: "(5) evaluates eductional programs for dental health, public health, and associated health professionals;"

f. Item (9) of the statement for the *Division of Associated and Dental Health Professions (HBP2)* is deleted and replaced with the following: "(9) maintains liaison with dental health, public health, and other health professional groups, including consumers, having common interests in the Nation's capacity to deliver services;"

g. In line 3 of item (1) of the statement for the *Division of Medicine (HBP3)*, the word "for" is inserted immediately before the word "planning."

h. Item (3) of the statement for the *Division of Medicine (HBP3)* is deleted and replaced with the following: "(3) engages with other Bureau programs in cooperative efforts of research, development, and demonstration on the interrelationships between the members of the health care team, their tasks, education requirements, training modalities, credentialing, and practices;"

i. The following new function is inserted immediately after item (3) of the statement for the *Division of Medicine (HBP3)*: "(4) supports and encourages the planning, development, and operation of regionally integrated educational systems;" and the items originally numbered (4) through (10) are successively renumbered (5) through (11).

j. Item (2) of the statement for the *Division of Nursing (HBP4)* is deleted and replaced with the following: "(2) supports and conducts programs with respect to the development, utilization, and quality of nursing personnel, including registered nurses, practical or vocational nurses, and nursing aides;"

k. Item (10) of the statement for the *Division of Nursing (HBP4)* is deleted and replaced with the following: "(10) provides consultation and technical assistance to public and private organizations, agencies, institutions, the PHS Regional Offices, program units of the Federal Government, and international agencies and ministries of health on all aspects of nursing."

l. In the first sentence of the statement for the *Division of Student Assistance (HBP5)*, the comma after "Loan Cancellation Programs" is changed to a period, and the words "and the Cuban Refugee Health Professions Loan Program" are deleted.

m. Item (2) of the statement for the *Division of Student Assistance (HBP5)* is deleted and replaced with the following: "(2) develops and implements program plans, regulations, and policies and operating and evaluation plans and procedures in coordination with the Office of Program Development and the Office of Program Support;"

n. Item (7) of the statement for the *Division of Student Assistance (HBP5)* is deleted and replaced with the following: "(7) in coordination with the Office of Program Development and the Office of Program Support, develops legislative proposals and implementation plans and related administrative and management information and control documents;"

o. The following new function is inserted immediately after item (5) of the statement for the *Division of Disadvantaged Assistance (HBP6)*, Bureau of Health Professions: "(6) conducts special studies and collects baseline data to identify specific factors contributing to the health and health-related problems of the disadvantaged, and to develop strategies for improving health services and career opportunities for the disadvantaged;" and the items originally numbered (6) through (11) are successively renumbered (7) through (12).

p. The renumbered item (9) of the statement for the *Division of Disadvantaged Assistance (HBP6)* is deleted and replaced with the following: "(9) in coordination with the Bureau's divisions and in collaboration with other HRSA entities, provides leadership for and assures implementation of Presidential, Departmental, and other special initiatives addressing the needs of the disadvantaged;"

q. In renumbered item (12) of the statement for the *Division of Disadvantaged Assistance (HBP6)*, "Office of the Assistance Secretary" is corrected to read "Office of the Assistant Secretary," and the phrase "is access to health resources * * *" is corrected to read "in access to health resources * * *."

(5) Under the *Bureau of Health Care Delivery and Assistance (HBC)*, the statements for the *Office of Program Development (HBC12)*, the *Office of Policy Coordination (HBC13)*, the *Office of Program Support (HBC14)*, the *Office of Data Management (HBC15)*, and the *Office of Financing Services (HBC16)* are placed, in the order listed, immediately after the statement for the *Office of the Director (HBC1)* and immediately before the statement for the *Division of Beneficiary Medical Programs (HBC2)*.

Under Section HB-20. Order of Succession

(1) In item (4) of the order of succession, "Associate Administrator for Program Coordination" is corrected to read "Associate Administrator for Policy Coordination;"

(2) In item (7), "Director, Bureau of Health Resources and Development;" is corrected to read "Director, Bureau of Health Maintenance Organizations and Resources Development;"

Under Section HB-30. Delegations of Authority

(1) Delete item (3) of the first paragraph and change item (4) to item (3).

(2) Delete item (3) of the second paragraph and change items (4) and (5) to items (3) and (4) respectively.

Dated: February 7, 1983.

Thomas R. Donnelly, Jr.,

Acting Secretary.

[FR Doc. 83-4064 Filed 2-14-83; 8:45 am]

BILLING CODE 4160-18-M

Social Security Administration

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Adminstration (SSA), HHS.

ACTION: New Routine Use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use of information in the system of records 09-60-0089—Claims Folder, HHS/SSA/OOPP. The proposed routine use will permit us to disclose information to the Immigration and Naturalization Service (INS), upon request, to identify and locate aliens in the United States.

We invite public comments on this proposal.

DATES: The proposed routine use will become effective as proposed without further notice on March 17, 1983, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this proposal by writing to the Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at 3-F-1 Operations Building at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Marlene Pegg, Chief, Enumeration Policy and Field Branch, Office of Enumeration and Earnings Records, Social Security Administrtion, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (Area Code 301) 594-6576.

SUPPLEMENTARY INFORMATION: Certain aliens who have been lawfully admitted to the United States by INS have a need for Social Security numbers (SSN's), whether or not they are authorized to work (e.g., exchange students whose educational institution uses the SSN as an identifier or aliens whose financial dealings with banks require an SSN in order to comply with rules promulgated by the Internal Revenue Service).

When applying for SSN's or Social Security benefits, the aliens must present certain immigration documents to SSA (e.g., the I-94—Arrival/Departure Record issued to students and visitors and the I-151 or I-551—Alien Registration Receipt Card issued to show proof of status). Social Security field office employees use the documents to determine the alien's identity, age and alien status when determining: (1) Whether to issue an SSN to the alien; and, (2) the alien's eligibility for benefits administered by SSA.

Upon the identification of possible fradulent documents, field office employees refer the suspected documents to INS for verification. (The Clamis Folder system (09-60-0089) and the Master Files of SSN Holders system (09-60-0058) already contain the appropriate routine use statement to permit these referrals to INS.) For those documents which INS confirms as fradulent, INS will request the applicant's name and other identifying information in accordance with the provisions of section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)). Section 290(c) requires the Secretary of HHS to furnish such available information as may be requested by the Attorney General (INS) regarding the identity and location of aliens in the United States. So that we may disclose the information from the Claims Folder system, we are proposing a routine use statement which would permit the disclosure of information for the following purpose:

To the Department of Justice (Immigration and Naturalization Service), upon request, to identify and locate aliens in the United States pursuant to the provisions of section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

We are proposing the routine use in accordance with the Privacy Act and our disclosure regulation (20 CFR Part 401). Section 401.310 of the regulation permits us to disclose information for a routine use where the information will be used for a purpose which is compatible with the purpose for which we collected the information. We consider disclosures required by status as disclosures for compatible purposes. Since 8 U.S.C. 1360(c) requires the Secretary of HHS to disclose the information, the above statement of routine use is appropriate.

The proposed routine use statement meets all requirements of the Privacy Act and our disclosure policy. Information will be disclosed under the routine use only upon receipt of a specific request from INS. We, therefore, do not anticipate that any disclosures under the routine use would result in any clearly unwarranted adverse effects on personal privacy.

Dated: February 3, 1983.

John A. Svahn,

Commissioner of Social Security.

09-60-0089

SYSTEM NAME:

Claims Folder, HHS/SSA/OOPP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The claims folders are generally set up in district or branch offices when claims for benefits are filed (see Appendix F.1 for address information). They are retained there until all development has been completed, and then transferred to the appropriate reviewing office as set out below. Supplemental security income claims folders are held in district or branch offices pending estalishment of a payment record, or until the appeal period, in a denied claim situation, has expired. The folders are then transferred to a folder-staging facility in Chicago prior to transfer to the Chicago Federal Archives Records Center.

Retirement and survivors insurance claims folders are maintained primarily in social security program service centers. However, if an individual to which the claim pertains resides outside the United States or any of its possessions, the folder is maintained in the Office of International Policy. See Appendix A for address information regarding the Program Service Centers and the Office of International Policy.

Disability insurance claims folders for individuals under age 62 are maintained primarily in the Office of Disability Operations, or if the individual resides outside the United States or any of its possessions, the Office of International

Policy. Disability insurance claims folders for disabled individuals over age 62 are maintained in the Program Service Centers or the Office of International Policy (see Appendix A for address information).

Claims folders relating to Black Lung claims are maintained in the Office of Disability Operations (see Appendix B.1 for address information).

Supplemental security income claims folders are maintained in the Chicago Federal Archives Records Center.

In addition, claims folders are transferred to numerous other locations thorughout the Social Security Administration and the General Service Administration and infrequently may be temporarily transferred to other Federal agencies (Department of Justice, or Office of the General Counsel, Department of Health and Human Services). The disability claims folders are also transferred to state agencies for disability and vocational rehabilitation determinations (see Appendix B.3 for address information).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants for retirement, survivors, disability, health insurance, or black lung benefits or supplemental security income payments.

CATEGORIES OF RECORDS IN THE SYSTEM:

The claims folder is established when a claim for benefits is filed. It contains application for benefits, earnings record information established and maintained by the Social Security Administration, documents supporting factors of entitlement and continuing eligibility, payment documentation, and correspondence to and from claimants and/or representatives.

It also may contain data collected as a result of inquires or complaints; and evalustion and measurement study of effectiveness of claims policies.

Separate files may be maintained of certain actions which are entered directly into the computer processes. These relate to reports of changes of address, work status, and other post-adjudicative reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 202–205, 223, 226, 228, 1611, 1631, 1818, 1836, and 1840 of the Social Security Act and Section 411 of the Federal Coal Mine and Health Safety Act.

PURPOSE(S):

The claims folder constitutes the basic record for payments and determinations under the Social Security Act and the Federal Coal Mine Health and Safety Act (Black Lung Act). Data are used to produce and maintain the Master Beneficiary Record (09–60–0090) which is the automated payment system for retirement, survivors, and disability benefits; the Supplemental Security Income Record (09–60–0103) system for the aged, blind, and disabled payments; the Black Lung Payments System (09–60–0045) for black lung claims; and the Health Insurance Billing and Collection Master Record system (09–70–0522) for hospital and supplementary medical (medicare) insurance benefits.

This paper file is controlled by the Social Security Administration Claims Control System (09–60–0091) while the claim is pending development for adjudication in the district or branch office, and by the Case Control System (09–60–0092) once the folder the folder has been transferred to the reviewing office (program service centers, Office of International Policy, or the Office of Disability Programs).

The claims folders are used throughout the Social Security Administration for the purposes of determining, organizing, and maintaining documents for making normal determinations as to eligibility for benefits, the amount of benefits, reviewing continuing eligibility, holding hearings or administrative review processes, and to ensure that proper adjustments are made based on events affecting entitlement. The folder may be referred to State Disability Determination Sections or Vocational Rehabilitation Agencies in disability cases. They may also be used for quality review, evaluation, and measurement studies, and other statistical and research purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the social security program when:

(a) The individual is unable to provide information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist):

(i) He/she is incapable or of questionable mental capability;

(ii) He/she cannot read or write;

(iii) He/she cannot afford the cost of obtaining the information;

(iv) A language barrier exists; or

(v) The custodian of the information will not, as a matter of policy provide it to the individuals; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her; eligibility for benefits under the Social Security program;

(ii) The amount of his/her benefit payment; or

(iii) Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

2. To third party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

3. To a person (or persons) on the rolls when a claim is filed by an individual which is adverse to the person on the rolls; i.e.:

(i) An award of benefits to a new claimant precludes an award to a prior claimant; or

(ii) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls; but only for information concerning the facts relevant to the interests of each party in a claim.

4. To employers or former employers for correcting or reconstructing earnings records and for social security tax purposes only.

5. To the Treasury Department for collecting Social Security taxes or as otherwise pertinent to tax and benefit payment provisions of the Social Security Act, (including Social Security Number verification services) and for investigating alleged theft, forgery, or unlawful negotiation of Social Security checks.

6. To the United States Postal Service for investigating alleged forgery of theft of Social Security checks.

7. To the Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, for representing the Secretary, and for investigating isssues of fraud by agency officers or employees, or violation of civil rights.

8. To the Department of State for administering the Social Security Act in foreign countries through facilities and services of that agency.

9. To the American Institute on Taiwan for administering the Social Security Act on Taiwan through facilities and services of that organization.

10. To the Veterans Administration, Regional Office Philippines, for administering the Social Security Act in the Philippines through facilities and services of that agency.

11. To the Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands through facilities of that agency.

12. To the Railroad Retirement Board for administering provisions of the Social Security Act relating to railroad employment.

13. To State Social Security Administrators for administration of agreements pursuant to section 218 (State and local).

14. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations, and expenditures of Federal funds by the State in support of the Disability Determination Section (DDS).

15. To private medical and vocational consultants for use in making preparation for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by the Social Security Administration or a State agency acting in accord with section 221 or 1633.

16. To specified business and other community members and Federal, State, and local agencies for verification of eligibility for benefits under section 1631(e).

17. To institutions or facilities approved for treatment of drug addicts or alcoholics as a condition of the individual's eligibility for payment under section 1611(e) and as authorized by regulations issued by the Special Action Office for Drug Abuse Prevention.

18. To applicants, claimants, prospective applicants or claimants, other than the data subject, their authorized representatives or representative payees to the extent necessary to pursue Social Security claims and receive an account of benefit payments.

19. To a congressional office in response to an inquiry from the congressional office made at the request of that individual.

20. To the Department of Justice in the event of litigation where the defendant is:

(a) The Department of Health and Human Services (HHS), any component of HHS or any employee of HHS in his or her official capacity;

(b) The United States where HHS determines that the claim, if successful, is likely to directly affect the operations of HHS or any of its component; or

(c) Any HHS employee in his or her individual capacity where the Justice Department has agreed to represent such employee;

HHS may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

21. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Social Security Act.

22. To Federal, State, or local agencies (or agents on their behalf) for administering cash or noncash income maintenance or health maintenance programs. Such disclosures include, but are not limited to, release of information to:

(a) The Railroad Retirement Board for administering provisions of the Railroad Retirement Act relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The Veterans Administration for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act;

(d) State welfare departments for administering sections 205(c)(b)(i)(II) and 402(a)(25) of the Social Security Act requiring information about assigned Social Security Act requiring information about assigned Social Security Numbers for Aid to Families with Dependent Children program purposes only;

(e) State agencies for making determinations of Medicaid eligibility; and

(f) State agencies for making determinations of food stamp eligibility under the food stamp program.

23. To State welfare departments pursuant to ageements with the Social Security Administration for administration of State supplementation payments; for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act; and for conducting independent quality assurance reviews of supplemental security income recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

24. To State Vocational Rehabilitation agencies or State crippled childrens's service agencies (or other agencies providing services to disabled children) for consideration rehabilitation services per sections 222a and 1615 of the Social Security Act.

25. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to Section 233 of the Social Security Act way be disclosed to a foreign country that is a party to that agreement.

26. To the Internal Revenue Service, Department of the Treasury, for the purpose of auditing the Social Security Administration's compliance with safeguard provisions of the Internal Revenue Code of 1954, as amended.

27. To the Office of the President for responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

28. To third party contacts (including private collection agenices under contract with the Social Security Administration (SSA), for the purpose of their assisting SSA in recovering overpayments.

29. To the Department of Justice (Immigration and Naturalization Service), upon request, to identify and locate aliens in the United States pursuant to the provisions of section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

POLICES AND PRACTICES FOR STORING RETRIEVING, ACCESSING AND DISPOSSING OF RECORDS IN THE SYSTEM:

STORAGE:

Claims folders are maintained in file cabinets by service area as set out in location above.

RETRIEVABILITY:

Claims folders are filed by Social Security Number.

SAFEGUARDS:

Claims folders are protected through Limited access to Social Security Administration records, limited employee access to need to know. All employees are instructed in Social Security Administration confidentiality rules as a part of their initial orientation training.

RETENTION AND DISPOSAL:

The claims folder is initially maintained in the reviewing office. Later, both active and inactive folders are transferred to the Federal Archives and Records Center for storage and

inactive (no one is entitled to benefits) folders are scheduled for destruction. The time for retention prior to destruction is 5-year retention—no record of surviving potential beneficiaries; 20-year retention—withdrawn claims, claims disallowed or lump-sum death payments only, and 55-year retention—potential future claimants indicated in the file.

When a subsequent claim is filed on the social security number, the claims file is recalled from the Records Center. Similarly, the claims files may be recalled from the Records Center at any time by the Social Security Administration as necessary in the administration of social security programs.

SYSTEM MANAGER(S) AND ADDRESS:

SSA Privacy Officer, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to him or her by contacting the most convenient Social Security office (see Appendix F.1 for address and telephone information).

When requesting notification, an individual should provide his or her name, social security number, the type of claim he or she filed (retirement, survivors, disability, health insurance, black lung special minimum payments, or supplemental security income; if more than one claim is filed, each should be identified), whether he or she is or has been receiving benefits, whether payments are being received under his or her own social security number, and if not, the name and social security number under which received, if benefits have not been received, the approximate date and place the claim was filed, and his or her address and/or telephone number.

An individual who requests notification of or access to a medical record shall, at the time he or she makes the request, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. However, SSA will grant direct access to a subject individual if the responsible SSA official determines that direct access is not likely to have an adverse effect on him or her. If the responsible SSA official is unable to make a determination, or makes the determination that some harm may occur to an individual, the official will send the record to the designated representative and inform the subject individual in writing that the records have been sent.

A parent or guardian who requests notification of or access to a minor's medical record shall at the time he or she makes the request designate a physician or other health professional (other than a family member) who will be willing to review the record and inform the parent or guardian of its contents at the physician's or health professional's discretion.

These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the information being sought. These procedures are in accordance with HHS Regulations 45 CFR 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record and specify the information to be contested. These procedures are in accordance with HHS Regulations 45 CFR 5b.

RECORD SOURCE CATEGORIES:

This information is obtained from the claimants, accumulated by the Social Security Administration from reports of employers or self-employed individuals, various local, State, and Federal agencies, claimant representatives and other sources to support factors of entitlement and continuing eligibilities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 83-4013 Filed 2-14-83; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Nevada; Classification Partially Vacated

February 3, 1983.

1. Multiple Use Classification N-1025 was published in the **Federal Register** on December 12, 1968 (FR Doc 68-14835). The classification was partially vacated as shown by **Federal Register** publication on November 22, 1982, page 52572 (FR Doc. 82-31879).

2. Pursuant to 43 CFR 2461.5(c)(2) Multiple Use Classification N-1025 is hereby vacated as to the following described land:

T. 16 N., R. 38 E.
sec. 8, N½S¼.

The area described comprises approximately 80 acres.

3. At 9:00 a.m. on March 17, 1983 the land is hereby open to the operation of the agricultural land laws, subject to valid existing rights. All valid applications received prior to or at 9:00 a.m. on March 17, 1983 will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

4. At 9:00 a.m. on March 17, 1983 the land will be opened to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. The land has been and will remain open to the mineral leasing laws.

6. There are 800 acres remaining under this classification.

Inquiries concerning this land should be addressed to the Deputy State Director, Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 83-3803 Filed 2-14-83; 8:45 am]
BILLING CODE 4310-84-M

[AA-50379-1]

Alaska Native Claims Selection; Chugach Natives Inc.

On January 10, 1983, the 1982 CNI Settlement Agreement was entered into by and among the United States of America, the State of Alaska, and Chugach Natives, Inc. (hereinafter referred to as the Agreement) to enable Chugach Natives, Inc., to receive the acreage equivalent of its entitlement under Secs. 12(c) and 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611(c), 1613(h)(8)(Supp. IV, 1980)) (ANCSA). The agreement was entered into pursuant to the provisions of Secs. 12(c), 14(h)(8) and 22(f) of ANCSA and Secs. 1302(h) and 1430(a) of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, 2475, 2531) (ANILCA).

Pursuant to the provisions of paragraph 4 of the Agreement, Chugach Natives, Inc., has elected to receive title

to certain lands in Prince William Sound—Eagle Bay (Glacier Island) in exchange for certain selection rights the corporation had, as outlined in paragraph 12 of the Agreement. The lands are identified in case file AA-50379-1.

The lands described below do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title. The conveyance shall be considered and treated as a conveyance under ANCSA.

In view of the foregoing, the surface and subsurface estate of the following described lands, containing approximately 120 acres, are considered proper for acquisition by Chugach Natives, Inc., and are hereby approved for conveyance pursuant to Sec. 22(f) of ANCSA and Sec. 1302(h) of ANILCA.

Copper River Meridian, Alaska (Unsurveyed)

An island located northwest of Growler Bay and adjacent to Glacier Island in Prince William Sound, having a latitude and longitude at its midpoint of 60°54'15" N. and 147°07'30" W., further described as follows:
T. 11 S., R. 11 W.
Sec. 14, that portion of the large island located in the SE¼;
Sec. 23, that portion of the large island located between Eagle Bay and Growler Bay east of Elder Point which lies primarily in the E½.
Containing approximately 120 acres.

There are no inland water bodies considered to be navigable within the above-described lands.

There are no easements to be reserved pursuant to Sec. 17(b) of ANCSA.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. The terms and conditions of the 1982 CNI Settlement Agreement entered into pursuant to Sec. 1430 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, 2531). A copy of the Agreement is located in case file AA-50379. Any person wishing to examine this Agreement may do so at the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513; and

4. The provisions of paragraph 19.C of the 1982 CNI Agreement entered into pursuant to Sec. 1430 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, 2531), namely the following covenant, which shall run with the land:

> These lands may be developed only for commercial recreation purposes such as, but not limited to, lodges, recreational cabins, restaurants, small grocery outlets and supply outlets, marine fuel outlets, marine repair and docking and charter facilities.

Chugach Natives, Inc., is entitled to conveyance of approximately 371,832 acres of land selected to Secs. 12(c) and 14(h)(8) of ANCSA. To date, approximately 47,869 acres of this entitlement have been approved for conveyance. The remaining entitlement of approximately 322,962 acres will be conveyed at a later date.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the CORDOVA TIMES.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E as revised. However, pursuant to Public Law 96-487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt and parties who received a copy of this decision by regular mail which is not certified, return receipt requested, shall have until March 17, 1983 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: Chugach Natives, Inc., 903 West Northern Lights, Suite 201, Anchorage, Alaska 99501.

Ann Johnson,
Chief, Branch of ANCSA Adjudication.

[FR Doc. 83-4004 Filed 2-14-83; 8:45 am]
BILLING CODE 4310-84-M

Utah; Sunnyside Combined Hydrocarbon Lease Conversion EIS; Scoping Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Meetings.

SUMMARY: Notice is hereby given that in accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), will prepare an environmental impact statement (EIS) covering the proposed conversion of existing oil and gas leases within the Sunnyside Special Tar Sand Area (Carbon County, Utah) to hydrocarbon leases, under the Combined Hydrocarbon Leasing Act of 1981.

The BLM Division of EIS Services, Denver, Colorado, will assist the Moab District Office in preparing the Sunnyside Lease Conversion EIS. The statement will analyze the impacts of the lease conversions and proposed surface and in-situ mining tar sand

projects. The Sunnyside Lease Conversion EIS will be tiered to the Tar Sand Leasing Regional EIS, which will evaluate the broader issues related to a combined hydrocarbon leasing program for eleven Special Tar Sand Areas in Utah, including the Sunnyside area.

A public open house (scoping meeting) to assist in determining the scope of the Sunnyside Lease Conversion EIS and the Tar Sand Leasing Regional EIS will be held in Price, Utah, on March 9, 1983, from 4:00 to 7:00 pm. The open house will be held in the conference room of the BLM Price River Resource Area Office, 900 North 7th East, Price, Utah. The purpose of this open house is threefold: 1) to inform the public of the nature of the combined hydrocarbon leasing program and the lease conversions proposed for the Sunnyside Special Tar Sand Area; 2) to gather resource information from the public; and (3) to consider concerns, problems, and/or issues important to the public, including possible alternatives, for possible inclusion in the Sunnyside Lease Conversion and/or Combined Hydrocarbon (Tar Sand) Leasing Regional EISs.

A summary of the proposed Sunnyside Special Tar Sand Area lease conversions and the resulting tar sand projects to be addressed in the Sunnyside Lease Conversion EIS can be obtained from: Gene Nodine, District Manager, Bureau of Land Management, Moab District, 125 W. 2nd S., P.O. Box 970, Moab, Utah 84532; telephone: (801) 259-6111. For persons who may not be able to attend the open house, letters of comment regarding the EIS scoping may be sent to this address.

Dated: February 7, 1983.

Gene Nodine,

District Manager.

[FR Doc. 83-3976 Filed 2-14-83; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications; Henry Ford Hospital et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Henry Ford Hospital, Detroit, MI—PRT 2-9991.

The applicant requests a permit to import two captive-born ruffed lemurs (*Lemur variegatus*) from the London Zoo for breeding purposes and biochemical studies aimed at detecting the hereditary biochemical abnormality in these mutant lemurs.

Applicant: San Diego Zoo, San Diego, CA—PRT 2-9986

The applicant requests a permit to import one captive-bred tiger from the Canton Zoo, Canton, Peoples Republic of China for enhancement of propagation.

Applicant: John A. Blankenship, USFWS, Mayaquez, Puerto Rico—PRT 2-9964

The applicant requests a permit to take (harass) yellow-shouldered blackbirds (*Agelaius xanthomus*) for enhancement of survival. A major factor in the decline of this blackbird has been the increase and spread of the shiny cowbird (*Molothrus bonariensis*) which parasitizes nests of yellow-shouldered blackbirds. Trapping in the blackbird's nesting area to control shiny cowbirds is proposed.

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: February 8, 1983.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-3963 Filed 2-14-83; 8:45 am]

BILLING CODE 4310-55-M

Issuance of Permits for Marine Mammals; Carle Foundation Hospital

On June 22, 1982, a notice was published in the **Federal Register** (47 FR Vol. 120, that an application had been filed with the Fish and Wildlife Service by the Carle Foundation Hospital, Urbana, Illinois for a permit to capture two polar bears (*Ursus maritimus*) for scientific research. In addition, on November 17, 1982, a notice was published jointly by the Fish and Wildlife Service and the National Marine Fisheries Service in the **Federal Register** (47 FR Vol. 222) that an application had been filed with the Fish and Wildlife Service and the National Marine Fisheries Service by the Mote Marine Laboratory, Sarasota, Florida, to use a sonar device in tracking movements of bottle-nosed dolphin (*Tursiops truncatus*) and West Indian manatees (*Trichechus manatus*).

Notice is hereby given that, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), both applicants named above were issued permits for the described activities subject to certain conditions set forth therein. The Carle Foundation was issued a permit (PRT 2-9221) on January 26, 1983, and Mote Marine Laboratory was issued a permit on February 1, 1983.

These permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 601, 1000 N. Glebe Road, Arlington, Virginia.

Dated: February 7, 1983.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-3964 Filed 2-14-83; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 4, 1983. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 2, 1983.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Jefferson County

Birmingham, *Five Points South Historic District*, Roughly bounded by 10th and 15th Aves, 19th and 21st Sts.

CONNECTICUT

Litchfield County

Canaan, *South Canaan Congregational Chruch*, CT 63 and Barnes Rd.

ILLINOIS

Cook County

Chicago, *Tri-Taylor Historic District*, Roughly bounded by Claremont, Harrison, Oakley, Polk, Ogden, and Roosevelt Rds.

Evaston, *Evaston Ridge Historic District*, Roughly bounded by Main, Asbury, Ashland, Emerson, Ridge and Maple Ave.

INDIANA

Daviess County

Washington, *Graham, Robert C., House*, 101 W. Maple St.

Franklin County

Oldenburg, *Oldenburg Historic District*, Bounded roughly by Sycamore, church land woods, Indiana, and Water Sts., and Gehring Farm.

Marion County

Indianapolis, *Cole Motor Car Company*, 730 E. Washington St.

Monroe County

Bloomington, *Morgan House*, 532 N. Walnut St.

Bloomington, *Wicks Building*, 116 W. Sixth St.

Perry County

Cannelton, *St. Luke's Episcopal Church*, Third and Washington Sts.

Vanderburgh County

Evansville, *Koester/Patberg House*, 504 Herndon Dr.

LOUISIANA

Lafayette Parish

Broussard, *Alesia (Broussard MRA)*, 108 N. Morgan St.

Broussard, *Billeaud House (Broussard MRA)*, 303 W. Main St.

Broussard, *Billeaud, Martial Jr., House (Broussard MRA)*, 118 N. Morgan St.

Broussard, *Broussard, Valsin, House (Broussard MRA)*, 408 W. Main St.

Broussard, *Comeaux House (Broussard MRA)*, 406 Second St.

Broussard, *Ducrest Building (Broussard MRA)*, 101 W. Main St.

Broussard, *Janin Store (Broussard MRA)*, 121 N. Morgan St.

Broussard, *Main Street Historic District (Broussard MRA)*, 203–302 E. Main St.

Broussard, *Roy-LeBlanc House (Broussard MRA)*, 105 St. Pierre St.

Broussard, *St. Cecilia School (Broussard MRA)*, 302 W. Main St.

Broussard, *St. Julien House (Broussard MRA)*, 203 E. Second St.

St. Landry parish

Eunice, *Midland Branch Railroad Depot*, First and North Sts.

St. Martin Parish

Breaux Bridge vicinity, *Olivier Pigeonnier*, SW of Breaux Bridge off LA 94

Union Parish

Marion, *Hopkins House*, Hopkins Lane

MARYLAND

Baltimore (Independent City)

Mercantile Trust and Deposit Company, 202 E. Redwood St.

MICHIGAN

Leelanau County

Glen Haven, *Glen Haven Village Historic District*, MI 209

NEVADA

Washow County

Reno, *Humphrey House*, 467 Ralston St.

NEW JERSEY

Bergen County, Mahwah, *Hopper Gristmill Site*,

OHIO

Delaware County

Delaware vicinity, *Warren Tavern Complex*, U.S. 36

Erie County

Sandusky, *Boeckling, G.A., (Side-paddlewheel steamboat)*, Jackson Street Dock

Lucas County

Toledo, *Gendron, Peter, House*, 1413 Walnut St.

OKLAHOMA

Creek County

Drumright vicinity, *Wheeler No. 1 Oil Well*, Off OK 99

Jefferson County

Ringling vicinity, *Cornish Orphan's Home*, Off OK 89

PENNSYLVANIA

Allegheny County

Pittsburgh, *Schenley Farms Historic District*, Roughly bounded by Andover Terr., Centre, Bellefield, and Parkman Aves, Dithridge, Thackeray, Forbes and Mawhinney Sts.

Armstrong County

Apollo, *Drake Log Cabin*, Williams Alley

Chester County

Parkerford, *Parker's Ford*, Old Schuylkill Rd.

Lancaster County

Strasburg, *Strasburg Historic District*, E. and W. Main, W. Miller, S. Decatur Sts.

Philadelphia County

Philadelphia, *Manayunk Main Street Historic District*, Roughly bounded by Reading RR, Flat Rock Dam, Schuylkill River, and Lot 4025 Main St.

Philadelphia, *Monte Vista*, 917–931 N. 63rd St., 6154–6160 Oxford St., 6151–6157 Nassau St.

TEXAS

Bexar County

San Antonio, *Thiele House and Thiele Cottage*, 411 and 415 Sixth St.

Blanco County

Johnson City, *Lyndon B. Johnson National Historical Park*, US 290

Travis County

Austin, *Haynes-DeLashwah House*, 1209 Rosewood Ave.

UTAH

Salt Lake County

Draper, *Smith, Lauritz, House*, 1350 E. 12400 South

Murray, *Cahoon, John P., House*, 4872 S. Poplar St.

VERMONT

Rutland County

West Haven, *Smith, Simeon, House*, W. Haven Rd.

Windsor County

Bethel, *Harrington House*, River St. and VT 107

WISCONSIN

Eau Claire County

Eau Claire, *Sacred Heart Church (Eau Claire MRA)*, 418 N. Dewey St.

Milwaukee County

Milwaukee, *Abbot Row*, 1019–1043 W. Ogden Ave.

Milwaukee, *Baumbach Building*, 302 N. Broasway St.

Monroe County

Sparta, *St. John's Episcopal Church*, 400 N. Water St.

[FR Doc. 83-3870 Filed 2-14-83; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Garrison Diversion Unit, North Dakota; Notice of Intent To Prepare a Supplemental Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and 40 CFR 15–2.9(c), the Department of the Interior plans to prepare a supplemental draft environmental statement covering actions proposed by the Department in connection with construction of the Garrison Diversion Unit, North Dakota. The Garrison Diversion Unit is a multipurpose project under construction in eastern North Dakota which includes irrigation, municipal and industrial water service, recreation and fish and wildlife purposes. This draft environmental statement will be supplemental to FSES 70–7, dated March 7, 1979, FSES 74–21, dated May 3, 1974, and FES 74–3, dated January 10, 1974.

The Governor of North Dakota has submitted to the Secretary of the Interior a proposal that the Garrison Diversion Unit be constructed in a phased manner so that the service areas to be constructed initially will not drain into Canada. Coincidental with the Secretary's consideration of that proposal, a joint Federal/State committee has developed potential

modifications of the fish and wildlife mitigation plan for the Garrison Diversion Unit, with emphasis on specific mitigation measures relating to the segments of the project to be constructed in the near future, which are essentially the same features included in the first phase of the Governor's proposal.

This supplemental draft environmental statement will cover: (1) Fish and wildlife mitigation and enhancement including the committee's recommended modifications mentioned above; (2) operation of Lonetree Reservoir; (3) not constructing a fish screen on the McClusky Canal; (4) a 2000 cubic feet per second (ft^3/s) emergency spillway from Lonetree Reservoir; (5) increasing the capacity of the proposed James river Feeder Canal from 450 ft^3/s to 1600 ft^3/s; (6) redirecting return and suplus flows from the new Rockford Service Area to the James River; and (7) changes in the flows of the James River resulting from the above actions. These proposed actions, which are consistent with the recommendations of the International Joint Commission and the obligations of the United States under the Boundary Waters Treaty of 1909, could be implemented independently from the Governor's proposal. Accordingly, this supplemental draft environmental statement will address only the potential impacts of the proposed actions but will also be useful to the Department in its further consideration of the Governor's proposal.

No scoping meeting is scheduled for this supplemental statement; however, the proposed modifications of the fish and wildlife mitigation plan have been the subject of public meetings in the State of North Dakota. The supplement will be prepared, circulated and filed in the same fashion as a draft and final statement and public comments will be solicited before a final decision on the proposed actions addressed in this supplemental statement is made.

The contact person for this supplemental draft statement is Mr. Larry Parsons, Bureau of Reclamation, P.O. Box 1017, Bismark, North Dakota 58501, telephone (701) 783-4595.

Dated: February 10, 1983.

R.N. Broadbent,

Commissioner.

[FR Doc. 83-4040 Filed 2-14-83; 8:45 am]

BILLING CODE 4310-09-M

Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Lands Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of availability of Findings of No Significant Impact (FONSI) addressing Environmental Assessments (EAs) for development of two abandoned mine land projects (19 sites) under the State of Montana's Reclamation Plan.

SUMMARY: Montana Department of State Lands has prepared EAs on projects submitted in the Federal Grant Application to the Office of Surface Mining.

A FONSI has been prepared for the two reclamation projects (19 sites) indicated below and included in the grant application developed under Title IV of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1231-1234.

ADDRESS: Copies of the EAs and FONSI are available for inspection or may be obtained at the following location between the hours of 8:00 a.m. and 4:00 p.m.: Office of Surface Mining, Casper Field Office, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

Reclamation Projects included in FONSI, Location and description: Montana is requesting reclamation Funds for two projects Jefferson and Lewis and Clark Counties. Work to be performed is solely for sealing both adits and shafts non-coal hard rock mine openings, at the following nineteen Sites.

Project	Area	Name	Legal description
Jefferson Co.	Alhambra	Wall	T8 N., R3 W., Sec 16 N.[2]
		Haynes	T8 N., R3 W., Sec 17 E.[2]
		Stiles-Mammouth	T8 N., R3 W., Sec 9 E.[2]
	Lump Gulch	Cole-Liverpool	T9 N., R3 W., Sec 33 SW.
		Marks	T9 N., R3 W., Sec 33 NW.
	Clancy Creek	Clancy Creek	T8 N., R3 W., Sec 8 NW.
		Marks-BLM	T8 N., R3 W., Sec 5 SW.
	Elkhorn	Quaintence-Louise	T6 N., R3 W., Sec 11 NE.
Lewis and Clark Co.	Scratchgravel	Anders-Julia	T10 N., R4 W., Sec 2 NE.
		Lovely-Oompaul	T11 N., R4 W., Sec 35
	Grizzly Gulch	Gunn	T9 N., R4 W., Sec 3 SW.
		Hubbard-Cycle	T9 N., R4 W., Sec 25 SE.
		Tangen	T10 N., R4 W., Sec 35 SE.
	Colorado Gulch	Stiller	T9 N., R5 W., Sec 13.
	York	Virag-Golden Messenger	T11 N., R1 W., Sec 4 SW.
	Marysville	Fritsche-Empire	T12 N., R6 W., Sec 33 N.[2]
		Seifert-Snowdrift	T12 N., R6 W., Sec 35.
		Tetsher-Penobscot	T11 N., R6 W., Sec 4 SE.
	Rimini	Tangen-Justice	T8 N., R5 W., Sec 6 N.[2]

FOR FURTHER INFORMATION CONTACT: William R. Thomas Director, Casper Wyoming Field Office, Commercial (307) 328-5830 or (FTS) 328-5824 at the (address above).

Dated: February 8, 1983.

William B. Schmidt,

Assistant Director, POI.

[FR Doc. 83-4087 Filed 2-14-83; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[332-149]

Competitive Assessment of the U.S. Metalworking Machine Tool Industry

AGENCY: United States International Trade Commission.

ACTION: The Commission is extending the deadline for the filing of written submissions from interested parties in the subject investigation from February 1, 1983 to March 1, 1983. Supplemental submissions from parties having already filed written briefs will be accepted. The initial notice of investigation indicating the scope of the study, contact persons, and other related information was published in the **Federal Register** of December 8, 1982 (47 FR 55343).

By order of the Commission.

Issued: February 7, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-4075 Filed 2-14-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-182 (Final)]

Rail Passenger Cars and Parts Thereof From Canada

AGENCY: United States International Trade Commission.

ACTION: Termination of final countervailing duty investigation.

EFFECTIVE DATE: February 9, 1983.

SUMMARY: On February 9, 1983, the United States International Trade Commission received a letter from the Budd Co. of Troy, Michigan, the petitioner in the subject investigation, withdrawing its petition. Accordingly, the United States International Trade Commission hereby gives notice of the termination of its countervailing duty investigation involving rail passenger cars and parts thereof from Canada (investigation No. 701-TA-182 (Final)) and of the cancellation of the public hearing scheduled for February 15, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis (202-523-0296), Office of Investigations, U.S. International Trade Commission.

This notice is published pursuant to § 207.40 of the Commission's Rules of Practice and Procedure (19 CFR 207.40).

By order of the Commission.

Issued: February 9, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-4076 Filed 2-14-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 104-TAA-11 and 104-TAA-12]

Unprocessed Float Glass From Belgium and Italy

Determination. Based on the record [1] developed in investigations Nos. 104-TAA-11 and 104-TAA-12, the Commission unanimously determines, pursuant to section 104(b) of the Trade Agreements Act of 1979, that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of an industry in the United States be materially retarded, by reason of imports of unprocessed float glass from Belgium and Italy, provided for in items 543.21 through 543.69 of the Tariff Schedules of the United States, currently covered by outstanding countervailing duty orders, if the orders were to be revoked.

Background. On November 30, 1980, and February 19, 1981, the U.S. International Trade Commission received requests from the Delegation of the Commission of the European Communities for investigations under section 104(b) of the Trade Agreements Act of 1979 with respect to unprocessed float glass imported from Italy and Belgium, respectively.

Accordingly, effective October 8, 1982, the Commission instituted investigations Nos. 104-TAA-11 and 104-TAA-12 under section 104(b) to determine whether an industry in the United States would be materially injured or threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of unprocessed float glass from Belgium and Italy, currently covered by countervailing duty orders, if the orders were to be revoked.

Notice of the institution of the Commission's investigations and of a hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C. 20436, and by publishing the notice in the **Federal Register** on October 20, 1982 (47 FR 46775). The hearing was held on December 16, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigations to the Secretary of Commerce on February 4, 1983. A public version of the Commission's report, *Unprocessed Float Glass from Belgium and Italy* (investigations Nos. 104-TAA-11 and 104-TAA-12, USITC Publication 1344, 1983), will contain the views of the Commissioners and information developed during the investigations.

By order of the Commission.

Issued: February 4, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-4077 Filed 2-14-83; 8:45 am]

BILLING CODE 7020-02-M

[1] The "record" is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (47 FR 6190, February 10, 1982).

[332-152]

Monthly Reports Providing Information on the U.S. Auto Industry

AGENCY: United States International Trade Commission.

ACTION: At the request of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representative, and in accordance with the provisions of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), the Commission has instituted investigation No. 332-152, for the purpose of providing monthly data on the U.S. automobile industry through December 1983. The monthly reports will include data on automobile production, imports, exports, inventories retail sales, price adjustments, and employment. The report will also include retail prices of selected comparable Japanese and U.S. produced automobiles on a monthly basis.

The reports issued under this investigation will be similar in scope to those issued under recently completed investigation Nos. 332-121, 332-129 and 332-136, of like title. Notice of the investigations were published in the **Federal Register** of January 7, 1981 (46 F.R. 1849), July 29, 1981 (46 F.R. 38779), and February 10, 1982 (47 F.R. 6118), respectively.

EFFECTIVE DATE: February 4, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. James McElroy or Mr. Charles West, Machinery and Equipment Division, Office of Industries, U.S. International Trade Commission, Washington, D.C. 20436 (telephone 202-523-0258 and 202-523-0299, respectively).

Issued: February 7, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-4078 Filed 2-14-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-136]

Certain Marine Hardware and Accessories; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: February 4, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-4079 Filed 2-14-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-170, 171, and 173 (Final)]

Certain Carbon Steel Products From the Republic of Korea

Determinations. On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 705(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)), that an industry in the United States is materially injured by reason of imports of the following products which have been found by the

[1] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i), 47 FR 6190, Feb. 10, 1982).

Department of Commerce to be subsidized by the Government of the Republic of Korea: hot-rolled carbon steel plate (investigation No. 701-TA-170 (Final)),[2] hot-rolled carbon steel sheet (investigation No.701-TA-171 (Final)),[3] and galvanized carbon steel (investigation No. 701-TA-173 (Final)).[4 5]

Background. The Commission instituted these investigations effective October 12, 1982, following preliminary determinations by the Department of Commerce that there was a reasonable basis to believe or suspect that subsidies were being provided to manufacturers, producers, or exporters of the subject carbon steel products in the Republic of Korea.

Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on October 27, 1982 (47 FR 47703). The hearing was held in Washington, D.C., on January 10, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigations to the Secretary of Commerce on February 8, 1983. A public version of the Commission's report, *Certain Carbon Steel Products from the Republic of Korea* (investigations Nos. 701-TA-170, 171, and 173 (Final), USITC Publication 1346, 1983) contains the views of the Commissioners and information developed during the investigations. Copies may be obtained after February 8, 1983, by calling 202-523-5178 or from the Office of the Secretary, 701 E Street NW., Washington, D.C. 20436.

Issued: February 8, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-4080 Filed 2-14-83; 8:45 am]

BILLING CODE 7020-02-M

[2] For purposes of this investigation, hot-rolled carbon steel plate is provided for in items 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated (TSUSA).

[3] For purposes of this investigation, hot-rolled carbon steel sheet is provided for in items 607.6610, 607.6700, 607.8320, 607.8342, and 607.9400 of the TSUSA.

[4] For purposes of this investigation, galvanized carbon steel sheet is provided for in items 608.0710, 608.0730, 608.1100, and 608.1300 of the TSUSA.

[5] Commissioner Stern dissenting.

[Investigation No. 701-TA-168 (Final)]

Certain Welded Carbon Steel Pipes and Tubes From the Republic of Korea

Determination. On the basis of the record [1] developed in the subject investigation, the Commission determines, [2] pursuant to section 705(b)(1) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)(1)), that an industry in the United States is materially injured by reason of imports of small diameter welded carbon steel pipes and tubes [3] which have been found by the Department of Commerce to be subsidized by the Republic of Korea.

Background. Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C. and by publishing the notice in the **Federal Register** on November 3, 1982 (47 FR 49908). The hearing was held in Washington, D.C. on January 6, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on February 8, 1983. A public version of the Commission's report, *Certain Welded Carbon Steel Pipes and Tubes from the Republic of Korea* (investigation No. 701-TA-168 (Final), USITC Publication 1345, 1983), contains the views of the Commissioners and information developed during the investigation.

Issued: February 8, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-4081 Filed 2-14-83; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

[2] Commissioner Stern dissenting.

[3] For purposes of this investigation the term "small diameter welded carbon steel pipes and tubes" covers welded, jointed, or seamed carbon steel pipes and tubes with walls not thinner than 0.065 inch, of circular cross section, and 0.375 inch or more but not more than 16 inches in outside diameter, as currently provided for in items 610.3208, 610.3209, 610.3231, 610.3232, 610.3241, 610.3244, and 610.3247 of the Tariff Schedules of the United States Annotated (TSUSA). Pipes and tubes suitable for use in boilers, superheaters, heat exchangers, condensers, and feed water heaters, or conforming to API specifications for oil well tubing with or without couplings; cold drawn pipes and tubes; and cold-rolled pipes and tubes with wall thickness not exceeding 0.1 inch are not included.

[332-96]

Collection of Data for Determination of Apparent U.S. Consumption of Watch Movements

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

EFFECTIVE DATE: February 9, 1983.

BACKGROUND: The Commission has terminated the present investigation in view of the fact that the Commission is not required to conduct such investigations until watch imports from insular possessions exceed 9 million units. Public Law 97-446, approved January 12, 1983, has amended headnote 6 of schedule 7, part 2, subpart E of the Tariff Schedules of the United States to provide that the Commission is to determine apparent U.S. consumption of watches and watch movements, report such determination to the Secretaries of Commerce and the Interior, and publish its determination in the **Federal Register** beginning with the first year in which watch imports from the U.S. insular possessions exceed 9 million units. See sec. 110(b) of Public Law 97-446 (96 Stat. 2329). Such imports are presently substantially below 9 million units.

Prior to the amendment, the Commission was required to make such determinations irrespective of the level of watch imports.

Notice of institution of the present investigation was published in the **Federal Register** of February 6, 1978 (43 F.R. 4890).

By order of the Commission.

Issued: February 9, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-4082 Filed 2-14-83; 8:45 am]

BILLING CODE 7020-02-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.

DATES: Protests are due within 15 days after 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 requirement 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
769	Richard Ogilvie, trustee for property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., ICC-MILW-C-0305 (zinc)	3	2-7-83
770	Missouri-Kansas-Texas Railroad Co., ICC-MKT-C-0236 (tallow and grease, inedible)	1	2-7-83
771	Chicago, Milwaukee, St. Paul & Pacific Railroad Co., ICC-MILW-C-0337 (temporary storage of grain)	1	2-7-83
773	Norfolk & Western Railway Co., ICC-NW-C-0041 (inedible tallow and grease)	3	2-7-83
774	Southern Pacific Transportation Co., ICC-SP-C-0382 (freight, all kinds—carload)	1	2-7-83
776	Southern Pacific Transportation Co., ICC-SP-C-0380 (automobiles, passenger, S/U)	3	2-7-83
777	Burlington Northern Railroad Co., ICC-BN-C-0274 (canned and preserved foodstuffs)	1	2-7-83
779	The Texas Mexican Railway Co., ICC-TN-C-11, Supplement 1, (asbestos fibre, asbestos shorts, asbestos waste	3	2-7-83
781	Richard Ogilvie, trustee for property of Chicago, Milwaukee, St., Paul & Pacific Railroad Co., ICC-MILW-C-0307 (copper)	1	2-7-83

[1] Review Board No. 1, Members Parker, Chandler, and Fortier.
Review Board No. 3, Members Krock, Joyce, and Dowell.

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. 83-3878 Filed 2-14-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP3MCFC-48]

Motor Carriers; Finance Applications

Decided; February 4, 1983.

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 Number 2, Carleton, Williams and Ewing. Board Member Ewing not participating.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 3, (202) 275-5223.

MC-FC-81102, filed December 14, 1982. By decision of February 4, 1983, issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 CFR Part 1181, Review Board Number 2, approval the transfer to ANTHONY COPPOLA, d.b.a. ANTHONY'S EXPRESS, New Haven, CT, of Certificate of Registration No. MC-120915 Sub 1, issued January 28, 1964, to ANTHONY COPPOLA AND PAUL COPPOLA, a partnership, d.b.a. Anthony's Express, New Haven, CT, evidencing a right to engage in transportation in intrastate commerce corresponding in scope to Certificate No. C-305, dated March 29, 1961, issued by the Public Utilities Commission of the State of Connecticut, authorizing the transportation of *general commodities* (other than household goods and office furniture and equipment, and other than commodities which necessitate the use of tank trucks, dump trucks or special equipment) for hire as a motor common carrier over regular routes as follows: (1) Between New Haven and Waterbury; serving New Haven, Shelton, Derby, Ansonia, Seymour, Beacon Falls, Naugatuck and Waterbury. (2) Between New Haven and Bristol; serving New Haven, East Haven, North Haven, Hamden, Wallingford, Meriden, Berlin, New Britain and Bristol., and (3) Between New Haven and Hartford; serving New Haven, Middletown, Easthampon, Portland, Cromwell, Glastonbury, East Hartford, West Hartford and Wethersfield.

Condition: Transferee shall file the following with this Commission's Office of Proceedings (either prior to or concurrently with the consummation of this transfer: (i) a certified copy of the State certificate as reissued to transferee, or—if the State Commission does not reissue the certificate—a certified copy of the State order approving the transfer of the underlying intrastate rights; and (ii) a written notice confirming the date of consummation of that intrastate transaction.

Temporary authority is not sought. Transferee is not a carrier.

Applicant's representative: Sidney L. Goldstein, 109 Church St., New Haven, CT 06510, for the transferee.

[FR Doc. 83-3967 Filed 2-14-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

In the matter of; Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers.

The following applications for motor common or contract carriers of property,

water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of Chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted. Please direct status inquires to Team 4 at (202) 275-7669.

Volume No. OP4-073

Decided: February 8, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 64806 (Sub-21), filed February 3, 1983. Applicant: R. P. THOMAS TRUCKING COMPANY, INCORPORATED, 807 W. Fayette St., Martinsville, VA 24112. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. 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 119546 (Sub-2), filed February 1, 1983. Applicant: CONTINENTAL TRUCK & TOWING CO., INC., 2021 E. 25th St., Los Angeles, CA 90058. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701, (702) 882-5649. Transporting (1) *construction logging, mining* and *transportation materials*, (2) *metal products*, (3) *wood products*, (4) *machinery*, and (5) *soil amendments*, between points in CA, NV, AZ, TX, CO, UT, NM, WA, OR, ID, MT, WY, KS, MO, IL, GA, and LA.

MC 157866 (Sub-1), filed February 2, 1983. Applicant: TULTEX TRANSPORTATION INCORPORATED, Franklin St., P.O. Box 5191-A Martinsville, VA 24115. Representative: Ernest W. Sams, (same address as applicant), (703) 632-2961. Transporting *chemicals*, between points in CT, DE, GA, MD, MA, NJ, NY, NC, PA, RI, SC, TN, and VA, under continuing contract(s) with Prillaman Chemical Corporation, of Martinsville, VA.

MC 164967 (Sub-1), filed January 14, 1983. Applicant: POCONO MOUNTAIN TRAILS, INC., Box 488, Blairstown, NJ 07825. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, (212) 239-4610. Over regular routes, transporting *passengers*, between Port Jervis, NY and Atlantic City, NJ, (a) from junction East Main St. and Jersey Ave., in Port Jervis, NY, over East Main St. to junction NJ Hwy 23, then over NJ Hwy 23 to Sussex, NJ, then over unnumbered Hwy to junction U.S. Rte. 206, at Montague, NJ, then over U.S. Rte. 206 to junction Interstate Hwy 295, then over Interstate Hwy 295 to junction access road, then over access road to Interstate Hwy 195, then over Interstate Hwy 195 to NJ route 539, then over NJ route 539 to junction access road, then over access road to Garden State Pkwy., then over Garden State Pkwy. to junction Atlantic City Expwy. then over Atlantic City Expwy. to Atlantic City, NJ, and return over the same route, serving all intermediate points, and (b) from junction East Main St. and Jersey Ave., in Port Jervis, NY over Jersey Ave. to jnction Front St., then over Front St. to junction U.S. Rte. 209, then over U.S. Rte. 209 to junction PA Hwy 611, then over PA Hwy 611 to junction 7th St., then over 7th St., to junction access roads, then over access roads to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction access roads then over access roads to junction U.S. Rte. 46, then over U.S. Rte. 46 to junction NJ Rte. 31, then over NJ Rte. 31 to junction Interstate Hwy 295, then over Interstate Hwy 295 to junction access roads, then over access roads to

junction Interstate Hwy 195 then over Interstate Hwy 195 to NJ Rte. 539, then over NJ Rte. 539 to junction access roads, then over access roads to junction Garden State Pkwy., then over Garden State Pkwy. to junction Atlantic City Expwy., then over Atlantic City Expwy. to Atlantic City, and return over the same route, serving all intermediate points.

NOTE.—Applicant intends to provide regular-route service only in interstate or foreign commerce.

MC 166057, filed February 3, 1983. Applicant: ELLENS CARTAGE LIMITED, 103 Herbert St., Mitchell, Ontario, Canada N0K 1N0. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW., Washington, DC 20005, (202) 783-3525. In foreign commerce only, transporting *rubber and plastic products, chemicals and related products,* and *metal products,* between ports of entry on 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), under continuing contract(s) with Standard Products (Canada) Limited, of Stratford, Ontario, Canada.

Volume No. OP 4-075

Decided: February 8, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

FF-656, filed January 24, 1983. Applicant: FLORIDA AUTO SHUTTLE, INC., Suite 902, 232 St. Augustine Ave., Venice, FL 33595. Representative: William Q. Keenan, 7 Corporate Park Dr., Suite 109, White Plains, NY 10604, (914) 694-1414. As a freight forwarder in connection with the transportation of *used passenger automobiles,* between New York, NY, Philadelphia and Pittsburgh, PA, Baltimore, MD, Washington, DC, Chicago, IL, Detroit, MI, and Cincinnati, Columbus, and Cleveland, OH, on the one hand, and, on the other, Jacksonville, Tampa, and Miami, West Palm Beach, and Sarasota, FL.

MC 26377 (Sub-34), filed January 24, 1983. Applicant: LEONARDO TRUCK LINES, INC., 511 S. First St., Selah, WA 98942. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210, (503) 226-3755. Transporting *general commodities* (except classes A and B explosives and household goods), between points in OR, WA, CA, ID, and MT, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 35807 (Sub-120), filed January 28, 1983. Applicant: WELLS FARGO ARMORED SERVICE CORPORATION, P.O. Box 4313, Atlanta, GA 30302. Representative: David E. Wells (same address as applicant), (404) 256-0540. Transporting *currency, coin, securities, food stamps and other articles of unusual value,* between points in OH and KY.

MC 59137 (Sub-21), filed January 25, 1983. Applicant: BISOM TRUCK LINE, INC., 725 First St. North, Newton, IA 50208. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501, (515) 682-8154. Transporting *machinery,* between points in Jasper County, IA, on the one hand, and, on the other, points in IN, KS, KY, MI, MO, and TN.

MC 59666 (Sub-24), filed January 28, 1983. Applicant: TRAFIK SERVICES, INC., 25 Esten Ave., Pawtucket, RI 02860. Representative: Robert A. Mega (same address as applicant), (401) 724-1200. 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 140916 (Sub-5), filed January 24, 1983. Applicant: R&E HAULING, INC., P.O. Box 2800, Baltimore, MD 21225. Representative: Ronald N. Corbert, 1730 M St. NW., Washington, DC 20036, (202) 296-2900. 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 141317 (Sub-8), filed January 24, 1983. Applicant: HAAG TRANSPORT, INC., P.O. Box 125, Shelburn, IN 47879. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846-6655. Transporting *metal products,* between points in the U.S. (except AK and HI).

MC 145476 (Sub-4), filed January 27, 1983. Applicant: RAY MABRY, d.b.a. MABRY TRUCKING SERVICE, 307 Lime St., Auburndale, FL 33823. Representative: Clayton R. Byrd, 2870 Briarglen Dr., Doraville, GA 30340, (404) 491-1696. Transporting *food and related products,* between points in the U.S. (except AK and HI).

MC 159986 (Sub-5), filed January 26, 1983. Applicant: AMAZON INDEPENDENT TRANSPORTATION, INC., 12480-24th Ave., Marne, MI 49435. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616) 459-6121. 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 Gordon Manufacturing Co., and H & H Plastics Manufacturing Co., both of Grand Rapids, MI.

MC 162027, filed January 24, 1983. Applicant: FERRIS CONSTRUCTION, INC., 2005 W. Chestnut, Enid, OK 73701. Representative: Williams P. Parker, P.O. Box 54657, Oklahoma City, OK 73154 (405) 424-3301. Transporting *Mercer commodities,* (1) between points in KS, OK, and TX, and (2) between points in OK, on the one hand, and, on the other, points in AR, CO, LA, and NM.

MC 165226 (Sub-1), filed January 27, 1983. Applicant: WISCONSIN ILLINOIS STAGES, INC., Rt. 3, Box 349B, Theatre Rd., Delavan, WI 53115. Representative: Steven L. Weiman, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, (301) 840-8565. Over regular routes, transporting *passengers,* (1) between Madison, WI, and Chicago, IL: from Madison over U.S. Hwy 12 to its junction with WI Hwy 67, then south over WI Hwy 11 to Delavan, WI, then east/WI Hwy 50 to junction Theatre Rd., at or near Delavan, WI, then over Theatre Rd., to Willimas Bay, WI, then over Geneva St., to its junction with WI Hwy 50, then over WI Hwy 50 to its junction with Kenosha County Hwy P, then over Kenosha County Hwy P to its junction with Kenosha County Hwy 0, then over Kenosha County Hwy 0 to its junction with E. Main St. in Twin Lakes, then over E. Main St. to its junction with Kenosha County Hwy EM, then over Kenosha County Hwy EM to its junction with Kenosha County Hwy F, then over Kenosha County Hwy F to Kenosha County Hwy B, then over Kenosha County Hwy B to its junction with Kenosha County Hwy AH, then over Kenosha County Hwy AH to its junction with Kenosha County Hwy SA, then over Kenosha County Hwy SA to its function with WI Hwy 83, then over WI Hwy 83 to the WI-IL State line, then over IL Hwy 83 to its junction with IL Hwy 173, then over IL Hwy 173 to its junction with Interstate Hwy 94, then over Interstate Hwy 94 to its junction with Interstate Hwy 294, then over Interstate Hwy 294 to its junction with Interstate Hwy 90, then over Interstate Hwy 90 to Chicago, and return over the same route, serving all intermediate points; (2) between Williams Bay and Lake Geneva, WI: from the junction of WI Hwys 50 and 67 at or near Williams Bay, WI, over WI Hwy 67 to its junction with Walworth County Hwy B, then over Walworth County Hwy B to its junction with Academy Rd., and Walworth County Hwy BB, then over Walworth County Hwy BB to its junction with WI Hwy 120, then over WI Hwy 120 to its junction with WI Hwy 50

at or near Lake Geneva, WI, and return over the same route, serving all intermediate points; (3) between junction WI Hwy 50, and Walworth County Hwy F and Junction WI Hwy 67, over Walworth County Hwy F, and return over the same route, serving all intermediate points; (4) between junction Walworth County Hwy B, BB, and Academy Rd., and Junction Academy Rd and S. Shore Drive, WI, over Academy Rd., and return over the same route, serving all intermediate points; and (5) between Ft. Atkinson and Cambridge, WI: from Ft. Atkinson, over WI Hwy 89 to its junction with U.S. Hwy 18, then over U.S. Hwy 18 to Cambridge, and return over the same route, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce.

MC 165867, filed January 24, 1983. Applicant: JOHN W. BROWN, d/b/a BROWN's TRANSFER, 705 N. Fifth St., Reading, PA 19601. Representative: William T. Hawke, #3 Riverside Office Center, 2101 N. Front St., Harrisburg, PA 17110, (717) 236-7426. Transporting *telephone equipment, and materials and supplies used in the maintenance, construction, installation, and repair of telephone systems,* between points in PA.

[FR Doc. 83-3966 Filed 2-14-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

In the matter of Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods).

The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common on contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service in for a named shipper "under contract."

For the following, please direct status inquiries to Team 1 at 202-275-7992.

Volume No. OP1-30

Notice of Corrections

The following volume was incorrectly published on January 27, 1983 (48 FR 3885) under the non-fitness guidelines, and are being republished this issue to reflect that the following applications fall under the fitness standards.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 82841 (Sub-328), filed January 10, 1983. Applicant: HUNT TRANSPORTATION, INC., d.b.a. HUNT BROKERAGE; 10770 "I" St., Omaha, NE 68127, Representative: Marshall D. Becker, Suite 610, 7171 Mercy Road, Omaha, NE 68106, (402) 392-1220.

MC 165571, filed January 7, 1983. Applicant: FIELDS' BUS RENTAL, INC., d.b.a., FIELDS' BUS SERVICE, 6099 Duckett Lane, Elkridge, MD 21227. Representative: William M. Fields, (same address as applicant), (301) 796-5264.

MC 165600, filed January 10, 1983. Applicant: HOWARD G. BAROUDI, 225 Belaire Terrace, Mt. Laurel, NJ 08054. Representative: Howard G. Baroudi, (same address as applicant), (609) 235-5286.

MC 165611, filed January 10, 1983. Applicant: IRVIN RAPHEAL, INC., 550 Old Stage Rd., Spotswood, NJ. Representative: Robert E. Goldstein, 370 Lexington Ave., New York, NY 10017, (212) 532-5181.

MC 165671, filed January 13, 1983. Applicant: GO TOURS, INC., 481 Eighth Ave., New York, NY 10001. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022, (212) 838-0600.

For the following, please direct status calls to Team 4 at 202-275-7669.

Volume No. OP4-072

Decided: February 7, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 138297 (Sub-15), filed January 31, 1983. Applicant: CENTRAL FLORIDA COACH LINES, INC., P.O. Box 127,

Mountaintop, PA 18707. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517, (717) 344-8030. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note:—Applicant seeks to provide privately-funded charter and special transportation.

MC 165986, filed January 31, 1983. Applicant: RANDALL L. ALLMENDINGER, 202 E. Cheyenne Mountain Blvd., Suite C, Colorado Springs, CO 80906. Representative: Lawrence Marquette, P.O. Box 629, Carmel Valley, CA 93924, (408) 625-2031. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 165987, filed January 28, 1983. Applicant: LAPADULA EQUIPMENT CORPORATION, P.O. Box 158, 320 Pacific Ave., Cedarhurst, NY 11516. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528, (914) 835-4411. 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), between points in the U.S. (except AK and HI); (2) *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); and (3) as a *broker of general commodities* (except household goods), between points in the U.S.

MC 166006, filed February 1, 1983. Applicant: BONFILS TRANSPORTATION SERVICES, INC., 21454 Cold Springs Ln., Diamond Bar, CA 91765. Representative: Milton W. Flack, 8484 Wilshire Blvd., #840, Beverly Hills, CA 90211, (213) 655-3573. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP4-074

Decided: February 8, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 36470 (Sub-470), filed February 1, 1983. Applicant: NJ TRANSIT BUS OPERATIONS, INC., 180 Boyden Ave., Maplewood, NJ 07040. Representative: Irwin I. Kimmelman, McArthur Hwy and Market St., P.O. Box 10009, Newark, NJ 07101, (201) 648-6908. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant states that it receives governmental financial assistance for the purchase or operations of buses.

MC 64446 (Sub-6), filed February 1, 1983. Applicant: W. H. FITZGERALD, INC., 78 Highland Ave., Youngsville, PA 16371. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101, (717) 236-9318. Transporting *general commodities* (except used household goods, hazardous materials, and sensitive weapons, and munitions), for or on behalf of the United States Government, between points in the U.S. (except AK and HI).

MC 166047, filed February 1, 1983. Applicant: JOSEPH & SCHILLER, INC., 6905 N.W. 25th St., Miami, FL 33122. Representative: Mortimer Schiller, (same address as applicant), (305) 591-8740. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP4-076

Decided: February 8, 1983.

By the Commission, Review Board No. 2, members Carleton, Williams, and Ewing.

MC 15317 (Sub-8), filed January 24, 1983. Applicant: CROWN TRANSIT LINES, INC., 1650 N. 14th St., Springfield, IL 62703. Representative: Leslieann G. Maxey, 907 S. Fourth St., P.O. Box 5039, Springfield, IL 62705, (217) 528-8476. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 126667 (Sub-8), filed January 25, 1983. Applicant: BRUSH HILL TRANSPORTATION COMPANY, 109 Norfolk St., Dorchester, MA 02124. Representative: Jeremy Kanh, Suite 733 Investment Bldg., 1511 K Street, NW., Washington, DC 20005, (202) 783-3525. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 133826 (Sub-4), filed January 24, 1983. Applicant: CARAVAN TRANSPORTATION, INC., 166-10 Archer Ave., Jamaica, NY 11433. Representative: William H. Shawn, Suite 501, 1730 M St. NW., Washington, DC 20036. (202) 296-2900.Transporting *passengers*, in charter and special operations between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165776, filed January 28, 1983. Applicant: JOSEPH ARNOLD, d.b.a. TAYLOR TRANSPORT, 1912 E. Mettler Rd., Lodi, CA 95240. Representative: Joseph A. Taylor, (same address as applicant), (209) 334-4005. Transporting *passengers*, in charter and special operations, between points in NV, AZ and UT.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165866, filed January 24, 1983. Applicant: X-PRESS AIR TRANSPORTATION, 9717 Carnegie, El Paso, TX 79925. Representative: Charles B. Candler, (same address as applicant), (915) 5983-5505. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165946, filed January 28, 1983. Applicant: NORTHLAND BUS SERVICE, INC., Box 116, Surrey, ND 58785. Representative: W. L. Lesmeister, (Same address as applicant), (701) 838-0207. Transporting *passengers*, in charter and special operations, beginning and ending at points in ND, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

For the following, please direct status calls to Team 5 at 202-275-7289.

Volume No. OP5-53

Decided: February 3, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 22589 (Sub-16), filed January 10, 1983. Applicant: CAMPUS TRAVEL, INC., d.b.a. CAMPUS COACH LINES, 545 Fifth Avenue, New York, NY 10017. Representative: Robert E. Goldstein, 370 Lexinton Avenue, Room 1201, New York, NY 10017, 202-532-5181. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 37049 (Sub-4), filed January 10, 1983. Applicant: ARROW BUS CO., INC., 88 Main Street, Garfield, NJ 07026. Representative: Edward F. Bowes, 7 Becker Farm Road, P.O. Box Y, Roseland, NJ 07068, 201-992-2200. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 48909 (Sub-7), filed January 11, 1983. Applicant: SEYMOUR TRANSFER LINES, INC., 800 E. Factory St., Seymour, WI 54165. Representative:

Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703, 608-256-7444. Transporting *passengers*, in charter and special operations, beginning and ending at points in IL, IN, IA, KY, MI, and WI, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 57568 (Sub-3), filed January 17, 1983. Applicant: D & M BUS COMPANY, 130 Carolyn Court, Danville, VA 24541. Representative: Calvin F. Major, 200 W. Grace St., P.O. Box 5010, Richmond, VA 23220, (804) 649-7591. Transporting *passengers* in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 74449 (Sub-2), filed January 14, 1983. Applicant: CAMIE ALEXANDER, d/b/a SATIN STAR CHARTER SERVICE, 11 Norwood Ave., Glen Rock, NJ 07452. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY, 10123, (212) 239-4610. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 143769 (Sub-1), filed January 13, 1983. Applicant: KANNAPOLIS TRANSIT CO., INC., 625 South Main St., P.O. Box 217, Kannapolis, NC 28081. Representative: John R. Huffstetler (same address as applicant), (704) 932-8176. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 150479 (Sub-2), filed January 18, 1983. Applicant: SAFEWAY LINES & TOUR CO., 1929 East 64th Street, Los Angeles, CA 90001. Representative: Ellis Ross Anderson, 100 Bush Street, Suite 410, San Francisco, CA 94104, (415) 421-6743. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 151878 (Sub-8(B)), filed January 17, 1983. Applicant: THREE WAY CORPORATION, 1120 Karlstad Drive, Sunnyvale, CA 94086. Representative: Charles H. White, Jr., 1019 19th Street NW., Suite 800, Washington, DC 20036, (202) 785-3420. To operate as a *broker* of *general commodities* (except household goods) between points in the U.S. (except AK and HI).

Note.—Applicant also seeks authority in MC-151878 Sub 8(A) nonfitness broker nationwide authority published in the same issue.

MC 161728 (Sub-2), filed January 11, 1983. Applicant: CHARTER BUSES, INC., 36 Elm Street, P.O. Box 1511, New London, CT 06320. Representative: Owen B. Katzman, 1828 L Street NW., Suite 1111, Washington, DC 20036, 202-822-8200. Transporting *passengers*, in special and charter operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165638, filed January 11, 1983. Applicant: TERRENCE R. CONNEL d.b.a. SIREN BUS SERVICE, INC., Box 171 (Hwy 35 So.), Siren, WI 54872. Representative: Terrence R. Connel (same address as applicant), 715-349-2425. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165648, filed January 11, 1983. Applicant: THE PREFERRED COACH LINE, INC., P.O. Box 300, Rte. 153, Centerbrook, CT 06409. Representative: Ann Bembenista Elly, P.O. Box 99, Centerbrook, CT 06409, 203-767-8613. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165729, filed January 17, 1983. Applicant: SOUTHEASTERN BUS LINES, INC., 9520 Scenic Hwy., Pensacola, FL 32504. Representative: Charles E. Clevenger (same address as applicant), (904) 476-1331. Transporting *passengers*, in charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter transportation.

MC 165768, filed January 18, 1983. Applicant: PEGGY LEE ROBINSON, DBA GREAT AMERICAN STAGE, 8800 Nimbus Way, Orangevale, CA 95662. Representative: Peggy Lee Robinson (same address as applicant), (916) 988-8122. Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI and AK).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165789, filed January 18, 1983. Applicant: WILLIAM J. TORRE AND MICHAEL J. SHALI, d/b/a CERTIFIED TRANSPORT SYSTEMS, 189 Rose St., Metuchen, NJ 08840. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572-5551. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5-55

Decided: February 4, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 107638 (Sub-9), filed January 18, 1983. Applicant: EVERGREEN TRAILS, INC., d/b/a EVERGREEN TRAILWAYS, 720 South Forest Street, Seattle, WA 98134. Representative: Richard A. Derham, 4200 Seattle-First National Bank Bldg., Seattle, WA 98154, (206) 622-3150. Transporting *passengers* in charter operations, beginning and ending at points in WA, OR, CA, NV, AZ, UT, and NM, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter transportation.

MC 108378 (Sub-11), filed January 24, 1983. Applicant: SUN VALLEY BUS LINES, INC., 600 East Jefferson St., Phoenix, AZ 85036. Representative: Elliott Bunce, 1600 Wilson Boulevard, Suite 1301 Arlington, VA 22209, (703) 522-0900. Transporting *passengers*, in charter and special operations between points in the U.S. (except HI).

Note.— Applicant seeks to provide privately-funded charter and special transportation.

MC 127738 (Sub-11) filed January 25, 1983. Applicant: TWA SERVICES, INC., Yellowstone National Park, WY 82190. Representative: Wayne Green (same address as applicant), (307) 344-7901. Transporting *passengers*, in charter and special operations between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

[FR Doc. 83-3971 Filed 2-14-83; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 311; Sub-4]

Modification of the Motor Carrier Fuel Surcharge Program

AGENCY: Interstate Commerce Commission.

ACTION: Change in owner-operator fuel reimbursement figure.

SUMMARY: Due to a change in the nationwide average cost of diesel fuel, owner-operator reimbursement has changed from 12.5 to 12 cents per mile.

EFFECTIVE DATE: This decision will be effective on March 2, 1983.

FOR FURTHER INFORMATION CONTACT: Lee Alexander, (202) 275-7723; Ted Kalick, (202) 275-6446; Alan Rothenberg, (202) 275-7597; Boston, MA, (617) 223-2372; Philadelphia, PA, (215) 597-4460; Atlanta, GA; (404) 881-2167; Chicago, IL, (312) 353-6204; Ft. Worth, TX, (817) 334-2794; San Francisco, CA, (415) 974-7125.

SUPPLEMENTARY INFORMATION: In a decision served January 21, 1983 (48 FR 3892, January 27, 1983), the Commission established owner-operator reimbursement at 12.5 cents per mile for all carrier-related business miles. This change will become effective February 10, 1983. As noted in the October 8, 1981 decision (46 FR 50070, October 9, 1981), the mileage payment will change when the price of fuel in conjunction with the reimbursement formula causes the figure to rise or decline by .5 cents per mile.

As of February 7, 1983, the current price of diesel fuel was 119.5 cents per gallon. The reimbursement figure is 11.9. Ten working days after publication of the notice in the **Federal Register** (effective March 2, 1983), carriers shall reimburse owner-operators at a minimum of 12 cents per mile.

During this 10-day period or after, if they choose, carriers may adjust their rates to reflect the change in owner-operator reimbursement by using the 10-day notice provisions of Special Permission No. 81-2500 (see Part 2 of Appendix B and Appendix C to the October 8 decision). All other normal rate-making avenues are also available.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State having jurisdiction over transportation by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by depositing a copy with the Director, Office of the Federal Register, for publication.

Decided: February 9, 1983.

By the Commission. Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-3969 Filed 2-14-83; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-15097]

PST, INC.; Purchase Exemption; Sunset Express Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343,* 367 I.C.C. 113 (1982), PST, Inc. (PST) (No. MC 141532), a regulated motor carrier, seeks an exemption from the requirement under section 11343 of prior regulatory approval for the acquisition of control of the operating rights of Sunset Express Corp. (Sunset), a regulated motor carrier (No. MC 148737), through purchase of all of Sunset's certificates and permits.

DATES: Comments must be received within 30 days after the date of publication in the **Federal Register.**

ADDRESSES: Send comments to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423 and (2) Petitioner's Representative, Michael J. Norton, 1905 South Redwood Road, Salt Lake City, UT 84104.

Comments should refer to No. MC-F-15097.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7949.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: February 9, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-3972 Filed 2-14-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29937]

Reliance Group Holdings, Inc.; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11343-11345a, the acquisition of control by Reliance Group Holdings, Inc., of Tiger International, Inc., and its two motor carrier subsidiaries, Hall's Motor Transit Company and Warren Transport, Inc.

DATES: This exemption shall be effective on April 18, 1983. Petitions to stay the effectiveness of this decision must be filed by February 28, 1983. Petitions for reconsideration must be filed by March 8, 1983.

ADDRESSES: Send pleadings to: (1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423. (2) Petitioner's representative: Robert J. Corber, 1250 Connecticut Ave., NW., Washington, DC 20036.

Pleadings should refer to Finance Docket No. 29937.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, DC 20423, (202) 289-4357—DC metropolitan area, (800) 424-5403—Toll free for outside the DC area.

DECIDED: February 9, 1983.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Vice Chairman Gilliam did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-3968 Filed 2-14-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Aegis Print Works, Inc., et al., Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than February 25, 1983.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 25, 1983.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 4th day of February, 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Aegis Print Works, Inc. (MP&EA)	Woodridge, NJ	1-28-83	1-25-83	TA-W-14, 376	Printing of textile material.
Ameref-Jerold Corp. (company)	Smithfield, NC	1-31-83	1-28-83	TA-W-14, 377	Outerwear, ladies & men.
American Roller Bearing (USWA)	Pittsburg, PA	1-27-83	1-17-83	TA-W-14, 378	Cylindrical roller bearing.
Armco, Inc. (USWA)	Zanesville, OH	1-21-83	1-13-83	TA-W-14, 379	Silicon sheet & strip steel.
Crompton Co., Inc. (FWAIU)	Waynesboro, VA	1-24-83	1-19-83	TA-W-14, 380	Cotton textile—velveteen & corduroy.
Electra Co. (workers)	Cumberland, IN	1-24-83	1-13-83	TA-W-14, 381	Manufacturers of cordless telephones.
Ellwood Knitting Mills (ACTWU)	Ellwood City, PA	1-26-83	1-24-83	TA-W-14, 382	Sweaters—men.
Hawera Tool Mfg., Co. (workers)	Jackson, MS	1-28-83	1-20-83	TA-W-14, 383	Carbide tipped masonary drill bits.
Kerr Glass (GPPAW)	Millville, NJ	1-24-83	1-11-83	TA-W-14, 384	Beer, soda bottles, fruit & jelly jars, prescription bottles.
Langston (workers)	Cherry Hill, NJ	1-24-83	1-14-83	TA-W-14, 385	Corrigated paper box machinery, corrigated box printers & folders.
N.L. Baroid (OCAW)	Cadet, MO	1-21-83	1-18-83	TA-W-14, 386	Baroid, tiff.
Playland Industries (workers)	New York, NY	1-21-83	1-15-83	TA-W-14, 387	Rainwear apparell—ladies.
Reed Rock Bit (USWA	Houston, TX	1-31-83	1-27-83	TA-W-14, 388	Rock bit (drill for oil).
Shafer Valve Co. (workers)	Mansfield & Orrville, OH	1-24-83	1-18-83	TA-W-14, 389	Valve actuators.
The Carborundum Co. (Chemical Workers, Teamsters)	Vancouver, WA	1-21-83	1-14-83	TA-W-14, 390	Sand paper, grinding wheels, refractory.
Tree Machine Tool Co., Inc. (IAMAW)	Racine, WI	1-31-83	1-27-83	TA-W-14, 391	Machine tools.

[FR Doc. 83-3960 Filed 2-14-83; 8:45 am]
BILLING CODE 4510-30-M

Hoover Universal, 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 January 31, 1983–February 4, 1983.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or pro-portion 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-13,335; Hoover Universal, Inc., Metal Staffing Div., Vincennes, IN

TA-W-13,263; Imperial-Clevite Corp., Engine Parts Div., Bridgeport, OH

TA-W-13,445; City Machine Tool & Die Co., Inc., Muncie, IN

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-13,129; Gulf & Western Industries, Inc., Natural Resources Group, Thorn Hill, TN

Aggregate U.S. imports of slab zinc did not increase in 1982 as required for certification. Production of slab zinc increased in 1981 compared to 1982.

TA-W-13,583; Jersey Miniere Zinc Co., Clarksville, TN

Aggregate U.S. imports of slab zinc did not increase in 1982 as required for certification. Production of slab zinc increased in 1981 compared to 1982.

Affirmative Determinations

TA-W-13,700; Firestone Synthetic Rubber & Latex Co., Orange, TX

A certification was issued in response to a petition received on August 3, 1982 covering all workers engaged in employment related to the production of butadiene who became separated on or after May 23, 1982.

TA-W-13,270; Bethlehem Steel Corp., Sparrows Point Shipyard, Sparrows Point, MD

A certification was issued in response to a petition received on February 9, 1982 covering all workers separated on or after August 1, 1981.

TA-W-13,328; Bethlehem Mines Co., Hanover Quarry, Hanover, PA

A certification was issued in response to a petition received on February 18, 1982 covering all workers separated on or after March 1, 1981.

TA-W-13,278; U.S. Steel Corp., Fairfield Works, Fairfield & Bessemer, AL

A certification was issued covering all workers engaged in employment related to the production railroad products and basic steel at the firm separated on or after February 4, 1981.

A certification was issued covering all workers engaged in employment related to the production of galvanized sheet at the firm separated on or after July 1, 1981.

TA-W-13,188; Crucible, Inc., Midland, PA

A certification was issued in response to a petition received on January 18, 1982 covering all workers engaged in employment related to the petition of stainless steel sheet and strip separated on or after September 30, 1981.

TA-W-13,366; The Singer Co., Elizabeth, NJ

A certification was issued covering all workers engaged in employment related to the production of parts for consumer or industrial sewing machines of the firm separated on or after August 28, 1982.

A certification was issued covering all workers engaged in employment related to the assembly of industrial sewing

machines of the firm separated on or after March 9, 1981.

I hereby certify that the aforementioned determinations were issued during the period January 31, 1983–February 4, 1983. 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: February 8, 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-3959 Filed 2-14-83; 8:45 am]

BILLING CODE 4510-30-M

Office of the Secretary

Steering Subcommittee; Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: March 1, 1983, 9:30 a.m., Rm. N3437 A & B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT: Joseph S. Papovich, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6171

February 9, 1983.

Signed at Washington, D.C. this 9th day of February 1983.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 83-3958 Filed 2-14-83; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee.

Date: Friday, March 4, 1983.

Time: 9 a.m. to 5 p.m.

Place: Rm. 543, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Mrs. Lois J. Hamaty, Executive Secretary, Alan T. Waterman Award Committee, National Science Foundation, Washington, D.C. 20550. Telephone: 202/357-7512.

Purpose of committee: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review nominations, with supporting documentation, as part of the selection process for the award.

Reason for closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of 5 U.S.C. 552b(c), *Government in the Sunshine Act.*

Authority to close meeting: The determination made on February 9, 1983 by the Director of the National Science Foundation pursuant to the provisions of Section 10(d) of Pub. L. 92-463.

Dated: February 10, 1983.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 83-4012 Filed 2-14-83; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-416]

Mississippi Power and Light Co.; Middle South Energy, Inc.; South Mississippi Electric Power Association; Issuance of Amendent of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 6 to Facility Operating License No. NPF-13, issued to Mississippi Power and Light Company, Middle South Energy, Inc., and South Missippi Electric Power Association (the licensees), for Grand Gulf Nuclear Station, Unit No. 1 (the facility) located in Claiborne County, Mississippi. This amendment grants changes to license conditions which relate to the schedule for submitting information on proposed modifications to the Automatic Depressurization System (ADS) logic and to additional one time Technical Specification exceptions for Phase I operation and adds a license condition regarding implementation of certain aspects of Pub. L. 97-425, January 7, 1983 (Nuclear Waste Policy Act of 1982). The amendment with respect to the submittal date for ADS logic was effective November 1, 1982. With respect to the other two items the amendment is effective as of the date of issuance.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see: (1) The applications for the amendments dated October 21 and December 22, 1982 and February 2, 1983: (2) Amendment No. 6 to License NPF-13 dated February 7, 1983; and (3) the Commission's evaluation dated February 7, 1983. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Hinds Jr. College, George M. McLendon Library, Raymond, Mississippi 39154. A copy of items (1), (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 7th day of February 1983.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83-4068 Filed 2-14-83; 8:45 am]

BILLING CODE 7590-01-M

NRC Form 136—Security Termination Statement; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: extension.
2. The title of the information collection: Security Termination Statement.
3. The form number if applicable: NRC Form 136.
4. How often the collection is required: On occasion. NRC Form 136 is only submitted whenever an individual's NRC access authorization is terminated.
5. Who will be required to report: NRC licensees and contractors who have employees terminating their NRC access authorization.
6. An estimate of the number of responses: It is estimated that 400 forms will be submitted annually by all affected respondents.
7. An estimate of the total number of hours needed to complete the requirement or request: It is estimated that all affected respondents will expend a total of 40 hours.
8. Section 3504(h), Pub. L. 96-511 does not apply.
9. Abstract: NRC Form 136, "Security Termination Statement," is the method by which an individual's access authorization (security clearance) is terminated. The individual's signature on this form indicates he/she is aware of, and understands, certain regulations and statutes and will abide by certain measures governing the continued protection of classified information that he/she has had access to while performing official duties.

ADDRESSES: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill (202) 295-7340.

NRC Clearance Officer R. Stephen Scott (301) 492-8585.

Dated at Bethesda, Maryland, this 9th day of February 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83-4067 Filed 2-14-83; 8:45 am]

BILLING CODE 7590-01-M

NRC Form 277—Request for Visit or Access Approval

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: extension.
2. The title of the information collection: Request for Visit or Access Approval.
3. The form number if applicable: NRC Form 277.
4. How often the collection is required: On occasion. Use is dependent on visits to Government agencies or other facilitites.
5. Who will be required or asked to report: NRC licensees and contractors who require access to classified information during visits to Government agencies or other facilities.
6. An estimate of the number of responses: It is estimated that 240 responses will be submitted annually by all affected respondents.
7. An estimate of the total number of hours needed to complete the requirement or request: It is estimated that all affected respondents will expend a total of 40 hours.
8. Section 3504(h), Pub. L. 96-511 does not apply.
9. Abstract: NRC Form 277 provides assurance that only properly cleared and authorized individuals, who require access to classified information as part of their offical employment duties, will have such access during visits to NRC, other contractor or licensee facilities or Government agencies.

ADDRESS: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT:

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 295-7340

NRC Clearance Officer R. Stephen Scott, (301) 492-8585.

Dated at Bethesda Maryland, this 9th day of February 1983.

For the Nuclear Regulatory Commission.

Patrica G. Norry,

Director, Office of Administration.

[FR Doc. 83-4066 Filed 2-14-83; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Corrected Version of Regulatory Guide

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

A printer's error was discovered on page 1.145-7 of Regulatory Guide 1.145, Revision 1, "Atmospheric Dispersion Models for Potential Accident Consequence Assessments at Nuclear Power Plants," which was issued in November 1982. The guide has been reprinted to correct the error, and the corrected version is being distributed to subscribers and licensees.

Comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 8th day of February 1983.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 83-4069 Filed 2-14-83; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Proposed Extension of Forms for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed extension of forms submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed extension of forms that collect information from the public. Form BRI 49-224—Child's Eligibility to Receive Benefits—is used by the Civil Service Retirement System, Compensation Group, Office of Personnel Management to survey survivor annuitants who have reached age 18 to determine if survivor benefits should be continued. Information received as a result of the survey may lead to the suspension of benefits to ineligible recipients as provided by Section 8341(a)(4)(c), Title 5, U.S. Code. Standard Form 2814—Insurance Carrier Certification—is used by the Civil Service Retirement System, Compensation Group, Office of Personnel Management to obtain certification from annuitants and insurance carriers for participation in the Retired Federal Employees' Health Benefits Program. Information received as a result of the certification may lead to the suspension of benefits to ineligible recipients as provided by Public Law 86-724. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632-7720.

DATES: Comments on this proposal should be received within 30 working days from the date of this publication.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6669, Washington, D.C. 20415

and

Frank Reeder, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: William J. Washington, (202) 632-5472.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 83-4053 Filed 2-14-83; 8:45 am]

BILLING CODE 6325-01-M

Proposed Extension of Forms For OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed extension of forms submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed extension of forms which collect information from the public. The Form BRI 49-175—Certification of Marital Status, is used by the Civil Service Retirement System, Compensation Group, Office of personnel Management to survey widows and widowers to verify their marital status. Information received as a result of the survey may lead to the removal of ineligible benefit recipients as provided by Section 8341(b)(3), Title 5, U.S. Code. For copies of this proposal, call John F. Weld, Agency Clearance Officer, on (202) 632-7720.

DATES: Comments on this proposal should be received within thirty working days from the date of this publication.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6H28, Washington, D.C. 20415

And

Frank Reeder, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: William J. Washington, (202) 632-5472.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 83-4054 Filed 2-14-83; 8:45 am]

BILLING CODE 6325-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 32
Tuesday, February 15, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Wednesday, February 16, 1983, 10:00 a.m.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

Open to the Public

1. *Aluminum Wire Petition AP 80-2.* The staff will brief the Commission on issues related to petition AP 80-2 from Mr. Jesse Aaronstein, Ph.D., which requests a rule under section 27(e), CPSA, requiring manufacturers of electrical wiring devices to furnish consumers with information about potential overheating hazards when incompatible receptacles and switches are used with aluminum wiring.

Closed to the Public

2. *Compliance Status Report.* The staff will brief the Commission on a Compliance Status Report.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207, 301-492-6800.

[S-216-83 Filed 2-11-83; 11:06 am]

BILLING CODE 6351-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Tuesday, February 15, 1983, 9:00 a.m.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

STATUS:
Open to the Public

Mid-Year Review

The Commission will meet with staff to discuss mid-year review.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207, 301-492-6800.

[S-217-83 Filed 2-11-83; 11:06 am]

BILLING CODE 6355-01-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Week of February 14, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Wednesday, February 16

2:00 p.m.—Briefing on Staff Actions Regarding Location of Emergency Operations Facilities (Public Meeting).

Thursday, February 17

10:00 a.m.—Briefing on Shift Manning Requirements (Public Meeting)

4:00 p.m.—Affirmation/Discussion and Vote (Public Meeting)

a. UCS Objection to *Ex Parte* Communications in TMI-1 Proceeding.

b. Regulations to Implement Public Law 97-415.

Additional Information:

Note title change—Discussion/Possible Vote on Regulatory Reform Task Force—Legislative Proposals scheduled for Wednesday, February 9.

On February 7 the Commission voted 5-0 to hold Discussion of Investigation (Closed—Ex. 5) scheduled for Wednesday, February 9.

Automatic telephone answering service for schedule update: (202) 634-1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,
Office of the Secretary.
February 9, 1983.

[S-214-83 Filed 2-11-83; 9:20 am]

BILLING CODE 7590-01-M

4

SECURITIES EXCHANGE COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (To be published)

STATUS: Open/closed meeting.

PLACE: 450 5th Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, January 31, 1983.

CHANGES IN THE MEETING: Deletion/additional item.

The following item will not be considered at an open meeting scheduled for Thursday, February 10, 1983, at 10:00 a.m.

Consideration of whether to propose for comment a plan for the allocation of regulatory responsibilities pertaining to options-related sales practice matters pursuant to Rule 17d-2 under the Securities Exchange Act of 1934 between the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Midwest Stock Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc. For further information, please contact Elizabeth S. York at (202) 272-2377.

The following additional item will be considered at a closed meeting scheduled for Thursday, February 10, 1983, immediately following the 10:00 a.m. open meeting.

Institution of administrative proceeding of an enforcement nature.

Chairman Shad and Commissioners Evans, Thomas, Longstreth and Treadway determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items.

FOR FURTHER INFORMATION AND TO ASCERTAIN WHAT, IF ANY MATTERS HAVE BEEN ADDED, DELETED OR POSTPONED, PLEASE CONTACT: Catherine McGuire at (202) 272-3085.

February 9, 1983.

[S-215-83 Filed 2-11-83; 9:20 am]

BILLING CODE 8010-01-M

federal register

Tuesday
February 15, 1983

Part II

Department of Health and Human Services

Food and Drug Administration

Skin Protectant Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket No. 78N-0021]

Skin Protectant Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) skin protectant drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs on the proposed regulation by April 18, 1983. New data by February 15, 1984.

Comments on the new data by April 16, 1984. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Comments on the agency's economic impact determination by June 15, 1983.

ADDRESS: Written comments, objections, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. New data and comments on new data should also be addressed to the Dockets Management Branch.

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 August 4, 1978 (43 FR 3468) FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC skin protectant drug products, together with the recommendations of the Advisory Review Panel On OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by November 2, 1978. Reply comments in response to comments filed in the initial comment period could be submitted by December 4, 1978.

In a notice published in the **Federal Register** of March 21, 1980 (45 FR 18402), the agency advised that it had reopened the administrative record for OTC skin protectant drug products to allow for consideration of data and information that had been filed in the Dockets Management Branch after the date the administrative record previously had officially closed. The agency concluded that any new data and information filed prior to March 21, 1980, should be available to the agency in developing a proposed regulation in the form of a tentative final monograph.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display on the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information.

The advance notice of proposed rulemaking, which was published in the **Federal Register** on August 4, 1978 (43 FR 34628), was designated as a "proposed monograph" in order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10). Similarly, the present document is designated in the OTC drug review regulations as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) the FDA states for the first time its position on the establishment of a monograph for OTC skin protectant drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing monograph for OTC skin protectant drug products.

In response to the advance notice of proposed rulemaking, 1 drug manufacturers' association, 1 cosmetic manufacturers' association, and 12 drug and cosmetic manufacturers submitted comments. Copies of these comments are on public display in the Dockets Management Branch.

This proposal would amend Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations by adding new Part 347. This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC skin protectant drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

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 authorized 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 (46 FR 47738).

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 at the tenative final monograph stage.

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.** On or after that date, no OTC drug products that are subject to the monograph and that contain nonmonograph conditions, i.e., conditions that 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 unless they are the subject of an approved new drug application. Further, any OTC drug products subject to this monograph that are repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date 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.

In the advance notice of proposed rulemaking for OTC skin protectant drug products (published in the **Federal Register** of August 4, 1978 (43 FR 34628)), the agency suggested that the conditions included in the monograph (Category I) be effective 30 days after the date of publication of the final monograph in the **Federal Register** and that the conditions excluded from the monograph (Category II) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph, regardless of whether further testing was undertaken to justify their future use. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 30 days after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register.** The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace. However, if the agency determines that any labeling for a condition included in the final monograph should be implemented sooner, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of December 12, 1972 (37 FR 26456) or to additional information that has come to the agency's attention since publication of advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

In the **Federal Register** of September 7, 1982 (47 FR 39436), FDA issued a notice of reopening of the administrative record for OTC skin protectant drug products to allow for consideration of the Miscellaneous External Panel's recommendations on skin protectant drug products used for the treatment of diaper rash, for prevention of poison ivy, oak, and sumac, for the treatment of fever blisters, as astringents, and as insect bity neutralizers. The agency will address the use of skin protectant active ingredients for these uses in this rulemaking in a future issue of the **Federal Register.**

I. The Agency's Tentative Conclusions on the Comments

A. General Comments on Skin Protectant drug Products

1. Several comments contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, publishd in the **Federal Register** of May 11, 1972 (37 FR 9464) and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association* v. *Weinberger,* 512 F. 2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA,* 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd,* 637 F. 2d 887 (2d Cir. 1981).

2. Two comments requested withdrawal of the advance notice of proposed rulemaking and initiation of a new rulemaking, while another comment urged that Panel deliberations be reopened, to allow cosmetic manufacturers an opportunity to present their positions. The comments contended that the cosmetic industry was not provided enough notice and a fair opportunity to participate in the rulemaking. The comments argued that the call-for-data notice (December 12, 1972; 37 Fr 26456) did not mention cosmetics and that the agency has stated that any product for which only cosmetic claims are made, and which is therefore not a drug, will not be reviewed.

The agency regularly published notices in the **Federal Register** announcing the dates of the Panel's meetings, part of each meeting was open to the public, and minutes of each meeting were publicly available. One of the industry lisison members to the Panel was nominated by the Cosmetic, Toiletry, and Fragrance Association (CTFA). For these reasons, the agency believes that adequate opportunity was provided for all parties, including cosmetic manufacturers, to present their positions to the Panel. Because the Panel has been disbanded, its deliberations cannot be reopened. The agency believes that no valid basis exists to withdraw the advance notice of proposed rulemaking and to initiate a new rulemaking. Ample opportunities have existed and continue to exist for all interested persons to express their opinions before the agency reaches any final conclusions on OTC skin protectant drug products. For example, interested persons, including cosmetic manufacturers, could comment and submit data during the comment period following publication of the Panel's report and may do so again following publication of this tentative final monograph. (For a discussion of the distinction between the drug and cosmetic use of these ingredients, see comment 6 below.)

3. One comment requested an extension of time for filing comments to the advance notice of proposed rulemaking for OTC skin protectant drug products in order to compare it with the advance notice of proposed rulemaking on OTC anorectal drug products, which

had not been published at the time the comment was submitted. the comment was submitted by a manufacturer concerned that the labeling and other portions of the two rulemakings would overlap with respect to white petrolatum, an ingredient contained in a marketed product submitted to both rulemakings.

The agency points out that, subsequent to the comment's request, the advance notice of proposed rulemaking for anorectal drug products was published in the **Federal Register** of May 27, 1980 (45 FR 35576), and comments were submitted to that rulemaking by the originator of the comment above. Additional comments may be filed for 60 days following publication of this tentative final monograph. Thus, ample opportunity is being provided through the normal OTC drug review procedures for comment on the handling of white petrolatum in the rulemakings for skin protectant and anorectal drug products.

4. One comment pointed out a discrepancy on pages 34628 and 34629 of the panel's report (43 FR 34628–34629). The comment noted that on page 34628 the report indicates that a request was made for data and information on all active ingredients utilized in topical analgesic products, including antirheumatic, otic, burn, and sunburn treatment and prevention drug products, while on page 34629 the report indicates that a request was made for data and information on OTC skin protectant drug products.

The comment is correct. On page 34628, reference is made to the notice issued in the **Federal Register** of December 12, 1972 (37 FR 26456), which contained a request for data and information on all active ingredients utilized in topical analgesic, including antirheumatic, otic, burn, and sunburn treatment and prevention drug products. Subsequent to the 1972 request for data, the Panel organized the active ingredients in this broad listing of ingredients into four major pharmacologic groups, external analgesics, skin protectants, topical otics, and sunscreens, and prepared a report on each. The statement on page 34629 was made in reference to data and information on skin protectants received in response to the December 12, 1972 notice.

5. One comment complained that many of the products and ingredients in the list of submissions to the Panel (43 FR 34629) come within the scope of the broad category of topical analgesics rather than the more narrow category of skin protectants. The comment maintained that placing an ingredient in Category II on the basis of this narrow range of use, and what it alleged to be a restricted literature search of skin protectant drugs, stignatized the ingredient as unsafe and ineffective for other uses. Citing sulfur as an example, the comment contended that its Category II classification as a skin protectant could result in bias by other OTC panels evaluating sulfur for other uses. The comment mentioned three references to support the effectiveness of sulfur for different topical uses and argued that it should be evaluated for these uses in appropriate rulemakings (Refs. 1, 2, and 3).

The agency acknowledges that many of the products and ingredients identified in the Panel's report (43 FR 34629) have uses other than as skin protectants. As stated at 43 FR 34630, the Panel considered a number of these ingredients in its sunscreen and external analgesic reports, and not in the skin protectant report. The Panel's Category II classification of sulfur for safety as a skin protectant did not influence other panels to place sulfur in Category II for other uses. For example, sulfur was subsequently classified in Category I by the Miscellaneous External Panel for use in controlling dandruff and by the Antimicrobial II Panel for treatment of acne. The agency believes these Category I classifications of sulfur demonstrate the impartial consideration of ingredients for their different OTC uses under appropriate rulemakings.

References

(1) Harvey, S. C., "Antiseptics and Disinfectants; Fungicides; Ectoparasiticides," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, The MacMillan Co., New York, p. 1005, 1975.

(2) "The Dispensatory of the United States of America," 25th Ed., edited by A. Osol and G. E. Farrar, Jr., J. B. Lippincott Co., Philadelphia, pp. 1368–1373, 1955.

(3) "AMA Drug Evaluations," 3d Ed., American Medical Association, Publishing Sciences Group, Inc., Littleton, MA, pp. 915–916, 1977.

6. Numerous comments pointed out that many of the ingredients included in the skin protectant monograph as active ingredients have historically been used in cosmetic products. The comments questioned the scope of the monograph, contending that it cannot be used to regulate cosmetic products that are not represented for use as drugs because whether a product is a drug or a cosmetic is determined by the vendor's representations in labeling or advertising. To support their contention, some comments cited definitions of "drug" and "cosmetic" in section 201 (g) and (i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 (g) and (i)), FDA Trade Correspondence issued in 1940, and prior case law. Some comments recommended revising the scope, definition, and indications sections of the monograph to emphasize that it regulates drugs only, and to state explicitly that it excludes cosmetics. Several comments requested the agency to clarify that the concentration range limitations and warnings established in the monograph do not apply to the use of the same ingredients in cosmetic products.

The agency agrees that this monograph applies only to skin protectant products that fall within the statutory definition of "drugs." The act principally defines a "drug" as an article "intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease" or "intended to affect the structure or function of the body * * * ." (21 U.S.C. 321(g)(1)(B), (C)). A "cosmetic," on the other hand, is defined primarily as an article intended to be "applied to the human body * * * for cleansing, beautifying, promoting attractiveness, or altering the appearance" (21 U.S.C. 321(i)(1)). The intended use of a product, therefore, determines whether the product is a "drug," a "cosmetic," or both. This intended use may be inferred from the product's labeling, promotional material, advertising, and any other relevant factor. See, e.g., *National Nutritional Foods Ass'n* v. *Mathews*, 557 F. 2d 325, 334 (2d Cir. 1977). In order to make it clear that the scope of the monograph extends only to drug products, the agency is proposing the following changes in this tentative final monograph: The word "drug" is being added to § 347.1 ("*Scope*"), to read "An over-the-counter skin protectant drug product * * * ." The word "drug" is being substituted for "agent" in the definition of "skin protectant" in § 347.3, to read "*Skin protectant.* A drug which * * * ." (See also comment 7 below.)

Because the final monograph will cover only the drug use of the active ingredients listed therein, the concentration range, limitations, warnings, and directions established for these ingredients in the monograph will not apply to the use of the same ingredients in products intended solely as cosmetics. Those products intended for both drug and cosmetic use must conform to the requirements of the final monograph. However, in addition to the indications allowed for skin protectant drug products, such products may also bear appropriate labeling for cosmetic uses, in conformity with section 602 of the act (21 U.S.C. 362) and the provisions

of 21 CFR Part 701. Consistent with the provisions of § 701.3(d) (21 CFR 701.3(d)) regarding label declarations of active drug ingredients and cosmetic ingredients, it is the agency's view that cosmetic claims appearing in any portion of the labeling that is required by the monograph could be misleading. Cosmetic claims may appear elsewhere in the labeling.

7. Several comments requested that the Panel's definition of a skin protectant in § 347.3 ("* * * an agent which isolates the exposed skin or mucous membrane surface from harmful or annoying stimuli") be revised. The comments contended that the definition was too broad and could be applied to both drugs and cosmetics; that, to limit its scope to drug products, the word "drug" or "OTC drug" should be substituted for the word "agent" and that the word "exposed" should be changed to "injured or damaged."

As discussed in comment 6 above, the agency has clarified that this mongraph applies only to drug products, and the word "agent" in the definition of a skin protectant has been changed to "drug." The agency agrees that the words "injured or damaged" could be added to the definition to describe the condition of the skin being treated. However, the word "exposed" also describes the drug use of the product when it is used for prevention purposes, such as to prevent chafing or windburn. Therefore, the agency concludes that both conditions are appropriate in the definition of a skin protectant. In addition, the agency believes that the word "protects" better describes the action of these products than the word "isolates." Thus, the definition of a skin protectant has been revised to read "* * * a drug which protects injured or exposed skin or mucous membrane surface from harmful or annoying stimuli."

B. Comments on Skin Protectant Ingredients

8. One comment requested that the skin protectant monograph not be finalized until the OTC Miscellaneous External Panel completed its review of glycerin. The comment contended that the call for data for topical analgesic drug products (37 FR 26456; December 12, 1972) did not include the indications of dry skin, minor skin irritation, skin protectant, or chapping; that glycerin was listed in the call for data for OTC miscellaneous external drug products (40 FR 38179; August 27, 1975); and that the Miscellaneous External Panel received data on the effectiveness of 2 percent glycerin in relieving dry skin.

Glycerin was labeled as an ingredient in marketed products submitted to the Topical Analgesic Panel. The Panel reviewed the data submitted to it on glycerin and classified it as a Category I skin protectant, even though the Miscellaneous External Panel's call for data listed that ingredient and those indications while the Topical Analgesic Panel's call for data did not.

The Miscellaneous External Panel completed its work on December 15, 1980, and did not review the submission on 2 percent glycerin submitted to it. The agency has determined that all data not reviewed by the Miscellaneous External Panel will be incorporated into the appropriate rulemakings and reviewed by the agency. Accordingly, the submission on 2 percent glycerin and other skin protectant submissions not reviewed by the Miscellaneous External Panel will be incorporated into the administrative record for skin protectant drug products at a later date. The skin protectant final monograph will not be issued until these data have been reviewed by the agency and interested persons provided an opportunity to comment on an agency proposal.

9. One comment submitted two journal articles to support the effectiveness of glycerin as a skin protectant at aqueous concentrations lower than the 20 to 45 percent recommended by the Panel (Refs. 1 and 2). The comment contended that effectiveness had been shown in one of these studies with a product containing 14 percent glycerin and requested that the allowable concentration range for glycerin be lowered to 14 percent.

The agency has reviewed the two articles submitted by the comment and concludes that the studies are not sufficient to demonstrate the effective use of glycerin at concentrations lower than those recommended by the Panel. The study by Johnson (Ref. 1) was an open clinical evaluation designed to show effectiveness in treating many common dermatoses, such as eczema, xeroderma, and dermatitis. The article reports that the test product used to treat all patients was a cream consisting basically of dimethicone 2.5 percent (a Category I skin protectant) in a hydrophilic base. The comment states that the product also contained 14 percent glycerin; however, there is no mention of glycerin in the article, and therefore any effects obtained cannot be attributed to glycerin.

The study by Harb (Ref. 2) measured the ability of 1,3-butylene glycol and glycerin at concentration levels of 5, 10, or 20 percent to retard water vapor loss when added to skin cream formulations (water-in-oil and oil-in-water emulsions), compared with the same cream formulations without 1,3-butylene glycol or glycerin. While glycerin appeared to prevent some water vapor loss from these preparations when tested in vitro, no information was provided on how the results of this study are applicable to an in vivo situation.

The agency finds that these journal articles do not support the effectiveness of glycerin as a skin protectant ingredient at concentrations lower than 20 percent, as the comment contended. The agency notes that the Advisory Review Panel on OTC Hemorrhoidal Drug Products (hereinafter referred to as the Hemorrhoidal Panel) also found 20 to 45 percent glycerin to be effective as a protectant (in OTC anorectal preparations) (45 FR 35630). Therefore, the agency concludes that 20 to 45 percent glycerin is the suitable range for use as an OTC skin protectant.

References

(1) Johnson, A., "Non-Steroid Skin Cream in Traumatic Dermatoses: A Clinical Open Evaluation," *Medical Journal of Australia*, 1:111–113, 1976.

(2) Harb, N. A., "1,3-Butylene Glycol as a Humectant in Cosmetic Creams," *Drug and Cosmetic Industry*, 115:48–60, 1974.

10. One comment requested a change in the Panel's statement that live yeast cell derivative is "obtained by refluxing cakes of live yeast with ethanol" (43 FR 34645). The comment stated that in its general discussion the Panel did not specify use of yeast cakes and that both cakes and moist yeast may be used. The comment requested that the word "cakes" be deleted from the Panel's statement.

The agency agrees withe the comment that live yeast cell derivative may be obtained from both compressed (caked) and moist forms of the live yeast *Saccharomyces cerevisiae* and that a more accurate statement would be "* * * may be obtainted by refluxing live yeast with ethanol."

11. One comment urged that live yeast cell derivative be placed in Category I as a wound-healing aid. The comment contended that sufficient data to demonstrate efficacy were submitted to the Panel, but the Panel did not consider as adequate the evidence that live yeast cell derivative by itself increases collagen formation in vivo. The comment further indicated that data were being developed to respond to questions raised by the Panel about wound healing agents and had requested that it be permitted to present these data for the Panel's consideration. However, the comment was unaware that the Topical Analgesic Panel had signed off on its final report on skin

protectants at its December 1977 meeting. Therefore, the comment provided clarification of the data which had previously been submitted to the Panel and additional data which the Panel had not had an opportunity to consider.

The comment noted that the Panel had characterized the various in vitro and in vivo data as "sophisticated." It is well accepted that collagen formation is the central event of the biological repair process and the accepted indicator of newly formed collagen is the conversion of proline to hydroxyproline measured by the presence of radioactive hydroxyporline. The comment noted that the Panel stated that "collagen production and cross linkages have been experimentally quantified by measurements of collagen production and wound tensile strength * * *. Most agents promoting experimental wound healing such as oxygen, oral ascorbic acid, and oral vitamin A, appear to act primarily to promote collagen synthesis." (See 43 FR 34631.) The comment contended that the Panel had not taken into consideration the evidence presented that live yeast cell derivative alone increases collagen formation. The Panel had indicated that there was a significant increase in the mean net weight of new tissue and in hydroxyproline content in the in vivo study in rats and an average increase of C^{14} labeled proline uptake of 70 percent in incubated human skin samples. Instead, the Panel conclude that "it has duly noted that the manufacturer's data show that live yeast cell derivative alone is responsible for the increased oxygen uptake by skin treated with the whole product (live yeast cell derivative and shark liver oil)." The comment stated that the Panel ignored the series of sophisticated experiments it had itself described using human skin tags in vitro and implanted cylinders in vivo which clearly demonstrate a significant increase in collagen formation.

The comment also stated that several studies were reviewed by the Hemorrhoidal Panel. That Panel was divided in its findings with regard to the data. The majority of the Panel (four members) was concerned that efficacy needed to be demonstrated in the anorectal area and did not accept data in other areas. A minority of the Panel (three members) believed the data warranted a finding of Category I for live yeast cell derivative as a wound healing agent. The comment noted that experts in the field were also consulted and concluded that the data for live yeast cell derivative are adequate for safe and effective use as a wound healing agent.

In summary, the comment maintained that the most rigorous testing within technical capability of a wound healing research laboratory had been met for live yeast cell derivative and that experts in wound healing concluded that there was more than enough evidence to establish that live yeast cell derivative is effective as a wound healing agent. In addition, these tests have shown that live yeast cell derivative acts independently of the combination of live yeast cell derivative and vitamin A as a wound healing agent.

The agency has carefully reviewed the "clarifications" contained in the comment with regard to the studies evaluated by the Topical Analgesic Panel and has evaluated the additional data not reviewed by the Panel.

The additional data compared the effects of vitamin A, live yeast cell derivative, and a combination of these active ingredients on collagen synthesis by studying the incorporation of proline into hydroxyproline in human skin slices obtained from surgical procedures. Skin samples from two separate sources were incubated in the presence of C^{14} labeled proline, after which the skin was separated from the medium and the amount of hydroxyproline formed was measured by isotope counting techniques. The results indicate that vitamin A alone increased collagen formation by 57 percent and live yeast cell derivative by 122 percent, whereas the combination of vitamin A and live yeast cell derivative increased collagen formation by 112 percent. The agency has reviewed these data and concludes that live yeast cell derivative alone may promote collagenous repair. The agency concurs with the Panel that submitted animal and in vitro studies support a positive influence of live yeast cell derivative on wound healing. Specifically, live yeast cell derivative has the characteristic of a wound healing aid, i.e., increased oxygen uptake, hydroxyproline formation which is associated with collagen byosynthesis, tissue growth, and epithelization.

The majority of the Hemorrhoidal Panel had concluded that there was insufficient evidence to prove the safety and effectiveness of live yeast cell derivative as a wound healing agent for use in the anorectal area. The Panel noted that no studies of safety of live yeast cell derivative have been specifically carried out, although no toxicity has been noted when the compound was used in experimental animals and no reports of clinical toxicity have been made or noted in the various clinical studies of the commercial product containing live yeast cell derivative. The Panel therefore assumed that the compound is safe for limited use (1 week or less). The minority of the Hemorrhoidal Panel disagreed and concluded that live yeast cell derivative should be placed in Category I as safe and effective. Whereas the agency has not fully evaluated the use of live yeast cell derivative in the anorectal area, it concurs with the Topical Analgesic Panel's conclusion that the ingredient is safe for use as a wound healing agent for minor cuts, scrapes, and burns. The use of live yeast cell derivative for the relief of symptoms in the anorectal area will be addressed in the rulemaking for OTC anorectal drug products at a later date in a future issue of the **Federal Register**.

Even though the ingredient can be considered safe for use as a wound healing agent, there remains a lack of sufficient data on its effectiveness. Corroborations of the effects of live yeast cell derivative on wound healing of the type proposed for OTC use in human subjects in a well-controlled clinical study are still unavailable. Clarifications were provided in the comment regarding one human study reviewed by the Panel involving donor wound sites in patients with burn wounds, including the fact that each patient acted as his own control and often several donor sites were used for control measurements on the same patient (Ref. 1). However, even with these data, the agency concurs with the Panel's conclusion that the study remains insufficient to demonstrate a clinically significant effect. The study can only be considered as suggesting a potential wound healing effect. The number of patients is too small and the data too subjective to arrive at a conclusive interpretation.

The comment also referred to two human clinical studies in the literature that were not addressed by the Panel. In a 1944 study, Barnes (Ref. 2) evaluated the healing rate of human skin determined by the measurement of the electrical potential on experimental abrasions. The rate of healing was measured objectively by a recording potentiometer to avoid the subjective attempt to measure visually ill-defined areas of healing with photographs. After the normal potential differences between homologous digits on each hand were measured, the left fingers were sterilized with alcohol and the tips of four fingers were marked with sterilized sandpaper until blood

appeared. The electrical potential of the fresh wound was measured as the difference between an injured left finger and the intact homologous right finger. Following measurement of the wound's electrical potential, two fingers were treated with live yeast cell derivative combined with non-saponified liver oil. The other two fingers were treated with petrolatum as controls. Barnes concluded that the live yeast cell derivative-containing product accelerates healing on human skin to statistically significant degrees compared with control abrasions treated with petrolatum alone. The agency has reviewed the article and believes that it provides supportive evidence. However, the article does not provide conclusive evidence of effectiveness for OTC uses. Measurement of electrical potential has not been validated as a reliable indicator of wound healing. In addition, live yeast cell derivative as a single ingredient was not evaluated. In the second study referred to in the comment, Walsh and Nutini (Ref. 3) reported in 1943 on burn therapy founded on cellular stimulation. The article summarizes 100 burn cases treated with a live yeast cell derivative-containing product. The agency has reviewed the findings and concludes that the article lacks sufficient information to establish effectiveness for OTC uses. Live yeast cell derivative was not used alone and only 3 of the 100 burn patients were discussed.

In conclusion, the agency agrees that the available data suggest a positive influence on wound healing, but live yeast cell derivative has not been evaluated in an adequate well-controlled study in conditions such as minor cuts, scrapes, and burns, that would represent the symptoms most often to be treated OTC. The agency concurs with the Panel's evaluation that there is inadequate proof of effectiveness of live yeast cell derivative. The agency's detailed comments and evaluations on the data are on file with the Dockets Management Branch (Ref. 4). The agency recommends that the study design for any clinical evaluation of the effectiveness of live yeast cell derivative be prepared in consultation with FDA. The procedures for consulting about proposed protocols are described in a policy statement published in the **Federal Register** on September 29, 1981 (46 FR 47740).

References

(1) Trunkey, D., "Effectiveness of SRF on Donor Wound Sites," draft of unpublished paper in OTC Volume 060160.

(2) Barnes, T. C., "Healing Rate of Human Skin Determined by Measurement of the Electrical Potential of Experimental Abrasions," *The American Journal of Surgery*, 69:82–88, 1945.

(3) Walsh, T. P., and L. G. Nutini, "Burn Therapy Founded on Cellular Stimulation," *Southern Medicine and Surgery*, 104:143–152, 1943.

(4) Letter from W. E. Gilbertson, FDA, to S. F. Barshay, Whitehall Laboratories, coded LET, Docket No. 78N–0021, Dockets Management Branch.

12. One comment objected to the Panel's recommendation against using shark liver oil and live yeast cell derivative on children under 2 years of age without consulting a physician. The comment contended that both ingredients are safe and effective as skin protectants for use on children under 2 years of age for treatment of diaper rash. The comment cited Grayzel, Heimer, and Grayzel (Ref. 1) in support of the safety of topical application of cod liver oil and the "Handbook of Nonprescription Drugs" (Ref. 2) in support of the use of shark liver oil and cod liver oil as sources of vitamins A and D in the treatment of diaper rash. The comment argued that the Panel gave no reason for limiting the use of shark liver oil and live yeast cell derivative on children under 2, and failed to mention that a product containing both shark liver oil and live yeast cell derivative was submitted specifically for diaper rash (Ref. 3).

The agency notes that the product referred to by the comment is listed at 43 FR 34629 as one of the marketed products submitted to the Panel. The agency has reviewed the Panel's report and notes that the Panel discussed shark liver oil and live yeast cell derivative for use as skin protectant ingredients only. The product referred to by the comment was also submitted to the Miscellaneous External Panel and was reviewed by that Panel for diaper rash claims (Ref. 4).

The administrative record for the skin protectant rulemaking was reopened on September 7, 1982 (47 FR 39436) to include the recommendations of the Miscellaneous External Panel on drug products used for the treatment of diaper rash. The agency will review the submission on the product containing shark liver oil and live yeast cell derivative for use as skin protectants and for the treatment of diaper rash as part of its evaluation of these drug products. The agency notes that the references submitted by the comment do not address the question of systemic absorption of vitamins A and D across infant skin, although Grayzel, Heimer, and Grayzel (Ref. 1) discuss local absorption by epithelial cells and attribute the safety of cod liver oil to lack of evidence of sensitivity or dermatitis. The agency will consider this reference as part of its evaluation of diaper rash drug products. Until that evaluation has been completed, the agency will defer a decision on limiting the use of shark liver oil and live yeast cell derivative for use as skin protectants and for the treatment of diaper rash on children under 2 years of age. The agency invites the submission of additional data on these uses of shark liver oil, particularly on children under 2 years of age.

References

(1) Grayzel, H., C. Heimer, and R. Grayzel, "The Value of a Cod Liver Oil Ointment and Cod Liver Oil Lotion in the Treatment of Dermatoses," *New York State Journal of Medicine*, 53:2233–2237, 1953.

(2) Smith, G., "Handbook of Nonprescription Drugs," 5th Ed., American Pharmaceutical Association, Washington, p. 354, 1977.

(3) OTC Volume 060113.

(4) OTC Volume 160271.

13. One comment objected to the Panel's Category II classification for tannic acid. The comment argued that the Panel discussed only unsafe concentrations (e.g., 10 to 20 percent) and unsafe uses (e.g., use on severe burns and injection into animals). The comment stated that the Panel's discussion was not applicable to its product, which contains 3.92 percent tannic acid and is intended for minor burns only. Further, the comment contended that using 2 or 3 sprays of its product (each containing 50 mg of tannic acid) is not dangerous, and even if the entire bottle (90 sprays) were used on a minor burn, the 4.44 g of tannic acid applied would not be harmful. The comment added that tannic acid spray is intended for use for immediate applicatin by consumers as first aid in first and second degree burns and is not intended for use by physicians in a burn center for excessive skin damage. The comment contended that its 3.92 percent tannic acid spray treatment for burns forms a light covering or film, rather than a crust as the Panel stated (43 FR 34644), and maintained that this film reduces the likelihood of bacterial growth.

The agency concurs with the Panel's Category II classification of tannic acid as a skin protectant for the treatment of burns. The data cited by the Panel have shown that tannic acid in varying concentrations is absorbed when applied topically to severe burns. The agency does not have data demonstrating that tannic acid in concentrations as low as 3.92 percent

applied topically to minor burns would not be absorbed, nor did the comment present any. The film or crust formed over abraded tissue provides a suitable medium under which bacterial growth may flourish. The agency concurs with the Panel's conclusion that tannic acid is not safe or effective for burn therapy and is not suitable as an OTC skin protectant.

14. One comment contended that the 80- to 100-percent concentration range for cocoa butter in skin protectant products is unnecessarily high. The comment stated that because cocoa butter is a rather hard solid at room temperature, it would be difficult, if not impossible, for lotion and soft ointment formulations to contain cocoa butter even at the proposed lower level of 80 percent. The comment stated its understanding that the Hemorrhoidal Panel was recommending the use of cocoa butter as a protectant for use in the anorectal area at not less than 50 percent levels and requested that the agency lower the concentration of cocoa butter to 50 percent in the skin protectant rulemaking. The comment added that this lower percentage would permit the same level of skin protectant efficacy as the higher concentrations.

The Panel's recommended dosages for cocoa butter as a skin protectant were based on clinical and marketing experience of the products reviewed. The Panel noted that, due to its bland nonirritating properties, cocoa butter is used as a protectant on abraded or irritated tissue, especially in the anorectal area (45 FR 35630). The Hemorrhoidal Panel concluded that cocoa butter is safe and effective as a protectant in OTC preparation in concentrations of at least 50 percent (45 FR 35629). In view of those findings, the agency agrees with the comment and is proposing a dosage range for cocoa butter from 50 to 100 percent for use as an OTC skin protectant.

15. One comment requested that the concentration range of 10 to 85 percent recommended by the Panel for corn starch be extended to 10 to 100 percent. The comment stated that there was no medical reason for the upper concentration of corn starch to be limited to 85 percent and that this limit was based on the highest concentration of corn starch contained in a commercially available product submitted to the Panel. The comment mentioned that its own product contains 96 to 97 percent corn starch and that the directions for use recommended by the Panel (i.e., to use on adults, children, and infants liberally as needed) support raising the upper concentration limit.

The Panel recognized that corn starch has an effective absorptive capacity for moisture and is likely to form a sticky mass if used alone (i.e., at 100 percent) on the skin (Ref. 1). The Panel also noted that the incorporation of a finely dispersed dessicant in a formulation may eliminate this undesirable effect of corn starch. In light of the wide use of corn starch and because there is no reason to question the safety of corn starch when used externally, the agency tentatively agrees with the comment that the upper concentration limit for corn starch could be raised. However, the agency believes that an increase to a concentration of 97 percent, rather than 100 percent, would be appropriate to allow for formulation with a dessicant or other pharmaceutical necessity. As discussed in comment 22 below, the agency is tentatively deleting corn starch from the skin protectant monograph until diaper rash drug products are reviewed. The agency will state its proposal on the appropriate upper concentration limit for corn starch at that time.

Reference

(1) Barnett, G. "Baby Toiletries," *in* "Cosmetics Science and Technology," 2d Ed., edited by M. S. Balsam and E. Saqarin, Wiley-Interscience, New York, 1:154, 1972.

16. One comment requested that concentrations of zinc oxide up to and including 40 percent be permitted for OTC skin protectant drug products. The comment stated its belief that the Panel had limited the upper concentration of zinc oxide to 25 percent because it did not receive any data to substantiate the use of this ingredient at higher concentrations. The comment added that submissions for zinc oxide as a skin protectant in concentrations up to and including 40 percent were made to the Advisory Review Panel on OTC Miscellaneous External Drug Products, which classified zinc oxide in Category I at these concentrations (Ref. 1).

The agency acknowledges that the Topical Analgesic Panel did not receive data demonstrating the safety and effectiveness of zinc oxide as a skin protectant in concentrations above 25 percent. The product cited by the comment was submitted to the Miscellaneous External Panel and contained 40 percent zinc oxide as an active ingredient for the treatment of diaper rash (Ref. 2). The Miscellaneous External Panel did not review and classify individual ingredients for use in treating diaper rash, but rather recommended inclusion of zinc oxide in the skin protectant rulemaking for diaper rash claims without discussing specific concentrations. That Panel's recommendations on diaper rash drug products were incorporated into this rulemaking on September 7, 1982 (47 FR 39436). The agency will address these recommendations in the **Federal Register** at a later date. At this time, the agency has made no decision on the upper limit concentration for zinc oxide in diaper rash products. Because no additional data were submitted on the use of these higher concentrations of zinc oxide for other skin protectant claims, the agency is not proposing to increase these limits as this time.

References

(1) Minutes of the Fourteenth Meeting of the Advisory Review Panel on OTC Miscellaneous External Drug Products, November 12 and 13, 1976.

(2) OTC Volume 160021.

17. One comment noted that the Panel presented a chart that clearly identifies which active ingredients can be used to treat the symptoms of "dryness," "wetness," or "friction (lubricity)" (43 FR 34632), but that this information is not stated in the monograph. The comment requested that the type of information that appears in the chart be incorporated into the monograph.

As stated in comment 22 below, the agency is proposing to revise the types of labeling claims recommended by the Panel, and the terms "dryness," "wetness," and "lubricity" will not be proposed in the tentative final monograph. The tentative final monograph specifically states which ingredients can bear the various labeling claims. A summary chart appears in comment 22 below.

C. Comments on Testing of Skin Protectant Drug Products

18. One comment recommended four changes in the Panel's suggested methods of testing to upgrade a wound-healing aid ingredient from Category III to Category I.

The agency has not addressed specific testing guidelines in this document. In revising the OTC drug review procedures relating to Category III, published in the **Federal Register** of September 29, 1981 (46 FR 47730), the agency advised that tentatively final and final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade the monograph status. Instead, the agency will meet with industry representatives at their request to discuss testing protocols. The revised procedures also state the time in which test data must be submitted for consideration in developimg ther final monograph. (See also part II. paragraph

A.2 below—*Testing of Category II and Category III conditions.)*

19. One comment pointed out an inconsistency in two Panel statements regarding Category III testing (43 FR 34647). The first statement would have allowed 2 years to develop the methodology for wound-healing studies in human subjects. The second statement recommended reclassifying the claim "aids wound healing" in Category II if adequate data to support it were not obtained in 2 years. The comment stated that it was not possible to develop methodology and perform investigations at the same time and that a 2-year time limit was not adequate.

Since the Panel's report was published in 1978, revisions in the procedural regulations for the OTC drug review have been made as a result of the Court ruling in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). The revised procedural regulations, published in the **Federal Register** of September 29, 1981 (46 FR 47730), provide that any testing necessary to resolve a Category III condition must be done before the publication of the relevant final monograph. In order to facilitate the development and submission of data to support changing a Category II or Category III classification, the agency has worked out procedures that were published in the same issue of the **Federal Register** as the revised regulations (46 FR 47740). These procedures cover review of proposed protocols by the agency and agency feedback on submitted data.

20. One comment contended that the Panel's requirement of three separate studies exceeds the "new drug" requirement of two adequate and well-controlled studies and is not necessary to confirm the extensive effectiveness data already submitted on live yeast cell derivative.

As discussed in comment 18 above, the agency will not address specific testing guidelines in this document. The number and extent of studies necessary to demonstrate effectiveness can only be resolved after the agency has met with industry representatives at their request to discuss testing protocols. For further information on testing protocols see comment 18 above and the agency's statement on testing Category II and Category III conditions in part II. paragraph A.2. below.

D. Comments on Labeling of Skin Protectant Drug Products

21. Two comments contended that FDA does not have the authority to legislate the exact wording of OTC labeling claims to the exclusion of what the comments described as other equally truthful claims for the products. The comments objected to the labeling recommended by the Panel as being overly restrictive and recommended that more flexibility in labeling be permitted by adding the following statement to each list of approved claims: "* * * or similar indication statements which are in keeping with the Panel's report."

During the course of the OTC drug review, the agency has maintained that a monograph describing the conditions under which an OTC drug will be generally recognized as safe and effective and not misbranded must include both specific active ingredients and specific labeling. (This policy has become known as the "exclusivity rule.") The agency's position has been that it is necessary to limit the acceptable labeling language to that developed and approved through the OTC drug review process in order to ensure the proper and safe use of OTC drugs. The agency has never contended, however, that any list of terms developed during the course of the review literally exhausts all the possibilities of terms that appropriately can be used in OTC drug labeling. Suggestions for additional terms or for other labeling changes may be submitted as comments to proposed or tentative final monographs within the specified time periods or through petitions to amend monographs under § 330.10(a)(12). For example, the labeling proposed in this tentative final monograph has been expanded and revised in response to comments received.

During the course of the review, FDA's position on the "exclusivity rule" has been questioned many times in comments and objections filed in response to particular proceedings and in correspondence with the agency. The agency has also been asked by The Proprietary Association to reconsider its position. To assist the agency in resolving this issue, FDA conducted an open public forum on September 29, 1982 at which interested parties presented their views. The forum was a legislative type administrative hearing under 21 CFR Part 15 that was held in response to a request for a hearing on the tentative final monographs for nighttime sleep-aids and stimulants (published in the **Federal Register** of June 13, 1978; 43 FR 25544). The agency's final decision on this issue will be announced in the **Federal Register** following conclusion of its review of the material presented at the hearing.

22. Several comments requested that the Panel's recommended indications in § 347.50(b)(7) (i) and (ii) be revised to make them more meaningful to consumers. Some comments stated that some of the indications were "cosmetic" in character, e.g., use of terms such as "soothes" or "gives comfort"; other comments questioned whether words such as "intertrigo" or "galling" would be understood by the ordinary consumer. One comment specifically objected to the use of the word "lubrication," stating that in general use the words "lubricate" and "lubricating" are understood to involve an oily or greasy substance used in machines to reduce friction and citing one dictionary definition to support this contention. The comment added that while some OTC skin protectant drug products, such as petrolatum, may be greasy, other product forms, such as powders, reduce friction without being greasy. The comment argued that consumers who do not want to use an oily or greasy substance may not use a product that is indicated for "lubrication" purposes; therefore, alternative words such as "soothing" or "smoothing" would better communicate to consumers the intended use of these products. One comment suggested that manufacturers be provided some flexibility in indications by arranging the Panel's recommended labeling into two groups and allowing manufacturers to label their products as they desire, especially if space limitations so require. The comment suggested that the indications be arranged as follows so that any phrase in column (1) may be combined with one or more terms in column (2):

(1)	(2)
Aids in temporary relief of	minor skin irritations
For the temporary protection	minor burns
Soothes	sunburn
Gives comfort to	windburn
For symptoms of chapping due to	scrapes
For symptoms of peeling due to	abrasions
For symptoms of scaling due to	cracked lips
For the lubrication of	
For symptoms of	intertrigo chafing galling rubbing friction

Another comment suggested that manufacturers be provided the option of describing the mode of action, e.g., absorbent, adsorbent, emollient, lubricant, in the labeling of the product.

The agency concurs that the Panel's recommended indications in § 347.50(b)(7) (i) and (ii) could be revised to make them more meaningful to consumers and to better reflect the "drug" use of these products. Many of the ingredients reviewed by the Panel have been used in both drug and cosmetic products for many years, and there has been an overlapping of

labeling claims. The agency has reviewed all of the labels for the marketed products submitted to the Panel and has reviewed all of the Panel's evaluations of these ingredients in an effort to identify historical drug claims for these ingredients. Most of the ingredients reviewed by the Panel are currently, or have been in the past, listed in the official drug compendia.

The agency has also reviewed all of the Category I labeling claims recommended by the Panel and determined that a number of these appear inappropriate for OTC drug labeling. Terms such as "intertrigo" and "galling" are not found in labeling for marketed OTC products submitted and reviewed by the Panel and would not be familiar to consumers; "contact dermatitis" is not readily self-diagnosable. The term "minor skin irritations" when used alone is too broad and would give consumers the impression that a skin protectant could or should be used for every type of minor skin irritation that occurs. The agency does not think that was the Panel's intent and points out that other types of skin remedies, e.g., external analgesic drug products, would be used to treat other types of skin irritations involving itching or pain. The agency considers the terms "soothes," "smoothing," "rubbing," "friction," and "lubrication" to be cosmetic claims in the context of skin protectant products. Symptoms of peeling or scaling may be interpreted differently by consumers, and the agency believes that stating that the product helps prevent or temporarily protects chafed and chapped skin or lips is more informative to the consumer. The term "abrasions," as recommended by the Panel, has not been included in the Category I labeling proposed for topical antibiotic and antimicrobial drug products. Instead, the term "scrapes" was used. Likewise, the agency believes that the term "scrapes" is more appropriate for skin protectant drug products.

The agency believes that the following labeling would adequately represent the drug uses of skin protectant drug products and is proposing the following in this tentative final monograph:

(1) "For the temporary protection of minor cuts, scrapes, burns, and sunburn."

(2) "Helps prevent and temporarily protects chafed, chapped, cracked, or windburned skin and lips."

(3) "Dries the oozing and weeping of poison ivy, poison oak, and poison sumac."

Based on the Panel's recommendations, the agency is proposing that the Category I ingedients included in the tentative final monograph be labeled with one or two of the three indications above as follows:

Ingredients	Indications		
	1	2	3
Allantoin	X	X	
Cocoa butter	X	X	
Petrolatum	X	X	
White petrolatum	X	X	
Shark liver oil	X	X	
Dimethicone		X	
Glycerin		X	
Aluminum hydroxide gel.			X
Calamine			X
Corn starch[1]			
Kaolin			X
Sodium bicarbonate[2]			
Zinc acetate			X
Zinc carbonate			X
Zinc oxide			X

[1] Deferred until diaper rash drug products are reviewed.
[2] Deferred to External Analgesic Rulemaking (see comment 33 below).

The permitted combinations in § 347.20 have been clarified to reflect the labeling indications above.

Based on these indications, the agency sees no need for requiring a description of the mode of action (e.g., adsorbent, absorbent) in the labeling. The agency believes that such additional information would not necessarily increase the consumer's understanding of the use of these products.

The rulemaking for skin protectant drug products was reopened on September 7, 1982 (47 FR 39436) to include the Miscellaneous External Panel's recommendations for diaper rash, astringent, external fever blister, insect bite neutralizer, and poison ivy, oak, and sumac prevention drug products. It is possible that the indications for skin protectant drug products will be expanded in the future to include some of these other uses. For example, a number of the Category I ingredients are used in diaper rash drug products. Corn starch is one of these ingredients. At the present time, none of the proposed Category I indications are applicable to corn starch. Most of the uses of corn starch discussed by the Topical Analgesic Panel are cosmetic uses. The primary OTC drug use of corn starch appears to be in diaper rash drug products. Therefore, the agency is not including corn starch in the tentative final monograph until its use in diaper rash drug products is reviewed.

23. One comment questioned whether the Panel, in recommending general warnings for a class of ingredients, considered the applicability of each warning to each individual ingredient in the class. The comment acknowledged that the Panel's recommendations could always be altered by petitioning the agency for a change, but contended that there should be no need to go through the petitioning process to eliminate requirements that are clearly not applicable to a specific ingredient.

The agency believes that, in recommending general warnings for skin protectants as a class, the Panel considered the applicability of the warnings to specific ingredients in the class. For example, the Panel recommended specific warnings for seven different skin protectant ingredients in § 347.50(c) (4) through (10). The agency has revised these warnings in a few instances and is proposing to delete some of the general warnings from the labeling the Panel recommended for certain skin protectant drug products, e.g., lip balms. (See comments 26, 28, 29, and 31 below and part II. paragraph B.12. below.) Interested persons who disagree with the agency's proposal need not petition the agency at this time to request changes. Instead, they may submit written comments and objections following publication of this tentative final monograph. Finally, interested persons may petition the agency for a change following issuance of the final monograph. The agency expects that, throughout the skin protectant rulemaking process, labeling requirements for specific ingredients will continue to be identified and thoroughly evaluated so that the final monograph will contain appropriate warnings.

24. One comment wished to reserve the right to decide after issuance of the final skin protectant monograph whether it would be appropriate to petition the agency to exempt petrolatum from the two general warnings prescribed in 21 CFR 330.1(g) ("Keep this and all drugs out of the reach of children" and "In case of accidental ingestion, seek professional assistance or contact a Poison Control Center Immediately.")

The two general warnings in 21 CFR 330.1(g) are not required in the labeling of OTC skin protectant drug products until a final monograph becomes effective for those products. As stated in § 330.1(g), all interested parties have the opportunity to petition for exemption from these general warnings at any time.

25. One comment strongly urged that petrolatum be exempt from the Panel's recommended warning in § 347.50(c)(2): "Avoid contact with the eyes." The comment referred to studies that showed that ohthalmic ointments did not interfere with corneal wound-healing (Ref. 1) and cited the classification of petrolatum by the Advisory Review Panel on OTC

Ophthalmic Drug Products as a Category I active ingredient in ophthalmic preparations and the "Physician's Desk Reference" listing of white petrolatum as a vehicle for numerous ophthalmic preparations. The comment contended that products containing white petrolatum are routinely used to treat diseased eyes and that the warning to "avoid contact with the eyes" is therefore unnecessary for petrolatum. The agency disagrees. It is possible for petrolatum that is not prepared for ophthalmic use to be contaminated and cause infection if placed in or near the eyes. Ophthalmic ointments containing petrolatum are sterilized so as not to introduce a source of infection to the eye or cornea. Nonophthalmic products containing petrolatum for topical use are not sterilized and should not be used in the eyes. The agency is therefore proposing the Panel's recommended warning in the tentative final monograph.

Reference

(1) Hanna, C., et al., "The Effects of Ophthalmic Ointments on Corneal Wound Healing," *American Journal of Ophthalmology*, 75:193–200, 1973.

26. One comment suggested that the Panel's recommended warning statement in § 347.50(c)(3), which reads "Discontinue use if symptoms persist for more than 7 days and consult a physician," be revised to read "If condition does not improve within 7 days, discontinue use and see your doctor." The comment contended that the Panel's recommended warning could be misinterpreted by some consumers and could result in unnecessary visits to the doctor, whereas the revised warning recognizes that the condition being treated may "improve" but still "persist." The comment stated that if the condition improves, it is unnecessary to encourage the consumer to visit a doctor. Another comment stated that the warning was not justified for petrolatum, adding that a brief delay in seeking medical attention would not create a hazard. The comment argued that if the consumer is going to heed the warning, then both "discontinue use" and "consult a physician" are not necessary, and referring the consumer to a physician should take precedence over telling the consumer to stop use of the drug. The comment suggested that the warning for petrolatum be shortened to "If symptoms persist, consult a physician," or "If symptoms persist, see your doctor."

The agency believes consumers should be advised that if the condition gets worse or does not improve after 7 days, a doctor should be consulted. The agency agrees that referring the consumer to a doctor is more important than telling the consumer to stop use of the drug. Therefore, the agency is proposing that the warning in § 347.50(c)(3) be revised to read: "If condition worsens or does not improve within 7 days, consult a doctor," While the consumer may continue to use the skin protectant product, the purpose of the warning is to convey to the consumer the message to seek medical care if improvement does not occur.

27. One comment contended that petrolatum is an excellent example of an ingredient generally recognized as safe; therefore, it seems somewhat contradictory that so many warnings (a total of six to date) have already been proposed for this ingredient, when several other panels that are also reviewing petrolatum have yet to be heard from.

The agency concurs that petrolatum is safe when used properly; however, some warnings are necessary to prevent improper use. The warning recommended by the Panel in § 347.50(c)(1) is a general warning for all externally applied products. The warnings proposed in § 347.50(c) (2) and (3) are discussed in comments 25 and 26 above. The warning recommended by the Panel in § 347.50(c)(7) is important to prevent improper use of petrolatum on puncture wounds, infections, and lacerations. (See part II. paragraph B.12. below.) The two general warnings required by § 330.1(g) are discussed in comment 24 above. The agency believes that the proposed warnings for petrolatum used as a skin protectant are necessary. Other panels that have evaluated petrolatum for other uses have recommended warnings related to those uses. The agency will review the recommended warnings for petrolatum in the various rulemakings and will propose appropriate warnings as necessary.

28. Several comments urged that the warning "For external use only" not be required for lip balm products. One comment claimed that 21 CFR 82.3(n) defines externally applied drugs as those "which are applied * * * not to the lips * * *," thus concluding the warning to be contradictory and confusing to the consumer. The comment also contended that consumers would not confuse a solid stick dosage form with a liquid medication that could be swallowed. Another comment believed that the warning, when read in context with the poison control warning required by 21 CFR 330.1(g), implies danger in using lip balms, thus discouraging use and increasing the incidence of chapping, cracking, and irritation of the lips. A third comment objected to the warning specifically for petrolatum-containing lip blam products. The comment contended that any hazard from the accidental ingestion of petrolatum is nonexistent, adding that the Panel stated that large amounts of petrolatum are essentially nontoxic when ingested (43 FR 34639); that petrolatum is regulated as an approved food additive by FDA in accordance with 21 CFR 172.880 and the Food Chemicals Codex; that with 424 million units distributed, only 10 adverse incidents have been reported, and these were not related to ingestion; and that the Advisory Review Panel on OTC Hemorrhoidal Drug Products found petrolatum safe and effective for intrarectal use.

The agency agrees with the comments. Although 21 CFR 82.3(n) is not applicable to drug active ingredients but to certified colors, the agency believes that lip balm products do not require the warning "For external use only" to assure safe use. Therefore, the agency is proposing that the warning in § 347.50(c)(1) is not required for lip balm products. (See comment 31 below.)

29. One comment urged that the Panel's recommended warning in § 347.50(c)(2), "Avoid contact with the eyes," should not be required for lip balms because the products' solid form will not run into the eyes and cannot be accidentlly splashed or poured into the eyes. The company submitting the comment added that it had sold millions of tubes of lip balm over 20 years and was not aware of a single complaint of irritation of the eyes.

The agency concurs with the comment that lip balms would not normally be used in or near the eyes and is proposing that the above warning not be required for lip balm products.

30. Two comments requested deletion for lip balms of the warning in § 347.50(c)(3), "Discontinue use if symptoms persist for more than 7 days and consult a physician." One comment contended that lip balms help protect against and heal chapped and dried lips and are not for treatment of a disease state, that the warning may discourage consumer use of these products, that discontinuing use increases the likelihood of symptoms occuring, that the 7-day time limitation imparts a sense of danger to the consumer, and that the warning is inconsistent with the directions for a lip balm, "Apply liberally as oftern as necessary." The second comment contended that the warning should be limited to products with indications for conditions such as

scrapes, burns, or weeping. The comment maintained that the warning should not apply to lip balms intended for chapped lips and the soothing of dry lips which could persist for many days under harsh climatic conditions.

The agency is proposing to revise the warning in § 347.50(c)(3) to read "If condition worsens or does not improve within 7 days, consult a doctor." (See comment 26 above.) The agency believes that this warning is needed for lip balms to alert consumers to consult a doctor if the condition does not improve after 7 days. Chapped lips can be caused by diseases which, if undiagnosed and untreated, can be harmful, e.g., cheilosis, a disease condition associated with deficiency of some B vitamins and characterized by fissuring and dry scaling of the surface of the lips (Ref. 1). The agency has modified the warning to refer to conditions rather than symptoms and believes that the revised warning is not inconsistent with the directions, "Apply liberally as often as necessary."

Reference

(1) Berkow R., editor, "The Merck Manual," 13th Ed., Merck and Co., Rahway, NJ, p. 1671, 1977.

31. Two comments requested that petrolatum-containing lip balms be exempt from the warning, "Not to be applied over puncture wounds, infections, or lacerations" recommended by the Panel in § 347.50(c)(7). One comment contended that the warning is appropriate for petrolatum marketed as a first-aid ointment, but is inappropriate for lip balms in which the petrolatum is combined with waxes to form a solid stick for use on chapped lips. The second comment asked that dimethicone-containing lip balms also be exempt from the same warning appearing in § 347.50(c)(5) for dimethicon, contending that lip balms containing dimethicone or petrolatum would not be mistakenly used on the conditions listed in the warning.

The agency agrees with the comments and believes that consumers would not mistakely use lip balms to treat puncture wounds, infections, or lacerations. Accordingly, the agency is proposing in the tentative final monograph that this warning not be required for lip balm products. The agency will further consider the "infection" part of this warning for the use of petrolatum-containing lip balms in the future when it evaluates the Miscellaneous External Panel's Statement on Drug Products for the Treatment of Fever Blisters, which will be incorporated into this rulemaking proceeding. Therefore, at this time, the agency is proposing the following statement in § 347.50(c) of the tentative final monograph:

"(9) *For products formulated as lip balms.* The warnings in paragraph (c)(1), (2), and (4) of this section are not required for lip balm products." (See comments 28 and 29 above.)

32. Several comments noted that it may not be possible to put all the required labeling recommended in § 347.50 on small containers without using cartons or package inserts. The comments urged that flexibility in wording be allowed on these small containers. One comment pointed out the petrolatum is a multipurpose active ingredient which was reviewed by several panels; that, because of its multipurpose character, labeling requirements may become cumbersome and confusing to consumers; and that it would be impossible to place several panels' different indications, warnings, and directions for the different uses of the product on small containers. The second comment suggested combining the indication allowed in § 347.50(b)(5), "For symptoms of chapping, peeling or scaling due to sunburn, windburn, or cracked lips," with the directions in § 347.50(d), "Apply liberally as often as necessary," to read "Apply liberally as needed for dry, chapped lips, wind or sunburned lips," adding that this shorter version would convey the same message. A third comment recommended that lip balm drug products be exempt from the warnings proposed in § 347.50(c) (1), (3), (5), and (7). The comment contended that the warnings are unnecessary, of no benefit to the public, and cannot be labeled conspicuously on small packages, as section 502(c) of the act would require. The comment also contended that off-package labeling would increase production costs and waste natural resources.

The agency has reviewed the Panel's recommended labeling and, wherever possible, has revesed the labeling so that only essential information is required. (See comments 22, 25, 26, and 27 above.) The agency has also deleted a number of warnings for products formulated as lip balms, including some the comment requested be deleted. (See comments 28, 29, and 31 above.) The agency believes that the labeling proposed in this tentative final monograph is necessary to assure proper and safe use of OTC drugs by the public and will not be confusing to consumers. Accordingly, the agency recommends that when an OTC skin protectant drug product is packaged in a container that is too small to contain the required labeling, the product be enclosed in a carton or be accompanied by a package insert that complies with the monograph.

33. On comment requested that sodium bicarbonate (baking soda) be exempted from the recommended warnings in § 347.50(c) (1), (2), and (9). Section 347.50(c)(1) states "For external use only." The comment contended that because sodium bicarbonate is both a food and an antacid, this warning statement would confuse the consumer. Section 347.50(c)(2) states "Avoid contact with the eyes." The comment contended that sodium bicarbonate is nonirritating according to the Draize Rabbit Eye Irritation Test and it is used in swimming pools and baths. Section 347.50(c)(9) states "Do not apply to extensive acid burns. Flood acid burns with cold tap water and consult a physician." The comment stated this warning should only be required when the label bears indications for relief from minor burns and sunburns.

In its evaluation of sodium bicarbonate, the Panel pointed out that sodium bicarbonate is an effective antipruritic in relieving itching due to nonpoisonous insect stings and bites or due to sunburn. It is also used to relieve the pain of minor acid burns (43 FR 34640). Because the indication "for the temporary relief of pain and itching due to minor burns, sunburn, * * *, insects bites, and minor skin irritations" is being specifically addressed in the rulemaking for OTC external analgesic drug products (44 FR 69768), the agency is transferring sodium bicarbonate to that rulemaking proceeding. The Topical Analgesic Panal also recommended that products containing any external analgesic active ingredient bear the warnings "For external use only" and "Avoid contact with the eyes." The agency will address the comment's statements about the applicability of these warnings to products containing sodium bicarbonate prior to the publication of a final monograph for external analgesic drug products in a future issue of the **Federal Register**. The Panel's recommended warning is § 347.50(c)(9) relating to acid burns will also be discussed in that publication.

34. One comment suggested substituting the term "concentration" for "dosage" in §§ 347.10 and 347.20. The comment explained that the term "dosage" is not accurate when read in context with the directions for use in §347.50(d).

The agency agrees with the comment. Accordingly, "dosage" has been changed to "concentration" where applicable in the tentative final monograph.

35. One comment requested that manufacturers not be required to put "directions for use" on petrolatum labels or at least have this option when label space limitations are a problem. This request was based on 21 CFR 201.116, which provides that the requirement for placing directions for use on labels can be omitted "insofar as adequate directions for common uses thereof are known to the ordinary individual." The comment concluded that petrolatum's long history of use qualifies it for this exemption.

Because petrolatum is used for many different indications, the agency believes that not including directions for use in the labeling might confuse consumers. It is also possible that consumers might not use the product as often as needed. Therefore, in the consumer's best interest, the agency is proposing that "directions" be required for petrolatum.

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. *Summary of ingredient categories.* The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and is proposing the following categorization of skin protectant active ingredients. For the convenience of the reader, the following table is included as a summary of the categoriation of skin protectant active ingredients by the Panel and the proposed classification by the agency:

Skin protectant active ingredients	Panel	Agency
Allantoin[1]	I	I.
Aluminum hydroxide gel	I	I.
Bismuth subnitrate	II	II.
Boric acid	II	II.
Calamine	I	I.
Cocoa butter	I	I.
Corn starch	I	(3)
Dimethicone	I	I.
Glycerin	I	I.
Kaoline	I	I.
Live yeast cell derivative[2]	III	III.
Petrolatum	I	I.
Shark liver oil	I	I.
Sodium bicarbonate	I	(4)
Sulfur	II	II.
Tannic acid	II	II.
White petrolatum	I	I.
Zinc acetate[1]	I	I.
Zinc carbonate	I	I.
Zinc oxide	I	I.

[1]Also classified by the Panel and the Agency as a Category III wound. healing agent.
[2]Classified only as a wound healing agent.
[3]Deferred.
[4]Transferred.

2. *Testing of Category II and Category III conditions.* The Panel recommended testing guidelines for skin protectant drug products (43 FR 34647). The agency is offering these guidelines as the Panel's recommendations without adopting them or making any formal comment on them. Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any skin protectant ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740). This policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made in the Panel's conclusions and recommendations follows.

1. The agency has added the word "drug" to the *"Scope"* in § 347.1 of the tentative final monograph and to the definition of skin protectant in § 347.3 to emphasize that the monograph covers only drug products and does not cover cosmetic products. (See comment 6 above.)

2. The agency has revised the definition of a skin protectant drug. (See comment 7 above.)

3. The agency is redesignating proposed Subpart D as Subpart C and placing the labeling sections of the monograph under Subpart C.

4. The agency is deferring review of the Panel's recommended warning limiting the use of shark liver oil and liver yeast cell derivative on children under 2 years of age until it reviews the use of these ingredients as part of its evaluation of diaper rash drug products. (See comment 12 above.)

5. The agency is not including corn starch in the monograph until diaper rash drug products are reviewed. (See comment 22 above.)

6. The agency has revised the labeling indications recommended by the Panel, and the permitted combinations in § 347.20 have been clarified to reflect the revised labeling indications. (See comment 22 above.)

7. The agency has revised the Panel's recommended warning statement in § 347.50(c)(3). (See comment 26 above.)

8. The agency has exempted lip balm drug products from the warnings in § 347.50(c) (1), (2), and (4). (See comments 28, 29, and 31 above.) To clarify the meaning of "lip balm," the agency is adding a definition of this term to § 347.3.

9. The agency has transferred sodium bicarbonate to the rulemaking for OTC external analgesic drug products. (See comment 33 above.)

10. The agency has substituted the term "concentration" for "dosage" where appropriate in the tentative final monograph. (See comment 34 above.)

11. In an effort to simplify OTC drug labeling the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and other applicable OTC drug regulations will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option.

12. The Panel proposed the same warning for dimethicone in § 347.50(c)(5) and for petrolatum and white petrolatum in § 347.50(c)(7). The agency proposes to redesignate this warning as § 347.50(c)(4) and to make it applicable to all skin protectants labeled with the same indications as dimethicone, petrolatum, or white petrolatum. The agency further proposes to revise this warning to include the term "deep" to describe wounds that should not be self-treated with these skin protectants and to advise consumers to consult a doctor for such wounds. These revisions are proposed because deep wounds, as well as puncture wounds, should be treated by a doctor for adequate protection against tetanus. As revised, the proposed warning for products labeled according to § 347.50(b) (1) or (2) reads as follows: "Not to be applied over deep or puncture wounds, infections, or lacerations. Consult a doctor."

The agency has examined the economic consequences of this proposed rulemaking and has determined that it does not require either a Regulatory Impact Analysis, as specified in Executive Order 12291, or a Regulatory Flexibility Analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Some skin protectant products may have to be reformulated to delete

nonmonogrpah ingredients. However, there are a number of Category I ingredients available for reformulation. The agency believes that minimal testing of nonmonograph ingredients will be done because of the availability of other ingredients for reformulation. Manufacturers will have up to 12 months to revise their product labeling. In most cases, this will be done at the next printing so that minimal costs should be incurred. Thus, the impact of the proposed rule, if implemented, appears to be minimal. Therefore, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC skin protectant drug products. 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 skin protectant drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on skin protectant drug products, a period of 120 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(d)(9) (proposed in the **Federal Register** of December 11, 1979; 44 FR 71742) this proposal 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 in 21 CFR Part 347

OTC drugs, Skin protectants.

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), it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new Part 347 to read as follows:

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
347.1 Scope.
347.3 Definitions.

Subpart B—Active Ingredients

347.10 Skin protectant active ingredients.
347.20 Permitted combinations of active ingredients.

Subpart C—Labeling

347.50 Labeling of skin protectant drug products.

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, 702, 703, 704).

Subpart A—General Provisions

§ 347.1 Scope.

(a) An over-the-counter skin protectant drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this part and each of the general conditions established in § 330.1.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 347.3 Definitions.

As used in this part:

(a) *Skin protectant.* A drug which protects injured or exposed skin or mucous membrane surface from harmful or annoying stimuli.

(b) *Lip balm.* A drug product that relieves and prevents dryness or chapping of the exposed surface of the lips.

Subpart B—Active Ingredients.

§ 347.10 Skin protectant active ingredients.

The active ingredients of the product consist of any of the following, within the established concentration for each ingredient:

(a) Allantoin, 0.5 to 2 percent.

(b) Aluminum hydroxide gel, 0.15 to 5 percent.

(c) Calamine, 1 to 25 percent.

(d) Cocoa butter, 50 to 100 percent.

(e) Dimethicone, 1 to 30 percent.

(f) Glycerin, 20 to 45 percent.

(g) Kaolin, 4 to 20 percent.

(h) Petrolatum, 30 to 100 percent.

(i) Shark liver oil, 3 percent.

(j) White petrolatum, 30 to 100 percent.

(k) Zinc acetate, 0.1 to 2 percent.

(l) Zinc Carbonate, 0.2 to 2 percent.

(m) Zinc oxide, 1 to 25 percent.

§ 347.20 Permitted combinations of active ingredients.

(a) Any two or more of the ingredients identified in § 347.10 (a), (d), (h), (i), and (j) may be combined provided the combination is labeled according to § 347.50(b)(1) and provided each ingredient in the combination is within the concentration specified in § 347.10.

(b) Any two or more of the ingredients identified in § 347.10 (a), (d), (e), (f), (h), (i), and (j) may be combined provided the combination is labeled according to § 347.50(b)(2) and provided each ingredient in the combination is within the concentration specified in § 347.10.

(c) Any two or more of the ingredients identified in § 347.10 (b), (c), (g), (k), (l), and (m) may be combined provided the combination is labeled according to § 347.50(b)(3) and provided each ingredient in the combination is within the concentration specified in § 347.10.

Subpart C—Labeling

§ 347.50 Labeling of skin protectant drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "skin protectant."

(b) *Indications.* The labeling of the product contains a statement under the heading "Indications" that is limited to one or more of the following phrases:

(1) *For products containing any ingredient in § 347.10 (a), (d), (h), (i), and (j).* "For the temporary protection of minor cuts, scrapes, burns, and sunburn."

(2) *For products containing any ingredient in § 347.10 (a), (d), (e), (f), (h), (i), and (j).* "Helps prevent and temporarily protects chafed, chapped, cracked, or windburned skin and lips."

(3) *For products containing any ingredient in § 347.10 (b), (c), (g), (k), (l), and (m).* "Dries the oozing and weeping of poison ivy, poison oak, and poison sumac."

(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."

(3) "If condition worsens or does not improve within 7 days, consult a doctor."

(4) *For products labeled according to § 347.50(b) (1) or (2).* "Not to be applied over deep or puncture wounds, infections, or lacerations. Consult a doctor."

(5) *For products formulated as lip balms.* The warnings in paragraph (c) (1), (2), and (4) of this section are not required for lip balm products.

(6) *For products containing aluminum hydroxide gel identified in § 347.10(b).* "Do not use on children under 6 months of age without consulting a doctor."

(7) *For products containing glycerin identified in § 347.10(f).* "Do not use on children under 6 months of age without consulting a doctor."

(8) *For products containing zinc acetate identified in § 347.10(k).* "Do not use on children under 2 years of age without consulting a doctor."

(d) *Directions.* The labeling of the product contains the following statement under the heading "Directions": "Apply liberally as often as necessary."

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements above.

Interested persons may, on or before April 18, 1983, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before June 15, 1983. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register.**

Interested persons, on or before February 15, 1984, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before April 16, 1984. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on April 16, 1984. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register** unless the Commissioner finds good cause has been shown that warrants earlier consideration.

Dated: January 27, 1983.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 83-3903 Filed 2-14-83; 8:45 am]

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federal register

Tuesday
February 15, 1983

Part III

Department of Agriculture

Food and Nutrition Service

Food Stamp Program; Disqualification Penalties for Intentional Program Violation, and Improved Recovery of Overpayments; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 276, and 277

[Amdt. No. 242]

Food Stamp Program; Disqualification Penalties for Intentional Program Violation, and Improved Recovery of Overpayments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking contains final regulations for the Food Stamp Program to implement certain provisions of the Omnibus Budget Reconciliation Act of 1981 and the Food Stamp Act Amendments of 1982. These provisions are aimed at deterring Food Stamp Program abuse, and improving recovery of overpayments. this rule also makes related changes based on recommendations received during the comment period on the proposed rulemaking.

DATES: This rule is effective February 15, 1983, and shall be fully implemented no later than April 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302; Phone: (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

This final rulemaking has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been classified "not major." It will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because the rule will not directly affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Robert E. Leard, Acting Administrator of the Food and Nutrition Service, has determined, in accordance with 5 U.S.C. 553, that good cause exists for making this rulemaking effective less than 30 days after publication. The Food Stamp Act Amendents of 1982 were enacted on September 8, 1982. Section 192(a) of these 1982 Amendments established the enactment date of the 1982 Amendments as the effective date for those provisions of the Omnibus Budget Reconciliation Act of 1981 not yet implemented by the Department. In addition, Section 193 of the 1982 Amendments established the enactment date of the 1982 Amendments as the effective date of its provisions. States are given until April 1, 1983 to fully implement the rule.

The final rule has also been reviewed with regard to the requirements of Pub. L. 96-354, and Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that the action will not have a significant economic impact on a substantial number of small entities. This action will implement those provisions of the Omnibus Budget Reconciliation Act of 1981 and the Food Stamp Act Amendments of 1982 aimed at deterring Food Stamp Program abuse and improving recovery of overpayments. State and local welfare agencies will be affected to the extent that they administer the Program. Those most affected will be individuals participating in the Program who are found to have committed a Program violation, and households which have received an overissuance.

Note.—In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB). (OMB approval No. 0584-0064.)

Background

The Department, on Monday, June 21, 1982, at 47 FR 26639, issued proposed regulations to implement those provisions of the Omnibus Budget Reconciliation Act of 1981 relating to the disqualification penalties for intentional Program violation, and the improved recovery of overpayments. These proposed regulations were republished in the **Federal Register** on Tuesday, June 22, 1982, at 47 FR 27038, to meet requirements for publication on the Tuesday/Friday schedule assigned to the Food and Nutrition Service. This rulemaking contains final regulations based on the provisions of the June 21 proposed rule.

This final rulemaking will implement the following provisions of the Reconciliation Act relating to the disqualification penalties for intentional Program violation (misrepresentation or fraud). First, the basis for disqualification is expanded to include the intentional making of false or misleading statements, misrepresentations, or the concealment or withholding of facts, as well as the commission of any act that constitutes a violation of any State food stamp statute. Second, mandatory disqualification periods of six months for the first offense, 12 months for the second, and permanently for the third offense will be imposed against any individual found to have committed an intentional Program violation, regardless of whether the determination was arrived at administratively or through a court of law. Third, State agencies are prohibited from increasing the benefits to the household of a disqualified person because of the disqualification. And fourth, the Department is required to promulgate regulation to ensure that information concerning disqualified individuals is forwarded by State agencies to the Department.

In addition, this final rulemaking will implement the following provisions of the Reconciliation Act regarding the improved recovery of overpayments. First, the household of the disqualified individual, rather than the household member guilty of an intentional Program violation, is held responsible for repaying the resultant overissuance and must agree to repayment in cash or to a reduction in its allotment. Second, in cases not the result of Program violation or State agency error, State agencies are required to collect overissuances from those persons still participating in the Program by reducing future allotments. Third, the amount by which State agencies can reduce the household's monthly allotment in the collection of overissuances not the result of intentional Program violation or State agency error is limited to 10 percent of the allotment or $10 per month, whichever will result in faster collection. And fourth, State agencies are allowed to retain 50 percent of the value of claims collected through use of the expanded basis for disqualification and 25 percent of the value of the collection of claims not the result of intentional Program violation or State agency error.

The Food Stamp Act Amendments of 1982 (Pub. L. 97-253, enacted on September 8, 1982) also contained some provisions relative to the recovery of recipient overissuances. First, State agencies are allowed to collect any type of overissuance by using means other than allotment reduction or cash repayment. Second, the household of a disqualified individual is allowed 30 days after it is requested to choose between cash repayment or a reduced allotment before the State agency takes action to reduce the household's allotment. And third, State agencies are specifically prohibited from retaining

any portion of recovered overissuances which resulted from State agency error. Although the 1982 Amendments were enacted after the Department issued the June 21 proposed rulemaking, the June 21 proposal contained proposed regulations dealing with the subject matter of these three statutory provisions. Therefore, this final rulemaking will also implement those provisions of the 1982 Amendments relating to the improved recovery of overpayments. (Other changes in the Food Stamp Program mandated by the 1982 Amendments are being addressed in separate rules.)

All comment letters received during the 60-day comment period on the June 21, 1982 proposed rulemaking were reviewed and considered during the development of the final regulations contained in this action. The Department received 72 comment letters. Comments were received from one member of Congress, one internal division and six Regional Offices of the Food and Nutrition Service, one other Federal agency, 29 State welfare agencies, four local welfare agencies, one local law enforcement agency, two eligibility workers, 11 public interest groups, and 16 members of the general public. This preamble discusses changes made from the proposed regulations as a result of those comments. The preamble also addresses other concerns of commenters where changes were not made. A full understanding of the basis and purpose of these final provisions may require reference to the June 21 **Federal Register** publication, and to the extent applicable, the contents of the preamble to the proposed rule are incorporated by reference.

I. Implementation

1. *General.* The proposed rule would have allowed the State agency to implement the rules as soon as possible, but no later than the first day of the month 120 days after publication. The Department's intent was to allow State agencies the option to implement the new regulations on the first day of the next yearly quarter following publication of the final rulemaking. Several State agencies have requested on a number of occasions that the Department provide for implementation of new regulations on the first day of yearly quarters, whenever possible, in order to facilitate making changes to their administrative procedures.

The Department received six comments on the proposed implementation schedule. One commenter expressed the hope that the final regulations would be implemented as soon as possible and without further delay. Two commenters supported giving State agencies until the first of the month 120 days from the date of publication of final rules. Two commenters felt that the proposed implementation timeframes were too short and unrealistic in view of the changes required. And, one commenter specifically requested that State agencies be given until the first day of the month 160 days following publication of final rules.

As a result of the passage of the implementation sections of Pub. L. 97-253, as discussed above, all of the legislatively mandated provisions contained in this final rule became effective when the 1982 Amendments were signed into law on September 8, 1982. The Department has decided to provide for implementation of the final rule no later than April 1, 1983. This will enable State agencies to implement it as soon as practicable or to take advantage of quarterly implementation should they choose to do so. It also should provide sufficient time to amend food stamp handbooks and forms, make any necessary changes in data processing systems and administrative procedures, and train eligibility workers.

2. *Disqualification penalties.* The proposed rule would have required the State agency to apply the disqualification penalties in effect at the time of the offense. The intent was to apply the new disqualification penalties of six months for the first violation, 12 months for the second, and permanent disqualification for the third offense only to individuals disqualified for actions which occurred after implementation of the final rule. The Department received a number of implementation-related comments as a result of this provision.

One commenter requested that we clarify whether the State agency would also have to apply the procedures for administrative disqualification and treatment of income and resources of disqualified members in effect at the time of the offense. Another commenter recommended that the final rule clearly provide that the disqualification procedures in the final rule apply only to acts of intentional Program abuse occurrring after implementation of the final rule. The Department never intended for the proposed policy regarding disqualification penalties to be extended to cover all the procedures contained in the rulemaking. It would not be administratively feasible or sound Program management to require the State agency to apply different administrative procedures for disqualifying Program violators depending on the date of the offense. Therefore, language has been added to the implementation section to clarify that all of the administrative procedures authorized by this final rule relating to disqualification, except the new disqualification penalties, apply to the disqualification of any individual suspected of an offense which occurred under the Food Stamp Act of 1977.

Five commenters expressed the belief that it would be cumbersome and administratively complex to apply the disqualification penalties themselves based on when the offense occurred, and recommended applying the disqualification penalties in effect at the time of the disqualification. Another commenter felt that additional clarification was needed concerning this matter. The Department continues to believe that it is most equitable to apply the penalties which were in effect at the time of the offense and does not view this requirement as administratively burdensome. Since participants are warned on the application form of the consequences of failure to comply with Program requirements, it would be unjust to later impose a different penalty than they expected to receive. Therefore, the Department has clarified in the implementation section that the new penalties will apply only for offenses which occur after implementation of the final rules. Moreover, the new penalties will apply only to those households which are certified on the basis of an application form which contained the new penalties or to currently participating households which have been given written notification that the new penalties have superceded the old penalties as described on earlier application forms.

Another issue raised by two commenters was the question of whether the new disqualification penalties would apply to recurring acts of the same offense which occurred over a period of time prior to and after implementation of the final rule. In view of the fact that the Department has decided to continue the current policy of prohibiting the State agency from separating acts of the same offense which recur over a period of time in order to impose separate penalties, it seems practicable to apply the new penalties under such circumstances. The individual will have been warned of the new penalties and have had ample opportunity to cease the intentional Program violation which could lead to disqualification. Therefore, clarification of this policy has been added to the implementation section.

The Department received three comments on implementation of the requirement that State agencies report to the Food and Nutrition Service (FNS) information on individuals disqualified for intentional Program violation. One commenter asked that we clarify whether State agencies will be required to report information on individuals disqualified prior to implementation of the final rule, and two commenters requested that State agencies be provided sufficient time to comply with the new reporting requirement. The Department agrees with the concerns raised by these commenters and is, therefore, giving State agencies until October 1, 1983 to report information on individuals disqualified under previous regulations implementing the Food Stamp Act of 1977.

3. *Claims.* The Department received a number of comments relating to implementation of the claims provisions in the final rule which warrant discussion. Three commenters requested that we clarify whether the procedures contained in the final rule would apply to claims pending upon implementation (i.e., those claims already established but not fully recovered). One of these commenters recommended that any claim being collected when the final rules are implemented continue to be collected under current procedures. Another commenter recommended that such claims be handled in accordance with the procedures in the final rules, and that claims already terminated remain terminated and suspended claims remain in suspense. Of primary concern to these commenters is the issue of whether or not the State agency will be allowed to utilize allotment reduction for recoupment of inadvertent household error claims already established upon implementation of the final rule. The Department sees no reason for limiting the State agency's use of this method of collection or any other procedure in the final rule to only those overissuances discovered after implementation. Therefore, language has been added to the implementation section to clarify that the recovery provisions contained in the final rule apply to any claim against a household for an overissuance which occurred under the Food Stamp Act of 1977.

The issue raised by the commenter concerning suspended claims remaining in suspense and terminated claims remaining terminated is somewhat more involved, and would seem to also apply to compromised claims. The proposed rule would have made optional the current requirements that State agencies suspend collection action on claims when certain criteria have been met, that claims be terminated after they are held in suspense for three years, and that the amount of a claim be compromised to an amount that will allow the household to repay within three years. The Department's intent in making these requirements optional was to provide State agencies increased flexibility in settling and adjusting claims, and to allow them to collect additional overissuances. There is, however, a major difference in purpose inherent in suspending claims which does not exist in the cases of compromising and terminating claims. Collection action is suspended on a claim when the State agency determines that collection is unlikely at the present time but that it may occur at some time in the future. The amount of a claim is compromised or collection action is terminated when the State agency determines that recovery of the full amount is not possible or that repayment is unlikely. The end result is that a suspension action is a temporary measure, while compromising and terminating are considered to be permanent by all parties involved. Therefore, the Department has decided to allow State agencies the option to reinstate any claims which have previously been suspended under the Food Stamp Act of 1977, and to authorize the use of the recovery provisions in the final rule for collecting such claims. However, the State agency cannot reinstate any previously compromised amounts of a claim or any terminated claims in order to collect such overissuances under the final rules.

Another issue raised by a commenter concerns exactly how far back the State agency can go in calculating the amount of an overissuance. The proposed rule would have continued the current policy of requiring the State agency to calculate the amount of an intentional Program violation claim back to the month the act occurred, regardless of the length of time that elapsed until the determination of intentional Program violation was made. It would also have allowed the State agency the option to calculate the amount of an inadvertent household or administrative error claim back to the month the error occurred, regardless of the length of time that elapsed until the error was discovered. The commenter requested that we stipulate that the amount of the claim can only be calculated back to the date of implementation of regulations under the Food Stamp Act of 1977. The Department agrees. In the preamble to the final regulations implementing the Food Stamp Act of 1977 issued on October 17, 1978 (at 43 FR 47846), the Department gave State agencies until November 1, 1979 to file claims against households for overissuances under the Food Stamp Act of 1964. Therefore, language has been added to clarify that the State agency can only go back to March 1, 1979 in calculating the amount of a claim.

The Department is taking this opportunity to clarify two other issues relating to the implementation of the claims provisions contained in the final rulemaking. First, the Department is adding language to make clear that the State agency retention of 50 percent of the value of collected intentional Program violation claims and 25 percent of the value of collected inadvertent household error claims applies to any collection action retroactive to January 1, 1982. This is consistent with the public notice issued on June 1, 1982 (at 47 FR 23786) which informed State agencies of the availability of these additional funds as an incentive to pursue collection of claims. And second, language is added to clarify that the first quarterly report on the Status of Claims Against Households, Form FNS-209, will cover the period from January 1 to March 31, 1983, and is due to FNS no later than April 30, 1983. (See 7 CFR 272.1(g)(58)).

II. Disqualification Penalties for Intentional Program Violation

1. *Household Concept.* The proposed rule would have continued the current practice of considering individuals disqualified for intentional Program violation (intentional misrepresentation or fraud) as nonhousehold members. Current Program regulations categorize certain types of individuals residing in a household as nonhousehold members for purposes of determining the household's eligibility and allotment level. Such nonhousehold members, which include roomers, live-in attendants, and others, are allowed to participate in the Program as separate households if otherwise eligible. One commenter pointed out that this classification is technically inaccurate for some individuals because they are ineligible to participate and their income and resources are considered as available to the remaining eligible household members. The Department agrees with this argument and, consequently, is taking this opportunity to revise the appropriate section of the regulations. The final rule divides the current category of nonhousehold members into two separate categories in order to distinguish between those individuals who are "excluded" from participation and those who remain

nonhoushold members. Excluded household members include those persons who are barred from participation because they are ineligible aliens or because of disqualification for failure to provide a social security number (SSN), for intentional Program violation, or for failure to comply with workfare requirements. (See 7 CFR 273.1(b)).

2. *Income and Resources of Disqualified Persons.* The proposed rule would count all of the disqualified member's income as available to the remaining household members but exclude the disqualified member when determining the household's size. Under current Program regulations, the income of the disqualified member is counted after a pro rata share (for the disqualified member) has been taken out. Current policy has resulted in some households receiving an increase in benefits when a household member is disqualified because the income which is not counted as available to the household may be substantial. Aware of this problem, Congress specifically prohibited any increase in benefits to the household of a person disqualified for intentional Program violation (Section 112 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981).

For commenters recommended that the Department require the use of the same method of calculating the budget for all households with a disqualified member (i.e., those households with a member disqualified for failure to provide an SSN or for being an ineligible alien as well as for intentional Program violation). Two of these commenters further suggested that the Department accomplish this objective by counting all of the income of a disqualified member as available to the household and applying a pro rate share reduction (for the disqualified member) to the household's allotment. The other two commenters requested that we utilize the procedure proposed for treatment of the income of household members disqualified for intentional program violation for all disqualifed household members. In addition, five commenters recommended that the current policy be retained and that the Department merely stipulate in the regulations that the household cannot receive any increase in benefits as a result of the disqualification of a household member for intentional Program violation.

The Department has decided not to change the proposed procedure. It is not possible to use the same method of calculating the household budget for all households with an excluded household member at this time. Section 6(f) of the Food Stamp Act of 1977, as amended, specifically mandates that the income of an Indivudual excluded from participation because of ineligible alien status be counted after a pro rata share has been taken out. This is the procedure currently being used for households with members disqualified for fraud and, as mentioned earlier, it has resulted in some households receiving an increase in benefits because the pro rata share of the disqualified member's income may respresent a substantial amount. Also, the Department does not believe that merely stipulating in the regulations that a household cannot receive any increase in benefits as a result of the disqualification would adequately address the problem. The effect of such a provision without changing the current method of treating the disqualifed member's income would be to penalize only those households whose monthly allotment increased beyond the previous level. Unless the allotment of every household with a member disqualified for intentional Program violation would be affected by the disqualification, the imposition of a disqualification penalty would be a meaningless and, possibly, unfair exercise. In addition, the Department believes that the procedure in the final rule is consistent with legislative intent, as demonstrated by the Senate Committee's recommendation that we "seriously consider attributing all of the income of the disqualifed member to the household (with no pro rata share reduction), during the disqualification period." See S. Rep. No. 97-128, 97th Cong., 1st Sess., p. 57 (1981).

The proposed rule would have continued the current policy of counting the resources of the disqualified member in their entirety as available to the remaining household members. One commenter pointed out that the proposed rule fails to specify that the disqualified member is not counted when determining the household's size for the purpose of comparing the household's resources to the resource eligibility limits. This issue arises because households of two or more members with an elderly household member are entitled to higher resource standard of $3,000 instead of the normal standard of $1,500. The Department agrees and is taking this opportunity to incorproate language to clarify this point. It is consistent with the Department's belief that any special consideration given to a household should be subject to the effects of the exclusion of a household member.

It should be noted that the language of the regulatory provisions on treatment of income and resources of disqualified persons has been revised slighty to reflect various technical changes. First, the overall emphasis of these provisions is shifted from disqualified individuals to excluded household members. This language change is necessary to conform with the change being made in household concept to distinguish nonhousehold members from excluded household members. Further, it helps to distinguish those individuals rendered ineligible because of ineligible alien status from those persons disqualified after having participated in the Program. And second, the last sentence of § 273.111 (c)(2)(ii) has been revised to specify that in the case of a household containing individuals excluded for being an ineligible alien or because of disqualification for refusal to obtain or provide an SSN all but the excluded member's pro rata share of the income is counted as *income* for the reamining household members. The proposal inaccurately specified that all but the excluded members' share of the income is counted as a deductible shelter expense. We received six comments on this technical inaccuracy in the proposed rule. Moreover, the Department subsequently overlooked the need to make the corresponding change in the final optional workfare program regulations which were undergoing internal clearance at that time. As a result, this technical inaccuracy beame a part of the Program's regulations when the optional workfare program regulations were issued on October 8, 1982 (at 47 FR 44692). (See 7 CFR 273.11(c)).

3. *Administrative responsibility.* The proposed rule would have established a separate section in the regulations which outlined the State agency's administrative responsibilities in investigating cases of alleged intentional Program violation and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to a court of appropriate jurisdiction. The provisions of this section on administrative responsibility were based on the requirements in current Program regulations governing administrative disqualifications. Related provisions of current regulations dealing with the State agency's responsibility for establishing a system for conducting administrative disqualification hearings and the conditions under which FNS would exempt any State agency from the requirement to establish such a system would have remained in the

section of the proposed rule concerning administrative disqualifications. And, included in the provisions on FNS exemptions from the requirement to establish an administrative disqualification system was a provision, taken from current regulations, which would require any State agency exempted from the requirement to refer cases of alleged intentional Program violation for prosecution by a court of appropriate jurisdiction.

The Department has decided to reorganize the provisions of the proposed rule on the State agency's responsibility for establishing an administrative disqualification system and the conditions for FNS exemptions from this requirement in the final rulemaking. This reorganization is intended to clarify the fact that it is the responsibility of each State agency to establish a system for administratively pursuing cases of alleged intentional Program violation unless they obtain an exemption from this requirement. Therefore, the section of the final rule on administrative responsibility has been expanded to include the provisions of the proposed rulemaking on this subject which would have been located in the section of the regulations on administrative disqualifications. The reorganization is also intended to clarify that any State agency exempted from the requirement to establish an administrative disqualification system must refer appropriate cases for prosecution by a court of appropriate jurisdiction. This provision has been relocated in the final rule to a new section dealing with the requirements for court referrals. The Department has also added language to the section of the final rule on administrative responsibility to clarify that if the State agency does not initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of intentional Program violation, the State agency must take action to collect the overissuance by establishing an inadvertent household error claim. (See 7 CFR 273.16 (a) and (g)).

The proposed rule would have deleted two provisions of current Program regulations which clarify when the State agency can conduct administrative fraud hearings. The first provision allows the State agency to conduct such hearings in cases where it believes the facts do not warrant civil or criminal prosecution through the courts and in cases previously referred for prosecution that were declined by the appropriate legal authority. And, the other provision clarifies that administrative fraud hearings can be conducted regardless of whether other legal action is planned against the household member. The Department deleted these provisions to reflect a change in the language of the statutory requirement governing State agency action in pursuit of cases of alleged Program abuse. Specifically, whereas the Food Stamp Act of 1977 previously mandated State agency proceedings against individuals alleged to have committed fraud either by way of administrative hearings or by referring such matters to appropriate legal authorities, or both (Section 6(b)), the language was amended by the Omnibus Budget Reconciliation Act of 1981 (Section 112 of Pub. L. 97-35) to simply require that the proceedings be either by way of administrative hearings or referrals to appropriate legal authorities.

The Department received a number of comments on the proposed rule which indicated the need for further clarification in this area. Two commenters suggested that the State agency be allowed to hold an administrative disqualification hearing after a court's decision if clear evidence exists indicating intentional Program violation, but the court failed to find an individual guilty (i.e., due to plea bargaining, pre-trial intervention, technical reasons, or the court's reluctance to impose permanent disqualification for a third violation). One of these commenters also felt that such a procedure would be appropriate if full repayment of the amount of overissuance was not ordered or the issue of restitution was not addressed by the court. And, a third commenter expressed the view that the Department's policy of limiting State retention of 50 percent of collected claims to those claims based on determinations that intentional Program violation occurred would force the State agency to hold administrative disqualification hearings on all cases in which the court does not render a guilty finding.

We continue to believe that Congress intended to prevent the State agency from pursuing the same case of alleged Program abuse by way of both an administrative hearing and referral for prosecution when the language of the statute was changed. Therefore, the final rule prohibits the State agency from initiating an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or a court of appropriate jurisdiction. This prohibition would not apply, however, in those instances where the factual issues of a case do not involve circumstances which are the same or related to those of the case against an individual previously referred for prosecution. In addition, the final rule clarifies those limited instances where a case which meets the criteria in the State agency's agreement with a prosecutor or which have previously been referred for prosecution should be pursued by way of an administrative hearing. These instances include cases where the State agency believes the facts do not warrant prosecution through the legal system, cases previously referred for prosecution which were declined by the appropriate legal authority, and previously referred cases where no action was taken by the prosecutor within a reasonable period of time. And, when no action is taken on a case referred for prosecution within a reasonable period of time, the State agency will have to formally withdraw the referral prior to holding an administrative disqualification hearing.

And lastly, the section of the proposed rule on administrative disqualifications would have included a stipulation that the State agency must base administrative disqualification for intentional Program violation on the determinations of hearing authorities arrived at through administrative disqualification hearings or on determinations reached by courts of appropriate jurisdiction. One commenter requested that we clarify whether signing of the waiver of right to an administrative disqualification hearing constitutes a finding of intentional Program violation by a hearing authority. Although the Department provided State agencies the option of allowing accused individuals to waive their rights to administrative disqualification hearings, the authority to base administrative disqualifications on such waivers was inferred rather than specifically stated. Therefore, the Department has decided to provide State agencies specific authority to base administrative intentional Program violation disqualifications on signed waivers of right to an administrative disqualification hearing. The provisions governing the basis of disqualification have been relocated to the section of the final rule on administrative responsibility due to their general applicability. (See 7 CFR 273.16(a)).

4. *Disqualification Penalties.* One commenter requested that language be added to this section to clarify that a disqualification penalty may be imposed without an administrative

disqualification hearing if the accused individual has signed a waiver of right to such a hearing. And, two commenters requested that the regulations address how the disqualification penalties are applied in cases of deferred adjudication (when a determination of guilt is not obtained from a court because the accused individual met the terms of a court order or the case was not prosecuted because the accused individual met the terms of an agreement with the prosecutor). The Department intends for the State agency to have the flexibility of not holding an administrative disqualification hearing if an individual signs a waiver of right to a hearing and, therefore, language is added to the final rule to clarify this point. In addition, language is added to clarify that a disqualification penalty may be imposed without a determination of guilt from a court if the accused individual signs a disqualification consent agreement in cases referred for prosecution. The procedure for allowing accused individuals to sign disqualification consent agreements in cases of deferred adjudication is discussed later in this preamble.

In response to one comment, the Department has removed the word "cash" from the sentence in this section which specifies that allotment reduction will be imposed if the household fails to agree to or fails to make restitution. The reference to cash repayment is no longer applicable since households may also repay with food stamp coupons. The Department has also added language to this sentence to clarify that the remaining household members must agree to make restitution within 30 days of the date the State agency's written demand letter is mailed or the household's monthly allotment will be reduced. This change is necessary to reflect Section 178 of the 1982 Amendments which allows the household only 30 days after it has been requested to make a selection of an alternative method of repayment before its monthly allotment is reduced. The provisions of the proposed rulemaking relative to action against households which fail to respond to the State agency's written demand letter at 7 CFR 273.18(d)(4) would have incorporated such a policy, and the Department believes that inclusion of language in this section will clarify the existence of this policy.

Another commenter requested that the Department clarify in this section that the remaining household members must begin repayment of the overissuance during the period of disqualification. Under current Program rules, the disqualified individual cannot be required to begin repayment until the disqualification period has ended. The proposed rule, however, would shift responsibility for repayment from the disqualified individual to the individual's household. Since the remaining household members, if any, may continue to receive a monthly allotment while the disqualified individual is not participating in the Program, the Department sees no reason for postponing repayment. In fact, the proposed rule would have provided for a reduction of the household's allotment if it failed to respond to the written demand letter sent at the time of disqualification within 30 days. Therefore, appropriate language has been added to this section to clarify this point. (See 7 CFR 273.16(b)).

5. *Basis for Disqualification.* In the proposed rule, the Department would have substituted separate definitions of misrepresentation and fraud for the current fraud definition. The regulations currently provide a definition of fraud to assist State agencies in determining through an administrative hearing whether or not fraud was committed. The proposed definitions of misrepresentation and fraud would have incorporated the language of the statute with only a minor modification. The modification would have maintained the present stipulation that the act of Program abuse must involve obtaining benefits to which the household is not entitled. In addition, the proposal would have replaced the word "fraud" with the term "intentional misrepresentation or fraud" wherever it occurs in the Program's regulations.

While six commenters supported the new definition of fraud and the additional definition of misrepresentation, the Department also received numerous recommendations for alternative approaches. Two commenters suggested that the two proposed definitions be combined and that the term "intentional misrepresentation or fraud" be replaced with the term "intentional misrepresentation." Another commenter also thought that the two proposed definitions should be combined, but recommended using the term "Program violation." One commenter requested that the word "fraud" be deleted wherever it appears in the Program's regulations. Three commenters expressed the opinion that the proposed definition of misrepresentation would not be useful because the substance of it is already contained in the current fraud definition, and another commenter requested that we retain the current definition of fraud. In addition, two commenters recommended that the basis of disqualification be expanded to cover misuses of coupons or ATP's to which recipients *are* entitled.

The basis for disqualification has been revised in the final rule to reflect the various recommendations made in this area. The final rule combines the proposed definitions of misrepresentation and fraud into a single definition of Program violation, and deletes the language which would have stipulated that the action must involve obtaining benefits to which the household is not entitled. As a result, the definition of Program violation will be consistent with the terminology of the Food Stamp Act of 1977, as amended, and encompass both intentional misrepresentation and violations as defined by Sections 6(b)(1)(A) and (B) of the Act. In addition, the final rule will replace the term "intentional misrepresentation or fraud" with "intentional Program violation" in those portions of the Program's disqualification regulations at 7 CFR 273.16 dealing with administrative disqualifications and the mechanism for administratively arriving at determinations that Program abuse has occurred. Since cases referred for prosecution are decided on the basis of statutes written in terms of misrepresentation and fraud, those terms will continue to appear in the portions of the Program's disqualification regulations relative to court referrals. Finally, the Department would like to reiterate its belief that Congress expanded the basis for disqualification in order to encourage the use of administrative disqualification hearings, rather than prosecution by a court of law, for determining whether or not Program abuse has occurred. State agencies have reported that they are reluctant to pursue administrative hearings because they view findings of fraud to be under the jurisdiction of the legal system. We hope that the changes being made on the basis for disqualification will encourage State agencies to pursue more cases of suspected Program abuse through administrative hearings because they will no longer have to prove fraud per se, but only intentional Program violation by the household (See 7 CFR 273.16 (c)).

6. *Disqualification Hearing Procedures.* Numerous comments addressed various aspects of the procedures for holding administrative disqualification hearings. The proposed rule would have incorporated the

current regulatory provisions governing the conduct of such hearings without any major changes. The proposal would have merely renamed the administrative "fraud" hearing as an administrative "disqualification" hearing and reorganized the provisions to locate all of the procedures relating to local level hearings at the end of the section rather than scattered throughout. The purpose of the reorganization was to simplify this section of the regulations for the majority of State agencies which provide administrative hearings only at the State level. Of the six commenters which addressed the issue of renaming the hearing, only one commenter recommended that it continue to be called a fraud hearing. No comments were received on the proposed reorganization to consolidate the provisions on holding local level hearings. In addition, the proposal would have made optional to State agencies the use of FNS-designed forms and notices, and eliminated the need to obtain FNS approval of those designed by State agencies. Although two commenters supported allowing State agencies to design their own forms and notices, one commenter recommended that these forms and notices be subject to FNS approval. The Department, however, continues to believe that State agencies should have the flexibility to develop their own forms and notices to meet their individual needs. Therefore, the final rule retains the proposed renaming of the hearing system, reorganization to consolidate local level hearing procedures, and State agency option to develop its own forms and notice without FNS approval.

The remaining comments centered around the issues of increasing State agency flexibility in holding the hearing and protecting the rights of the accused individual. In fact, one commenter called into question the Department's overall approach in regulating the way State agencies conduct hearings, and recommended that a greater degree of flexibility be provided. The Department is concerned that some State agencies may be experiencing difficulties in complying with the regulatory requirements in this area, but also feels that a compelling need exists to ensure that the accused individual's rights are not violated. Although the Food Stamp Act of 1977, as amended, does not specify the kind of administrative hearing that should be conducted to determine if Program abuse has occurred, the Department has consistently taken the approach that such hearings should be as close as possible to fair hearings requested by households. The few ways in which the procedures for the two types of hearings differ have resulted from the need to account for the fact that disqualification hearings are initiated by the State agency while fair hearings are not. And, the department has always given careful consideration to the constitutional requirements of due process in establishing the standards for both types of hearings. The Department intends to continue this approach in its ongoing review of the effectiveness of these regulatory provisions, and may be able to provide a greater degree of administrative flexibility at some time in the future.

The proposed rule would have continued to allow State agencies to consolidate an administrative disqualification hearing with a fair hearing if the factual issues arise out of the same, or related, circumstances. If the hearings are combined, however, the household must receive prior notice of this fact and the timeframes for conducting administrative disqualification hearings must be followed. One commenter recommended that the household be given the option to waive the 30-day advance notice period for an administrative disqualification hearing in order for the two hearings to be combined. The Department agrees. Since the household would have requested the fair hearing, we see no reason for preventing the household from choosing to have it held at the earliest possible date if the State agency is prepared to conduct the administrative disqualification hearing at the same time. In addition, the department is taking this opportunity to clarify that if the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not intentional Program violation has occurred, the household will lose its right to a subsequent fair hearing on the amount of the claim.

The proposal would also have continued to require that the State agency initiate action to make its disqualification decision effective within 90 days of notifying the household member that a hearing has been scheduled. One commenter recommended that the phrase "initiate administrative action" be changed to specify that the State agency must, at a minimum, issue a notice of decision within 90 days. The Department agrees. This change will make the state agency's responsibility when administrative disqualification hearings are held the same as for fair hearings. Therefore, the final rule specifies that the household and local agency must be notified of the decision within 90 days of the date the household member is notified that a hearing has been scheduled.

The household member or representative would continue to be entitled to a postponement of the scheduled hearing in the proposed rule. One commenter suggested that the Program's regulations should require that a request for postponement be made at some reasonable time prior to the scheduled hearing date. The commenter's argument was that allowing the household member or representative to request a postponement up until the time the parties have assembled for the hearing fails to take into consideration the administrative resources expended to reimburse the administrative hearing official as well as the assembled State agency witnesses for travel time and expenses. The Department agrees with the commenter's argument and believes that requiring the household member or representative to request a postponement at least 10 days in advance of the scheduled hearing will provide the State agency sufficient time to alter its hearing schedule and notify any scheduled witnesses of the rescheduled hearing. This will provide the household member or representative with 20 days in which to decide if additional time is needed to prepare the case or for any other essential reason. Therefore, the final rule has been revised to incorporate this change.

The proposal continued to allow the requested postponement of a scheduled hearing to be for up to 30 days. (When a hearing is postponed, the state agency's time limits are extended for as many days as the hearing is postponed.) One commenter recommended that the regulations specify that the household member or representative is entitled to only one postponement of up to 30 days. Another commenter suggested that any postponement or postponements granted to a household should be limited to a total of 30 days. And a third commenter recommended that the State agency be allowed to postpone the hearing for up to 30 days in order to consider or investigate additional issues or evidence which may surface at the hearing. The Department does not agree that the State agency should be allowed to postpone the hearing in order to search out additional evidence or investigate related cases of alleged wrongdoing. The presumption is made that the State agency possesses sufficient evidence to warrant disqualifying an individual when the administrative disqualification

hearing is scheduled. The reason for holding the hearing is to provide accused individuals an opportunity and a forum for refuting the allegations being made against them. Likewise, the Department agrees that the accused individual should not be allowed to postpone indefinitely answering to the allegations being made by requesting a series of 30-day postponements. Therefore, language has been added to the final rule to clarify that the hearing cannot be postponed for more than a total of 30 days and that the State agency has the option to limit the number of postponements to one.

The State agency would continue, under the proposed rule, to inform the household in advance of a scheduled hearing through a notice mailed by certified mail—return receipt requested. One commenter requested that the State agency be allowed to serve the notice of hearing by any method of personal service allowable under State law, provided that receipt of notice is made. The Department agrees with this recommendation. The intent in requiring that these notices be mailed by certified mail—return receipt requested was to relieve the household member of the burden of proving to the State agency that the notice was not received or, if received, that it was not timely received. It also let the State agency know whether or not the notice was received and, if received, the exact date the notice was received. We see no reason why the notice has to be mailed if the State agency can arrange for it to be delivered in person, as long as there is some mechanism for proof of receipt. Therefore, the final rule allows the State agency the option to provide the advance notice by any other method as long as proof of receipt is obtained.

In the proposed rule, the advance notice of a scheduled administrative disqualification hearing would continue to include a statement that the individual can call the food stamp office to get the name and number (if available) of someone who can give free legal advice. If free legal advice is not available, the food stamp office would provide the phone number of a lawyer referral service of the local bar association. Two commenters recommended that the notice contain a direct referral to a legal services office serving the project area. One commenter requested that the State agency only be required to notify the household of free legal services if such services are available. And, one commenter suggested that State agencies be given the flexibility to decide for themselves what method is best suited for informing clients of any legal assistance available to them. The Department never intended to put State agencies in the business of providing direct referrals to lawyers' offices. However, the Department does believe that, owing to the low income levels of participating households, most households being notified of an impending administrative disqualification hearing would benefit from knowing of any free legal services available to them. We are also concerned that the present requirement may be imposing an unnecessary burden on those State agencies and local project area offices where free legal services are not available. Therefore, the requirement has been revised in the final rule to stipulate that the advance notice of a scheduled hearing must advise the household member of the availability of free legal representation, if that service is availiable. This will make the requirement for notification of free legal representation the same for both administrative disqualification hearings and fair hearings.

The proposed rule would also have continued to require that the State agency attach a copy of its published hearing procedures to the advance notice of a scheduled hearing. One commenter recommended that this provision be modified to require that the State agency inform clients that they have the right to obtain a copy of the published hearing procedures by requesting it from their caseworker. The Department believes that, as a matter of policy, households should be provided every possible opportunity to understand their rights and responsibilities regarding administrative disqualification hearings, and that access to the State agency's published hearing procedures would assist some households to do so. We also understand that many households may be overwhelmed by the legal/technical nature of these procedures and that, as a result, the procedures would be of little value to them. Therefore, the Department has decided to retain the current requirement as a standard, and to allow State agences the option to inform households in the advance notice of their right to obtain a copy of the published hearing procedures upon request.

The household member or representative would continue to have 10 days from receipt of the notice of disqualification decision to present good cause reasons for failure to appear at the scheduled hearing, under the proposed rule. (If the State agency determines that the household member or representative had good cause for not appearing, the previous decision would not stand and the hearing would be rescheduled.) The Department has decided that the timeframe for presenting good cause reasons should be tied to the date of the missed hearing rather than to receipt of the notice indicating the hearing official's decision. Also, the Department believes that the household member or representative should be advised of the good cause provision in the advance notice of a scheduled hearing. Therefore, the final rule has been revised to incorporate these changes.

In addition, the proposed rule would have continued to specify that the disqualification period for nonparticipants at the time of the administrative disqualification or court decision would be deferred until the individual applies for and is determined eligible for program benefits. One commenter expressed the belief that this provision is significant enough to warrant a separate subparagraph in order to avoid it being overlooked. The Department agrees. In fact, the Department has decided to add four separate subparagraphs to ensure that this provision is not overlooked in any of the circumstances under which a disqualification penalty can be imposed (i.e., after a hearing official or court of appropriate jurisdiction has determined that a household member committed intentional Program violation, or after the accused individual has signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases of deferred adjudication).

The Department is also taking this opportunity to clarify two other issues which arose while considering a related comment. One commenter requested that we clarify whether a disqualification penalty, once imposed, continues to run during a period in which the disqualified individual's household ceases to participate in the Program. The Department believes that it should. Otherwise, any household with remaining household members, after the individual disqualified for intentional Program violation is excluded from the household, would be more severely penalized than households in which the disqualified individual is the only member. Since a household in which the disqualified individual is the only member does not have to obtain a determination of eligibility during a period of disqualification, we see no reason for requiring that larger households continue to participate as a prerequisite for completion of the disqualification

penalty imposed against a household member. The Department would also like to point out that the household's responsibility for repayment of any claim does not end merely because the household ceases to participate in the Program. Indeed, the household's monthly allotment will be subject to reduction for repayment of any outstanding amounts of an overissuance which resulted from an intentional Program violation on the part of a household member, once it resumes participation in the Program. Therefore, the final rule also contains four additional subparagraphs to ensure that these points are not overlooked when disqualification penalties are imposed.

And finally, the proposed rule would have continued to require the State agency to mail the household member written notification of the disqualification decision prior to beginning the period of disqualification. The notice of disqualification would be sent regardless of whether the disqualification penalty was being imposed because the hearing official found that the household member committed intentional Program violation or as a result of the accused individual having waived his/her right to an administrative disqualification hearing. In addition to informing the disqualified household member of the disqualification, the notice would also inform the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. Two commenters recommended that State agencies simply be required to provide the household with written notification of the disqualification rather than required to send it through the mail. Two other commenters recommended that the requirement be revised to require the State agency to notify the disqualified member of his/her disqualification, and to notify the remaining household members of their eligibility and benefit level. The concern raised by these two commenters is that simultaneous notification of the disqualified and remaining household members may not be possible because the hearing officer is a State level official while benefit determinations are sometimes made at the local level. And, another two commenters raised the objection that this mechanism failed to ensure notification of the remaining household members of the effect of the disqualification on their allotment because it was directed to the disqualified individual. The Department agrees with the arguments raised by these commenters and has decided to revise the requirements for notification of the disqualification. The final rule specifies the content of the written notification which must be provided to the disqualified and remaining household members, respectively, and provides State agencies the additional flexibility needed to ensure that written notice is provided to the appropriate parties (See 7 CFR 273.16(e)).

7. *Waived hearings.* The proposed rule would have provided State agencies the option of allowing accused individuals to waive their right to administrative disqualification hearings. This option was intended to provide State agencies a mechanism for expeditiously disposing of those cases of suspected Program abuse which prosecutors have declined to prosecute or which the State agency determines do not warrant referral for prosecution, and which involve individuals who are willing to be disqualified without having a hearing on the allegations being made against them. The household members suspected of intentional Program abuse would have been provided written notification of the possibility and mechanism for waiving his/her right to an administrative disqualification hearing as a part of the advance notice of a scheduled hearing. Once the State agency received a signed waiver, the household member would have been disqualified in the same manner as any person found to have committed intentional Program violation through a disqualification hearing or prosecution in a court of law. And, there would have been no administrative mechanism for appealing the disqualification available to the household member after the waiver of right to an administrative disqualification hearing had been signed.

Comments received by the Department on the waived hearings provision fell into two basic categories. The first category of comments recommended alternative approaches for allowing individuals suspected of intentional Program violation to waive their rights to a hearing. Four commenters requested that State agencies be given the option to allow the accused individual to waive an administrative disqualification hearing before a disqualification hearing is actually scheduled. Three commenters suggested that State agencies be provided the option to disqualify the household member on the basis of the facts which point to intentional Program violation and to provide the household member an opportunity to subsequently request a disqualification hearing or fair hearing if he/she disagrees with the State agency's action. And, two commenters recommended that we provide each State agency the option of establishing its own procedures for allowing individuals suspected of intentional Program violation to waive a disqualification hearing.

The Department does not agree that State agencies should be allowed to disqualify household members on the basis of a suspicion that intentional Program violation occurred and then leave it up to the disqualified individual to request a hearing. Allowing a procedure whereby the household member is disqualified prior to a hearing would be tantamount to providing a mechanism for circumventing the entire administrative disqualification hearing system, and might result in innocent household members being disqualified. A dual system of administrative disqualification and fair hearings was adopted to afford more protection for the rights of the individual suspected of intentional Program abuse. We continue to regard the consequences of a determination that intentional Program violation occurred as being very serious, and to believe that additional protections should be provided to the accused individual under such circumstances. It follows, therefore, that the Department does not believe State agencies should be given the opportunity to develop their own procedures without regard to specific standards established at the Federal level for ensuring that the individual's rights are protected. As a result, the Department has rejected the recommendations that State agencies be allowed to establish their own procedures without specific standards or to disqualify suspected Program abusers prior to an administrative disqualification hearing.

The question of providing State agencies the additional flexibility to offer the waiver possibility to individuals suspected of intentional Program violation before a hearing has actually been scheduled, however, does not present the Department with any major problems. Our original purpose in requiring that the household member suspected of intentional Program violation be provided written notification of the waiver possibility as a part of the advance notice of a scheduled hearing was to guarantee that the State agency possessed sufficient evidence to warrant holding a disqualification hearing before allowing the household member to waive the hearing. We continue to believe that

some third party review, made by someone other than the household's eligibility worker, should be completed to determine that the evidence supports holding a disqualification hearing before informing the household member of the waiver possibility. This review is necessary to ensure that innocent household members do not waive their rights to an administrative disqualification hearing on allegations which are fabricated, contrived, or otherwise without basis. Therefore, the waived hearings provision in the final rule has been revised to provide State agencies the option to inform the household member of the waiver possibility before a disqualification hearing has actually been scheduled, as long as the State agency has obtained a determination that the evidence against the household member warrants holding such a hearing.

The second category of comments on the waived hearings provision dealt with the specific procedures outlined in the proposed rulemaking. Two commenters felt that the regulations should contain the additional stipulation that written notification of the waiver possibility is the only form of communication allowable concerning the waiver. These commenters expressed the belief that any oral communication about the waiver by State agency personnel might intimidate the household member into waiving the hearing, even though the household member committed no wrongdoing. The Department disagrees with this analysis and sees no reason for preventing the State agency from responding to recipient inquiries concerning the waiver, or otherwise informing the client of the existence of this procedure, in person or by telephone. In no event, however, will such oral communication substitute for the requirement that the household member be provided written notification of the waiver possibility and the mechanism for waiving the disqualification hearing. The proposed rule would have required that the waiver form which the household member signed in order to waive his/her right to a disqualification hearing include various statements of the individual's rights and the consequences of signing the waiver. One commenter requested that the waiver form include the additional statements that the household member is not required to sign, and that the household member cannot be adversely affected or more severely penalized for not signing. While the Department agrees with the sentiments inherent in this recommendation, we do not believe that the inclusion of such statements will significantly enhance the protection of the individual's rights.

Also, we would like to point out that the requirements in the regulations represent only the minimum information which State agencies must include when developing their waiver forms. Each State agency has the flexibility to include whatever additional information it deems to be appropriate.

Among the statements which the proposed rule would have required on the waiver form was a statement of the fact that waiving the hearing will result in an automatic disqualification and an allotment reduction for the period of disqualification. One commenter pointed out that it is technically incorrect to refer to "an automatic" disqualification because the regulations require the State agency to provide the household member written notification prior to disqualification. Another commenter recommended that this sentence be expanded to clarify that the waiver will result in a disqualification penalty being imposed, even if the individual does not admit to the facts presented but still waives the hearing. And, three commenters requested that we revise the second half of the statement to indicate that a reduction in benefits will occur for the period of disqualification. These commenters felt that the proposed wording was misleading because allotment reduction is used elsewhere in the regulations to indicate a method of collecting claims and that allotment reduction may take place for longer than the disqualification period if the claim is being collected that way. The Department agrees with the concerns raised by these commenters and has revised the statement in the final rule so that the household member will be correctly informed that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification. In addition, the statement also clarifies that the disqualification and reduction in benefits will occur even if the accused individual does not admit to the facts as presented by the State agency but still decides to waive the disqualification hearing.

The waiver form would also have included the name and phone number of the disqualification hearing official responsible for resolving the case against the household member, along with a recommendation that the household member should contact that person if he/she does not understand the charges being made or the implications of waiving the disqualification hearing. Four commenters objected to inclusion of this information on the waiver form because they felt that the hearing officer was not the proper person to contact for information on the charges or the implications of signing the waiver. Two of these commenters expressed the belief that any discussion between the hearing official and accused individual prior to the waiver being signed would jeopardize the impartial status of the hearing officer, thereby presenting the household member with an excellent legal argument for subsequent reversal of the disqualification by a court of law. And, one of these commenters recommended that it would be more practical to simply require that a phone number be provided for the household member to call for more information. The Department recognizes that the hearing officer is not the proper person to discuss the charges or implications of signing the waiver with the household member. The hearing officer may not have any knowledge of the charges and facts which led to the allegations because the case has not been actually presented for a hearing. In addition, the household member may misinterpret remarks made by the hearing officer during discussions of the implications of signing the waiver as a recommendation on whether or not the accused individual should waive the hearing. Therefore, the requirement has been revised in the final rule to stipulate that the waiver include the telephone number and, if possible, name of a person to contact for additional information. This change will make the requirement for the waiver form the same as for the notice of adverse action, which informs household members of their right to request a fair hearing. Also, the Department strongly encourages State agencies to recommend to their hearing officers that they refrain from discussing cases with household members for the reasons already mentioned.

One commenter recommended that we clarify in the regulations what action the hearing officer should take on the waiver once it is received. The Department envisions that the role of the hearing officer would vary from State to State, depending on whether the State agency chose to have the signed waivers reviewed by the hearing officer prior to imposition of a disqualification penalty. There is nothing in the final rule to prevent a State agency from choosing to simply consider a case closed once the individual has signed a waiver and to disqualify the household member suspected of intentional Program

violation. Similarly, the final rule does not preclude the State agency from submitting the signed waivers to the hearing officer along with the evidence against the household member for a determination that the case warrants a disqualification action. Such a review would seem particularly appropriate if the State agency feared that household members did not fully understand the consequences or felt coerced into signing the waivers. The provisions on waiver of right to a disqualification hearing in the final rule are intended to provide the State agency with minimum standards to follow, and the flexibility to develop their own procedures based on these standards. (See 7 CFR 273.16(f)).

8. *Court referrals.* The section of the proposed rule on court imposed disqualifications has been expanded to include the requirements of current Program regulations on referral of cases for prosecution by a court of appropriate jurisdiction. These provisions would have been included in the section of the regulations on administrative disqualifications under the proposed rule. Included among the provisions which have been relocated to this section are the requirements governing agreements between State agencies and prosecutors for the referral of appropriate cases. The Department has relocated these provisions to this section of the regulations to assist those State agencies which are exempted from the requirement to establish an administrative disqualification system because they refer cases of alleged intentional Program violation for prosecution in accordance with an agreement with prosecutors or State law.

Of the comments received on the proposed regulations dealing with court imposed disqualifications, six commenters specifically addressed the issue of timeframes for imposing a disqualification penalty based on a court decision. The proposed rule would have required the State agency to initiate a court ordered disqualification period for currently eligible individuals the first month following the date the disqualification was ordered, whenever a court did not specify the date for initiating the disqualification period. Any other disqualification resulting from a court decision would have begun the first month following the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud. These are the same timeframes as required under current Program regulations. Three commenters recommended that the State agency be given until the first month following the date the State agency is served with a copy of the court order to initiate the disqualification. These commenters expressed the concern that it may take several months for a State agency to become aware of the court order, and that it would be impossible for the State agency to comply with the proposed timeframes under such circumstances. One commenter recommended that the disqualification period begin the first month which follows the date the household member receives written notification of the disqualification, so that the timeframes would be the same for court imposed disqualifications as they are for disqualifications resulting from an administrative hearing decision. One commenter suggested that the State agency should begin the disqualification period no later than the month following the month the court rendered the decision. And, another commenter requested that the State agency be given until the month following the month of the court order or determination of guilt when they occur after the 20th of a month.

The Department does not agree with the recommendations that the timeframes for initiating a disqualification period should be tied to State agency receipt of the court order. We reject the notion that the State agency, after having referred the case against a household member for prosecution, might somehow remain uninformed of the court's decision for a period of time longer than a few days. The Department also disagrees with the recommendation that the timeframes for initiating court imposed disqualification periods should be the same as those for administrative disqualifications. The timeframes for initiating disqualification periods resulting from administrative actions are tied to the written notification of the household member because that notification is the mechanism whereby the individual is advised of the State agency's decision, while in court imposed disqualifications the individual is advised of the court's decision at the time the court order is issued or the determination of guilt is made. The Department does, however, agree that State agencies may need more time to initiate the disqualification period than is currently allowed in those cases where the court order or determinations of guilt are made late in a month. Therefore, the timeframes have been revised in the final rule to require the State agency to initate the disqualification period within 45 days of the date the court ordered disqualification or found the individual guilty of civil or criminal misrepresentation or fraud. These timeframes will provide the State agency enough time to affect the benefits of the disqualified individual's household by the household's next normal issuance cycle.

The proposed rule would have required the State agency to provide the household member with written notification of the disqualification whenever the disqualification resulted from a court decision. As under current rules, the proposed rulemaking stipulated that the household member must be provided written notification prior to disqualification, whenever possible. One commenter objected to use of the phrase "whenever possible" and recommended that the regulations specifically require whether or not an advance notice must be provided. The Department would like to clarify that the current wording was chosen to account for the fact that a court may choose to specify a date for the disqualification period to begin, and it may not be possible for the State agency to provide the household member with advance notice of the disqualification prior to that date. Therefore, the language of this provision has been retained in the final rule. (See 7 CFR 273.16(g)).

9. *Deferred adjudication.* The Department also received a number of comments which indicated the need for additional clarification concerning cases of deferred adjudication. Cases of deferred adjudication are those cases either not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor or in which a determination of guilt is not obtained from a court due to the accused individual having met the terms of a court order. In either situation, cases of deferred adjudication result in the State agency not obtaining a determination of guilt in cases that have been referred for prosecution.

In the proposed rule, a household member suspected of an intentional Program violation would have been disqualified only after a determination from a hearing authority or by a court of appropriate jurisdiction that intentional Program violation had occurred, or after the accused individual waived his/her right to an administrative disqualification hearing. Two commenters recommended that a disqualification penalty also be imposed in cases of deferred adjudication, and another two commenters requested additional clarification concerning whether or not the household member could be disqualified in such cases. An

additional two commenters felt that a mechanism should exist for imposing a disqualification penalty against household members which are willing to be disqualified in cases of deferred adjudication, such as the procedures in the proposed rule for disqualifying individuals who waive their rights to administrative disqualification hearings.

The Department continues to believe that a determination that intentional Program violation occurred is necessary before a disqualification penalty can be imposed in a case referred for prosecution. Although we acknowledge that an admission of guilt may be implied in the individual's decision to comply with the terms of an agreement with the prosecutor or a court order, the statute does not provide for disqualification on that basis. At the same time, the Department also believes that accused individuals should be allowed to consent to disqualification in cases of deferred adjudication. Therefore, the Department has decided to adopt a procedure whereby State agencies can impose administrative disqualifications in those cases of deferred adjudication where the accused individual consents to disqualification.

Under this procedure, State agencies will have the option of allowing accused individuals to sign disqualification consent agreements as a part of their agreements with prosecutors or as a condition of a court order. Each State agency which chooses this option will develop either a disqualification consent agreement form or language to be included in the agreements reached by prosecutors and accused individuals or in the court orders. The final rule contains guidelines for the State agency to follow in establishing its procedures which are designed to ensure that the accused individual receives advance written notice of the consequences of agreeing to be disqualified. Once the State agency receives documentation to substantiate that the household member has signed a disqualification consent agreement, the individual will be disqualified from participation in the Program. The household member will be provided written notification of the disqualification prior to imposition of a disqualification penalty, whenever possible. Unless the court specifies a date in the court order for initiating the disqualification period, disqualification will begin within 45 days of the date the household member signed the disqualification consent agreement. And, the State agency will initiate collection of the claim which results from the overissuance, unless the individual has alredy repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

The procedures in the final rule for allowing accused individuals to consent to disqualification in cases of deferred adjudication are consistent with the Department's approach in providing State agencies the option to allow individuals to waive their rights to administrative disqualification hearings. Since the Department does not have the authority to mandate procedures for prosecutors or courts to follow, however, it will be the responsibility of State agencies to discuss this matter with prosecutors and ensure that individuals are disqualified only if the guidelines in the regulations are followed. As far as court orders are concerned, the State agency will have to encourage State and local prosecutors to recommend to the courts that the Program's procedures be adopted. The Department believes that this change will result in greater Program uniformity and fairness to household members suspected of intentional Program abuse while also protecting the rigths of such individuals. (See 7 CFR 273.16(h)).

10. *Reporting Requirement.* The proposed rule contained a provision for automated State agency reporting on individuals disqualified for intentional misrepresentation or fraud into a national disqualification file. The Department specifically invited comments on the administrative feasibility of the provision and on suggestions for alternative mechanisms for facilitating State agency reporting. A wide variety of comments were received from 31 commenters.

The most prevalent comment was that the proposal did not provide enough detail on how the proposed procedure would operate. This was primarily due to the fact that, although the Department had outlined the broad parameters of the most desirable alternative, we had hoped that commenters would provide information on what details were necessary to make it administratively feasible. However, the comments received on the establishment of an automated procedure were generally favorable. Only six commenters specifically stated that they were opposed to an automated disqualification reporting network, the primary reason being that some States do not have a centralized computer system. The Department has ascertained that, since all but four State agencies (South Dakota, Guam, Hawaii, Virgin Islands) will have terminals provided by FNS for the Integrated Quality Control System (IQCS) and the Department is interested in fully utilizing those resources, the automation of the National Disqualification Reporting Network is administratively feasible. The procedure for State agencies to input information on disqualified individuals into the master file is currently being developed by FNS. State agencies will access the file directly using batch job submissions through the IQCS terminals. The State agencies which cannot use the IQCS terminals could submit report requests through other automated means. State agencies which have no such access could request FNS Regional Offices to access the file for individual cases. More detailed instructions on submitting and accessing the information on disqualified individuals in the master file will be provided prior to implementation of these provisions.

The proposal contained a provision requiring submittal of disqualification reports within 30 days of the date the disqualification took effect. Two commenters suggested that 30 days was inadequate. However, the Department feels that it is desirable to have these records on file as soon as possible. Since the State agency learns of the disqualification before it takes effect, in some cases up to 45 days in advance, the Department feels that an additional 30 days allows sufficient time to report the disqualification. The Department has amended the final rule to account for reporting on individuals whose disqualifications could not be imposed because they were currently ineligible for participation in the Program. Therefore, the reports on disqualified individuals must be received by FNS no later than 30 days after the date the disqualification took effect, or would have taken effect for a currently ineligible individual whose disqualification is pending future eligibility.

Several comments addressed the data elements of the reporting procedure. In response to these comments, several items have been added to the reporting format. These are the birth date (as an additional identifier) of the disqualified individual, the county (or other appropriate political subdivision) in which the individual was disqualified, and the number of the disqualification (first, second, or third offense). Final regulations eliminate the proposed requirement for the report to contain the nature of the offense for which the individual was disqualified. As one commenter pointed out, the specificity of this element was unwarranted. One commenter suggested adding the date the disqualification period ended to the

report. Such a requirement would require updating the disqualification report at the end of each disqualification period. The Department has determined, in the interest of administrative simplicity, that once a disqualification takes effect it runs continuously until the end of the period imposed and is not to be halted mid-period because the disqualified individual has become ineligible for Program benefits. Therefore, no final updating of the file is necessary for individuals who have begun serving their disqualification penalty. The State merely needs to report the length of the period imposed and the date it took effect. A simple calculation is all that is needed to determine when the disqualification period has been served.

There are only two situations in which a report on a disqualification penalty needs to be revised after the initial submission. One is when the individual was ineligible at the time the disqualification should have taken effect and the initial report indicated that the imposition of the disqualification period was pending the individual's future eligibility. If the individual subsequently becomes eligible for Program benefits and begins serving his/her disqualification, the State agency must submit a report to FNS amending the file to indicate the date the disqualification took effect. The other situation in which the State agency must revise the initial report is when the determination of intentional Program violation is reversed by a court of appropriate jurisdiction. As two commenters pointed out, the procedure must provide for purging the file of disqualification reports which were subsequently invalidated by such a reversal. The final regulations have been revised to reflect the provisions for amending the file as described above. One commenter misunderstood the nature of the proposed procedure and requested that final regulations address the deletion of the information once the disqualification has been served. All information will be retained indefinitely so that the record shows the cumulative data on every individual ever disqualified for intentional Program violation. This is to ensure that appropriate penalties, based on the number of previous disqualifications, are imposed.

Six commenters provided suggestions on the requirements concerning when a State agency must access the information contained in the Disqualification Reporting Network file. An additional five commenters requested that individuals not be required to clear the disqualification list prior to certification. The proposed regulations addressed only circumstances in which a State agency *may* use the data and did not require States to access the national file in any circumstances. In response to the comments, the final rule contains a requirement for State agencies to access the information in the Disqualification Reporting Network: (1) When pursuing a disqualification to ascertain the appropriate penalty to impose, and (2) to determine the eligibility of individuals when the State agency has reason to believe a household member is subject to a disqualification penalty in another political jurisdiction. The automation of the reporting procedure and the fact that almost all State agencies will have direct access to the computer files should make it possible for the information to be received prior to the certification of the household in question.

In addition, State agencies may use the data in a variety of other ways. State agencies who have on-line access may want to screen all program applicants for prior or current disqualifications. Periodically, State agencies may wish to match the entire list of disqualified individuals against their current caseloads. The Department encourages State agencies to utilize the National Disqualification Reporting Network to the fullest extent possible as one means of combatting fraud and abuse in the Food Stamp Program.

The proposal at § 273.16(h)(5) stated that disqualifications which occurred prior to the implementation of the new penalties shall not be considered when determining the appropriate penalty to impose. This provision, as two commenters pointed out, conflicted with § 273.16(b) which stated that any disqualifications which occurred prior to the implementation of these penalties shall be considered as one previous disqualification. This section has been revised to bring it into conformance with § 273.16(b).

Three commenters requested that the Department address the funding provisions for establishing and maintaining the Disqualification Reporting Network. The Department has determined that because disqualification reporting is required by law and the retrieval of the information contained on file can be an integral part of an investigation, the Department will provide 75% funding for preparing the input documents and retrieving information from the Disqualification Reporting Network file to the extent that these functions are performed by State food stamp agency employees assigned specifically to the food stamp intentional Program violation investigation and prosecution functions. A subparagraph has been added to § 277.15(e) which will make this an eligible activity for 75% funding. Any costs incurred by the State agency in planning, designing, developing or installing a computerized procedure to implement the provisions of these regulations are eligible for 75% funding, provided the requirements of § 277.18 regarding the establishment of an information retrieval network are met. Because it is the Department's intention to utilize existing computer equipment to the extent possible and most of the design and development of the disqualification reporting procedure will be provided by FNS, State agency costs in this area should be minimal. (See 7 CFR 273.16(i) and 277.15(e)).

To comply with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Department is amending FNS Notice of Systems of Records, USDA/FNS-5, to provide for automation of the subcategory of data within the system pertaining to individuals disqualified for intentional Program violation.

III. Improved Recovery of Overpayments

1. *Categories of claims against households.* The proposed rule would allow the State agency to handle a claim as an intentional Program violation claim for collection and retention purposes only if an administrative hearing official or a court of appropriate jurisdiction determined that a household member had committed an intentional Program violation. One commenter pointed out that the proposed rule appeared to omit as intentional Program violation claims those claims established when the individual waives his/her right to an administrative disqualification hearing. The Department, however, never intended to preclude the State agency from establishing an intentional Program violation claim under such circumstances. Three commenters also recommended that State agencies be allowed to handle claims as intentional Program violation claims for collection and retention purposes in cases of deferred adjudication. For the reasons already discussed above, the Department has decided to allow States to establish intentional Program violation claims against households in cases of deferred adjudication only if the accused individual has signed a disqualification consent agreement in accordance with the procedures outlined in the Program's regulations. Therefore,

the sections of the final rulemaking on establishing and collecting claims against households, as well as State share of collected claims, have been revised to include as intentional Program violation claims those claims which result from the accused individual having signed either a waiver of his/her right to an administrative disqualification hearing or a disqualification consent agreement in cases of deferred adjudication. (See 7 CFR 273.18(a), (d), and (h)).

2. *Criteria for establishing claims.* In the proposed rule, the Department provided State agencies the option of establishing inadvertent household error and administrative error claims for which more than 12 months have elapsed between the month an overissuance occurred and the month the State agency discovered a specific case involving the overissuance. Current Program regulations contain a 12 month time limit for establishing such nonfraud claims. The Department has determined that it is not reasonable to expect a household to repay an overissuance which occurred many years prior to the date it was discovered. Therefore, the final rule limits State agency action on inadvertent household error and administrative error claims to those overissuances which occurred within six years of the date the overissuance was discovered.

The proposal also provided specific instances of overissuances for which the State agency would establish either an inadvertent household error or administrative error claim. Included among the instances for which the State agency would establish an administrative error claim was the case of a State agency having determined a household eligible or provided it with more benefits than it was entitled to receive pending a fair hearing decision. Two commenters recommended that overissuances resulting from aid pending fair hearing decisions be included as instances of inadvertent household error claims. These commenters correctly pointed out that such overissuances are not caused by the State agency but result from the household having requested a continuation of benefits pending a fair hearing decision. In addition, classification of these claims as administrative error claims prevents State agenices from collecting them through allotment reduction as well as from retaining 25 percent of the amount recovered. The Department agrees and has revised the final rule to include as instances of inadvertent household error claims those overissuances which result from the household having requested a continuation of benefits pending a fair hearing decision based on the mistaken belief that it was entitled to such benefits. (See 7 CFR 273.18(b)).

3. *Calculating the amount of claims.* Under the proposed rule, State agencies would have the option of calculating the amount of inadvertent household and administrative error claims back to the month the error occurred, regardless of the length of time that elaspsed until the error was discovered. Current Program regulations require State agencies to exclude those months that are more than 12 months prior to the date the overissuance was discovered when calculating the amount of such nonfraud claims. The final rule has been revised to require State agencies to exclude those months that are more than six years prior to the date the overissuance was discovered when calculating these claims. This change is necessary in order for the method of calculating the amount of inadvertent household error and administrative error claims to conform with the revised requirements for establishing such claims. The final rule has also been revised to apply this six year limit to the calculation of intentional Program violation claims. The Department believes that this six year time limit is both reasonable and consistent with similar standards for recouping losses of Federal funds.

The proposed rule would have required State agencies to consider the first month affected by a household's inadvertent failure to timely report a change in its circumstances as the month after the month in which the change occurred. If the household timely reported a change but the State agency did not act on the change within the required timeframes, the first month affected by the State's failure to act would have been the first month the State agency should have made the change effective. Two commenters pointed out that the proposed procedures for determining the first month affected by a household's failure to report a change in its household's circumstances do not take into account either the new monthly reporting or retrospective budgeting requirements. Another two commenters felt that the first month affected should be the same for household failure to report a change as for State failure to act upon a reported change. And, three commenters recommended counting as the first month affected by a household's failure to report a change in its circumstances as the first month in which the change would have been effective had it been properly reported.

The Department agrees with the concerns raised by these commenters and has adopted their recommendations. Therefore, the final rule has been revised to require the State agency to consider as the first month affected by a household's failure to report a change in its circumstances the first month in which the change would have been effective had it been reported. This approach takes into account the fact that the first month affected by a change in a household's circumstances may vary under a monthly reporting and/or retrospective budgeting system. It may vary depending on whether the change would affect prospective eligibility or retrospective allotment and whether the State agency is operating under a one or two month system. The Department is also adding language to clarify that the first month considered to be affected by a change had it been reported or, if it was reported, had it been acted upon, cannot be any later than two months from the month in which the change occurred.

The proposed rule would also have required the State agency to determine the correct amount of food stamp benefits, if any, the household was entitled to receive for each month that a household received an overissuance due to an act of intentional Program violation. One commenter requested that we clarify that the amount of the intentional Program violation claim would then be the difference between the allotment the household received and the allotment the household should have received. Although the proposed rule stipulated that the amount of an inadvertent household or administrative error claim would equal the difference between the allotment the household received and the allotment the household should have received, the fact that this procedure would apply to intentional Program violation claims was implied rather than specifically stated. Therefore, the final rule has been revised to clarify this fact. (See 7 CFR 273.18(c)).

4. *Collecting claims against households.* The proposed rule would have required the State agency to initiate collection action on all inadvertent household and administrative error claims: unless the claim is collected through offset; the total amount of the claim is less than $35, and the claim cannot be recovered by reducing the household's allotment; or the household cannot be located. One commenter requested that we clarify that collection action will be initiated against the household and not a

particular individual. The Department agrees and has made this change. Two commenters recommended that State agencies be given the option to combine separate claims of under $35 for the purpose of establishing a claim against the household. The Department also agrees with this recommendation and has included such an option in the final rule. We would like to point out that this option does not contain any limits on the period of time over which the separate claims of under $35 could have occurred, other than the restriction that State agencies exclude those months that are more than six years prior to the date the overissuance was discovered when calculating these claims. Since the State agency also has the option to calculate the amount of larger inadvertent household and administrative error claims back to the month the error occurred, we believe it is appropriate to provide State agencies the same flexibility when combining multiple overissuance of under $35.

State agencies would have initiated collection action on claims by sending the household a written demand letter for repayment, under the proposed rules. The written demand letter would inform the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household may pay the claim, and the household's right to a fair hearing if the household disagrees with the amount of the claim. One commenter recommended that the State agency be required to provide the household a written demand letter rather than required to send one. The Department has decided to make this change in order to be consistent with the revised requirements for providing, rather than sending, the household member notification of the disqualification and the remaining household members notification of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired when a household member is disqualified for intentional Program violation. Another commenter suggested that the written demand letter should contain a direct referral to a legal services program or bar referral service for legal representation. As previously explained, the Department disagrees with providing direct referrals to lawyers' offices but does believe that households being notified of a State agency action would benefit from knowing of any free legal services available to them. Therefore, the Department has decided to require that the written demand letter for repayment also inform the household of the availability of free legal representation, if that service is available. The Department is also clarifying that the written demand letter need not inform the household of its right to a fair hearing on the amount of the claim if the household has already had such a hearing as a result of consolidation of the administrative disqualification hearing with the fair hearing.

For inadvertent household error and intentional Program violation claims against households currently participating in the Program, the proposed rule would have allowed households 30 days from receipt of the State agency's written demand letter to choose a method of repayment. If a household failed to respond within 30 days of the date of receipt, the household's monthly allotment would be reduced without further notice being provided. The Department received three comments which recommended requiring the State agency to commence allotment reduction 30 days from the date the written demand letter is mailed rather than 30 days from the date it is received by the household. These commenters pointed out that requiring the State agency to act 30 days from the date of receipt of the written demand letter places the burden on the administering agency to determine the date of receipt. The Department never intended to put such a burden on the State agency, but rather intended to place responsibility with the household for initiating an alternative payment method. Therefore, the final rule has been revised to allow the household 30 days of the date the State agency's written demand letter is mailed to choose an alternative method of repayment or the household's monthly allotment will be reduced.

The proposed rule would also have provided State agencies the option to pursue other appropriate collection actions to obtain restitution of a claim against any household which fails to respond to a written demand letter. Other collection actions would include methods of collection not specifically provided for in the Program's regulations, such as turning the claims over to professional collection agencies or pursuing collection through a civil court action. One commenter requested that we clarify whether other collection actions could be initiated when claims resulted from an overissue due to an administrative error. The Department intended for State agencies to be able to pursue other collection actions for repayment of any type of claim. Also, we believe that Congress intended for State agencies to have this ability when it authorized the use of other methods of collection in Section 177 the 1982 Amendments. Therefore, language has been added to the final rule to clarify that other collection actions can be pursued for repayment of any inadvertent household error, administrative error, or intentional Program violation claim.

Three commenters raised the issue of how the State's share of claims collected through other collection actions would be calculated due to the fact that most collection agencies are paid a percentage of the amount recovered. One commenter requested that we clarify whether the Federal government and the State agency would share the cost of the collection service, another commenter recommended that the costs of collection be deducted from the total amount recovered, and the third commenter suggested that more administrative funds should be made available to make such collections feasible. The Department does not intend for State agencies to utilize this provision in order to relieve themselves of the responsibility for initiating or otherwise pursuing collection of claims against households, or as a mechanism for obtaining additional administrative funding. Therefore, the final rule has been revised to clarify that if a State agency chooses to pursue other collection actions and the household makes payment on the claim, the State agency's retention will be based on the actual amount collected from the household. However, since any costs associated with such collection actions are allowable Food Stamp Program administrative costs at the 50 percent funding level, the Department believes that basing the State agency's retention on the actual amount collected will not impose a burden on participating State agencies. It merely becomes incumbent on the State agency to ensure that the State's share of the costs associated with such collection services does not exceed an amount which the State agency can afford to pay. The Department plans to monitor the effectiveness of this provision and to further study the costs associated with other methods of collection. (See 7 CFR 273.18(d)).

5. *Changes in household composition.* If a change in household membership occurs, the proposed rule would have required State agencies to initiate collection action against the household containing a majority of the individuals who were household members at the time of the activity which resulted in the

overissuance. The requirement would have been the same for all households, regardless of whether the overissuance resulted from an inadvertent household or administrative error or due to an act of intentional Program violation. One commenter supported the proposed provision on changes in household composition. Ten commenters opposed collecting intentional Program violation claims against the household with a majority of the household members at the time of the offense, and eight of these commenters felt that the obligation to repay should remain with the disqualified individual. One commenter suggested we provide State agencies the flexibility to initiate collection against either the larger household or the household which is currently participating in the Program, and another commenter supported this procedure but recommended that collection be first pursued against the household which contains the disqualified individual. One commenter recommended that collection be initiated against the household containing a majority of the adults who were household members at the time of the offense, and another commenter recommended pursuing collection against the income earners of the disqualified individual's original household. And, one commenter could not understand the rationale behind holding the majority of original household members responsible for repayment but agreed that the procedure would be administratively simpler than pursuing collection from the disqualified individual.

The Department continues to believe that those persons who most benefited from the overissuance should be held responsible for repayment of the claim. However, we also acknowledge that a strict adherence to this provision may result in inequities when drastic changes have occurred in the composition of the disqualified individual's original household. Therefore, the Department has decided to provide State agencies the option to pursue collection against the household currently containing the individual disqualified for intentional Program violation if it determines that circumstances warrant such action. In addition, we also recognize that responsibility for repayment of any overissuance should not end merely because the State agency cannot locate or determine which household contains a majority of the members of the household which received the overissuance. Therefore, the final rule requires State agencies to initiate collection action against the household containing the head of the household at the time the overissuance occurred under such circumstances, unless the State agency has chosen to pursue collection against the household currently containing the individual disqualified for intentional Program violations. (See 7 CFR 273.18(f)).

6. *Method of collecting claims.* The proposed rule would have allowed the household to choose a method of repayment. If the household chose to repay in either cash or food coupons, the State agency would collect a lump sum payment for whatever amount the household was financially able to pay at one time. Then, the State agency would negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment. If the household fails to make a payment in accordance with the established payment schedule (either a lesser amount or no payment) the State agency would be required to renegotiate the payment schedule with the household. However, the State agency would have the flexibility to continue renegotiation with the household if it believes that the household's economic circumstances have not changed enough to warrant the requested renegotiation of the amount of repayment. The Department has decided to add language to clarify that the State agency also has the option to invoke allotment reduction against a currently participating household for repayment of an inadvertent household error of intentional Program violation claim if a settlement cannot be reached.

The proposed rule would also have required that in cases where the household is currently participating in the Program and a payment schedule is negotiated for repayment of an inadvertent household error or intentional Program violation claim, the State agency must ensure that the amount of the claim recovered through installment payments is not less than the amount which could be recovered through allotment reduction. One commenter requested that we clarify whether the provision refers to the total amount to be collected through installment payments or to the monthly installment payment. Another commenter asked that we clarify whether or not the State agency must automatically switch to allotment reduction when the amount which can be recovered through allotment reduction is greater than the installment amount. And, a third commenter suggested that it would be more appropriate to phrase the provision in terms of the applicable allotment reduction formulas which the monthly installment must exceed.

The final rule has been revised to clarify that the negotiated amount to be repaid each month through installment payments must not be less than the amount which could be recovered through reduction of the household's monthly allotment. The Department does not intend for State agencies to have to compare the monthly installment amount with the amount that could be recovered through reduction of the household's monthly allotment. Therefore, the final rule also clarifies that the amount to be repaid each month through installment payments, once negotiated, generally will remain unchanged regardless of subsequent changes in the household's monthly allotment. However, since the household's economic circumstances may change enough to warrant a renegotiation of the amount to be repaid each month through installment payments, the final rule also provides both the State agency and the household the option to initiate renegotiation of the payment schedule if they believe the circumstances warrant such an action.

Under the proposed rule, State agencies would collect payments for inadvertent household error and intentional Program violation claims from households currently participating in the Program by reducing the households' food stamp allotments, unless a household requests another method of repayment. Two commenters requested that State agencies be allowed to offer households which have received an overissuance due to administrative error the opportunity to repay the claim through allotment reduction. The Department sees no reason for preventing households from choosing to repay an administrative error claim through allotment reduction and believes that this change will provide State agencies a better opportunity to effectively collect such overissuance. Therefore, the final rule has been revised to require State agencies to accept this method of repayment form any currently participating household which prefers to use allotment reduction for repayment of an administrative error claim. In addition, the Department has decided to allow the State agency and the household to negotiate the amount by which the household's monthly allotment will be reduced for repayment of an administrative error claim should the household choose to utilize this method of repayment.

The proposed rule would have required State agencies to inform the

household of the amount of food stamps to be recovered each month and of the availability of other methods of repayment prior to reduction. One commenter suggested that State agencies have no way of knowing what a household's monthly allotment will be for the next six, twelve, or thirty-six months and recommended that households be informed of the applicable allotment reduction formula instead. The Department agrees that circumstances may exist where the State agency is unable to inform the household of the exact amount of food stamps to be recovered each month through allotment reduction. Therefore, the requirement has been revised in the final rule to stipulate that the household be informed of the appropriate formula for determining the amount of food stamps to be recovered each month and the effects of that formula on the household's allotment.

Current Program regulations contain a formula for determining the amount by which a household's monthly allotment can be reduced for repayment of a fraud claim. This formula limits the reduction amount to the lesser of 25 percent of the household's monthly allotment or the fraudulent individual's pro rata share of the entitlement. Although the proposed rule would not have changed this formula for intentional Program violation claims, it would add a separate formula for determining the amount by which a household's monthly allotment could be reduced for repayment of an inadvertent household error claim. The proposed formula would limit inadvertent household error claim reductions to the greater of 10 percent of the household's monthly allotment or $10 per month. Five commenters recommended that the formula for determining the amount by which a household's allotment can be reduced be the same for both types of overissuances. Two of these commenters suggested using the formula in the proposed rulemaking for inadvertent household error claims, and one recommended compromising the two formulas to the greater of 20 percent of the household's monthly allotment or $10 per month for both types of claims. Another seven commenters pointed out the need to clarify how to determine the amount by which the household's allotment is reduced for intentional Program violation claims during the period of disqualification. And finally, one commenter objected to the fact that the forumula for intentional Program violation claims requires State agencies to do two computations, and recommended that we use a flat percentage instead of the current formula.

The Department has decided to revise the formula for determining the amount by which a household's monthly allotment can be reduced for repayment of intentional Program violation claims on the basis of these comments. The final rule will limit the amount of such reductions to the greater of 20 percent of the household's monthly entitlement or $10 per month. The formula uses the household's monthly entitlement rather than monthly allotment in order to account for the exclusion of the household member during the period of disqualilfication. Therefore, the amount of food stamps to be recovered each month for repayment of intentional Program violation claims will always be based on the household's potential monthly allotment, the amount of benefits the household would have received if not for the disqualification of a household member. The Department believes that the chosen formula will significantly lessen the frequency of recalculations of the recovery amounts and will not impose an undue burden on households of any particular size. (See 7 CFR 273.18(g)).

7. *Submission of Payments.* Most of the 21 comment letters addressing this paragraph suggested minor clarifications of the regulatory language or changes to the FNS–209 form. The comments on the FNS–209 will be addressed here only to the extent that they affect the regulations. Those that are more procedural in nature will be addressed in the instructions provided with the transmittal of the revised FNS–209 to State agencies.

Eight commenters addressed the claim retention factors. Two of them suggested an increase to 50% for inadvertent household error claims and one felt that State agencies should be allowed to retain a portion of administrative error claims as well. Another commenter felt that State agencies should retain 50% when the prosecutor agrees not to pursue the case if the recipient agrees to repay the claim. The other comments expressed agreement with the retention factor outlined in the proposal. The Department wishes to clarify that the retention factors contained in this rule are legislatively mandated and cannot be changed by regulation. (See Section 16(a) of the Food Stamp Act of 1977, as amended).

The proposed regulations at § 273.18(h)(1) stated that the State agency shall retain the value of collected claims which include the "total value of allotment reductions to collect inadvertent household error and intentional misrepresentation or fraud claims, but does not include the value of the reduction of allotments resulting from a disqualification." A similar phrase was included in § 273.18(h)(2). Three commenters recommended that the language be clarified to reflect the Department's intent that the value of the allotment reduction resulting solely from impostiton of a disqualification period not be considered a recovered claim. The language has been revised to make this intent clear in the final regulations.

Four commenters requested that the timeframes for submission of the FNS–209 remain monthly rather than quarterly because some State agencies maintain a monthly reporting system, and that the additional calculation required to compile the data into a quarterly report increases rather than simplifies the State's reporting responsibilities. Two other commenters specifically expressed their support for the change to a quarterly submission. In as much as the adjustments to the letters of credit based on claims collection information occur quarterly and the Department has no need for more frequent submissions, the Department has decided to retain the provision for quarterly submissions of the FNS–209. The Department believes that for the majority of States this provision eases their recordkeeping and reporting responsibilities. Those State agencies which currently compile the data monthly have the option of amending their systems so that only one quarterly tabulation is necessary.

Finally, the FNS–209 has been revised to incorporate the requirements of this final rulemaking. Since the remarks section of the previous form has been eliminated, references to including information in remarks have been changed to including necessary information on an attachment to the report. (See 7 CFR 273.18(h)).

8. *Overpayment of Claims.* Two commenters provided suggestions for making the method of repayment to households for overpaid claims more specific. One commentor suggested mandating that repayment be made in the same manner as that used by the household to make its payments. However, such a provision would be inappropriate if, for example, the household paid its claim via allotment reduction and is no longer participating in the Program when the overpayment becomes known. The other suggestion was to specify that repayment shall be made either in cash, food stamps or a combination of both, as established by State agency option. As the suggested language merely includes several of the

options available to State agencies under the proposed provision the Department has determined that no change in the proposed regulatory language is necessary. Although the method of repayment is a State agency option, the Department would like to reemphasize the need to take into account the household's circumstances in determining the appropriate method of repayment.

The proposal indicated that State agencies must report repayments to households only if repayment is made from funds collected through overissuance recoveries. The Department would like to clarify that, if the collection of the overpaid claim was reported on an FNS-209, any refunds of those claims previously reported as collected must be reported on the FNS-209 for the quarter in which refund was made.

One comment indicated a need to clarify how to account for amounts that the State agency previously retained on collected claims that were subsequently returned to the household. The FNS-209 has been revised so that amounts refunded to households for overpaid claims which were previously reported on the FNS-209 are to be subtracted from the total of the claims collected for the quarter in which the refund was made. The appropriate retention factor is then applied to the reduced amount This calculation will automatically reduce the State agency's retention amount by the amount previously retained on the claims the household had overpaid.

Another commenter suggested that State agencies should be required to notify the household of the overpayment and how to obtain payment as soon as the overpayment becomes known to the State agency. This provision has been revised slightly to require that the repayment of overpaid claims be made as soon as possible after the overpayment becomes known. Since repayment is automatic and the State agency chooses the method of repayment, the Department has decided that no other notification is necessary. The State agency may wish, however, to explain the reason for the repayment to the household at the time of the repayment to avoid any confusion on the part of the household. (See 7 CFR 273.18(h)(4)).

9. *Destruction of Coupons.* The proposed rules contained a provision which would require State agencies to destroy any coupons received in payment for claims. Four comments were received which stated that State agencies should be given the option of returning unused, intact coupon books to inventory. In response, the Department has amended the rule to allow this. If the claims collection unit has access to inventory and can exercise the proper accountability controls for transmitting the usable coupon books, it may opt to return them to inventory. Otherwise, the State agency must destroy the coupons which are not returned to inventory in accordance with the procedures outlined in the Program's regulations. The final rule also clarifies that the $500 level for destruction of returned coupons by State agencies without prior FNS approval applies to each claims collection point within the State for any month. Where the State agency also receives returned coupons directly from households, the State agency is considered an additional claims collection point and the $500 level applies to the coupons received by the State agency. A separate Form FNS-471, Coupon Account and Destruction Report, must be completed each time coupons are destroyed and the State agency will submit all of the forms FNS-471 which are completed during the calendar quarter covered by the Form FNS-209 along with that form. (See 7 CFR 273.18(i)).

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Records, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Penalities.

7 CFR Part 277

Food stamps, Government procurement, Grant programs—social programs, Investigations, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 272, 273, 276, and 277 are being amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, a new paragraph (g) (58) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(58) *Amendment 242.* State agencies shall implement the disqualification penalties for intentional Program violation, and the improved recovery of overpayments provisions contained in Amendment 242 no later than April 1, 1983.

(i) The provision in § 273.11(c) for handling the income and resources of an individual disqualified for intentional Program violation shall apply to any individual disqualified for such a violation since the implementation of the fraud disqualification provisions of the Food Stamp Act of 1977. The disqualification procedures for intentional Program violation in § 273.16 shall apply to any individual alleged to have committed one or more acts of intentional Program violation since the implementation of the fraud disqualification provisions under the Food Stamp Act of 1977. However, the disqualification penalties in § 273.16(b) shall apply only to individuals disqualified for acts of intentional Program violation which occur after implementation of this amendment. In addition, the disqualification penalties in § 273.16(b) shall apply only to individuals disqualified for acts of intentional Program violation which occurred either during a certification period based on an application form containing these penalties or after receipt of written notification from the State agency of these penalties. Recurring acts of intentional Program violation which occur over a period of time prior to and after implementation of this final rule shall not be separated. Only one penalty can be imposed for such recurring violations and the household member shall be disqualified in accordance with the disqualification penalties specified in this amendment. The reporting requirements of § 273.16(i) shall become effective upon implementation, however, the State agency shall have until October 1, 1983, to submit such reports on individuals disqualified under previous regulations implementing the Food Stamp Act of 1977.

(ii) The recovery provisions for claims against households in § 273.18 shall apply to any overissuance caused by an action which occurred after implementation of regulations promulgating the Food Stamp Act of 1977, as amended. And, the procedures for calculating the amount of overissuances as specified in § 273.18(c) shall apply to any month in which an overissuance occurred retroactive to March 1, 1979. However, State agency retention of 50 percent of the value of collected intentional Program violation claims and 25 percent of the value of collected inadvertent household error

claims as provided in § 273.18(h) shall apply to any collection action retroactive to January 1, 1982. The State agency shall have the option of reinstating any claim previously suspended, but not terminated, under the recovery provisions of regulations implementing the Food Stamp Act of 1977 and, once reinstated, such claims shall be subject to the recovery provisions contained in this amendment. However, the State agency shall not reinstate any amount of a claim compromised or any claim terminated under previous regulations implementing the Food Stamp Act of 1977, as amended. The submission requirements for the Form FNS-209, Status of Claims Against Households, as set forth in § 273.18(h) shall become effective with the quarter ending March 31, 1983.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.1, paragraphs (b)(3) and (b)(6) are removed; paragraphs (b) (1), (2), (4), (5), and (7) are redesignated as paragraphs (b)(1) (i), (ii), (iii), (iv), and (v), respectively; introductory paragraph (b) is redesignated as the introductory paragraph of paragraph (b)(1); a new title is added for paragraph (b); and a new paragraph (b)(2) is added. The additions read as follows:

§ 273.1 Household concept.

* * * * *

(b) *Nonhousehold and excluded household members.* * * *

(2) *Excluded household members.* The following individuals residing with a household shall be excluded from the household when determining the household's size for the purposes of assigning a benefit level to the household or of comparing the household's monthly income with the income eligibility standards. However, the income and resources of excluded household member shall be considered available to the remaining household members in accordance with § 273.11(c). Excluded household members may not participate in the Program as separate households.

(i) *Ineligible aliens.* Individuals who do not meet the citizenship or eligible alien status in § 273.4(a).

(ii) *SSN disqualified.* Individuals disqualified for failure to provide an SSN, as set forth in § 273.6.

(iii) *Intentional Program violation disqualified.* Individuals disqualified for intentional Program violation, as set forth in § 273.16.

(iv) *Workfare sanctioned.* Individuals against whom a sanction was imposed while they were participating in a household disqualified for failure to comply with workfare requirements, as set forth in § 273.22.

* * * * *

3. In § 273.8, paragraph (j) is revised to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(j) *Resources of nonhousehold and excluded household members.*—(1) *Nonhousehold members.* The resources of nonhousehold members, as defined in § 273.1 (b)(1), shall not be counted as available to the household.

(2) *Excluded household members.* The resources of excluded household members, as defined in § 273.1 (b)(2), shall be counted as available to the remaining household members.

4. In § 273.9, paragraph (3) or paragraph (b) is revised to read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) *Definition of income.* * * *

(3) The earned or unearned income of an individual disqualified from the household for intentional Program violation, in accordance with § 273.16, or as a result of a sanction imposed while he/she was participating in a household disqualified for failure to comply with workfare requirements, in accordance with § 273.22, shall continue to be attributed in their entirety to the remaining household members. However, the earned or unearned income of individuals disqualified from households for failing to comply with the requirement to provide an SSN, in accordance with § 273.6, or for being an ineligible alien, in accordance with § 273.4, shall continue to be counted as income, less a pro rata share for the individual. Procedures for calculating this pro rata share are described in § 273.11(c).

* * * * *

5. In § 273.11, paragraph (c) is revised to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(c) *Treatment of income and resources of excluded members.* Individual household members may be excluded for being ineligible aliens, because of disqualification for failure or refusal to obtain or provide an SSN, or for intentional Program violation, or due to the imposition of a sanction while they were participating in a household disqualified for failing to comply with workfare requirements. During the period of time that such household members are ineligible, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section.

(1) *Excluded for intentional Program violation disqualification or workfare sanction.* The eligibility and benefit level of any remaining household members of a household containing individuals excluded because of disqualification for intentional Program violation or imposition of a sanction while they were participating in a household disqualified for failure to comply with workfare requirements shall be determined as follows:

(i) *Income, resources, and deductible expenses.* The income and resources of the excluded household member(s) shall continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, and excess shelter deductions shall continue to apply to the remaining household members.

(ii) *Eligibility and benefit level.* The excluded member shall not be included when determining the household's size for the purposes of:

(A) Assigning a benefit level to the household;

(B) Comparing the household's monthly income with the income eligibility standards; or

(C) Comparing the household's resources with the resource eligibility limits. The State agency shall ensure that no household's coupon allotment is increased as a result of the exclusion of one or more household members.

(2) *Excluded for others causes.* The eligibility and benefit level of any remaining household members of a household containing individuals excluded for being an ineligible alien or because of disqualification for refusal to obtain or provide an SSN shall be determined as follows:

(i) *Resources.* The resources of such excluded members shall continue to count in their entirety to the remaining household members.

(ii) *Income.* A pro rata share of the income of such excluded members shall be counted as income to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the excluded member's income and dividing the income evenly among the household members, including the excluded members. All but the excluded members' share is counted as income for the remaining household members.

(iii) *Deductible expenses.* The 18 percent earned income deduction shall apply to the prorated income earned by such excluded members which is

attributed to their households. That portion of the households' allowable shelter and dependent care expenses which are either paid by or billed to the excluded members shall be divided evenly among the households' members including the excluded members. All but the excluded members' share is counted as a deductible shelter expense for the remaining household members.

(iv) *Eligibility and benefit level.* Such excluded members shall not be included when determining their households' sizes for the purposes of:

(A) Assigning a benefit level to the household;

(B) Comparing the household's monthly income with the income eligibility standards; or

(C) Comparing the household's resources with the resource eligibility limits.

(3) *Reduction or termination of benefits within the certification period.* Whenever an individual is excluded within the household's certification period, the State agency shall determine the eligibilty or ineligibility of the remaining household members based, as much as possible, on information in the case file.

(i) *Excluded for intentional Program violation disqualification.* If a household's benefits are reduced or terminated within the certification period because one of its members was excluded because of disqualification for intentional Program violation, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the excluded member is notified of his or her disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits, unless the household has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing.

(ii) *Excluded for other causes.* If a household's benefits are reduced or terminated within the certification period because one or more of its members is an ineligible alien, was sanctioned while they were participating in a household disqualified for failure to comply with workfare requirements, or was disqualified for refusal to obtain or provide an SSN, the State agency shall issue a notice of adverse action in accordance with § 273.13(a)(2) which informs the household of the exclusion, the reason for the exclusion, the eligibility and benefit level of the remaining members, and the actions the household must to end the exclusion.

* * * * *

6. In § 273.13, paragraphs (b)(7) and (b)(10) are revised to read as follows:

§ 273.13 Notice of adverse action.

* * * * *

(b) *Exemptions from notice.* * * *

(7) A household member is disqualified for intentional Program violation, in accordance with § 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. The notice requirements for individuals or households affected by intentional Program violation disqualifications are explained in § 273.16.

* * * * *

(10) Converting a household from cash and/or food stamp coupon repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in § 273.18.

* * * * *

7. Section 273.16 is revised to read as follows:

§ 273.16 Disqualification for intentional Program violation.

(a) *Administrative responsibility.* (1) The State agency shall be responsible for investigating any case of alleged intentional Program violation, and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to a court of appropriate jurisdiction in accordance with the procedures outlined in this section. Administrative disqualification procedures or referral for prosecution action should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional Program violation as defined in paragraph (c) of this section. If the State agency does not initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of intentional Program violation, the State agency shall take action to collect the overissuance by establishing an inadvertent household error claim against the household in accordance with the procedures in § 273.18. The State agency should conduct administrative disqualification hearings in cases in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system, in cases previously referred for prosecution that were declined by the appropriate legal authority, and in previously referred cases where no action was taken within a reasonable period of time and the referral was formally withdrawn by the State agency. The State agency shall not initiate an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same, or related, circumstances. The State agency may initiate administrative disqualification procedures or refer a case for prosecution regardless of the current eligibility of the individual. The disqualification period for nonparticipants at the time of the administrative disqualification or court decision shall be deferred until the individual applies for and is determined eligible for Program benefits.

(2) Each State agency shall establish a system for conducting administrative disqualifications for intentional Program violation which conforms with the procedures outlined in paragraph (e) of this section. FNS shall exempt any State agency from the requirement to establish an administrative disqualification system if the State agency has already entered into an agreement, pursuant to paragraph (g)(1) of this section, with the State's Attorney General's Office or, where necessary, with county prosecutors. FNS shall also exempt any State agency from the requirement to establish an administrative disqualification system if there is a State law that requires the referral of such cases for prosecution and if the State agency demonstrates to FNS that it is actually referring cases for prosecution and that prosecutors are following up on the State agency's referrals. FNS may require a State agency to establish an administrative disqualification system if it determines that the State agency is not promptly or actively pursuing suspected intentional Program violation claims through the courts.

(3) The State agency shall base administrative disqualifications for intentional Program violations on the determinations of hearing authorities arrived at through administrative disqualification hearings in accordance with § 273.16(e) or on determinations reached by courts of appropriate jurisdiction in accordance with § 273.16(g). However, any State agency has the option of allowing accused

individuals either to waive their rights to administrative disqualification hearings in accordance with § 273.16(f) or to sign disqualification consent agreements for cases of deferred adjudication in accordance with § 273.16(h). Any State agency which chooses either of these options may base administrative disqualifications for intentional Program violation on the waived right to an administrative disqualification hearing or on the signed disqualification consent agreement in cases of deferred adjudication.

(b) *Disqualification penalties.* Individuals found to have committed intentional Program violation either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the program for six months for the first violation, 12 months for the second violation, and permanently for the third violation. However, one or more intentional Program violation disqualifications which occurred prior to the implementation of these penalties shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration. If a court fails to impose a disqualification period for the intentional Program violation, the State agency shall impose the disqualification penalties specified in this section unless it is contrary to the court order. State agencies shall disqualify only the individual found to have committed intentional Program violation, or who signed the waiver of right to an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household. The remaining household members shall agree to make restitution within 30 days of the date the State agency's written demand letter is mailed or the household's monthly allotment shall be reduced. If the remaining household members agree to make restitution but fail to do so, the State agency shall impose an allotment reduction on the household's monthly allotment. The remaining household members, if any, shall begin restitution during the period of disqualification imposed by the State agency or a court of law. All restitutions shall be made in accordance with established procedures for cash repayment, allotment reduction, or coupons for repayment.

(c) *Definition of intentional Program violation.* For purposes of determining through administrative disqualification hearings whether or not a person has committed an intentional Program violation, intentional Program violations shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts, or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's.

(d) *Notification to applicant households.* The State agency shall inform the household in writing of the disqualification penalties for intentional Program violation each time it applies for Program benefits. The penalties shall be in clear, prominent, and boldface lettering on the application form.

(e) *Disqualification hearings.* The State agency shall conduct administrative disqualification hearings for individuals accused of intentional Program violation in accordance with the requirements outlined in this section.

(1) *Consolidation of administrative disqualification hearing with fair hearing.* The State agency may combine a fair hearing and an administrative disqualification hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice that hearings will be combined. If the disqualification hearing and fair hearing are combined, the State agency shall follow the timeframes for conducting disqualification hearings. And, if the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not intentional Program violation has occurred, the household shall lose its right to a subsequent fair hearing on the amount of the claim. However, the State agency shall, upon household request, allow the household to waive the 30-day advance notice period required by paragraph (e)(3)(i) of this section when the disqualification hearing and fair hearing are combined.

(2) *Disqualification hearing procedures.* (i) State agencies have the option of using the same hearing officials for disqualification hearings and fair hearings or designating hearing officials to conduct only disqualification hearings.

(ii) The provisions of § 273.15 (m), (n), (o), (p), and (q)(1) are also applicable for disqualification hearings.

(iii) At the disqualification hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(iv) Within 90 days of the date the household member is notified in writing that a State or local hearing initiated by the State agency has been scheduled, the State agency shall conduct the hearing, arrive at a decision and notify the household member and local agency of the decision. The household member or representative is entitled to a postponement of the scheduled hearing, provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. However, the hearing shall not be postponed for more than a total of 30 days and the State agency may limit the number of postponements to one. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

(v) The State agency shall publish clearly written rules of procedure for disqualification hearings, and shall make these procedures available to any interested party.

(3) *Advance notice of hearing.* (i) The State agency shall provide written notice to the household member suspected of intentional Program violation at least 30 days in advance of the date a disqualification hearing initiated by the State agency has been scheduled. The notice shall be mailed certified mail-return receipt requested or provided by any other method as long as proof of receipt is obtained, and shall contain at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge(s) against the household member;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the decision will be based solely on information provided by the food stamp office if the household member fails to appear at the hearing;

(E) A statement that the household member or representative will have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(F) A warning that a determination of intentional Program violation will result in a six-month disqualification for the first violation, 12-month disqualification for the second violation, and permanent disqualification for the third violation, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;

(G) A listing of the household member's rights as contained in § 273.15(p);

(H) A statement that the hearing does not preclude the State or Federal Government from prosecuting the household member for international Program violation in a civil or criminal court action, or from collecting the overissuances; and

(I) If there is an individual or organization available that provides free legal representation, the notice shall advise the household member of the availability of the service.

(ii) A copy of the State agency's published hearing procedures shall be attached to the 30-day advance notice or the advance notice shall inform the household of its right to obtain a copy of the State agency's published hearing procedures upon request.

(iii) Each State agency shall develop an advance notice form which contains the information required by this section. A model form for providing advance notice of a scheduled hearing is available from FNS for adaptation by any State agency.

(4) *Scheduling of hearing.* The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional Program violation. If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intentional Program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. The household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

(5) *Participation while awaiting a hearing.* A pending disqualification hearing shall not affect the individual's or the household's right to be certified and participate in the Program. Since the State agency cannot disqualify a household member for intentional Program violation until the hearing official finds that the individual has committed intentional Program violation, the State agency shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. For example, if the misstatement or action for which the household member is suspected of intentional Program violation does not affect the household's current circumstances, the household would continue to receive its allotment based on the latest certification action or be recertified based on a new application and its current circumstances. However, the household's benefits shall be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. The State agency shall also reduce or terminate the household's benefits if the State agency has documentation which substantiates that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of intentional Program violation and the resulting disqualification hearing) and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, the State agency may have facts which substantiate that a household failed to report a change in its circumstances even though the State agency has not yet demonstrated that the failure to report involved an intentional act of Program violation.

(6) *Criteria for determining intentional Program violation.* The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraphs (c) of this section.

(7) *Decision format.* The hearing authority's decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent FNS regulation, and respond to reasoned arguments made by the household member or representative.

(8) *Imposition of disqualification penalties.* (i) If the hearing authority rules that the household member has committed intentional program violation, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) on this section beginning with the first month which follows the date the household member receives written notification of the hearing decision. However, if the act of intentional program violation which led to the disqualification occurred prior to notification of the disqualification periods specified in paragraph (b) of this section, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional Program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.

(ii) No futher administrative appeal procedure exists after an adverse State level hearing. The determinaton of international program violation made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) If the individual is not eligible for the Program at the time the disqualification period is to begin the period shall be postponed until the individual applies for and is determined eligible for benefits.

(iv) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualifed member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(9) *Notification of hearing decision.* (i) If the hearing official finds that the household member did not commit intentional Program violation, the State agency shall provide a written notice which informs the household member of the decision.

(ii) If the hearing official finds that the household member committeed intentional Program violation, the State agency shall provide written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. In addition, the notice shall inform the household member of the date disqualification will take effect. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for Program benefits. The State agency shall also provide written notice to the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they

must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). A written demand letter for restitution, as described in § 273.18(d)(3), shall also be provided.

(iii) Each State agency shall develop a form for notifying individuals that they have been found by an administrative disqualification hearing to have committed intentional Program violation. The form shall contain the information required by this section. A model form for notifying individuals of an adverse hearing decision is available from FNS for adaptation by any State agency.

(10) *Local level hearings.* (i) The State agency may choose to provide administrative disqualification hearings at the local level in some or all of its project areas with a right to appeal to a State level hearing. If a local level disqualification hearing determines that a household member committed intentional Program violation the notification of hearing decision, as described in paragraph (e)(9) of this section, shall also inform the household member of the right to appeal the decision within 15 days after the receipt of the notice, the date disqualification will take effect unless a State level hearing is requested, and that benefits will be continued pending a State level hearing if the household is otherwise eligible. If the household member appeals the local level decision, the advance notice of hearing, as described in paragraph (e)(3) of this section, shall be provided at least 10 days in advance of the scheduled State level hearing and shall also inform the household member that the local hearing decision will be upheld if the household or its representative fails to appear for the hearing without good cause. When a local level decision is appealed, the State agency shall conduct the State level hearing, arrive at a decision, and notify the household member and local agency of the decision within 60 days of the date the household member appealed its case. The prior decision shall not be taken into consideration by the State hearing officer in making the final determination. In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this section for State level hearings.

(ii) The State agency shall develop appropriate forms which contain the information required by this section for notification of a local level hearing decision and advance notice of a scheduled State level hearing for appeal of a local level decision.

(f) *Waived hearings.* Each State agency shall have the option of establishing procedures to allow accused individuals to waive their rights to an administrative disqualification hearing. For State agencies which choose the option of allowing individuals to waive their rights to an administrative disqualification hearing, the procedures shall conform with the requirements outlined in this section.

(1) *Advance notification.* (i) The State agency shall provide written notification to the household member suspected of intentional Program violation that the member can waive his/her right to an administrative disqualification hearing. Prior to providing this written notification to the household member, the State agency shall ensure that the evidence against the household member is reviewed by someone other than the eligibility worker assigned to the accused individual's household and a decision is obtained that such evidence warrants scheduling a disqualification hearing.

(ii) The written notification provided to the household member which informs him/her of the possibility of waiving the administrative disqualification hearing shall include, at a minimum:

(A) The date that the signed waiver must be received by the State agency to avoid the holding of a hearing and a signature block for the accused individual, along with a statement that the head of household must also sign the waiver if the accused individual is not the head of household, with an appropriately designated signature block;

(B) A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him/her in a court of law;

(C) The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by the State agency;

(D) An opportunity for the accused individual to specify whether or not he/she admits to the facts as presented by the State agency. This opportunity shall consist of the following statements, or statements developed by the State agency which have the same effect, and a method for the individual to designate his/her choice:

(*1*) I admit to the facts as presented, and understand that a disqualification penalty will be imposed if I sign this waiver; and

(*2*) I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result;

(E) The telephone number and, if possible, the name of the person to contact for additional information; and

(F) The fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.

(iii) The State agency shall develop a waiver of right to an administrative disqualification hearing form which contains the information required by this section as well as the information described in paragraph (e)(3) of this section for advance notice of a hearing. However, if the household member is notified of the possibility of waiving his/her right to an administrative disqualification hearing before the State agency has scheduled a hearing, the State agency is not required to notify the household member of the date, time and place of the hearing at that point as required by paragraph (e)(3(i)(A) of this section.

(2) *Imposition of disqualification penalties.* (i) If the household member suspected of intentional Program violation signs the waiver of right to an administrative disqualification hearing and the signed waiver is received within the timeframes specified by the State agency, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section. The period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification. However, if the act of intentional Program violation which led to the disqualification occurred prior to the written notification of the disqualification periods specified in paragraph (b) of this section, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional Program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.

(ii) No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent fair

hearing decision. The household member, however is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) If the individual is not eligible for the Program at the time the disqualification period to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.

(iv) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* The State agency shall provide written notice to the household member prior to disqualification. The State agency shall also provide written notice to any remaining household members of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The notice(s) shall conform to the requirements for notification of a hearing decision specified in paragraph (e)(9) of this section. A written demand letter for restitution, as described in § 273.18(d)(3), shall also be provided.

(4) *Waiver of hearing at local level.* Any State agency which has adopted the two-tiered approach for administrative disqualification hearings may also provide for waiver of the right to disqualification hearing procedures outlined in this section.

(g) *Court referrals.* Any State agency exempted from the requirement to establish an administrative disqualification system in accordance with paragraph (a) of this section shall refer appropriate cases for prosecution by a court of appropriate jusisdiction in accordance with the requirements outlined in this section.

(1) *Appropriate cases.* (i) The State agency shall refer cases of alleged intentional Program violation for prosecution in accordance with an agreement with prosecutors or State law. The agreement shall provide for prosecution of intentional Program violation cases and include the understanding that prosection will be pursued in cases where appropriate. This agreement shall also include information on how, and under what circumstances, cases will be accepted for possible prosecution and any other criteria set by the prosecutor for accepting cases for prosecution, such as a minimum amount of overissuance which resulted from intentional Program violation.

(ii) State agencies are encouraged to refer for prosecution under State or local statutes those individuals suspected of committing intentional Program violation, particularly if large amounts of food stamps are suspected of having been obtained by intentional Program violation, or the individual is suspected of committing more than one act of intentional Program violation. The State agency shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution. State agencies shall also encourage State and local prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed in addition to any other civil or criminal penalties for such violations.

(2) *Imposition of disqualification penalties.* (i) State agencies shall disqualify an individual found guilty of intentional Program violation for the length of time specified by the court. If the court fails to impose a disqualification period, the State agency shall impose a disqualification period in accordance with the provisions in paragraph (b) of this section, unless contrary to the court order. If disqualification is ordered but a date for initiating the disqualification period is not specified, the State agency shall initiate the disqualification period for currently eligible individuals within 45 days of the date the disqualification was ordered. Any other court-imposed disqualification shall begin within 45 days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.

(ii) If the individual is not eligible for the Program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.

(iii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* If the court finds that the household member committed intentional Program violation, the State agency shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date disqualification will take effect. The State agency shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). In addition, the State agency shall provide the written demand letter for restitution described in § 273.18(d)(3).

(h) *Deferred adjudication.* Each State agency shall have the option of establishing procedures to allow accused individuals to sign disqualification consent agreements for cases of deferred adjudication. State agencies are encouraged to use this option for those cases in which a determination of guilt is not obtained from a court due to the accused individual having met the terms of a court order or which are not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor. For state agencies which choose the option of allowing individuals to sign disqualification consent agreements in cases referred for prosecution, the procedures shall conform with the requirements outlined in this section.

(1) *Advance notification.* (i) The State agency shall enter into an agreement with the State's Attorney General's Office or, where necessary, with county prosecutors which provides for advance written notification to the household member of the consequences of consenting to disqualification in cases of deferred adjudication.

(ii) The written notification provided to the household member which informs him/her of the consequences of consenting to disqualification as a part of deferred adjudication shall include, at a minimum:

(A) A statement for the accused individual to sign that the accused individual understands the consequences of consenting to disqualification, along with a statement that the head of household must also sign the consent agreement if the

accused individual is not the head of household, with an appropriately designated signature block.

(B) A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil of criminal misrepresentation or fraud.

(C) A warning that the disqualification penalties for intentional Program violation under the Food Stamp Program which could be imposed are a six-month disqualification for the first violation, 12-month disqualification for the second violation, and permanent disqualification for the third violation, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification.

(D) A statement of the fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

(iii) The State agency shall develop a disqualification consent agreement, or language to be included in the agreements reached between the prosecutors and accused individuals or in the court orders, which contains the information required by this section for notifying a household member suspected of intentional Program violation of the consequences of signing a disqualification consent agreement.

(2) *Imposition of disqualification penalties.* (i) If the household member suspected of intentional Program violation signs the disqualification consent agreement, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section, unless contrary to the court order. The period of disqualification shall begin within 45 days of the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies the date for initiating the disqualification period, the State agency shall disqualify the household member in accordance with the court order.

(ii) If the individual is not eligible for the Program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.

(iii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualfied member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* If the household member suspected of intentional Program violation signs the disqualification consent agreement, the State agency shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date the disqualification will take effect. The State agency shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). In addition, the State agency shall provide the written demand letter for restitution described in § 273.18(d)(3).

(i) *Reporting requirements.* (1) Each State agency shall report to FNS information concerning individuals disqualified for intentional Program violation, including those individuals disqualified based on the determination of an administrative disqualification hearing official or a court of appropriate jurisdiction and those individuals disqualified as a result of signing either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases referred for prosecution. This information shall be submitted to FNS so that it is received no later than 30 days after the date the disqualification took effect, or would have taken effect for a currently ineligible individual whose disqualfication is pending future eligibility.

(2) Each State agency shall report information concerning each individual disqualified for intentional Program violation in a format designed by FNS. This format shall include the individual's social security number, date of birth, and full name, the number of the disqualification (1st, 2nd, or 3rd), the State and county in which the disqualification took place, the date on which the disqualification took effect, and the length of the disqualification period imposed.

(3) Each State agency shall submit the required information on each individual disqualified for intentional Program violation through a reporting system in accordance with procedures specified by FNS.

(4) All the data submitted by State agencies will be available for use by any State Welfare Agency.

(i) State agencies shall, at a minimum, use the data for the following:

(A) To determine the eligibility of individual Program applicants prior to certification in cases where the State agency has reason to believe a household member is subject to disqualification in another political jurisdiction, and

(B) To ascertain the appropriate penalty to impose, based on past disqualifications, in a case under consideration.

(ii) State agencies may also use the data in other ways, such as the following:

(A) To screen all program applicants prior to certification, and

(B) To periodically match the entire list of disqualified individuals against their current caseloads.

(5) The disqualification of an individual for intentional Program violation in one political jurisdiction shall be valid in another. However, one or more fraud disqualifications which occurred prior to the implementation of the penalties contained in these regulations shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification(s) took place. State agencies are required to identify any individuals disqualified for fraud prior to implementation of this rule and to submit the information required by this section on such individuals.

(6) In cases where the imposition of a disqualification penalty is being held pending the future eligibility of a household member found to have committed intentional Program violation, the State agency shall submit a report revising the original disqualification report once the individual begins the period of disqualification in accordance with instructions provided by FNS.

(7) In cases where the disqualification for intentional Program violation is reversed by a court of appropriate jurisdiction, the State agency shall submit a report to purge the file of the information relating to the disqualification which was reversed in accordance with instructions provided by FNS.

(j) *Reversed disqualifications.* In cases where the determination of intentional program violation is reversed by a court of appropriate jurisdiction, the State agency shall reinstate the individual in the program if the household is eligible. The State agency shall restore benefits that were lost as a result of the disqualification in accordance with the procedures specified in § 273.17(e).

8. Section 273.18 is revised to read as follows:

§ 273.18 Claims against households.

(a) *Establishing claims against households.* The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive.

(1) *Inadvertent household error claims.* A claim shall be handled as an inadvertent household error claim if the overissuance was caused by a misunderstanding or unintended error on the part of the household.

(2) *Administrative error claims.* A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action.

(3) *Intentional Program violation claims.* A claim shall be handled as an intentional Program violation claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed intentional Program violation as defined in § 273.16(c), or an individual is disqualified as a result of signing either a waiver of his/her disqualification hearing as discussed in § 273.16(f) or a disqualification consent agreement in cases referred for prosecution as discussed in § 273.16(h). Prior to the determination of intentional Program violation or the signing of either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases of deferred adjudication, the claim against the household shall be handled as an inadvertent household error claim.

(b) *Criteria for establishing inadvertent household and administrative error claims.* The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error if the criteria specified in this paragraph have been meet. At a minimum, the State agency shall take action on those claims for which 12 months or less have elasped between the month an overissuence occurred and the month the State agency discovered a specific case involving an overissuance. The State agency may choose to take action on those claims for which more the 12 months have elasped. However, the State agency shall not take action on claims for which more than six years have elasped between the month an overissuance occurred and the month the State agency discovered a specific case involving an overissuance.

(1) Instances of inadvertent household error which may result in a claim include, but are not limited to, the following:

(i) The household unintentionally failed to provide the State agency with correct or complete information;

(ii) The household unintentionally failed to report to the State agency changes in its household circumstances; or

(iii) The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits.

(2) Instances of administrative error which may result in a claim include, but are not limited to, the following:

(i) A State agency failed to take prompt action on a change reported by the household;

(ii) A State agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;

(iii) A State agency incorrectly issued duplicate ATP's to a household which were subsequently transacted;

(iv) The State agency continued to provide a household food stamp allotments after its certification period had expired without benefit of a reapplication determination; or

(v) The State agency failed to provide a household a reduced level of food stamp benefits because its public assistance grant changed.

(3) Neither an administrative error claim nor an inadvertent household error claim shall be established if an overissuance occurred as a result of the following:

(i) A State agency failed to insure that a household fulfilled the following procedural requirements:

(A) Signed the application form,

(B) Completed a current work registration form, or

(C) Was certified in the correct project area;

(ii) The household transacted an expired ATP, unless the household altered its ATP.

(c) *Calculating the amount of claims.*—(1) *Inadvertent household and administrative error claims.* (i) For each month that a household received an overissuance due to an inadvertent household or administrative error, the State agency shall determine the correct amount of food stamp benefits the household was entitled to receive. The amount of the inadvertent household or administrative error claim shall be calculated based, at a minimum, on the amount of overissuance which occurred during the 12 months preceding the date the overissuance was discovered. The State agency may choose to calculate the amount of the claim back to the month the inadvertent household or administrative error occurred, regardless of the length of time that elapsed until the inadvertent household or administrative error was discovered. However, the State agency shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered. In cases involving reported changes, the State agency shall determine the month the overissuance initially occurred as follows:

(A) If, due to an inadvertent error on the part of the household, the household failed to report a change in its circumstances within the required timeframes, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been timely reported. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(B) If the household timely reported a change, but the State agency did not act on the change within the required timeframes, the first month affected by the State's failure to act shall be the first month the State agency would have made the change effective had it timely acted. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred. If a notice of adverse action was required but was not provided, the State agency shall assume for the purpose of calculating the claim that the maximum advance notice period as provided in § 273.13(a)(1) would have expired without the household requesting a fair hearing.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the

household received and the allotment the household should have received.

(iii) After calculating the amount of the inadvertent household or administrative error claim, the State agency shall offset the amount of the claim against any amounts which have not yet been restored to the household in accordance with § 273.17. The State agency shall then initiate collection action for the remaining balance, if any.

(2) *Intentional Program violation claims.* (i) For each month that a household received an overissuance due to an act of intentional Program violation, the State agency shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the intentional Program violation claim shall be calculated back to the month the act of intentional Program violation occurred, regardless of the length of time that elapsed until the determination of intentional Program violation was made. However, the State agency shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered. If the household member is determined to have committed intentional Program violation by intentionally failing to report a change in its household's circumstances, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been reported. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

(iii) Once the amount of the intentional Program violation claim is eatablished, the State agency shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with § 273.17.

(d) *Collecting claims against households.*—(1) Criteria for initiating collection action on inadvertent household and administrative error claims.

(i) State agencies shall initiate collection action against the household on all inadvertent household or administrative error claims unless the claim is collected through offset or one of the following conditions apply:

(A) The total amount of the claim is less than $35, and the claim cannot be recovered by reducing the household's allotment. However, any State agency shall have the option to initiate collection action for other claims under $35 at such time that multiple overissuances for a household total $35 or more. If the State agency chooses this option, households shall be informed of this policy.

(B) The State agency has documentation which shows that the household cannot be located.

(ii) The State agency may postpone collection action on inadvertent household error claims in cases where an overissuance is being referred for possible prosecution or for administrative disqualification, and the State agency determines that collection action will prejudice the case.

(2) *Criteria for initiating collection action on intentional Program violation claims.* If a household member is found to have committed intentional Program violation (by an administrative disqualification hearing official or a court of appropriate jurisdiction) or has signed either a waiver as discussed in § 273.16(f) or a consent agreement as discussed in § 273.16(y), the State agency shall initiate collection action against the individual's household. In addition, a personal contact with the household shall be made, if possible. The State agency shall initiate such collection unless the household has repaid the overissuance already, the State agency has documentation which shows the household cannot be located, or the State agency determines that collection action will prejudice the case against a household member referred for prosecution. The State agency shall initiate collection action for an unpaid or partially paid claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. In cases where a household member was found guilty of misrepresentation of fraud by a court or signed a disqualification consent agreement in cases referred for prosecution, the State agency shall request that the matter of restitution be brought before the court or addressed in the agreement reached between the prosecutor and accused individual.

(3) *Initiating collection on claims.* (i) State agencies shall initiate collection action by providing the household a written demand letter which informs the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household may pay the claim, and the household's right to a fair hearing if the household disagrees with the amount of the claim, unless the household has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing. If there is an individual or organization available that provides free legal representation, the written demand letter shall also advise the household of the availability of the service. For inadvertent household error and intentional Program violation claims, the household shall also be informed of the length of time the household has to decide which method of repayment it will choose and inform the State agency of its decision and of the fact that the household's allotment will be reduced if the household fails to agree to make restitution. For administrative error claims, the household shall also be informed of the availability of allotment reduction as a method of repayment if the household prefers to use this method. In addition, any household against which the State agency has initiated collection action shall be informed of its right to request renegotiation of any repayment schedule to which the household has agreed in accordance with paragraph (g)(2) of this section should the household's economic circumstances change. The demand letter shall provide space for the household to indicate the method of repayment and a signature block.

(ii) Each State agency shall develop a written demand letter for initiating collection action on claims which contains the information required by this section. A model form letter for demanding restitution of an overissuance is available from FNS for adaptation by any State agency.

(iii) If the household pays the claim, payments shall be accepted and submitted to FNS in accordance with the procedures outlined in paragraphs (g) and (h) of this section.

(4) *Action against households which fail to respond.* (i) If the household against which collection action has been initiated for repayment of an inadvertent household error or intentional Program violation claim is currently participating in the program and does not respond to the written demand letter within 30 days of the date the notice is mailed, the State agency shall reduce the household's food stamp allotment.

(ii) If any nonparticipating household or if any currently participating household against which collection

action has been initiated for repayment of an administrative error claim does not respond to the first demand letter, additional demand letters shall be sent at reasonable intervals, such as 30 days, until the household has responded by paying or agreeing to pay the claim, until the criteria for suspending collection action, as specified in paragraph (e) of this section, have been met, or until the State agency initiates other collection actions.

(iii) The State agency may also pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any inadvertent household error, administrative error, or intentional Program violation claim. If the State agency chooses to pursue other collection actions and the household pays the claim, payments shall be submitted to FNS in accordance with the procedures outlined in paragraph (h) of this section and the State agency's retention shall be based on the actual amount collected from the household through such collection actions.

(e) *Suspending and terminating collection of claims.*—(1) *Suspending collection of inadvertent household and administrative error claims.* An inadvertent household or administrative error claim may be suspended if no collection action was initiated because of conditions specified in paragraph (d)(1)(i) of this section. If collection action was initiated, and at least one demand letter has been sent, further collection action of an inavertent household error claim against a nonparticipating household or of any administrative error claim may be suspended when:

(i) The household cannot be located; or

(ii) The cost of further collection action is likely to exceed the amount that can be recovered.

(2) *Suspending collection of intentional Program violation claims.* The State agency may suspend collection action on intentional Program violation claims at any time if it has documentation that the household cannot be located. If the State agency has sent at least one demand letter for claims under $100, at least two demand letters for claims between $100 and $400, and at least three demand letters for claims of more than $400, further collection action of any intentional Program violation claim against a nonparticipating household may be suspended when the cost of further collection action is likely to exceed the amount that can be recovered.

(3) *Terminating collection of claims.* A claim may be determined uncollectible after it is held in suspense for 3 years. The State agency may use a suspended or terminated claim to offset benefits in accordance with § 273.17.

(f) *Change in household composition.*—(1) *Inadvertent household and administrative error claims.* The State agency shall initiate collection action against the household which received the overissuance for which the inadvertent household or administrative error claim was established. If a change in household membership occurs, the State agency shall initiate collection action against the household containing a majority of the individuals who were household members at the time the error occurred. If the State agency cannot locate or determine the household which contains a majority of household members, the State agency shall initiate collection action against the household containing the head of the household at the time the overissuance occurred.

(2) *Intentional Program violation claims.* The State agency shall initiate collection action against the household which contained the household member found to have committed intentional Program violation and which received the overissuance for which the claim was established. If a change in household membership occurs, the State agency shall initiate collection action against the household containing a majority of the individuals who were household members at the time the act(s) of intentional Program violation occurred. However, the State agency shall have the option to initiate collection action against the household currently containing the individual found to have committed intentional Program violation if it determines that circumstances warrant such action. The State agency may choose to exercise this option if, for example, it determines that a particular household member was responsible for the act of intentional Program violation and that household member subsequently changes households. If the State agency cannot locate or determine the household which contains a majority of household members and chooses not to exercise the option of initiating collection action against the individual found to have committed intentional Program violation, the State agency shall initiate collection action against the household containing the head of the household at the time the overissuance occurred.

(g) *Method of collecting payments.* As specified in paragraph (d) of this section, State agencies shall collect payments for claims against households as follows:

(1) *Lump sum.* (i) If the household is financially able to pay the claim at one time, the State agency shall collect a lump sum cash payment. However, the household shall not be required to liquidate all of its resources to make this one lump sum payment.

(ii) If the household is financially unable to pay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, the State agency shall accept this method of payment.

(iii) If the household chooses to make a lump sum payment of food stamp coupons as full or partial payment of the claim, the State agency shall accept this method of repayment.

(2) *Installments.* (i) The State agency shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment. Payments shall be accepted by the State agency in regular installments. The household may use food stamp coupons as full or partial payment of any installment. If the full claim or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to pay the claim in 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17.

(ii) If the household fails to make a payment in accordance with the established repayment schedule (either a lesser amount or no payment), the State agency shall send the household a notice explaining that no payment or an insufficient payment was received. The notice shall inform the household that it may contact the State agency to discuss renegotiation of the payment schedule. The notice shall also inform the household that unless the overdue payments are made or the State agency is contacted to discuss renegotiation of the payment schedule, the allotment of a currently participating household against which an inadvertent household error or intentional Program violation claim has been established may be reduced without a notice of adverse action.

(iii) If the household responds to the notice, the State agency shall take one of the following actions as appropriate:

(A) If the household makes the overdue payments and wishes to continue payments based on the previous schedule, permit the household to do so;

(B) If the household requests renegotiation, and if the State agency

concurs with the request, negotiate a new payment schedule;

(C) If the household requests renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement, the State agency may continue renegotiation until a settlement can be reached. The State agency shall have the option to invoke allotment reduction against a currently participating household for repayment of an inadvertent household error or intentional Program violation claim if a settlement cannot be reached.

(iv) If a currently participating household against which an inadvertent household error or intentional Program violation claims has been established fails to respond to the notice, the State agency shall invoke allotment reduction. The State agency may also invoke allotment reduction if such a household responds by requesting renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement. If allotment reduction is invoked, no notice of adverse action is required.

(v) In cases where the household is currently participating in the program and a payment schedule is negotiated for repayment of an inadvertent household error or intentional Program violation claim, the State agency shall ensure that the negotiated amount to be repaid each month through installment payments is not less than the amount which could be recovered through allotment reduction. Once negotiated, the amount to be repaid each month through installment payments shall remain unchaged regardless of subsequent changes in the household's monthly allotment. However, both the State agency and the household shall have the option to initiate renegotiation of the payment schedule if they believe that the household's economic circumstances have changed enough to warrant such action.

(3) *Reduction in food stamp allotment.* State agencies shall collect payments for inadvertent household error claims and intentional Program violation claims from households currently participating in the program by reducing the household's food stamp allotments. State agencies shall collect payments for administrative error claims from households currently participating in the program by reducing the household's food stamp allotments if the household prefers to use this method of repayment. Prior to reduction, the State agency shall inform the household of the appropriate formula for determining the amount of food stamps to be recovered each month and the effect of that formula on the household's allotment (i.e., the amount of food stamps the State agency expects will be recovered each month), and of the availability of other methods of repayment. If the household requests to make a lump sum cash and/or food stamp coupon payment as full or partial payment of the claim, the State agency shall accept this method of payment. The State agency shall reduce the household's allotment to recover any amounts of an inadvertent household error or intentional Program violation claim not repaid through a lump sum cash and/or food stamp coupon payment, unless a payment schedule has been negotiated with the household. The provision for a $10 minimum benefit level for households with one and two members only, as described in § 273.10(e)(2)(ii)(B), shall apply to the allotment prior to reduction in accordance with this paragraph. If the full or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to make restitution within 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17. The amount of food stamps to be recovered each month through allotment reduction shall be determined as follows:

(i) *Inadvertent household error claims.* For inadvertent household error claims, the amount of food stamps shall be the greater of 10 percent of the household's monthly allotment *or* $10 per month.

(ii) *Administrative error claims.* For administrative error claims, the amount of food stamps to be recovered each month from a household choosing to use this method shall be negotiated with the household. Choice of this option is entirely up to the household and no household shall have its allotment reduced by an amount with which it does not agree for payment of an administrative error claim.

(iii) *Intentional Program violation claims.* For intentional Program violation claims, the amount of food stamps shall be the greater of 20 percent of the household's monthly entitlement *or* $10 per month.

(h) *Submission of payments.* (1) The State agency shall retain the value of funds collected for inadvertent household error, intentional Program violation, or administrative error claims. This amount includes the total value of allotment reductions to collect claims, but does not include the value of benefits not issued as a result of a household member being disqualified. The States' letter of credit will be amended on a quarterly basis to reflect the States' retention of 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional Program violation claims collected, as well as full retention by FNS of all administrative error over issuance recoveries.

(2) Each State agency shall submit quarterly a Form FNS–209, Status of Claims Against Households, to detail the State's activities relating to claims against households. This report is due no later than 30 days after the end of each calendar year quarter and shall be submitted to FNS even if the State agency has not collected any payments. In addition to reporting the amount of funds recovered from inadvertent household error and intentional Program violation claims each quarter on Form FNS–209, the State agency shall also report these amounts on other letter of credit documents as required. In accounting for inadvertent household error and intentional Program violation claims collections, the State agency shall include cash or coupon repayments and the value of allotments recovered or offset by restoration of lost benefits. However, the value of benefits not issued during periods of disqualification shall not be considered recovered allotments and shall not be used to offset an intentional Program violation claim. In addition, each State agency shall establish controls to ensure that officials responsible for intentional Program violation determinations will not benefit from the State share of recoveries.

(3) The State agency may retain any amounts recovered on a claim being handled as an inadvertent household error claim prior to obtaining a determination by an administrative disqualification hearing offical or a court of appropriate jurisdiction that intentional Program violation was committed, or receiving from an individual either a signed waiver or consent agreement, at the rate applicable to intentional Program violation claims, once the determination or signed document is obtained. In such cases, the State agency shall include a note in an attachment to the quarterly reporting form specified in paragraph (h)(2) of this section which shows the additional amounts being retained on amounts already recovered as a result of the change in status of the claim.

(4) If a household has overpaid a claim, the State agency shall pay the household any amounts overpaid as soon as possible after the overpayment becomes known. The household shall be paid by whatever method the State agency deems appropriate considering the household's circumstances. Overpaid amounts of a claim which have previously been reported as collected via the FNS-209 and which have been repaid to the household shall be reported in the appropriate column on the FNS-209 for the quarter in which the repayment occurred. The amount of the repayment shall be subtracted from the total amount collected. The appropriate retention rate shall be applied to the reduced collection total.

(5) In cases where FNS has billed a State agency for negligence, any amouts collected from households which were caused by the State's negligence will be credited by FNS. When submitting these payments, the State agency shall include a note as an attachment to the quarterly reporting form specified in paragraph (h)(2) of this section which shows the amount that should be credited against the State's bill.

(i) *Returned coupons.* If coupon books collected from households as payment for claims are returned intact and in usable form, the State agency may return them to coupon inventory. The State agency shall destroy any coupons or coupon books which are not returned to inventory in accordance with the procedures outlined in this section.

(1) The State agency shall require claims collection points to either send the coupons which are not returned to inventory to the State agency for destruction or hold the subject coupons in secure storage pending examination and destruction by the State agency at the claims collection point. After verification of the reports from the claims collection point, the State agency shall destroy the coupons or coupon books received from the claims collection points if the value of the coupons does not exceed $500.00 per claims collection point for any month. If the value of the coupons to be destroyed exceeds $500.00 per claims collection point per month, the State agency shall request FNS approval prior to any destruction of the coupons.

(2) The State agency shall destroy the coupons and coupon books by burning, shredding, tearing, or cutting so that they are not negotiable. Two State agency officials shall witness and certify the destruction and forward the Form FNS-471, Coupon Account and Destruction Report, with the Form FNS-209.

(j) *Claims discharged through bankruptcy.* State agencies shall act on behalf of, and as, FNS in any bankruptcy proceeding against bankrupt households owing food stamp claims. State agencies shall possess any rights, priorities, interests, liens or privileges, and shall participate in any distribution of assets, to the same extent as FNS. Acting as FNS, State agencies shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which FNS might have filed. Any amounts collected under this authority shall be transmitted to FNS as provided in paragraph (h) of this section.

(k) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for monitoring claims against households. At a minimum, the accounting system shall be designed to readily accomplish the following:

(1) Document the circumstances which resulted in a claim, the procedures used to calculate the claim, the methods, used to collect the claim and, if applicable, the circumstances which resulted in suspension or termination of collection action.

(2) Identify those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household.

(3) Identify those households that have failed to make installment payments on their claims.

(4) Document how much money was collected in payment of a claim and how much was submitted to FNS.

(l) *Interstate Claims Collection.* In cases where a household moves out of the area under a State agency's jurisdiction, the State agency should initiate or continue collection action against the household for any overissuance to the household which occurred while it was under the State agency's jurisdiction. The State agency which overissued benefits to the household shall have the first opportunity to collect any overissuance. However, if the State agency which overissued benefits to the household does not take prompt action to collect, then the State agency which administers the area into which the household moves should initiate action to collect the overissuance. Prior to initiating action to collect such overissuances, the State agency which administers the area into which the household moves shall contact the State agency which overissued benefits to ascertain that it does not intend to pursue prompt collection. The State share of any collected claims, as provided in § 273.18(h), shall be retained by the State agency which collects the overissuance.

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

9. In § 276.2, paragraph (c) is revised to read as follows:

§ 276.2 State agency liabilities.

* * * * *

(c) *Cash losses.* State agencies are liable to FNS for cash losses when money collected by State agencies from participant claims has been lost, stolen, or otherwise not remitted to FNS by the State agency in accordance with the provisions of § 273.18(h). The amount of such losses shall be determined from sources such as audits, Performance Reporting System reviews, Federal reviews and investigations.

* * * * *

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

10. In § 277.15, paragraphs (a), (c)(1), (c)(2), (c)(3), (c)(5), introductory paragraph (e), the first sentence of paragraph (e)(1), and paragraph (e)(2) are revised; and a new paragraph (e)(1)(iv) is added. The revisions and addition read as follows:

§ 277.15 Food Stamp investigations and prosecutions.

(a) *General.* This section establishes the standards and procedures for Federal funding of State and local costs of intentional Program violation investigations, prosecutions and administrative disqualification hearings under the Food Stamp Program.

* * * * *

(c) *State Agency Descriptions.* * * *

(1) Identification of the oganizational units, with a brief description of the intentional Program violation disqualification hearing, investigation or prosecution function assigned, that is claimed at the 75 percent rate;

(2) A copy of the statutes or court decisions under which intentional Food Stamp Program violation cases are prosecuted;

(3) A detailed description of the coordination between the investigative units and the prosecuting units, and the process by which prosecuting officials present indictments regarding intentional Food Stamp Program violation cases;

* * * * *

(5) Assurance that the administrative disqualification hearing activity claimed under this part is conducted in accordance with § 273.16.

* * * * *

(e) *Eligible Activity.* The following activities performed at the State or local level shall be eligible for funding at 75 percent of the costs if they are an integral element of intentional Food Stamp Program investigations, prosecutions, and administrative disqualification hearings.

(1) *Direct charges.* Direct charges are costs which may be directly attributable to employees assigned specifically to the investigation and prosecution functions for intentional Food Stamp Program violations. * * *

* * * * *

(iv) Costs related to reporting individuals disqualified for intentional Program violation and to retrieving data from the Disqualification Reporting Network file, when performed by employees assigned specifically to the food stamp intentional Program violation investigation and prosecution functions.

(2) *Indirect charges.* Indirect charges are, in general, those costs which are attributable through allocation to the investigation and prosecution functions for intentional Food Stamp Program violations.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2029); secs. 112, 113 and 114 of Pub. L. 97–35, 95 Stat. 362 (7 U.S.C. 2015, 2022, and 2025), and secs. 177, 178 and 179 of Pub. L. 97–253, 96 Stat. 781 (7 U.S.C. 2022 and 2025))

(Catalog of Federal Domestic Assistance Programs No. 10551, Food Stamp Program)

Dated: February 7, 1983.

Robert E. Leard,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 83-3580 Filed 2-14-83; 8:45 am]

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federal register

Tuesday
February 15, 1983

Part IV

Department of Energy

Office of Conservation and Renewable Energy

Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 455

[Docket No. CAS-RM-80-509]

Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy proposes to amend the regulations for administration of the grant program providing financial assistance for schools, hospitals, local government buildings and public care institutions. Present regulations provide that the administrative grant for each State not exceed 5 percent of the total value of institutional grants awarded within the State during any grant funding cycle. Recent experience has shown that a number of States with relatively small allocations of funds have found it necessary to petition for relief with DOE's Office of Hearings and Appeals because they found their allowable administrative grants inadequate. This amendment would establish $30,000 as an alternate minimum amount for a grant to a State for its expenses in administrating this program.

DATES: Written comments (15 copies) must be received no later than March 17, 1983. A hearing will be held on February 24, 1983, in Washington, D.C. Requests to speak at the hearing must be received no later than 4:30 p.m. e.s.t. February 18, 1983.

ADDRESSES: Send 15 copies of written comments and requests to speak at the hearing (include 15 copies of oral statements) to: Department of Energy, Conservation and Renewable Energy, Office of Hearings and Dockets, Docket #CAS-RM-80-509, Room 5F-078, Mail Stop 6B-025, 1000 Independence Ave., SW., Washington, D.C. 20585. Telephone: (202) 252-9319. The hearing will be held in Room 6E-069, Forrestal Building, 1000 Independence Ave., SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Nicholas Fedoruk, Office of Institutional Conservation Programs, Office of Conservation and Renewable Energy, Department of Energy, Mail Stop 5B-148, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2334

Edward H. Pulliam, Office of General Counsel, Department of Energy, Mail Stop 6F-094, 1000 Independence Avenue, SW., Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comment Procedures
III. Additional Information

I. Background

Parts 1 and 2 of Title III of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3238 (42 U.S.C. 6371), established a program administered by the Department of Energy to fund technical assistance programs and energy conservation measure installations for certain types of public and private, nonprofit institutions. Regulations governing this program appear in the code of Federal Regulations at 10 CFR Part 450 and 10 CFR Part 455. The most recent amendments to these regulations, which went into effect on May 13, 1982, were published at 47 FR 15765.

Current regulations limit the amount of grants to States for their expenses in administrating the program to 5 percent of the total amount awarded for technical assistance and energy conservation measure grants within the State during any grant funding cycle. States may petition DOE's Office of Hearings and Appeals for additional administrative support funds when they (1) find the amount available under the present rules inadequate to properly support the program; and (2) can support their contention tha program participation depends on their receiving the relief requested. As a result of petitions for additional funds filed by several States, it became apparent that there is a need for additional administrative funds for those States with relatively small allocations. To address this need, the Department of Energy (DOE) proposes in this notice to amend § 455.62 and 455.83 of the program regulations to provide a "floor" for State administrative grants. Under the proposed revisions, the amount available to a participating State for administrative purposes during a funding cycle would be $30,000 or 5 percent of the total awarded for institutional grants with in the State, whichever is the larger amount. When matched with State funds, as required by the regulations for all grants under the program, the $30,000 should provide adequate funds to administer the institutional grants.

DOE is interested in receiving comments from the public on this proposed amendment.

II. Comment Procedures

A. *Written Comments.* Interested persons are invited to submit written comments with respect to the proposed regulation to: Department of Energy Conservation and Renewable Energy, Office of Hearings and Dockets, Docket # CAS-RM-80-509, Room 5F-078, Mail Stop 6B-025, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments received will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. All comments and related information must be received on or before March 17, 1983 to ensure consideration.

All information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, or it will not be treated as confidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

B. *Public Hearing.* A public hearing will be held at 9:00 a.m., e.s.t., on February 24, 1983, in Washington, D.C. to receive oral presentations. Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may make a written request for an opportunity to make an oral presentation. The request should be sent to the address indicated in the address section of the preamble and should be received by the date indicated in the date section of the preamble. Such a request may be hand delivered to Room 5F-078, Forrestal Building, 1000 Independence Ave., SW., Washington, D.C. 20585. The person making the request should describe his or her interest in the proceeding and provide a concise summary of the proposed oral presentation and a phone number where he or she may be reached. Each person who, in DOE's judgement, proposes to present relevant material and information shall be selected to be heard and shall be notified by DOE of their participation before 4:30 p.m., local time on February 22, 1983.

C. *Conduct of Hearing.* DOE reserves the right to arrange the schedule of presentations to be heard, and to establish the procedures governing the conduct of the hearing. The length of presentations may be limited, based on the number of persons requesting to be heard. A DOE official will be designated as presiding officer of the hearing, and

questions may be asked only by those conducting the hearing. There will be no cross-examination of persons presenting statements. Any participant who wishes to ask a question at the hearing may submit the question in writing to the presiding officer, who will determine whether the questions are relevant and material and whether time limitations permit a response.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

D. *Transcript of Hearing.* A transcript of each hearing will be made, retained by DOE, and available for inspection at the DOE Freedom of Information Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 between 8:00 a.m. and 4:30 p.m., Monday through Friday. A copy of the transcript may be purchased from the reporter.

III. Additional Information

A. Regulatory Impact Analysis and Review

The Department of Energy has determined that this rule is not a major rule under Executive Order 12291 because it will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) 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.

The rule was submitted to the Director of the Office of Management and Budget pursuant to Executive Order 12291.

B. Regulatory Flexibility Act Analysis

This amendment, by providing a somewhat larger administrative grant to States with small allocations, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601).

C. Environmental Review

Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, 83 Stat. 852 (42 U.S.C. 4321), DOE published a Notice of Availability of an environmental assessment (EA) of the entire Title III of NECPA on March 12, 1979, in the **Federal Register** (44 FR 13554). Based on this EA, DOE determined that the NECPA Title III program did not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and that an environmental impact statement (EIS) was not needed to support the action.

DOE has reviewed the environmental impacts of the proposed amendments. It is DOE's determination that the environmental impacts of the amendments have been adequately analyzed in the March 1979 EA and that these impacts are not significant. Thus, no additional EA or EIS is required.

D. Paperwork Reduction Act

This amendment does not change the information collection requirements of the program as such requirements are defined in the Paperwork Reduction Act, Pub. L. 95-511, 94 Stat. 2812 (44 U.S.C. 3501).

E. Catalog of Federal Domestic Assistance Program Number

The Catalog of Federal Domestic Assistance program number and title is *"81.052, Energy Conservation Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions."*

List of Subjects in 10 CFR Part 455

Buildings, Community facilities, Energy audits, Energy conservation, Grant programs—energy, Health facilities, Hospitals, Reporting requirements, Schools, Solar energy, Technical assistance.

In consideration of the foregoing, DOE proposes to amend § 455.62 and § 455.83, Part 455, Chapter II, Title 10 of the Code of Federal Regulations as set forth below:

Issued in Washington, D.C., February 4, 1983.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

PART 455—[AMENDED]

10 CFR Part 455 is proposed to be amended as follows:

1. The authority citation for Part 455 reads as follows:

Authority: Title III, National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3238 (42 U.S.C. 6371) and Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101).

2. In § 455.62, paragraph (a) is revised to read as follows:

§ 455.62 Grant applications for State Administrative expenses.

(a) Each State desiring to receive grants to help defray State administrative expenses shall file an application in accordance with the provisions of this section. At any time after notice by DOE of the amounts allocated to each State for a grant program cycle, each State may apply to the Secretary for an amount for administrative expenses not exceeding $30,000 or 2 percent of its total allocation for technical assistance and energy conservation measures, whichever is higher. In addition, each State, after it makes the submittal to DOE required under section 455.72, may apply for a further grant not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within that State in that grant program cycle, less any amounts previously awarded the State for administrative expenses in the same grant program cycle.

* * * * *

3. In § 455.83, the introductory text of paragraph (a) and paragraph (a)(1) are revised to read as follows:

§ 455.83 Approval of grant applications.

(a) For the purpose of defraying State expenses in the administration of technical assistance programs in accordance with Subpart C and energy conservation measures in accordance with Subpart D, the Secretary may make grant awards to a State—

(1) Immediately following public notice of the amounts allocated to a State for the grant program cycle, and upon approval of the grant application for administrative costs, in an amount not exceeding $30,000 or 2 percent of the State's total allocation for a given grant cycle for technical assistance and energy conservation measures, whichever is higher. Grants for such purposes may be made for up to 50 percent of a State's administrative expenses, as approved by the Secretary; and

* * * * *

[FR Doc. 83-3918 Filed 2-14-83; 8:45 am]

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Tuesday
February 15, 1983

Part V

Department of Labor

Office of the Secretary

Twelve-Month List for Review of Rules

DEPARTMENT OF LABOR

Office of the Secretary

20 CFR Chs. I, V, and VI

29 CFR Subtitle A and Chs. V, XVII, and XXV

30 CFR Ch. I

41 CFR Ch. 60

Twelve-Month List for Review of Rules

AGENCY: Department of Labor.

ACTION: Twelve-month listing for review of rules.

SUMMARY: This Notice sets forth the Department's twelve-month listing for review of existing regulations pursuant to the Regulatory Flexibility Act.

DATES: This schedule includes all regulations which will be under a Regulatory Flexibility Act review between now and January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Seth D. Zinman, Associate Solicitor for Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, Room N2428, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-523-8201.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act requires that each agency publish a 10-year schedule for the review of all agency rules that are in existence on the effective date of the Act (January 1, 1981) and that have or will have a significant economic impact on a substantial number of "small entities" (small businesses, small organizations and small governmental jurisdictions). The Department published its 10-year schedule on June 30, 1981 (see 46 FR 33536). During a Regulatory Flexibility Act review, the agency is required to examine the rule's economic impact on "small entities" and to determine whether the rule can be modified to lessen its "small entity" impact, consistent with the stated objectives of the applicable statutes.

The Regulatory Flexibility Act also requires that each year agencies publish in the **Federal Register** a list of the rules that the agency's 10-year schedule has set for a Regulatory Flexibility Act review during the succeeding twelve months. The list must include a brief description of each rule, the need for and legal basis of each rule, and must invite public comment.

In conducting its review of rules, the Regulatory Flexibility Act requires that, in assessing a rule's economic impact on small entities, the Department consider the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

It should be emphasized that the twelve-month review list is not intended to be an all-inclusive list of existing rules that the Department intends to have under substantive review in 1983. The 12-month review list includes only those rules that have been set by the Department of Labor's 10-year schedule for a 1983 Regulatory Flexibility Act review ("small business" review). Hence, the Department's 12-month list does not include existing Departmental rules that are currently under review for reasons other than a *scheduled* Regulatory Flexibility Act review. However, a listing of those rules is in substance published in the Department's Semiannual Agenda of Regulations. The regulations listed in that agenda are being reviewed pursuant to a mandate of Executive Order 12291; but where appropriate, the Department is simultaneously reviewing these rules for consistency with the Regulatory Flexibility Act. Executive Order 12291 establishes specific rulemaking requirements that an agency must abide by to ensure that its rules are well-reasoned and cost-effective; requires the agency to initiate reviews of its existing rules to ensure that they are in conformance with the Executive Order's requirements; and further requires the agency to publish in its Semiannual Agenda a listing of such existing regulations that are under current review pursuant to the Executive Order. The listing of existing Labor Department regulations currently under review pursuant to Executive Order 12291 was published in the **Federal Register** on October 28, 1982 (47 FR 48532).

The list of regulations to be reviewed by the Department of Labor, in 1983, pursuant to a scheduled Regulatory Flexibility Act review follows. Public comment is invited on the listing.

Twelve-Month Review List

I. Labor-Management Services Administration, Pension and Welfare Benefit Programs

1. 29 CFR 2510.3-1—Employee Welfare Benefit Plan

Description: Welfare plans and pension plans are treated differently under ERISA Title I and under Departmental regulations. Section 3(1) of ERISA defines "employee welfare plan". This regulation clarifies this definition by identifying certain employer-employee practices and arrangements which do not constitute employee welfare plans.

Need and Legal Basis: This regulation is needed to continue to clarify certain questions about coverage which have been raised. The legal basis for the regulation is 29 USC 1135 (section 505 of ERISA) which provides the Secretary with general authority to promulgate necessary and appropriate regulations.

2. 29 CFR 2510.3-2—Employee Pension Benefit Plan

Description: Pension plans and welfare plans are treated differently under ERISA Title I and under Departmental regulations. Section 3(2) of ERISA defines "employee pension plan". This regulation clarifies the section 3(2) definition by identifying certain specific plans, funds, and programs which do not constitute employee pension plans.

Need and Legal Basis: This regulation is needed to continue to clarify certain questions about coverage which have been raised. The legal basis for this regulation is (1) 29 U.S.C. 1135 (section 505 of ERISA) which provides the Secretary with general authority to promulgate necessary and appropriate regulations, and (2) 29 U.S.C. 1002(2) (§ 3(2) of ERISA) which provides the Secretary with the authority to treat certain supplemental pension plans as welfare plans.

3. 29 CFR 2510.3-3—Employee Benefit Plan

Description: This regulation section clarifies the definition in section 3(3) of ERISA of the term "employee benefit plan". It lists a number of employer-employee practices which are not employee benefit plans. Any such practices or arrangements listed in the regulation are not covered by Title I of ERISA.

Need and Legal Basis: This regulation is needed to continue to clarify certain

questions about coverage which has been raised. The legal basis for this regulation is 29 U.S.C. 1135 (section 505 of ERISA), which provides the Secretary with general authority to promulgate necessary and appropriate regulations.

II. Employment and Training Administration

1. 20 CFR Part 609—Unemployment Compensation for Federal Civilian Employees

Description: The regulations establish a program to pay unemployment benefits to Federal civilian employees. The program is administered under agreement with State Employment Security Agencies.

Need and Legal Basis: The regulations are necessary to provide Federal and State agencies with uniform guidelines and procedures for the payment of unemployment benefits to qualified individuals. The legal bases for the regulations are 29 U.S.C. 3304 *et seq.*; 33 U.S.C. 1001 *et seq.*; and 5 U.S.C. 8501–8508.

2. 20 CFR Part 614—Unemployment Compensation for Ex-Servicemembers

Description: The regulations establish a program that pays unemployment benefits to individuals separated from military service who are unable to obtain work. The program is financed by Federal funds and is administered under agreement with State Employment Security Agencies.

Need and Legal Basis: The regulations are needed to provide agencies with guidelines and procedures for the payment of appropriate benefits to qualified individuals. The legal bases for the regulations are 26 U.S.C. 3304 *et seq.* and 5 U.S.C. 8521–8525.

3. 20 CFR Part 635 (revises and supersedes 29 CFR Part 91)—Trade Adjustment Assistance: Benefit Payments

Description: The regulations implement the Trade Adjustment Assistance Program, which provides training, employment assistance, and cash allowances to workers whose unemployment is linked to increased importation of foreign-made products.

Need and Legal Basis: The regulations are necessary to assure that services and allowances are provided appropriately to trade impacted workers and are effective in gaining such workers' return to work. The legal basis for the regulations is 19 U.S.C. 2320.

4. 20 CFR Parts 602, 653 Subpart B, and 658—Employment Service System

Description: The regulations establish the Employment Service system for carrying out responsibilities under the Wagner-Peyser Act; describe the special efforts States must undertake to serve migrant and seasonal farmworkers; and set forth administrative provisions governing the employment service complaint system, the discontinuation of services to employers, the assessment of State compliance with Federal regulations, and Federal action for handling non-compliance.

Need and Legal Basis: The regulations are necessary to provide direction and guidance to Federal and State agencies in their implementation of the employment service system. The legal bases for the regulations are 29 U.S.C. 49 *et seq.*; 38 U.S.C. 2010–2014; and 38 U.S.C. Chapters 41 and 42.

III. The Employment Standards Administration

1. 20 CFR Part 10—Claims for Compensation under the Federal Employees' Compensation Act, as amended

Description: This regulation sets forth the regulations applicable to the filing, processing and payment of claims for workers' compensation benefits under the provisions of the Federal Employees' Compensation Act, as amended. Review of this item has been carried over from 1982.

Need and Legal Basis: The regulation is needed to provide detailed guidance and assistance to persons seeking compensation benefits under the Act, as well as to personnel within the Department of Labor and other agencies of the United States who are required to perform some function with respect to its administration. The legal basis for the regulation is the Federal Employees' Compensation Act (5 U.S.C. 8101 *et seq.*).

2. 20 CFR Part 704—Special Provisions for Longshoremen's and Harbor Workers' Compensation Act Extensions

Description: This part of the regulations governing the administration of the Longshoremen's and Harbor Workers' Compensation Act and related statutes contains the exceptions to the general applicability of Parts 702 and 703 for the Defense Base Act, the District of Columbia Compensation Act, the Outer Continental Shelf Lands Act and the Nonappropriated Fund Instrumentalities Act. Review of this item has been carried over from 1982.

Need and Legal Basis: These regulations are needed to provide detailed procedures for the implementation of the provisions of the extensions of the LHWCA which differ from the provisions of the basic statute. They are based on legal provisions in 33 U.S.C. 939, 42 U.S.C. 1651 *et seq.*, 36 District of Columbia Code 501 *et seq.*, 43 U.S.C. 1331, 5 U.S.C. 8171 *et seq.*,

3. 20 CFR Part 722—Criteria for Determining Whether State Workmen's Compensation Laws Provide Adequate Coverage for Pneumoconiosis and Listing of Approved State Laws

Description: These regulations establish procedures and standards to be applied by the Secretary of Labor in determining whether a State workers' compensation law provides adequate coverage for death or disability due to pneumoconiosis. Review of this item has been carried over from 1982.

Need and Legal Basis: The Black Lung Benefits Act requires the Secretary to establish criteria by which the adequacy of State laws which provide benefits for disability or death due to pneumoconiosis are to be determined. The legal basis for this regulation is 30 U.S.C. 931 and 936.

4. 20 CFR 726—Black Lung Benefits, Requirements for Coal Mine Operators' Insurance

Description: These rules govern the manner by which a coal mine operator shall fulfill its insurance obligations under the Black Lung Benefits Act, either by qualification as a self-insurer or by contracting with a commercial insurance company. Review of this item has been carried over from 1982.

Need and Legal Basis: These regulations are necessary to provide detailed procedures defining the means used to secure the payment of benefits under the Black Lung Benefits Act. The legal bases for this regulation are 30 U.S.C. 931, 933, 936 and 33 U.S.C. 901 *et seq.*

5. 20 CFR 61 and 62—Compensation for Injury, Disability, Death, or Enemy Detention of Employees of Contractors with the United States

Description: These rules define procedures for the disability compensation of employees of contractors with the United States and for reimbursement to private parties who are responsible for the payment of such compensation.

Need and Legal Basis: These rules are needed to provide orderly and uniform procedures for the compensation of these employees. The legal bases for these rules are 5 U.S.C. 8145 and 8149 and 5 U.S.C. 1706.

6. 20 CFR 71—Compensation for Injury, Disability or Death of Civilian American Citizens Incurred while Detained by or in Hiding from the Imperial Japanese Government

Description: These rules provide procedures for the compensation of American civilians who were taken prisoner or forced into hiding in the Pacific theater of World War II.

Need and Legal Basis: These rules are needed to provide orderly procedures for the compensation of these persons. The legal bases for these rules are 5 U.S.C. 8145 and 8149, 42 U.S.C. 1706 and 50 U.S.C. App. 2004.

7. 41 CFR Chapter 60—Office of Federal Contract Compliance Programs (OFCCP), Equal Employment Opportunity, Department of Labor (Except 41 CFR Part 60-3 Uniform Guidelines on Employee Selection Procedures)

Description: This group of regulations contains OFCCP's rules covering obligations of Federal contractors under E.O. 11246 (41 CFR Part 60-1); affirmative action program requirements under E.O. 11246 (41 CFR Part 60-2); required utilization analysis under E.O. 11246 (41 CFR Part 60-2.11); construction contractors' affirmative action requirements under E.O. 11246 (41 CFR Part 60-4); sex discrimination guidelines under E.O. 11246 (41 CFR Part 60-20); administrative hearing rules under E.O. 11246, 38 U.S.C. 2012 of the Vietnam Era Veterans' Readjustment Assistance Act and Section 503 of the Rehabilitation Act of 1973 (41 CFR Part 60-30); religion and national origin discrimination guidelines under E.O. 11246 (41 CFR Part 60-50); nonconstruction contractor evaluation procedures under E.O. 11246 (41 CFR Part 60-60); affirmative action requirements and enforcement provisions under 38 U.S.C. 2012 of the Vietnam Era Veterans' readjustment Assistance Act (41 CFR Part 60-250); affirmative action requirements and enforcement provisions under Section 503 of the Rehabilitation Act of 1973 (41 CFR Part 60-741); and examination and copying of OFCCP documents (41 CFR Part 60-40).

With the exception of Part 60-2.11, this review has been carried over from 1982.

Need and Legal Basis: These regulations implement E.O. 11246, as amended by E.O. 11375 and E.O. 12086, 38 U.S.C. 2012 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and Section 503 of the Vocational Rehabilitation Act of 1973, as amended.

8. 29 CFR Part 541—Defining the Terms "Executive," "Administrative," "Professional," and "Outside Salesman"

Description: These regulations set forth criteria for determining the application of the Fair Labor Standards Act (FLSA) exemption for "executive," "administrative," "professional," and "outside sales" employees from the minimum wage and overtime requirements of the Act.

Need and Legal Basis: These regulations are needed in order to delineate the duties, responsibilities, and minimum salary levels which must be met in order for employees to qualify for the minimum wage and overtime exemption contained in Section 13(a)(1) of the FLSA. The legal basis for these regulations is 29 U.S.C. 213.

9. 29 CFR Part 529—Employment of Patient Workers in Hospitals and Institutions at Subminimum Wages

Description: These regulations set forth the conditions under which certificates may be issued under the Fair Labor Standards Act (FLSA) authorizing special minimum wage rates for patient workers in hospitals and institutions.

Need and Legal Basis: Section 14(c) of the FLSA provides for the employment of handicapped individuals whose earnings or productive capacity is impaired, at special wage rates in order to prevent curtailment of their opportunities for employment. These regulations are needed in order to define the conditions under which such special wage rates may be paid handicapped workers who are patients in hospitals and institutions. The legal basis for these regulations is 29 U.S.C. 214.

10. 29 CFR Part 552—Application for the Fair Labor Standards Act to Domestic Service

Description: These regulations define the manner in which the Fair Labor Standards Act (FLSA) applies to domestic service employees.

Need and Legal Basis: Sections 6(f) and 7(1) of the FLSA require that domestic service employees be paid minimum wage and overtime compensation, respectively. Sections 13(a)(15) and 13(b)(21) of the FLSA provide exemptions from the above requirements. These regulations are needed in order to define the manner in which the FLSA applies to the various categories of domestic employment. The legal basis for these regulations is 29 U.S.C. 213.

11. 29 CFR Part 793—Exemption of Certain Radio and Televison Station Employees from Overtime Pay Requirements Under Section 13(b)(9) of the Fair Labor Standards Act

Description: These regulations set forth criteria for determining the application of the Fair Labor Standards Act (FLSA) to announcers, news editors and chief engineers employed by certain radio and television stations.

Need and Legal Basis: Section 13(b)(9) of the FLSA provides an overtime pay exemption for empolyees who are announcers, news editors or chief engineers of certain radio and television stations. These regulations are needed in order to define the conditions under which this exemption is applicable. The legal basis for these regulations is 29 U.S.C. 213.

IV. Occupational Safety and Health Administration

1. 29 CFR 1910.1001—Occupational Exposure to Asbestos

Description: OSHA's 1972 standard for asbestos established an 8-hour timeweighted (TWA) exposure limit of 5 fibers (longer than 5 micrometers) per cubic centimeter of air (5 f/cc), with a ceiling limitation against exposure in excess of 10 fibers per cubic centimeter of air (10 f/cc). Under the 1972 standard, and effective as of 1976, that 8-hour TWA was reduced to 2 fibers per cubic centimeter of air (2 f/cc). On October 9, 1975 (40 FR 47652), OSHA issued a notice of proposed rulemaking to further lower the permissible exposure level (PEL) to 0.5 fibers per cubic centimeter of air (0.5 f/cc). In 1976, OSHA requested the National Institute for Occupational Safety and Health (NIOSH) to reevaluate information on asbestos and to advise OSHA of the findings. NIOSH recommended to OSHA that the PEL be lowered to 0.1 fibers per cubic centimeter of air (0.1 f/cc). A technological feasibility assessment and an economic impact analysis were prepared in September 1977 and 1978. In April 1980, OSHA announced that it would begin work on a proposed revision to the present standard. This decision was based on recommendations of an OSHA/NIOSH committee formed in 1979 to review scientific information on asbestos-related disease and to assess the adequacy of the current OSHA occupational health standard. A draft regulatory analysis was prepared in 1980 to address the proposed PELs of 0.5 f/cc of air and 0.1 f/cc of air. OSHA will continue to review the current asbestos standard during the next year, both

under the standards set by Executive Order 12291 and the Regulatory Flexibility Act.

Need and Legal Basis: This rule is needed because asbestos is a hazard to which many thousands of American workers are exposed. New research on the health hazards of asbestos, particularly its role as a cause of occupationally related cancer, and concern for the adequacy of the current standard have prompted Agency review of the PEL for asbestos. Recent epidemiologic evidence indicates that asbestors-related disease may be induced at very low levels of exposure, and experimental data in animals suggest that all forms of asbestos present a health standard. The asbestos standard was promulgated pursuant to section 6 of the Occupational Safety and Health Act (hereinafter 29 U.S.C. 655).

2. 29 CFR 1990—Identification, Classification and Regulation of Potential Occupational Carcinogens

Description: OSHA plans to reevaluate and reconsider the current standard for the identification, classification and regulation of potential occupational carcinogens. As a result of a July 1980 Supreme Court decision on OSHA's benzene standard, the Agency deleted portions of the current regulations (46 FR 48890, January 19, 1981) to reflect the Court's finding that consideration must be given to the significance of risk in issuing standards on carcinogens. Amendments to conform such standards to the Supreme Court's decision were proposed on January 23, 1981 (46 FR 7402) but were withdrawn on March 27, 1981 (46 FR 19000) to permit the Agency to address alternatives that had not been fully considered. The Agency published an ANPR on January 5, 1982 (47 FR 187) to gather comments on needed revisions to this standard. The Agency is evaluating these comments and intends to publish a proposed revision in early 1983.

Need and Legal Basis: This rule is needed because OSHA needs to have a consistent method of dealing with the specific identification, classification and regulation of toxic substances for which there is reported to be evidence of a potential carcinogen in man. The rule attempts to deal with worker exposures to toxic substances that may be potential carcinogens. The legal basis for this rule is 29 U.S.C. 655.

3. 29 CFR 1910.95—Occupational Exposure to Noise

Description: In 1974, the Occupational Safety and Health Administration (OSHA) proposed standards governing occupational noise exposure, which included a permissible exposure limit (PEL) of 90 dB, as an 8-hour time-weighted average (TWA), and requirements for established hearing conservation programs. Public hearings were held during 1975 and 1976. On January 16, 1981 (46 FR 4078), OSHA published a final hearing conservation amendment as a final rule and a regulatory impact analysis of the amendment. This amendment was directed toward establishing hearing conservation programs for employees to prevent occupational hearing loss. Since January, the Agency received numerous petitions for an administrative stay and reconsideration of the hearing conservation amendment. In order to evaluate those petitions and to comply with Executive Order 12291, the Agency delayed the effective date from April 15 to June 1, 1981; from June 1 to August 1, 1981; and from August 1 to August 22, 1981. On August 21, 1981 (46 FR 42622), a regulatory impact and flexibility analysis was completed, and certain provisions of the hearing conservation amendment were put into effect. OSHA is continuing to evaluate and study those stayed requirements of the amendment that did not go into effect on August 22, 1981. Publication of the final decisions regarding these provisions is anticipated for early 1983.

Need and Legal Basis: This rule is needed because there are over 900,000 Americans who suffer a moderate to severe hearing loss due to exposure to occupational noise. Epidemiological and laboratory evidence indicates that protracted noise exposures above 90 dB cause hearing loss in a substantial portion of the exposed population and that more susceptible individuals will incur hearing loss at levels below 90 dB. Noise-induced hearing loss is an irreversible condition that progresses with increased exposure and with age. Because hearing is essential for communication, hearing loss can lead to serious social and psychological handicaps. The legal basis for this rule is 29 U.S.C. 655.

4. 29 CFR 1910.134; 1926.103; 1915.82; 1916.82; 1917.82; and 1918.102—Respiratory Protection

Description: On May 14, 1982 (47 FR 20803), OSHA published an advance notice of proposed rulemaking (ANPR) to solicit relevant information on revising the standards on respiratory protection. Since the adoption of the present OSHA standard on respiratory protection in 1971, important advances have been made in respirator technology. Further, the present OSHA standard makes no reference to respiratory fit or protection factors, such as numerical estimates of the effectiveness of respirators in removing contaminants. The ANSI standard, from which the OSHA standard was adopted, has been substantially revised. Because the present OSHA standard does not consider recent advances in respiratory protection, respirator use is not as protective or as cost-effective as it might be. Also, the present OSHA standard requires the use of respirators approved by the U.S. Department of Interior, Bureau of Mines, when available. This approval function has been transferred to MSHA and indirectly to NIOSH. Because serious questions have been raised about the MSHA/NIOSH approval process, the relationship between MSHA/NIOSH approval and OSHA requirements should be examined. The proposed ANPR will address a wide range of complex issues. Specific options for addressing the issues will be based on the responses to the ANPR. A regulatory impact and regulation flexibility analysis may be conducted in conjunction with the overall review of the present regulations.

Need and Legal Basis: This rule is needed because respirators are effective for protecting workers only when they are properly fitted to the wearer, properly used, and properly maintained. These rules help employers provide adequate respiratory protection for employees. The legal basis for this rule is 29 U.S.C. 655.

5. 29 CFR 1910.96 and 29 CFR 1926.53—Ionizing Radiation

Description: The present standard was adopted by OSHA in 1971 under paragraph 6(a) of the Occupational Safety and Health (OSH) Act. The standard limits worker exposure to 1.25 rems per calendar quarter, or 3 rems per quarter as long as the lifetime accumulated dose does not exceed 5 (N-18) rems where N is the worker's age. The source of most radiation covered under this standard is from commercially produced equipment such as X-ray machines and accelerators of various types. A regulatory impact and regulatory flexibility study may be conducted in conjunction with the Agency's initiation of an overall review of the standard.

Need and Legal Basis: This rule is needed because of the carcinogenic and mutagenic risks associated with exposures to ionizing radiation. The standard covers industrial exposure situations not presently regulated by other Federal agencies. The legal basis for this rule is 29 U.S.C. 655.

6. 29 CFR 1910.97 and 1926.54—Nonionizing Radiation

Description: In 1971, OSHA adopted the American National Standards Institute (ANSI) recommended standard C9.1-1966, "Safety Level of Electromagnetic Radiation with Respect to Personnel," as its standard for nonionizing radiation (29 CFR 1910.97). The ANSI standard was written as a recommended guideline for worker exposure to nonionizing electromagnetic radiation. It covers exposures from sources such as radio frequency and microwave radiation and has a nonmandatory permissible exposure limit. This standard will be deleted in accordance with Agency action on all advisory, or nonmandatory, standards. In light of new evidence, however, OSHA is initiating a review to reevaluate the health effects of nonionizing radiation at various exposure levels to determine at what exposure level a mandatory standard is warranted. OSHA may prepare a regulatory impact and regulatory flexibility analysis to assess the costs and the effectiveness of alternative nonionizing radiation standards. In addition, the potential economic impacts on small entities will be examined.

Need and Legal Basis: This rule is needed because nonionizing radiation poses a significant risk of material impairment to the health of exposed workers. The legal basis for this rule is 29 U.S.C. 655.

7. 29 CFR Part 1907—Accreditation of Testing Laboratories

Description: Present regulations established the criteria and procedures that OSHA would use to accredit testing laboratories desiring to test products that require approval in the OSHA standards 29 CFR Parts 1910, 1915, 1918 and 1926.

Need and Legal Basis: Additional qualified laboratories, other than those specifically mentioned in Part 1907 should be allowed to achieve the nationally recognized accreditation required by Parts 1910, 1915, 1918, and 1926. The legal basis for this rule is 29 U.S.C. 655.

8. 29 CFR Part 1910, Subpart I—Personal Protective Equipment

Description: Present standards address the design, selection and use of personal protective equipment. These standards set forth the requirements for hardhats, eye and face protection, respirators, safety shoes, and other personal protective equipment. These standards were originally promulgated in 1971 based on the then existing national consensus standards.

Need and Legal Basis: This rule is needed because of the increased number of occupational injuries and deaths that would occur if the use of personal protective equipment were required, but the equipment was improperly designed. The legal basis for this rule is 29 U.S.C. 655.

9. 29 CFR Part 1910, Subpart Q—Welding, Cutting and Brazing

Description: Present standards address safe work practices for welding, cutting, and brazing operations. The standard sets forth design criteria for welding, cutting and brazing equipment, and facilities as well as their proper maintenance and use. These standards were originally promulgated in 1971 based on the then existing national consensus standards:

Need and Legal Basis: This rule is needed because of the occupational hazards related to improper welding, cutting, and brazing practices and the use of defective equipment. The legal basis for this rule is 29 U.S.C. 655.

10. 29 CFR 1910.94 (c) and (d)—Spray Finishing Operations and Open Surface Tanks

Description: Present standards address safe work practices for spray finishing and open surface tank dipping operations. The standards set forth the ventilation design, construction, and operation requirements for spraying and dipping operations. These standards were originally promulgated in 1971 based on the then existing national consensus standards.

Need and Legal Basis: These rules are needed because of the occupational hazards related to improper ventilation in spraying and dipping operations. The legal basis for this rule is 29 CFR 655.

11. 29 CFR Part 1910.144 and 1910.145—Safety Color Code for Marking Physical Hazards; Specifications for Accident Prevention Signs and Tags

Description: Present standards address the use of colors for marking physical hazards and specifications for accident prevention signs. These standards were originally promulgated in 1971 based on the then existing national consensus standards.

Needs and Legal Basis: These rules are needed primarily to warn employees of the dangers concerning immediate hazards and to warn employees to exercise caution against potential hazards or unsafe practices. Tags are to be utilized as a temporary means of warning employees of a hazardous condition, defective equipment, etc. The legal basis for this rule is 29 U.S.C. 655.

12. 29 CFR Part 1910.66—Powered Platforms for Exterior Building Maintenace

Description: Present standards address the design, maintenance, and use of powered platforms for exterior building maintenance.

Need and Legal Basis: This rule is needed because of the occupational hazards related to unsafe platforms or to the improper use of powered platforms. The legal basis for this rule is 29 U.S.C. 655.

13. 29 CFR Part 1910.266—Pulpwood Logging

Description: Present standards address safe work practices for employees who are engaged in pulpwood logging.

Need and Legal Basis: This rule is needed because of the occupational hazards related to pulpwood logging. The legal basis for this rule is 29 U.S.C. 655.

14. 29 CFR Part 1915—Occupational Safety and Health Rules for Shipyard Employment

Description: These rules set safety and health requirements for those who are engaged in shipbuilding, shipbreaking and shiprepairing operations.

Need and Legal Basis: These rules are needed because of the higher than average number of worker accidents and injuries that occur in these industries. The legal basis for these rules are 29 U.S.C. 655 and 33 U.S.C. 941.

15. 29 CFR Part 1981—Safety and Health Regulations for Longshoring

Description: These rules set safety and health requirements for employers whose employees are employed, in or whole or in part, in longshoring operations or related employments within the Federal maritime jurisdiction on navigable waters of the United States, *other than* the master, ship officers, crew of the vessel or any person engaged by the master to load or unload any vessel under 18 net tons.

Need and Legal Basis: These rules are needed because the accident and injury rates in this industry are considerably higher than the average. The legal bases for these rules are 29 U.S.C. 655 and 33 U.S.C. 941.

16. 29 CFR Part 1926, Subpart F—Fire Protection and Prevention

Description: The current standards address the hazards associated with

compressed gases, flammable and combustible liquids, and temporary heating devices. These standards were originally promulgated in 1971.

Need and Legal Basis: This rule is needed because of the hazards associated with the handling and use of such substances as compressed gases, and flammable and combustible liquids. The legal basis for this rule is 29 U.S.C. 655.

17. 29 CFR Part 1926, Subpart N—Cranes, Derricks, Hoists, Elevators and Conveyors

Description: Present standards address the design, maintenance and use of equipment such as cranes, derricks, hoists, elevators, conveyors and helicopters in construction. These standards were originally promulgated in 1971.

Need and Legal Basis: This rule is needed because of the occupational hazards related to equipment failure and to improper use and maintenance of equipment.

The legal basis for this rule is 29 U.S.C. 655.

18. 29 CFR Part 1926, Subpart O—Motor Vehicles, Mechanized Equipment and Marine Operations

Description: Present standards address the design, use, and maintenance of motor vehicles, materials handling equipment, pile driving equipment, and marine operations equipment. These standards were originally promulgated in 1971.

Need and Legal Basis: This rule is needed because of the occupational hazards related to equipment failure and to the improper use and maintenance of equipment. In addition, design changes over the past 11 years have made many of the performance requirements inappropriate, and similarly, the current standard has inhibited technological advances in this equipment. The legal basis for this rule is 29 U.S.C 655.

19. 29 CFR Part 1926, Subpart T—Demolition

Description: Present standards address construction activities such as mechanical demolition, selective demolition by explosives, removal of steel construction, and manual removal of floors, walls, and masonry sections. These standards were originally promulgated in 1971.

Need and Legal Basis: This rule is needed because of the safety and health hazards associated with the demolition of structures. The legal basis for this rule is U.S.C. 655.

20. 29 CFR Part 1926, Subpart U—Blasting and Use of Explosives

Description: Present standards address construction activities that are related to blaster's qualifications, surface and underground transportation of explosives, storing and loading blasting materials, inspection after blasting, misfires, underwater blasting, and blasting in excavation work using compressed air. These standards were originally promulgated in 1971.

Need and Legal Basis: This rule is needed because of the occupational hazards associated with the use of explosives in construction. The legal basis for this rule is 29 U.S.C. 655.

21. 29 CFR Part 1926, Subpart W—Rollover Protective Structures and Overhead Protection

Description: Present standards address the test procedures for and the design of rollover protective structuresives (ROPS) for materials handling equipment such as scrapers, loaders, dozers, graders, crawler tractors, and agricultural/industrial tractors used in construction work.

Need and Legal Basis: This rule is needed because of the occupational injuries that occur when such equipment is involved in rollover accidents. The legal basis for this rule is 29 U.S.C. 655.

V. Office of the Assistant Secretary for Administration and Management

41 CFR Part 29, Procurement and Grant Regulations

Description: This rule establishes Department of Labor procurement policies and procedures.

Need and Legal Basis: This rule is needed because of public interest and participation in providing property and services to support Department of Labor operations. The legal bases for this rule are 5 U.S.C. 301 and 40 U.S.C. 471, *et seq.*

VI. Mine Safety and Health Administration

1. 30 CFR Parts 55, 56 and 57—Review of Standards

Description: The existing safety and health standards applicable to metal and nonmetal mines have generally been in effect for over ten years. MSHA is reviewing the standards to (1) eliminate unnecessary standards, (2) clarify and update existing standards, (3) incorporate technological advances and (4) reduce recordkeeping burdens on the industry. Informal, public conferences were held during the Spring of 1982 on selected high priority sections. Preproposal drafts of the revised standards are expected in late 1982 and early 1983. This project is one of MSHA's highest priorities.

Need and Legal Basis: This rule is necessary to provide safety and health protection for metal and nonmetal miners. The legal basis for this rule is section 101 of the Mine Act (hereinafter 30 U.S.C. 811).

2. 30 CFR Part 75—Review of Underground Coal Mine Safety Standards

Description: MSHA has initiated a review of all safety standards for underground coal mines to (1) reduce recordkeeping burdens on the industry, (2) clarify and update existing standards, (3) eliminate unnecessary standards and (4) incorporate technological advances. MSHA published an ANPRM on 07/09/82 (47 FR 30025) which solicited suggestions for regulatory suggestions for regulatory changes to all of the standards, but specifically roof support, explosives, and the ventilation requirements in § 75.316. The comment period was extended to 11/15/82 (47 FR 38097). MSHA will publish preproposed drafts of high priority standards and schedule public conferences during 1983. Several proposed rules are also expected to be published during 1983.

Need and Legal Basis: This rule is needed to provide safety and health protection for underground miners. This legal basis for this rule is 30 U.S.C. 811.

3. 30 CFR Parts 55/56/57.19–20 through .19–29, 75.1401–1; 77.1402–1; 77–1903(b)—Wire Rope Standards

Description: This rule would revise, clarify and update MSHA's current wire rope standards with regard to requirements for the selection, installation, use, inspection, maintenance, and removal of wire ropes used in coal and metal and nonmetal mines. A NPRM was published 11/16/82 (47 FR 51684) with comments due by 01/17/83.

Need and Legal Basis: This rule is necessary for assuring safe wire rope standards affecting miners who rely on hoist or personnel conveyances or who work nearby materials hoisted by wire ropes. The legal basis for this rule is 30 U.S.C. 811.

4. 30 CFR Part 37—Alternate Program for Equipment Approvals

Description: The proposal would provide an alternate program for the approval of certain equipment used in underground mines. Under the proposal, applicants would certify to MSHA that the equipment meets the required design and test criteria, has been successfully

tested, and will be produced in accordance with an accepted quality control plan. A regulatory flexibility analysis will be prepared. A regulatory impact analysis is not required.

Need and Legal Basis: This rule is necessary to provide a more expeditious process for introducing new and safe technology into mines. The legal basis for this rule is 30 U.S.C 811.

5. 30 CFR Part 48—Consolidation of and Review of Training Requirements

Description: MSHA would review all existing metal and nonmetal and coal standards to determine if certain provisions duplicate, in whole or in part, the comprehensive training regulations which were promulgated on October 13, 1978. In addition, the regulation will be reviewed for their continued applicability and effectiveness.

Need and Legal Basis: This rule is needed to provide requirements for training and retraining of miners. The legal basis for this rule is 30 U.S.C. 811.

Signed this 9th day of February, 1983, at Washington, D.C.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 83-3975 Filed 2-14-83; 8:45 am]

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Part VI

Environmental Protection Agency

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 2282-2]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and notice of intent to deny rulemakng petition and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act or 1976 (RCRA), as amended, by expanding the household waste exclusion to include wastes from bunkhouses, ranger stations, crew quarters, campgrounds, and picnic grounds. EPA is taking this action on response to rulemaking petitions submitted by both the U.S. Departments of Agriculture and Interior. EPA is also publishing notice of its tentative determination to deny the American Retail Federation's petition to exempt from RCRA regulation "consumer-household products" which have left manufacturer control.

DATES: EPA will accept public comments on both the proposed rule and our tentative decision to deny the American Retail Federation's (ARF) petition until April 18, 1983.

Any person may request a hearing on the proposal or our tentative decision to deny AFR's petition by filing a request with John P. Lehman, whose address appears below by March 2, 1983. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments on both the proposed rule and EPA's tentative decision to deny ARF's petition should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Comments on either of these decisions should identify the regulatory docket numbers "Section 3001—Household Exemption" or "Section 3001—Consumer Product Exemption." Requests for a hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The public docket for this amendment is located in Room S-269C, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday thru Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346 or in Washington, D.C. at 382-3000. For technical information, contact Filomena Chau, Office of Solid Waste (WH-565B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, EPA promulgated the first phase of regulations implementing the hazardous waste management system under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. (These regulations are published in Title 40 of the Code of Federal Regulations (CFR) in Parts 260 to 266 and 122 to 124.) Among other things, these regulations include a list of solid wastes which are not defined as hazardous wastes and thus, are not subject to the Subtitle C requirements. Included in this list of exemptions is "household waste."

The Agency defined this provision as an exclusion of a waste stream—namely "household waste"—when generated by consumers. This approach, we believe, accords closely with the legislative intent to exclude waste streams generated by consumers at the household level. Since the wastes generated at hotels and motels are essentially the same as those generated by consumers in their households, EPA decided that such wastes should also be within the exclusion. In response to comments to its original proposal of the hazardous waste regulations, EPA also indicated that Federal agencies could not, as a class, qualify as households. Therefore, the regulations as promulgated did not categorically exclude Federally owned facilities from regulation under this provision (see 45 *FR* 33099).

II. Rulemaking Petitions

A. U.S. Departments of Agriculture and Interior Petitions

On September 25, 1980 and June 3, 1981, respectively, the U.S. Department of Agriculture and the U.S. Department of the Interior submitted rulemaking petitions pursuant to 40 CFR 260.20. In their petitions, the two Federal agencies requested that EPA expand the existing household waste exclusion to include "household type wastes" generated at Federally owned campgrounds, picnic grounds, and administrative sites.[1] The petitioners claimed that wastes generated from these types of Federal facilities are essentially the same as those generated by consumers in their households, and those generated by hotels and motels. More specifically, the petitioners argued:

- *Campgrounds and Picnic Grounds*—refuse generated at campgrounds and picnic grounds is the same as that which would be generated in households. Facilities at campgrounds generally include only comfort stations, bathhouses, and wastewater pumps. Sanitary wastes from these sources are treated by septic tank-absorption field systems. These sanitary wastes are similar to those generated by a household; subsequent septic tank pumpings would also be similar.
- *Administrative Sites*—administrative sites operated by the Forest Service, the National Park Service, and other public land management agencies basically include Ranger Stations and Work Centers which generate "at home" type refuse. Facilities at these sites include residences, bunkhouses, and crew quarters for employees which are, in fact, households.[2] Wastes from these facilities—refuse and septic tank pumpings—are similar to those generated by a household.

The petitioners further argued that EPA should emphasize the nature of the waste stream itself, rather than the class of generators, in defining the breadth of the "household waste" exclusion. The petitioners believe their approach would mean that all "household type" waste, regardless of its Federal or non-Federal nature, would be treated the same by EPA. Therefore, the petitioners urged EPA to amend the existing household waste exclusion, as described above.

B. American Retail Federation Petition

On December 1, 1980, the American Retail Federation (ARF) submitted a rulemaking petition, pursuant to 40 CFR 260.20, which requested that EPA exempt "consumer-household products" which have left manufacturer control, whether in the hands of households,

[1] The U.S. Department of the Interior (DOI) petition also requested amendments to two provisions in EPA's consolidated permit regulations. This part of DOI's petition is addressed in two recently published **Federal Register** proposals (47 *FR* 25546, June 14, 1982 and 47 *FR* 32038, July 23, 1982).

[2] Administrative sites also contain storage buildings, offices, and other support type buildings. The petitioner did not request that the wastes from these facilities be included in the household waste exclusion.

retailers, transporters, or landfill operators.[3] ARF suggested that EPA might use the definition of consumer product contained in the Consumer Product Safety Act (15 U.S.C. 2052) as one way of defining those products to be exempt from hazardous waste control.

The petitioner argued that since EPA has not brought households within the hazardous waste management system, there appears to be some recognition that most "consumer-household products" when disposed create no hazard. The petitioner further argued that by exempting "consumer-household products," both enforcement and compliance costs would be reduced without significantly increasing the environmental risk. The petitioner also contended that such an amendment would address, in part, the chief concern raised by the National Solid Waste Managment Association (NSWMA) as part of their petition [4] because "the exclusion would apply to landfill operators handling such products, as well as households, retailers, and transporters." (Page 6, ARF petition)

Moreover, the ARF contends that, under the present regulations, most retailers do not know which wastes to consider in determining whether they are a small quantity generator (i.e., they argue that retailers, in most instances, are unable to determine what products when discarded would constitute hazardous waste). Thus, such an exemption would specifically clarify for the regulated community, including the retailer, its responsibility under the hazardous waste regulations. Finally, ARF believes that a "consumer-household product" exemption is consistent with the household waste exemption in that it would only exempt diluted hazardous wastes. Therefore, they requested that EPA exempt "consumer-household products" from Subtitle C regulations.

[3] The ARF indicated that acutely hazardous wastes would by definition be excluded from the definition of consumer products.

[4] The NSWMA petition of September 12, 1980 requested that EPA amend the hazardous waste regulations so that small quantity generators would be required to comply with the packaging, labeling, manifest, and recordkeeping requirements now applicable to large quantity generators and transporters of hazardous waste under 40 CFR 262 and 263, respectively. NSWMA stated that, "to exempt these generators and transporters from such regulations in the broad manner of the present regulation presents a serious threat, to the public, to employees of waste transportation and disposal firms and to the environment, yet serves no valid administrative purpose." (Page 4, NSWMA petition)

III. EPA's Decision

A. U.S. Departments of Agriculture & Interior Petitions

In reviewing these petitions, the Agency has sought to implement Congressional intent to exclude waste streams generated by consumers at the household level. Thus, EPA has tried to clearly identify those waste sources which are sufficiently similar to households, and for which an exemption would be appropriate.

In implementing this objective, EPA has concluded that it is reasonable to use two basic criteria to define the scope of the exclusion. First, the waste must be generated by a source that serves as a temporary or permanent residence for individuals. Second, the waste stream must be composed primarily of a mixture of materials found in the wastes generated by consumers in their homes. In EPA's view, a waste stream satisfying both of these criteria could be viewed as a household waste for regulatory purposes.

Under these criteria, the ownership of the source (*i.e.*, Federal vs. non-Federal) should not determine whether the source is covered by the "household waste exemption" and, thus, excluded from the hazardous waste management system. Since bunkhouses (relatively permanent multiple residences), ranger stations (relatively permanent single residences), and campgrounds and picnic grounds (temporary residences) all generate wastes similar to those generated by a consumer in his home, they should be excluded. Similarly, single and multiple residences on military installations generate wastes akin to those generated by a consumer in his home. Thus, wastes from these sources should also be excluded. The Agency has decided, however, that storage areas, offices, or work centers do not meet both criteria. These sources are not residences nor do they necessarily generate wastes similar to those generated by a consumer in his home. Thus, wastes from these sources should not be excluded.

Accordingly, EPA is responding to these petitions by proposing to expand the household waste exclusion to wastes generated at bunkhouses, ranger stations, crew quarters, campgrounds, and picnic grounds, whether or not these wastes are generated at Federally-owned sites. As proposed, the exclusion would not extend to administrative sites that do not serve as temporary or permanent residence (*e.g.*, offices, storage buildings). EPA seeks comment on the scope of the proposed exclusion as well as the criteria used in evaluating the petitions for rulemaking.

The petitioners also requested that EPA define "household waste" by waste characteristics rather than by class of generators. However, we believe that this approach is inconsistent with Congressional intent—*i.e.*, to exclude waste streams generated by consumers at the household level. Therefore, we are denying the petitioner's request for a definition of "household waste" by waste characteristcs.

B. American Retail Federation Petition

In its review of this petition, EPA has again sought to implement Congressional intent regarding the household waste exclusion. As discussed above and as stated in the legislative history, these wastes have been exempted from regulation because Congress intended to exclude "household waste," *not* because they necessarily pose no hazard [5] (See Senate Report No. 94–988, 94th Congress, 2nd Session, at 16). Thus, we believe that only those waste sources which are sufficiently similar in both quantity and nature to households should be covered under the household waste exclusion. This being the case, we do not believe that "household-type wastes" that are generated at establishments other than households (*i.e.*, retail stores, office buildings, restaurants, shopping centers, etc.) are meant to be included in the household waste exemption. Rather, we believe that these wastes should be evaluated on the same footing as all other solid wastes, *i.e.*, if they are listed or if they exhibit one or more of the characteristics of hazardous waste, they should be regulated (provided they are generated in quantities greater than the small quantity generator exclusion).

Some "consumer-household products" would be hazardous wastes when discarded by retailers or commercial establishments. Because of quantity of material or concentration of harmful constitutents, these wastes could have adverse impacts (compared to wastes discarded by a household). For example, crates of spoiled household pesticides, which could be discarded by a retailer, are likely to have adverse environmental effect; cartons of household solvents if discarded, could be viewed similarly. Consequently, we

[5] In their petition, the ARF states that, "Since the EPA has not brought households within the hazadous waste management system, it recognizes that most consumer household products when disposed of create no hazard." As discussed in the preamble to this proposal, this exemption is based entirely on Congressional intent and not on absence of hazard from the waste.

are providing notice of our intent to deny the petition.

It should be noted that most "consumer-household product" wastes would probably not exhibit any of the four characteristics. In many cases retailers producing such wastes should be able to rely on their knowledge of such wastes in making a determination as to their hazardousness. Furthermore, many retailers and commercial establishments are small quantity generators (those who generate less than 1000 kg of hazardous waste and less than I kg of acutely hazardous waste per month) and thus are subject to the small quantity generator exemption.

ARF commented that currently retailers do not know which wastes are hazardous and thus do not know which wastes to consider in determining if they are exempted by the small quantity generator conditional exclusion. For any questions on the hazardous waste regulations, we suggest that retailers contact the RCRA Hotline, toll free at (800) 424-9346 or in Washington, D.C. at 382-3000. For examining which products, when disposed, are considered hazardous wastes, we suggest that retailers consult both the "Chemical Activities Statuts Report" (#EPA 560/13-80-040(a)) and 40 CFR 261.33 ("Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof"). The Chemical Activities Status Report gives trade names for chemicals. This report was published by the Agency's Office of Pesticides and Toxic Substances and is available in the EPA Regional Libraries. It is being updated and will become available through the National Technical Information Service at the end of 1982. For further information, the reader should contact the Office of Toxic Substances Industry Assistance Office at (800) 429-9065, toll free, or 554-1404, in the Washington, D.C. area.

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed amendment is not major because it will not result in an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. In fact, this regulation will reduce the overall costs and economic impact of EPA's hazardous waste management regulations. For example, the approximately 450,000 Federal housing units in the United States would benefit from this proposed amendment. It is not possible at the present time to quantify the number of non-Federal bunkhouses, ranger stations, crew quarters, campgrounds, and picnic grounds in the United States. However, the Agency believes that this is also a substantial number. All this will be in addition to the 79,763,000 non-Federal housing units already covered under the "household waste" exclusion. In addition, there will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Because this proposed amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

This proposed amendment was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any responses to those comments are available for public inspection at the Office of Solid Waste Docket, Room S-269C, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This proposed amendment will have no adverse economic impact on small entities. Accordingly, I hereby certify that this proposed amendment will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

The reduction in reporting or recordkeeping provisions in this rule will be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.* Any final rule will explain how its reporting or recordkeeping provisions respond to any OMB or public comments.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: February 8, 1983.

Anne M. Gorsuch,

Administrator.

PART 261—[AMENDED]

For the reasons set out in the preamble, 40 CFR 261 is proposed to be amended as follows:

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In § 261.4 paragraph (b)(1) is revised to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (*e.g.*, refuse-derived fuel), or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, and picnic grounds.

* * * * *

[FR Doc. 83-4006 Filed 2-14-83; 8:45 am]

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

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