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Highlights

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Highlights

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority by the Secretary of Agriculture and General Officers of the Department; Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: The delegations of authority for the Department of Agriculture are revised to reflect the dissolution of the Management Staff and the transfer of the functions performed by that Staff to the Office of Personnel and the Office of Operations and Finance.

EFFECTIVE DATE: January 13, 1981.

FOR FURTHER INFORMATION CONTACT: John W. Fossum, Director, Office of Personnel, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-3585.

SUPPLEMENTARY INFORMATION: Responsibility for the Department's management program activities has been transferred to the Office of Personnel and the Office of Operations and Finance. It has been determined that this action will improve the coordination of these activities with existing administrative activities and avoid fragmentation and dilution of effort. Responsibility for organization reviews and analysis, delegations of authority and committee management has been transferred to the Office of Personnel. Responsibility for all other management programs previously delegated to the Management Staff has been transferred to the Office of Operations and Finance. Since this rule relates to internal agency management, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12044, Improving Government Regulations, and, thus, does not require the preparation of a regulatory impact analysis.

Accordingly, 7 CFR Part 2 is amended as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries and the Director of Economics, Policy Analysis and Budget

1. Section 2.25 is amended by revising paragraph (c)(1), by removing and reserving paragraphs (c)(2) and (c)(5), and by adding new paragraphs (e)(12) through (e)(14) as follows:

§ 2.25 Delegations of authority to the Assistant Secretary for Administration.

* * * * *

(c) *Related to management.* (1) Administer the Department's management improvement program including the provision of assistance to agencies through management studies and planning review; review the management and operating policies and processes; search for more economical approaches to the conduct of business and provide such other assistance as will aid in improving the management effectiveness and operation of the Department's programs.

(2) [Reserved]

* * * * *

(5) [Reserved]

* * * * *

(e) *Related to personnel.* * * *

(12) Maintain, review and update departmental delegations of authority.

(13) Authorize organizational changes which occur in:

(i) Departmental organizations:

(a) Service or office.

(b) Division (or comparable component).

(c) Branch (or comparable component in departmental centers, only).

(ii) Field organizations:

(a) First organizational level.

(b) Next lower organizational level—required only for those types of field installations where the establishment, change in location, or abolition of same, requires approval in accordance with 1 AR 673.

(14) Formulate and promulgate departmental organizational objectives and policies.

* * * * *

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

2. Section 2.75 is amended by adding new paragraphs (a)(20) through (a)(25) and by revising paragraph (a) as follows:

§ 2.75 Director, Office of Operations and Finance.

(a) *Delegations.* Pursuant to § 2.25 (b), (c), and (d), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Operations and Finance:

* * * * *

(20) Administer the Department's management improvement program including the provision of assistance to agencies through management studies and planning review; review the management and operating policies and processes; search for more economical approaches to the conduct of business and provide such other assistance as will aid in improving the management effectiveness and operation of the Department's programs.

(21) Administer the Department's management review program. This authority includes the development and promulgation of departmental directives regulating the management review function.

(22) Develop, design, install, and revise systems, processes, work methods, and techniques, and undertake other system engineering efforts to improve the management and operational effectiveness of the USDA.

(23) Exercise authority under the Department's Acquisition Executive to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular No. A-109; Major Systems Acquisitions. This delegation includes the authority to:

(i) Insure that OMB Circular No. A–109 is effectively implemented in USDA and that the management objectives of the Circular are realized.

(ii) Review the program management of each major system acquisition.

(iii) Review any departmental acquisition for designation as a major system acquisition under A–109.

(24) Formulate and promulgate Department management policies, procedures and regulations.

(25) Promulgate departmental policies, standards, techniques, and procedures for the conduct of reviews and analysis of the utilization of the resources of state and local governments, other Federal agencies and of the private sector in domestic program operation; maintain the departmental inventory of government commercial or industrial activities resulting from such review in accordance with the Office of Management and Budget Circular A–76.

* * * * *

3. Section 2.77 is hereby removed and reserved as follows:

§ 2.77 [Removed and Reserved]

4. Section 2.78 is amended by adding new paragraphs (a)(16) through (a)(18) and a paragraph (b) as follows:

§ 2.78 Director, Office of Personnel.

(a) *Delegations.* * * *

(16) Maintain, review and update departmental delegations of authority.

(17) Authorize organizational changes which occur in:

(i) Departmental organizations:

(*a*) Service or office.

(*b*) Division (or comparable component).

(*c*) Branch (or comparable component in departmental centers, only).

(ii) Field organizations:

(*a*) First organizational level.

(*b*) Next lower organizational level—required only for those types of field installations where the establishment, change in location, or abolition of same requires approval in accordance with 1 AR 673.

(18) Formulate and promulgate departmental organizational objectives and policies.

(b) *Reservations.* The following authority is reserved to the Assistant Secretary for Administration:

(1) Authorize organizational changes occurring in a Department service or staff office which affect the overall structure of that service or office; i.e., require a change to that service or office's overall organization chart.

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

For Subpart C:

Dated: January 5, 1981.

Jim Williams,

Acting Secretary of Agriculture.

For Subpart J:

Dated: January 5, 1981.

Joan S. Wallace,

Assistant Secretary for Administration.

[FR Doc. 81-1133 Filed 1-12-81; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Stabilization and Conservation Service

7 CFR Part 722

1981 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to proclaim the result of the national marketing quota referendum with respect to the 1981 crop of extra long staple cotton held during the period December 8–11, 1980, each inclusive. The Agricultural Adjustment Act of 1938, as amended, requires that the result of the referendum be proclaimed within thirty days after the referendum. This rule is needed to satisfy this statutory requirement.

EFFECTIVE DATE: January 7, 1981.

ADDRESS: Production Adjustment Division, ASCS, USDA, 3630 South Building, P.O Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Chief, Program Analysis Branch, Production Adjustment Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, telephone 202–447–7873. This action was anticipated under the provisions of 7 CFR 722.558–561 and was specifically considered in the Final Impact Statement prepared for these actions. The Final Impact Statement describing the options considered and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's memorandum Number 1955 to implement Executive Order 12044 and has been classified "not significant."

The title and number of the federal assistance program that this final rule applies to are: Title—Cotton Production Stabilization; Number 10.052, as found in the Catalog of Federal Domestic Assistance.

This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

In accordance with Section 343 of the Agricultural Adjustment Act of 1938, as amended (1938 Act), a referendum with respect to marketing quotas for extra long staple (ELS) cotton was conducted by the Agricultural Stabilization and Conservation Service (ASCS) during the period December 8–11, 1980, to determine whether farmers were in favor of or opposed to the marketing quota proclaimed by the Secretary of Agriculture for the 1981 crop of ELS cotton.

It is essential that this rule be made effective as soon as possible since the proclamation of the result of the referendum is required by Section 343 of the 1938 Act to be made not later than thirty days after the referendum. Accordingly, it is hereby found and determined that compliance with any further rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044 is impracticable and contrary to the public interest. Therefore, this amendment to 7 CFR 722.564 shall be effective upon filing this document with the Director, Office of the Federal Register. The material previously appearing in this section remains in full force and effect as to the crop to which it was applicable.

Final Rule

Accordingly, 7 CFR 722.564 and the title of the subpart preceding 7 CFR 722.564 are amended to read as follows:

Subpart—1981 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas

§ 722.564 Result of the national marketing quota referendum for the 1981 crop of extra long staple cotton.

(a) *Referendum period.* The national marketing quota referendum for the 1981 crop of extra long staple cotton was held by mail ballot during the period December 8 to 11, 1980, each inclusive, in accordance with § 722.561 (45 FR 68911) and Part 717 of this chapter.

(b) *Farmers voting.* A total of 854 farmers engaged in the production of the 1980 crop of extra long staple cotton voted in the referendum. Of those voting, 733 farmers, or 85.8 percent, favored the 1981 national marketing quota, and 121 farmers, or 14.2 percent, opposed the 1981 national marketing quota.

(c) *1981 national marketing quota continues in effect.* The national marketing quota for the 1981 crop of extra long staple cotton of 195,000 bales proclaimed in § 722.558 (45 FR 68911) shall continue in effect since two-thirds or more of the extra long staple cotton farmers voting in the referendum favored the quota.

(Sec. 343, 63 Stat. 670, as amended (7 U.S.C. 1343)).

Signed at Washington, D.C., on January 7, 1981.

Weldon Denny,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 81-1008 Filed 1-7-81; 4:17 pm]

BILLING CODE 3410-05-M

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7 CFR Part 725

[Amendment 13]

Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations, 1973-74 and Subsequent Marketing Years

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Correction of final rule.

SUMMARY: This document corrects a previous **Federal Register** document relating to the lease and transfer of tobacco marketing quotas appearing at page 13431 in the issue for Friday, February 29, 1980, by including a citation of authority for its issuance.

EFFECTIVE DATE: February 29, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas R. Burgess, Program Specialist, Agricultural Stabilization and Conservation Service, Washington, D.C. 20013, (202) 447-7935.

SUPPLEMENTARY INFORMATION: In FR Doc. 80-6181 appearing at page 13431 in the **Federal Register** of Friday, February 29, 1980, the authority citation for this document was inadvertently omitted. Accordingly, a citation of authority is added to the document appearing at page 13431 in the **Federal Register** (FR Doc. 80-6181) of Friday, February 29, 1980, immediately preceding the signature of the approving official.

Citation of Authority

Authority: Secs. 301, 313, 314, 316, 317, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 79 Stat. 66, 52 Stat. 63, as amended, 65-66, as amended, 72 Stat. 995; sec. 401, 63 Stat. 1054, as amended, secs. 106-112, 125, 70 Stat. 191, 195, 198 as amended, section 16(e), 76 Stat. 606; (7 U.S.C. 1301, 1313, 1314, 1314b, 1314c, 1363, 1372, 1377, 1378, 1421, 1813, 1824, 1836), (16 U.S.C. 590p(e)).

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 81-907 Filed 1-12-81; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins

AGENCY: Rural Electrification Administration.

ACTION: Final rule.

SUMMARY: REA hereby amends Appendix A to issue revised Bulletin 345-60, REA Specification for Coaxial Drop and Coaxial Service Entrance Cable, PE-73. This revision reflects improvements in state of the art production and will provide uniform requirements for the production of the cable. Use of this specification will permit REA borrowers to provide the best, most cost-effective CATV possible using state of the art technology.

EFFECTIVE DATE: January 5, 1981.

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) 447-3827. The Final Impact Analysis describing the options considered in developing this rule and the impact of implementing it 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 hereby issues REA Bulletin 345-60, REA Specification for Coaxial Drop and Coaxial Service Entrance Cable, PE-73. This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 to implement Executive Order No. 12044 and has been classified not significant. This program is listed in the Catalog of Federal Domestic Assistance as 10.853 Community Antenna Television Loans and Loan Guarantees.

A Notice of Proposed Rulemaking was published in the **Federal Register** on September 19, 1980. However, no public comments were received in response to the notice.

Dated: January 5, 1981.

John H. Arnesen,

Assistant Administrator—Telephone.

[FR Doc. 81-1126 Filed 1-12-81; 8:45 am]

BILLING CODE 3410-15-M

Office of Environmental Quality

7 CFR Ch. XXXI

Cultural and Environmental Quality; Change of Chapter Head

AGENCY: Office of Environmental Quality, United States Department of Agriculture.

ACTION: Correction of chapter head.

SUMMARY: On Wednesday, September 26, 1979, the Office of Environmental Quality, U.S. Department of Agriculture, published at 44 FR 55327 "Change of Chapter and Part Names." In that Federal Register entry, United States Department of Agriculture was inadvertently left off of the Chapter head. It should be corrected to read as follows:

Chapter XXXI, Office of Environmental Quality, Department of Agriculture.

EFFECTIVE DATE: January 13, 1981.

FOR FURTHER INFORMATION CONTACT: Barry R. Flamm, Director, Office of Environmental Quality, USDA. Washington, D.C. 20250. Phone (202) 447-3965.

Dated: January 7, 1981.

F. T. Holt,

Acting Director, Office of Environmental Quality.

[FR Doc. 81-1279 Filed 1-13-81; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF ENERGY

Office of the Assistant Secretary for Environment

10 CFR Parts 712 and 1020

Grand Junction Remedial Action Criteria; Redesignation of Part and Nomemclature Change

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is amending its regulations to reflect nomenclature changes in the regulations. Executive Order 12044 sets forth a program of regulatory reform to be followed by all executive departments. One element of that program is periodic review of existing regulations. The Department of Energy is committed to review all of its existing

regulations within five years, on a schedule set forth in the **Federal Register** for May 8, 1980, 45 F. Reg. 30448.

DATES: This regulation is effective March 16, 1981.

ADDRESSES: Communications procedures should be addressed to: Dr. William E. Mott, Director, Environmental and Safety Engineering Division, Office of Environment, EV–14, U.S. Department of Energy, Washington, D.C. 20545 (301) 353–3016.

FOR FURTHER INFORMATION CONTACT:

Dr. William E. Mott, Director, Environmental and Safety Engineering Division, Office of Environment, EV–14, U.S. Department of Energy, Washington, D.C. 20545.

Mr. Steven Miller, Office of General Counsel, Forrestal Building, GC–34, 1000 Independence Avenue, N.W., Washington, D.C. 20585, (202) 252–6947.

SUPPLEMENTARY INFORMATION: As part of the commitment, the Department has reexamined the regulations contained in 10 CFR Part 712. These regulations deal with the Department's activities to clean up radiation-emitting mill tailings in the vicinity of Grand Junction, Colorado. This program is expected to continue until 1987. Two minor changes are necessary to remove certain inaccuracies in Part 712 contained in the May 31, 1979, revision. That revision, for example, incorrectly defines the "administrator of Energy Research and Development" rather than the "Secretary of Department of Energy." Due to organization changes, DOE is amending 10 CFR Part 712 to require communication procedures to be addressed to the responsible official rather than the "Director, Division of Safety, Standards, and Compliance, U.S. Department of Energy, Washington, D.C. 20545."

In consideration of the foregoing, Part 712 of Chapter III of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below:

Issued in Washington, D.C., January 6, 1981.

Ruth C. Clusen,

Assistant Secretary for Environment.

PART 1020—GRAND JUNCTION REMEDIAL ACTION CRITERIA

1. The Authority for these amendments is Section 203, Pub. L. 92–314, 86 Stat. 226.

2. Part 712 is redesignated as new Part 1020 of Chapter X, with §§ 712.1 through 712.10 newly designated as §§ 1020.1 through 1020.10.

3. Section 1020.3(a) (formerly § 712.3(a)) is revised to read as follows:

§ 1020.3 Definitions.

(a) "Secretary" means the Secretary of Energy or his duly authorized representative.

* * * * *

4. Section 1020.4 (formerly § 712.4) is revised to read as follows:

§ 1020.4 Interpretations.

Except as specifically authorized by the Secretary in writing, no interpretation of the meaning of the regulation in this part by an office or employee of DOE other than a written interpretation by the General Counsel will be recognized to be binding upon DOE.

5. Section 1020.5 (formerly § 712.5) is revised to read as follows:

§ 1020.5 Communications.

Except where otherwise specified in this part, all communications concerning the regulations in this part should be addressed to the Director, Environmental and Safety Engineering Division, U.S. Department of Energy, Washington, D.C. 20545.

6. References in § 1020.8 and § 1020.9 (formerly § 712.8 and § 712.9) to "§ 712.7" are changed to refer to "§ 1020.7".

[FR Doc. 81-1123 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R-0326]

Electronic Fund Transfers; Exemptions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form an amendment to Regulation E, which implements the Electronic Fund Transfer Act. The amendment, which was published for comment in proposed form on October 6, 1980 (45 FR 66348), exempts overdraft credit plans from Section 913(1) of the act. That section prohibits a creditor from conditioning an extension of credit on repayment by means of preauthorized debits. The amendment creates an exception for overdraft credit plans, which have historically included an automatic payment feature.

EFFECTIVE DATE: January 15, 1981.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation, contact John C. Wood, Senior Attorney, or Beth Morgan, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–2412). Regarding the economic impact analysis, contact: Frederick J. Schroeder, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–2584).

SUPPLEMENTARY INFORMATION: (1) *General.* Under § 205.3(d) of Regulation E, which implements the Electronic Fund Transfer Act, certain electronic fund transfers that are intra-institutional and that have been preauthorized by the consumer to occur automatically are exempt from the requirements of the act and regulation. This exemption applies to loan payments made from the consumer's account to the financial institution; the financial institution remains subject, however, to Section 913(1) of the act—the "compulsory use" provision. That provision prohibits the conditioning of an extension of credit on the borrower's repayment of the credit by preauthorized electronic fund transfers.

On October 6, 1980, the Board proposed an amendment to the regulation that would create an exception with respect to overdraft credit plans. Under such plans an automatic advance from the financial institution to the consumer's account will occur when the consumer's account is overdrawn. Reciprocally, the plans almost universally have provided for the automatic debiting of a minimum payment during a cycle in which a credit balance is owed by the consumer.

(2) *Comments on proposal.* The Board received approximately 140 comments. All but two supported adoption of the proposed amendment.

A Congressman commented that the impact of permitting preauthorized debits pursuant to an overdraft checking plan is not unduly onerous on consumers. However, he believes that the act unambiguously forbids such a requirement, and that the Board lacks the statutory authority to implement the change. If there is compelling need for such a change, he believes the appropriate course would be for the Board to recommend that the Congress amend the law so that overdraft checking plans are exempt.

The comments in support of the proposal noted some of the benefits that accrue to consumers from overdraft checking plans generally. These include a reduction in charges paid by consumers for returned items or for overdrafts, the ability to obtain credit as

it is needed and in smaller increments than might otherwise be available from the institution, and protection against the inconvenience and embarrassment of having items returned for insufficient funds.

With regard to the automatic payment feature, the commenters believe that consumers benefit from the convenience of having minimum payments made automatically, from reduced finance charges since payments are always made on the due dates, and from the absence of late payment charges that characterize many non-automatic payment systems. They assert that under a non-automatic system, delinquencies are generally higher if for no other reason than that consumers forget to mail payments. This likely to occur in cases where consumers are accustomed to having payments take place automatically.

Commenters believe a requirement that financial institutions provide an option for non-automatic payment (if the amendment were not adopted) could lead to the termination of overdraft service, particularly in cases where the added expense of maintaining a dual payment system of automatic and external payments means that the overdraft service cannot be cost-justified. In other cases, again because of cost justification, overdraft service could become unavailable to consumers who now qualify for relatively small credit lines.

Commenters noted that financial institutions benefit from automatic debiting because automatic payments minimize delinquencies, collection costs, and time spent in processing check payments. Providing a different payment option, on the other hand, means setting up a billing program, printing coupons or other payment reminders, special encoding, processing of additional paperwork, and increased collection efforts.

Some institutions reported that they had already implemented a nonautomatic payment option. They find that processing of non-automatic payments is time consuming if done manually, yet expensive to do by computer. These institutions strongly support the amendment because they find that few customers are opting for non-automatic payments, the institution would need to expend additional thousands of dollars to make the dual payment system more efficient, and operation of a non-automatic payment option means continuing costs for them. One bank modified its overdraft plan at a cost estimated between $4,000 and $12,000 and has yet to have a customer request the nonautomated means of payment.

(3) *Economic impact.* Overdraft protection is a service that financial institutions have been providing to consumers at little or no extra cost beyond the cost of the protected account. The cost has been low *in part* because the service is highly automated. The financial institution's computer keeps track of the consumer's balance and credit limit, automatically advancing funds to cover any overdrafts. The computer also automatically debits the consumer's account according to a prearranged schedule to repay the loan.

Under section 904 of the act, setting forth the Board's authority to prescribe regulations, the Board is directed to consider the cost and benefits to consumers and financial institutions and, to the extent practicable, to demonstrate that the consumer protections provided by the regulations outweigh the compliance costs imposed on consumers and financial institutions.

The Board believes that the cost of providing and maintaining a non-automatic payment option is substantial and that it could have an adverse impact on consumers. There is general agreement that the cost could lead to higher service charges or reduced service levels for consumers. In some cases, it could lead to the termination of the overdraft service altogether—to the detriment of consumers. In others, the service could become unavailable to consumers who now qualify for overdraft checking but who might not qualify if an institution adopted stricter standards or set higher minimums for overdraft credit lines.

(4) *Regulatory provision.* After careful consideration of the issues raised, the Board is adopting the amendment as proposed. The Board believes that it has the legal authority to adopt this exception under section 904(c) of the act, which expressly authorizes the Board to provide adjustments and exceptions for any class of electronic fund transfer that in the Board's judgment are necessary or proper to carry out the purposes of the act or to facilitate compliance.

Although the language of section 913(1) appears unequivocal, the Board notes that there is legislative history indicating that exceptions may exist. The Senate report (95th Congress, 2d Session, Report No. 95-915) expressly permits creditors to offer incentives to induce the election of automatic payments. In the case of overdraft credit, the Board believes that the incentives relate in part to the benefits that consumers derive from the availability of overdraft checking. Further, there is little evidence of consumer complaints. It is arguable that the popularity of overdraft credit plans, which almost universally have involved an automatic payment feature is some indication of the acceptability of automatic debiting in the narrow circumstances to which the exception applies.

As adopted, the amendment creates an exception to the compulsory use prohibition with respect to credit extensions under overdraft credit plans, or plans in which an extension of credit occurs automatically to maintain an agreed-upon minimum balance in the consumer's account.

The wording and format of the amendment differ from the proposal that was published in October. The references to sections 913, 915, and 916 have been deleted from the text of § 205.3(d) (2) and (3) and incorporated in a new footnote numbered 1a. This change permits the exception applicable to overdraft credit plans to be stated in a more straightforward, less cryptic manner than was possible under the previous format. The revision to § 205.3(d) is purely editorial, with no change in substance.

A number of commenters noted that under some plans, overdraft extensions of credit are charged to the same open-end account as extensions of credit that the consumer may obtain in other ways. For example, cash advances may be debited directly to the credit line, without going through a checking account. The exemption applies to such plans; it does not seem practicable to try to distinguish between extensions of credit that are triggered under such plans because of the overdraft mechanism and those that are advanced to the consumer by other means.

(5) Pursuant to the authority granted in 15 U.S.C. 1693b, the Board amends Regulation E, 12 CFR Part 205, effective January 15, 1981, by redesignating footnote 1 as footnote 1b and by revising § 205.3(d)(2) and (3) to read as follows:

§ 205.3 Exemptions.

* * * * *

(d) Certain automatic transfers.* * *

(2) Into a consumer's account by the financial institution, such as the crediting of interest to a savings account;[1a]

[1a] The financial institution remains subject to section 913 of the act regarding compulsory use of electronic fund transfers. A financial institution may, however, require the automatic repayment of credit that is extended under an overdraft credit plan or that is extended to maintain a specified minimum balance in the consumer's account. Financial institutions also remain subject to sections 915 and 916 regarding civil and criminal liability.

(3) From a consumer's account to an account of the financial institution, such as a loan payment;[ta]

* * * * *

By order of the Board of Governors, January 8, 1981.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 81-1145 Filed 1-12-81; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 341

Registration of Transfer Agents

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") has adopted an amendment to its transfer agent registration rule. The amendment eliminates the requirement that transfer agents registered with the FDIC file annual amendments to Item 7 (which includes Schedule B) of their registration form, Form TA-1. The requirement to file annual amendments is being eliminated in anticipation of a comprehensive revision of Form TA-1, which is expected to be published for comment during 1981.

EFFECTIVE DATE: January 13, 1981.

FOR FURTHER INFORMATION CONTACT: John F. Harvey, Trust Section Chief, Division of Bank Supervision, phone 202/389-4295.

SUPPLEMENTARY INFORMATION: The FDIC today adopted an amendment to 12 CFR § 341.2 under the Securities Exchange Act of 1934 (the "Act") to eliminate the requirement that transfer agents registered with the FDIC file annual amendments to Item 7 (which includes Schedule B) of their registration form, Form TA-1.

A. Background

§ 341.2 requires a transfer agent for which the FDIC is the appropriate regulatory agency to apply for registration with the FDIC on, and in accordance with the instructions contained in, Form TA-1.[1] Among other things, § 341.2 requires that Item 7 of Form TA-1 (which includes Schedule B)[2] must be updated within thirty days following the close of any calendar year during which the information has become inaccurate, misleading or incomplete.[3]

B. Statutory Basis, Competitive Considerations and Effective Date

The FDIC, acting pursuant to Sections 2, 17, 17A, and 23(a) of the Act, 15 U.S.C. 78b, 78q, 78q-1 and 78w(a), hereby adopts amendments to paragraph (c) of 12 CFR § 341.2.

In doing so, the FDIC finds that eliminating the requirement that transfer agents file annual amendments to Schedule B reduces the reporting burden on transfer agents registered with the FDIC. The FDIC also finds that the notice and public procedure requirements of Section 553(b)(B) of the Administrative Procedure Act. (5 U.S.C. 553(b)(B)) are impracticable, unnecessary, and contrary to the public interest in this situation and that good cause exists for making these amendments effective immediately upon publication in the **Federal Register** in accordance with Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)).

C. Certain Factors

1. *Competition.* As required by Section 23(a)(2) of the Act, the FDIC has specifically considered the impact which the proposed amendment would have on competition. The FDIC concludes that the amendment would impose no significant burden on competition.

2. *Alternatives Considered.* The alternative considered was to wait until a full revision of Form TA-1 could be completed. The FDIC believes it is preferable to relieve a burden immediately.

3. *Reporting and Recordkeeping.* The amendment eliminates a reporting requirement. It adds no new requirements.

4. *Cost-Benefit Analysis.* The amendment can only reduce the costs to a bank. Therefore, a cost-benefit analysis was not prepared.

By order of the Board of Directors.

Dated: January 5, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

12 CFR Part 341 is amended as follows:

1. The authority citation for Part 341 is revised to read as follows:

Authority: The provisions of this Part 341 and Form TA-1 issued under secs. 2, 17, 17A and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78).

2. In Part 341, § 341.2(c) is revised to read as follows:

§ 341.2 Application for registration as transfer agent.

* * * * *

(c) Within twenty-one calendar days following the date on which any information reported at Items 1-6 of Form TA-1 becomes inaccurate, misleading or incomplete, the registrant shall file an amendment on Form TA-1 correcting the inaccurate, misleading or incomplete information.

* * * * *

[FR Doc. 81-913 Filed 1-12-81; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission appliance labeling rules require that the table in § 305.9 which sets forth the representative average unit energy costs for seven categories of appliances be revised periodically on the basis of updated information provided by the Department of Energy.

This rule revises the Table to incorporate the latest figures for average unit energy costs as published in the **Federal Register** on December 1, 1980, by the Department of Energy.

EFFECTIVE DATE: This revision is effective on April 13, 1981.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-724-1491 or Lucerne D. Winfrey, 202-724-1453, attorneys, Federal Trade Commission, 414 11th Street, N.W., Washington, D.C. 20580

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final Appliance Labeling Rule that requires the disclosure of energy efficiency or cost

[1] The Securities and Exchange Commission ("SEC"), the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System have adopted a similar registration rule and an identical registration form for transfer agents registered with those agencies.

[2] Registrants are required to list on Schedule B certain securities for which they perform transfer agent functions, the capacities in which they act for those securities, as well as other information.

[3] Section 341.2 also requires Items 1-6 of Form TA-1 to be amended twenty-one calendar days following the date on which the information contained in those items becomes inaccurate, misleading or incomplete. Items 1-6 of Form TA-1 request information regarding registrant's identity and the nature of its transfer agent activities.

information on labels and in retail sales catalogs for seven categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures. The Rule also requires a general disclosure on certain point-of-sale promotional materials of the availability of energy cost of energy efficiency rating information, and requires that any claims concerning energy consumption made in writing or in broadcast advertisements be based on results of the standardized test procedures. The information obtained by following the test procedures is derived by using representative average unit energy costs provided by the Department of Energy.

Table I, in § 305.9 of the rule, sets forth the representative average unit energy costs to be used for all requirements of the rule. As stated in § 305.9(b), the table is intended to be revised periodically on the basis of updated information provided by the Department of Energy.

On December 1, 1980, the Department of Energy published (45 FR 79575) its latest figures for representative average unit energy costs, to be effective January 1, 1981. Consequently, Table I must be updated in order to reflect these most recent cost figures. Accordingly, Table I is revised as follows:

Table 1[1]

Line	Electricity	Oil	Natural gas	Propane gas
1	$0.0564 per kWh	$8.9 × 10⁻⁶ per Btu	$4.26 × 10⁻⁵ per Btu	$8.62 × 10⁻⁶ per Btu
2	5.64¢ per kWh	124.0¢ per gal	42.6¢ per therm (100 ft³)	78.4¢ per gal.

[1] These figures are based on DOE calculations for 1981 and are subject to change.

Issued: By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-1049 Filed 1-12-81; 8:45 am]

BILLING CODE 3510-18-M

FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 271

[Docket No. RM80-21]

Natural Gas First Sale Regulations; Conditional Stay of Effective Date and Granting of Rehearing

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule; conditional stay of effective date.

SUMMARY: On November 14, 1980, The Federal Energy Regulatory Commission (Commission) issued a final rule in this docket (Order No. 108) (45 FR 76664, November 20, 1980.) That rule amended the Commission's regulations regarding the reimbursement of state severance taxes in the case of first sales of natural gas subject to sections 105 and 106(b) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. §§ 3301–3432, and was to become effective January 1, 1981. This action, issued by order on December 24, 1980, stays the effective date of the amendment pending the issuance of an order granting or denying rehearing of Order No. 108. The stay is subject to conditions described below.

DATE: The effective date of January 1, 1981, is stayed. The effective date of the stay is January 1, 1981.

FOR FURTHER INFORMATION CONTACT:

Scott Koves, Office of General Counsel, Federal Energy Regulatory Commission, Washington, D.C. 20426, (202) 357–8317

Teresa Ponder, Office of General Counsel, Federal Energy Regulatory Commission, Washington, D.C. 20426, (202) 357–8151

SUPPLEMENTARY INFORMATION:

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., and George R. Hall.

Issued December 24, 1980.

A. Background

On November 14, 1980, the Federal Energy Regulatory Commission (Commission) issued in Order No. 108 [1] final rules respecting the treatment of State severance taxes in the case of first sales of natural gas subject to sections 105 and 106(b) of the Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301, *et seq.* (NGPA).

Order No. 108 amended § 271.1102 of the Commission's Regulations to provide that, except in the case of State severance taxes increased by State law enacted after November 9, 1978, the maximum lawful price for sales under existing and successor intrastate contracts subject to section 105 of the NGPA and intrastate rollover contracts subject to section 106(b) of the NGPA is presumed to recover all State severance taxes borne by the seller. Order No. 108 also clarified that the term "price" in the definitions of "contract price" and "price under the terms of the existing contract" in § 271.504 of the Commission's Regulations was intended to incorporate all amounts paid by the purchaser even if earmarked as State severance tax reimbursements.

The amendments to §§ 271.504 and 271.1102 were issued as final rules effective for natural gas delivered on or after Janaury 1, 1981. The effect of Order No. 108 is to disallow the collection of State severance tax payments in addition to the ceiling price under section 105 and 106(b) of the NGPA. Accordingly, it is likely that many first sale prices subject to these sections must be reduced effective January 1, 1981, unless stay is granted.

B. Applications

On December 12, 1980, in separate pleadings, Delhi Gas Pipeline Corporation (Delhi) and Indicated Producers, consisting of Shell Oil Company and others (Indicated Producers), filed applications for Stay of Order No. 108 pursuant to § 286.101 of the Commission's Regulations.

Also on December 12, 1980, Delhi, Indicated Producers, and Mobile Gas Service Corporation and Clarke-Mobile Counties Gas District, Alabama (Mobile) separately filed Applications for Rehearing of Order No. 108 pursuant to § 286.102 of the Commission's regulations.[2] Houston Oil & Minerals Corporation filed "Comments" in addition to Indicated Producer's Application in a pleading filed December 15, 1980. On December 15, 1980, the following persons filed Applications for Rehearing of Order No. 108: Amoco Production Company (Supplement to Application of Indicated Producers); Damson Oil Corporation, *et al.*; Isaac Arnold, Jr.; Lone Star Gas Company; Terra Resources, Inc.; Texas Gas Exploration Corporation; Undersigned Companies (Supplemnental Application for Rehearing of certain of

[1] Final Rule, Regulations Under Sections 110, 105 and 106(b) of the Natural Gas Policy Act of 1978, Docket No. RM80-21 (45 FR 76664; November 20, 1980).

[2] Mobile filed pursuant to § 1.34 of the Commission's Rules of Practice and Procedure.

the Indicated Producers; and Valero Transmission Company.

C. Discussion

1. Rehearing

In view of the restrictive time frame during which action must be taken on the subject applications for rehearing,[3] the significant monetary impact that Order No. 108 will have on sellers, purchasers, and consumers of natural gas, and the complexity of the issues involved, the Commission finds good cause to grant rehearing solely for further consideration of the subject applications for rehearing.

2. Stay

In their applications for stay of Order No. 108, Indicated Producers and Delhi each rely on the criteria for granting court-ordered stays set forth in *Virginia Petroleum Jobbers Ass'n* v. *FPC* [4] and assert that these criteria are met.

But the Commission has much broader discretionary power to stay its own orders,[5] and is not bound by the criteria respecting court-ordered stays. Here, the applications raise no procedural or substantive arguments that compel a stay of Ordered No. 108. Indeed, the possibility of irreparable harm to gas consumers who would be required to continue to bear the cost of excessive State severance payments militates against granting an unconditional stay. On the other hand, Delhi does raise the spectre of irreparable harm to intrastate pipelines if stay is not granted.[6]

Upon consideration of the equities here, the Commission finds that good cause exists to fashion a pragmatice remedy. The Commisson will grant stay, but only until such time as it takes further action on the applications for rehearing, and only upon the conditions set forth below which are designed to provide an element of protection to consumers. The Commission wishes to emphasize that the conditional stay granted here will be of a limited duration in that the Commission plans to act on the subject applications for rehearing in the near future.

The Commisson orders:

(A) The Applications for Stay of Order No. 108 filed by Delhi and Indicated Producers are granted and the effective date of the amendments of §§ 271.504 and 271.1102 promulgated by Order No. 108 is stayed pending issuance of a order granting or denying rehearing of Order No. 108 upon further consideration, *subject, however,* to the following conditions:

(1) that, unless otherwise specifically ordered by the Commission, all payments in a first sale of natural gas subject to this proceeding which are made for deliveries of natural gas on or after January 1, 1981, are subject to refund, with interest, in accordance with § 270.101(e) of the Commission's regulations, to the extent such payments exceed the applicable maximum lawful price, *and,*

(2) that all amounts refunded pursuant to clause (1) of this ordering paragraph are to be passed on, dollar-for-dollar, to the customers of the recipient of such refunds.

(B) The Applications for Rehearing of Order No. 108 noted in the text above are granted solely for purposes of further consideration.

By the Commission.

Kenneth F. Plumb,

Acting Secretary.

[FR Doc. 81-1124 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[3] Section 286.102(d)(3) provides that unless the Commission acts upon the application within 30 days after it is filed (January 12, 1981), such application shall be considered to have been denied.

[4] 259 F. 2d 921, 925 (D.C. Cir. 1958).

[5] *See,* 5 U.S.C. § 705.

[6] For example, Delhi asserts that they and other intrastate pipelines may suffer irreparable harm because they might not be able to recover reimbursement from their customers (which are not subject to the Commission's jurisdiction) for make-up payments to producers.

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 615

Federal-State Unemployment Compensation Program, Extended Benefits; Amendments of Regulation

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This document amends regulations for the Federal-State Unemployment Compensation Program. The amendments in this document revise the method of computing National and State "on" and "off" indicators for the Extended Benefit Program. The amendments are required by a court decision invalidating amendments to these regulations which were adopted on January 3, 1980, with an effective date of February 3, 1980. These amendments reinstate the regulations as in force prior to February 3, 1980, and provide that weeks claimed for extended benefits and for State additional benefits will be included in calculating the rate of insured unemployemnt for purposes of the Extended Benefit Program. The amendments adopted on January 3, 1980, excluded claims for extended benefits and State additional benefits from that calculation.

EFFECTIVE DATE: February 3, 1980.

FOR FURTHER INFORMATION CONTACT: William B. Lewis, Administrator, Unemployment Insurance Service, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 (Phone 202-376-7032).

SUPPLEMENTARY INFORMATION: The Federal-State Extended Unemployment Compensation Act of 1970 (Pub. L. 91-373, Title II; 26 U.S.C. 3304 note) created a program of extended unemployment benefits (referred to as Extended Benefits) as a permanent part of the Federal-State Unemployment Compensation Program, for unemployed individuals who exhaust their rights to regular unemployment benefits under State and Federal unemployment compensation laws. Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when unemployment in a State (State indicator) or in all States collectively (National indicator) reaches the high levels set in the Act. The Act and all State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when unemployment both in the State and in all States collectively is no longer at the high levels set in the Act.

National and State "on" and "off" indicators are triggered by the National or State "rate of insured unemployment," a term which is defined in section 203(f)(1) of the Act as meaning the percentage arrived at by dividing (A) the average weekly number of individuals filing claims for weeks of unemployment with respect to a 13-week period by (B) the average monthly covered employment for the same period.

Under 20 CFR 615.12 as in force prior to February 3, 1980, claims for Extended Benefits and for State additional benefits, as well as claims for regular compensation, were included in the calculation of the rate of insured unemployment. As experience in the administration of the Act accumulated, however, the Department of Labor concluded that inclusion of Extended Benefit claims and State additional benefit claims in the calculation of the rate rendered use of the rate inadequate as an economic indicator and also tended to define the level of employment differently for "on" and "off" triggers. Accordingly, on June 15, 1979, at 44 FR 34512, the Department

published a proposed revision of 20 CFR 615.12 in order to change the method of calculating the rate of insured unemployment. This proposal omitted Extended Benefit claims and State additional benefit claims from the calculation of the rate. On January 3, 1980, at 45 FR 797, the Department adopted the proposed rule as a final rule, effective on February 3, 1980.

The AFL–CIO subsequently filed an action against the Secretary of Labor challenging the validity of 20 CFR 615.12 as amended. In *AFL–CIO* v. *Marshall*, No. 80–1360 (D.D.C., August 7, 1980), the United States District Court for the District of Columbia held that the language of section 203(f)(1) of the Act referring to "individuals filing claims for weeks of unemployment" included individuals filing claims for Extended Benefits and State additional benefits as well as claims for benefits under the "regular" unemployment compensation program, and ruled that 20 CFR 615.12 as amended was inconsistent with the Act. This decision requires the Department of Labor to rescind the amendments to 20 CFR 615.12, and to reissue 20 CFR 615.12 as it existed prior to the amendments. This document is intended to comply with the Court's decision.

Since the amendments made herein are required by a judicial decision, the Department of Labor has determined that compliance with the provisions of 5 U.S.C. 553 as to notice of proposed rule making, opportunity for public participation, and delay of effective date is unnecessary and impracticable, and that good cause therefore exists for adopting these amendments in final form upon publication, with an effective date of February 3, 1980.

Note.—The Department of Labor has determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis within the meaning of Executive Order 12044, Secretary's Order 6–79 (May 30, 1979), and the Department's guidelines published at 44 FR 5570.

This document has been prepared under the direction and control of William B. Lewis, Administrator, Unemployment Insurance Service, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213 (Phone: 202–376–7032).

Accordingly, 20 CFR Part 615 is amended as follows:

PART 615 [AMENDED]

1. The authority citation for Part 615 reads as follows:

Authority: Title II, Pub. L. 91–373 (84 Stat. 695, 708); secs. 116, 212, and 311 of Pub. L. 94–566 (90 Stat. 2667, 2672, 2677, 2678); 5 U.S.C. 553; Secretary's Order No. 4–75 (40 FR 18515).

2. In Part 615, § 615.12(d)(2) and (e)(2) and (e)(3) are revised to read as follows:

§ 615.12 Determination of "on" and "off" indicators.

* * * * *

(d) *Computation of national insured unemployment rates.*

* * * * *

(2) *Method of computing the national indicator rate.* The seasonally adjusted weekly average number of weeks claimed in all States is computed in the following manner:

(i) The number of weeks claimed for regular compensation reported by all State agencies is compiled for the current week and for each of the preceding 12 weeks.

(ii) The national total of unadjusted weeks claimed for each week in the 13-week period obtained in paragraph (d)(2)(i) of this section is seasonally adjusted, using the applicable seasonal adjustment factor or factors developed and published by the Bureau of Labor Statistics of the U.S. Department of Labor.

(iii) To these seasonally adjusted weekly volumes of insured unemployment (weeks claimed) are added weeks claimed for additional compensation and for Extended Benefits for which there are no seasonal factors.

(iv) The resulting weekly totals are added for the 13 weeks and divided by 13 to obtain the average weekly volume for the 13-week period.

* * * * *

(e) *Computation of State insured unemployment rates.*

* * * * *

(2) *Method of computing the State indicator rates.* The unadjusted weekly average number of weeks claimed in the State is computed in the following manner:

(i) The number of weeks claimed for regular compensation, additional compensation, and Extended Benefits are added for the current week and for each of the preceding 12 weeks.

(ii) The weekly totals obtained in paragraph (e)(2)(i) of this section are added for the 13 weeks and divided by 13 to obtain the average weekly volume for the 13-week period.

(3) *Rates for preceding 2 years.* Determinations of State rates for the corresponding 13-week periods in the preceding two years shall be made in the same manner as provided in paragraph (e)(4) of this section.

* * * * *

Signed at Washington, D.C., on December 31, 1980.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 81–1105 Filed 1–12–81; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 78N–0320]

Labeling; Requirements for Designating Manufacturer's Name on a Drug Product's Label; Stay of Effective Date and Request for Comment on Petition

AGENCY: Food and Drug Administration.

ACTION: Stay of effective date of final rule and request for comment.

SUMMARY: The Food and Drug Administration (FDA) announces that certain provisions of the regulation are stayed pending consideration of a petition by the Pharmaceutical Manufacturers Association (PMA) to amend the requirements for designating manufacturer's name on a drug product's label to permit a firm to claim to have manufactured products actually made by a corporately related firm under common ownership and control. The agency seeks public comment on the petition to assist in its deliberations. The agency also announces the availability of the petition.

DATES: The final rule becomes effective on April 10, 1981, the stay is effective on January 13, 1981. Comments on the PMA petition should be submitted by March 16, 1981.

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

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

SUPPLEMENTARY INFORMATION: In the Federal Register of April 15, 1980 (45 FR 25760), FDA issued a final regulation, § 201.1, amending the requirements for designating the manufacturer's name on drug product labels. The regulation specifies the conditions under which a person may be identified on the label of a drug product as its manufacturer. The

regulation is scheduled to become effective April 10, 1981. The regulation is primarily intended to end the "man-in-the-plant" practice. Under that practice some drug firms have claimed to have made drug products on the basis of having placed quality control staff in the plants of subcontractor firms that actually made the products. The part of the regulation that will end the "man-in-the-plant" practice is not affected by this notice.

The regulation contains several provisions that govern the kind of manufacturing claim that can be made on a drug product label when two or more corporately related drug firms are involved in the manufacture or marketing of a product. Section 201.1(g) provides, among other things, that the name of the manufacturer, packer, or distributor shall be deemed to be satisfied, in the case of a corporation, only by the actual corporate name, which may be preceded or followed by the name of a particular division. That section also states that a separately incorporated subsidiary shall use its actual corporate name and not the name of its parent company. Section 201.1(f) provides that the name of the person represented as manufacturer must be the same as the name of the establishment under which that person is registered at the time the labeled product is produced. Thus, under the regulation, if two or more divisions of a parent company make a product, the product, by whatever division it is made, can be labeled as manufactured by the parent company. However, if separately incorporated subsidiaries of the parent company manufacture the product, different labels would be required for each subsidiary.

Responding to those provisions affecting what firm in a corporately related family of firms can claim to have made a drug product, PMA (a trade association representing many of the largest drug companies) requested a meeting with FDA officials to discuss the impact of the regulation on PMA's member firms. A meeting between representatives of FDA and PMA was held September 30, 1980. At the meeting, representatives of PMA described some of the problems posed for certain drug firms by those provisions that would prevent a parent company from claiming to be a drug product's manufacturer when the product was actually made by a separately incorporated subsidiary of the parent company. According to the industry's representatives, these provisions create various labeling and marketing difficulties for diversified corporate structures. PMA indicated that it intended to submit a citizen petition to amend the regulation.

On October 10, 1980, PMA submitted a petition to amend the regulation. PMA requested that § 201.1(g) be amended to read as follows:

The requirement for declaration of the name of the manufacturer, packer, or distributor shall be deemed to be satisfied, in the case of a corporation, only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. The actual corporate name may be either the name of the parent, subsidiary and/or affiliate company where there exists an ownership and control relationship between the companies and the parent, subsidiary and/or affiliate company either individually or jointly qualified as a manufacturer. Abbreviations for "Company", "Incorporated", etc. may be used and "The" may be omitted. In the case of an individual partnership, or association, the name under which the business is conducted shall be used.

The petition agreed that there may be valid justification for the primary goal of the regulation—to end the "man-in-the-plant" practice—and the petition stated that it did not seek to amend that aspect of the regulation. However, the petition argued that economic, legal, and tax considerations may encourage an enterprise to structure its organization so that one or more incorporated subsidiaries manufacture products for a common parent company. The petition conceded that "technically speaking, a subsidiary is a separate entity," but contended that "it is owned and controlled by another corporation that ultimately is responsible for its activities and the relationship between the parent/subsidiary is similar to the one existing between a corporate parent and a division or other operating unit within a corporation." The petition concluded that no regulatory problem or consumer confusion could be attributed to a provision permitting a parent company or any other company in a corporate family from claiming to have made products made by any other member of the corporate family and argued, to the contrary, that "use of an unknown or lesser known subsidiary could well be less informative due to lack of recognition than would be the use of the parent name or the more well known subsidiary."

A representative of a family of firms also commented on the regulation as it affects label claims made by individual corporate members of the family. The Proctor and Gamble Co., in a letter to FDA dated August 27, 1980, asked that it be permitted to continue to use the abbreviated name "Proctor and Gamble" for products either made or distributed by companies that use Proctor and Gamble in the corporate name, i.e., the Proctor and Gamble Company, the Proctor and Gamble Manufacturing Company, and the Proctor and Gamble Distributing Company. The letter stated that "[L]iteral compliance with § 201.1 (f) and (g) would produce trivial, insignificant changes of absolutely no benefit whatsoever to anybody and would present an unreasonable logistical and very expensive burden * * *." A copy of this letter has been placed on file in the Dockets Management Branch, address above.

To assist the agency in its consideration of the issues raised by the petition, FDA is requesting comments on the petition from interested persons. Although comments on all aspects of the petition are welcome, FDA is particularly interested in the following issues:

1. What benefits would result in retaining the current regulatory distinction between the parent corporation and the separately incorporated subsidiary?

2. What are the benefits and costs of permitting a drug company to claim to have made products actually made by a corporately related firm?

3. In the event that the agency finds merit in the petition, should the agency amend the regulation to permit a corporately related firm to be identified as the manufacturer in place of the actual manufacturer or retain the present regulation and permit individual drug firms to request waivers on a case by case basis? If the agency decides to review waiver requests on an individual basis, what principles should be consulted in assessing the merits of an individual request?

Copies of the petition are available on request from the Dockets Management Branch (HFA-305), Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

The regulation is scheduled to become effective April 10, 1981. The agency notes that many of the purported problems associated with the provisions requiring disclosure of the actual corporate name stem from the drug industry's initial compliance costs. Therefore, because the agency will probably not be able to consider and resolve the issues raised by the petition by the effective date, the agency is staying the effective date of that part of the regulation in § 201.1(g) which requires a separately incorporated subsidiary to use its actual corporate name and not the name of its parent company. The agency is also staying

that part of § 201.1(f) which requires that the name of the person represented as manufacturer under § 201.1(b) or (c) must be the same as the name of the establishment under which that person is registered at the time the labeled product is produced, provided that the person identified on the label is the parent or subsidiary of the person in whose name the establishment is registered, and provided that no more than one person is represented as manufacturer of a specific product manufactured in that establishment. These provisions are stayed pending the agency's consideration of the PMA petition. All other parts of the regulation go into effect on April 10, 1981.

Interested persons may submit written comments on the petition by March 16, 1981, to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. FDA will consider these comments in determining whether further amendment to the regulation or other action is warranted.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502, 701(a), 52 Stat. 1050-1051 as amended, 1055 (21 U.S.C. 352, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), the amendments to § 201.1 as described below are stayed until further notice.

Dated: January 6, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

§ 201.1 [Amended]

The following two provisions are stayed pending agency consideration of the PMA petition: (1) The provision in § 201.1(g) (21 CFR 201.1(g)), which requires a separately incorporated subsidiary to use its actual corporate name and not the name of its parent company; and (2) the provision in § 201.1(f) requiring that the name of the person represented as manufacturer (under § 201.1(b) or (c)) must be the same as the name of the establishment under which that person is registered at the time the labeled product is produced, provided that the person identified on the label is the parent or subsidiary of the person in whose name the establishment is registered and that no more than one person claims to have manufactured a drug product produced at that establishment; * * *.

[FR Doc. 81-1147 Filed 1-12-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Parts 430, 436 and 444

[Docket No. 80N-0294]

Antibiotic Drugs for Human Use; Cyclacillin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for the certification of a new antibiotic drug, cyclacillin. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective January 12, 1981; comments by February 11, 1981.

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

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new antibiotic drug, cyclacillin. The agency concludes that the data supplied by the manufacturer on cyclacillin are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 440 (21 CFR Parts 430, 436, and 440) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 430, 436, and 440 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended:

a. In § 430.5 by adding new paragraphs (a)(67) and (b)(67) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(67) *Cyclacillin.* The term "cyclacillin working standard" means a specific lot of a cyclacillin that is designated by the Commissioner as the standard of comparison in determining the potency of the cyclacillin working standard.

(b) * * *

(67) *Cyclacillin.* The term "cyclacillin master standard" means a specific lot of homogeneous preparation of cyclacillin.

b. In § 430.6 by adding paragraph (b)(69) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(69) *Cyclacillin.* The term "microgram" applied to cyclacillin means the cyclacillin activity (potency) contained in 1.01 micrograms of the cyclacillin master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended:

a. In § 436.33(b) by alphabetically inserting a new item into the table as follows:

§ 436.33 Safety test.

* * * * *

(b) * * *

Antibiotic drug	Test dose			Route of administration as described in paragraph (c) of this section
	Diluent (diluent number as listed in § 436.31)	Concentration in milligrams units or of activity per milliliter	Volume in milliliters to be administered to each mouse	
* * *	*	*	*	*
Cyclacillin	9	20 mg	0.5	Intravenous
* * *	*	*	*	*
* * *	*	*	*	*

b. In § 436.105(a) and (b) by alphabetically inserting a new item into the respective tables, as follows:

§ 436.105 Microbiological agar diffusion assay.

(a) * * *

Antibiotic	Media to be used (as listed by medium number in § 436.102(b))		Milliliters of media to be used in the base and seed layers		Test organism	Suggested volume of standardized inoculum to be added to each 100 milliliters of seed agar	Incubation temperature for the plates
	Base layer	Seed layer	Base layer	Seed layer			
						Milliliters	*Degrees C.*
*	*	*	*	*		*	*
Cyclacillin	11	11	21	4	C	0.5	36–37.5
*	*	*	*	*		*	*

(b) * * *

Antibiotic	Working standard stock solutions					Standard response line concentrations	
	Drying conditions (method number as listed in § 436.200)	Initial solvent	Diluent (solution number as listed in § 436.101(a))	Final concentration units or milligrams per milliliter	Storage time under refrigeration	Diluent	Final concentrations, units or micrograms of antibiotic activity per milliliter
*	*	*		*	*	*	*
Cyclacillin	Not dried		Distilled water		1 mg 1 day	3	0.64, 0.80, 1.0, 1.25, 1.56 µg. (Prepare the standard response line simultaneously with the sample solution.)
*	*	*	*	*	*	*	*

c. In § 436.204(b)(1) and (2) by alphabetically inserting a new item into the respective tables, as follows:

§ 436.204 Iodometric assay.

(b) * * *
(1) * * *

Antibiotic	Initial solvent	Diluent (solution number as listed in § 436.101(a))	Final concentration in units or milligrams of activity per milliliter of standard solution
*	*	*	*
Cyclacillin	None	Distilled water	1.0 mg.
*	*	*	*

(2) * * *

Antibiotic	Initial solvent	Diluent (solution number as listed in § 436.101(a))	Final concentration in units or milligrams of activity per milliliter of sample
* * * * * * *			
Cyclacillin	None	Distilled water	1.0 mg.
* * * * * * *			

d. In § 436.205 (b) and (c) by alphabetically inserting a new item into the respective tables, as follows:

§ 436.205 Hydroxylamine colorimetric assay.

* * * * *

(b) * * *

Antibiotic	Diluent (solution number as listed in § 436.101(a))	Final concentration in milligrams per milliliter of standard solution
* * * * * *		
Cyclacillin	Distilled water	1.25
* * * * * *		

* * * * *

(c) * * *

Antibiotic	Diluent (solution number as listed in § 436.101(a))	Final concentration in milligrams per milliliter of sample
* * * * * *		
Cyclacillin	Distilled water	1.25
* * * * * *		

* * * * *

e. In § 436.213(c) by alphabetically inserting two new items into the table as follows:

§ 436.213 Nonaqueous titrations.

* * * * *

(c) * * *

Antibiotic	Weight in milligrams of sample	Solvent
* * * * *		
Cyclacillin-acid titration	100	20 milliliters dimethylsulfoxide and 30 milliliters methyl alcohol.*
Cyclacillin-base titration	100	50 milliliters glacial acetic acid
* * * * *		

* * * * *

f. By adding new § 436.327 to read as follows:

§ 436.327 Thin layer chromatographic identity test for cyclacillin.

(a) *Equipment*—(1) *Chromatography tank.* Use a rectangular tank approximately 23 x 23 x 9 centimeters, with a glass solvent trough on the bottom and a tight-fitting cover.

(2) *Plates.* Use 20 x 20 centimeter thin layer chromatography plates coated with Silica Gel G or equivalent to a thickness of 250 microns.

(b) *Reagents*—(1) *Developing solvent.* One percent ammonium formate aqueous solution.

(2) *Spray solution.* Dilute starch iodide paste TS (U.S.P. XIX) with an equal volume of water. Mix diluted starch iodide paste, glacial acetic acid, and 0.1*N* iodine in volumetric proportions of 50:3:1, respectively.

(c) *Assay solutions*—(1) *Preparation of working standard solution.* Accurately weigh an amount of cyclacillin working standard and dissolve the material with sufficient 0.1*N* sodium hydroxide to obtain a solution containing 1 milligram per milliliter. Allow the solution to stand for 15 minutes before using.

(2) *Preparation of sample solution.* Using the sample solution prepared as described in the section for the antibiotic to be tested, proceed as described in paragraphs (d) and (e) of this section.

(d) *Procedure.* Pour the developing solvent into the bottom of the chromatography tank. Cover and seal the tank. Allow it to equilibrate. Prepare a plate as follows: On a line 2 centimeters from the base of the thin layer chromatography plate and at intervals of 2 centimeters, spot 5 microliters each of the working standard solution and sample solution. Dry the spots throughly with a stream of dry air. Place the plate in the trough in the chromatography tank. Cover and seal the tank. Allow the solvent front to travel about 15 centimeters from the starting line and then remove the plate from the tank. Dry the plate by heating for 30 minutes at 80° C in a circulating air oven. Visualize the spots by applying the spray solution.

(e) *Evalution.* Measure the distance the solvent front traveled from the starting line, and the distance the spots are from the starting line. Divide the latter by the former to calculate the R_f value. The sample and standard should appear as white spots against a blue background at an R_f of approximately 0.6. The test is satisfactory if the R_f value of the sample compares with that of the working standard.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

3. Part 440 is amended:

a. In Subpart A by adding new § 440.17 to read as follows:

§ 440.17 Cyclacillin.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cyclacillin is 6-[1-aminocyclohexanecarboxamido)-3,3-dimethy-7-oxo-4-thia-1-azabicyclo[3.2.0] heptane-2-carboxylic acid. It is a white to off-white powder. It is so purified and dried that:

(i) It contains not less than 900 micrograms and not more than 1,050 micrograms of cyclacillin per milligram.

(ii) It passes the safety test.

(iii) Its moisture content is not more than 1.0 percent.

(iv) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 4.0 and not more than 6.5.

(v) Its cyclacillin content is not less than 90 percent on an anhydrous basis.

(vi) The acid-base titration concordance is such that the difference between the percent cyclacillin content when determined by nonaqueous acid titration and nonaqueous base titration is not more than six. The potency-acid titration concordance is such that the difference between the potency value divided by 10 and the percent cyclacillin content of the sample determined by the nonaqueous acid titration is not more than six. The potency base titration concordance is such that the difference between the potency value divided by 10 and the percent cyclacillin content of the sample determined by the nonaqueous base titration is not more than six.

(vii) It is crystalline.

(viii) It gives a positive identity test for cyclacillin.

(2) *Labeling.* In addition to the labeling requirements of § 432.5 of this chapter, each package shall bear on its outside wrapper or container and the immediate container the following statement, "For use in the manufacture of nonparenteral drugs only."

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, moisture, pH, cyclacillin content, concordance, crystallinity, and identity.

(ii) Samples required: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Assay for potency by any of the following methods; however, the results obtained from the iodometric assay shall be conclusive.

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed portion of the sample in sufficient sterile distilled water to give a stock solution containing 1 milligram of cyclacillin per milliliter (estimated). Further dilute an aliquot of the stock solution with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to the reference concentration of 1.0 microgram of cyclacillin per milliliter (estimated).

(ii) *Iodometric assay.* Proceed as directed in § 436.204 of this chapter.

(iii) *Hydroxylamine colorimetric assay.* Proceed as directed in § 436.205 of this chapter.

(2) *Safety.* Proceed as directed in § 436.33 of this chapter.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(5) *Cyclacillin content.* Proceed as directed in § 436.213 of this chapter, using both the titration procedures described in paragraph (e)(1) and (2) of that section. Calculate the percent cyclacillin content as follows:

BILLING CODE 4110-03-M

(i) Acid titration.

$$\text{Percent cyclacillin content} = \frac{(A-B)\,(\text{normality of lithium methoxide reagent})(341.4)(100)(100)}{(\text{Weight of sample in milligrams})(100-m)}$$

Where:

A = Milliliters of lithium methoxide reagent used in titrating the sample;

B = Milliliters of lithium methoxide reagent used in titrating the blank;

m = Percent moisture content of the sample.

Calculate the difference between the potency and the cyclacillin content as follows:

$$\text{Difference} = \frac{\text{Potency in micrograms per milligram}}{10} - \text{percent cyclacillin content.}$$

(ii) Base titration.

$$\text{Percent cyclacillin content} = \frac{(A-B)\,(\text{normality of perchloric acid reagent})(341.4)(100)(100)}{(\text{Weight of sample in milligrams})(100-\underline{m})}$$

Where:

A = Milliliters of perchloric acid reagent used in titrating the samples;

B = Milliliters of perchloric acid reagent used in titrating the blank;

$\underline{m}$ = Percent moisture content of the sample.

Calculate the difference between the potency and the cyclacillin content as follows:

$$\text{Difference} = \frac{\text{Potency in micrograms per milligram}}{10} - \text{percent cyclacillin content.}$$

BILLING CODE 4110-03-C

(6) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(7) *Identity.* Proceed as directed in § 436.211 of this chapter, using a 1-percent potassium bromide disc prepared as described in paragraph (b)(1) of that section.

b. In Subpart B by adding new §§ 440.117, 440.117a, and 440.117b to read as follows:

§ 440.117 Cyclacillin oral dosage forms.

§ 440.117a Cyclacillin tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cyclacillin tablets are composed of cyclacillin with one or more suitable and harmless diluents, lubricants, colorings, and disintegrants. Each tablet contains 250 or 500 milligrams of cyclacillin. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cyclacillin that it is represented to contain. Its moisture content is not more than 5 percent. The tablets disintegrate within 15 minutes. It gives a positive identity test for cyclacillin. The cyclacillin used conforms to the standards prescribed by § 440.17(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The cyclacillin used in making the batch for potency, safety, moisture, pH, cyclacillin content, concordance, crystallinity, and identity.

(*b*) The batch for potency, moisture, disintegration time, and identity.

(ii) Samples required:

(*a*) The cyclacillin used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch: A minimum of 36 tablets.

(b) *Tests and methods of assay*—(1) *Potency.* Use any of the following methods; however, the results obtained from the iodometric assay shall be conclusive.

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar with sufficient 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to give a stock solution of convenient concentration. Blend for 3 to 5 minutes. Remove an aliquot and further dilute with solution 3 to the reference concentration of 1.0 microgram of cyclacillin per milliliter (estimated).

(ii) *Iodometric assay.* Proceed as directed in § 436.204 of this chapter, preparing the sample solution as follows: Place a representative number of tablets in a high-speed glass blender jar and add sufficient distilled water to give a convenient concentration. Blend for 3 to 5 minutes. Further dilute an aliquot with distilled water to the prescribed concentration.

(iii) *Hydroxylamine colorimetric assay.* Proceed as directed in § 442.40(b)(1)(ii) of this chapter, except prepare the working standard and sample solutions and calculate the potency of the sample as follows:

(*a*) *Preparation of working standard solution.* Dissolve and dilute an accurately weighed portion of the cyclacillin working standard in sufficient distilled water to obtain a concentration of 1.25 milligrams of cyclacillin per milliliter.

(*b*) *Preparation of sample solution.* Place one tablet into a high-speed glass blender jar and add sufficient distilled water to obtain a concentration of 1.25 milligrams of cyclacillin per milliliter. Blend for 3 to 5 minutes. Filter, if necessary.

(*c*) *Calculations.* Calculate the cyclacillin content in milligrams per tablet as follows:

$$\text{Milligrams of cyclacillin per tablet} = \frac{A_u \times P_a \times d}{A_s \times 1{,}000}$$

Where:

A_u = Absorbance of sample solution;

P_a = Potency of working standard in micrograms per milliliter;

A_s = Absorbance of working standard solution;

d = Dilution factor of the sample.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Disintegration time.* Proceed as directed in § 436.212 of this chapter, using the procedure in paragraph (e)(1) of that section, except do not use discs.

(4) *Identity.* Proceed as directed in § 436.327 of this chapter, preparing the sample as follows: Dissolve a representative portion of finely powdered tablets with sufficient 0.1*N* sodium hydroxide to obtain a solution containing 1 milligram of cyclacillin per milliliter. Allow the same solution to stand for 15 minutes before using.

§ 440.117b Cyclacillin for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cyclacillin for oral suspension is a mixture of cyclacillin with one or more suitable and harmless colorings, flavorings, buffer substances, sweetening ingredients, preservatives, and suspending agents. When reconstituted as directed in the labeling, it contains either 25 milligrams, 50 milligrams, or 100 milligrams of cyclacillin per milliliter. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cyclacillin that it is represented to contain. Its moisture content is not more than 1.5 percent. When reconstituted as directed in the labeling, its pH is not less than 4.5 and not more than 6.5. It gives a positive identity test for cyclacillin. The cyclacillin used conforms to the standards prescribed by § 440.17(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the

requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The cyclacillin used in making the batch for potency, safety, moisture, pH, cyclacillin content, concordance, crystallinity, and identity.

(*b*) The batch for potency, moisture, pH, and identity.

(ii) Samples required:

(*a*) The cyclacillin used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch: A minimum of seven immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Assay for potency by any of the following methods; however, the results obtained from the iolometric assay shall be conclusive.

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Reconstitute the drug as directed in the labeling. Place an accurately measured representative portion of the sample into a suitable volumetric flask and dilute to volume with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to give a convenient concentration. Mix well. Further dilute an aliquot with solution 3 to the reference concentration of 1.0 microgram of cyclacillin per milliliter (estimated).

(ii) *Iodometric assay.* Proceed as directed in § 436.204 of this chapter, preparing the sample as follows: Reconstitute the drug as directed in the labeling. Place an accurately measured representative portion of the sample into an appropriate-sized volumetric flask and dilute to volume with 1 percent potassium phosphate buffer, pH 6.0 (solution 1). Mix well. Further dilute with solution 1 to the prescribed concentration.

(iii) *Hydroxylamine colorimetric assay.* Proceed as directed in § 442.40(b)(1)(ii) of this chapter, except prepare the working standard and sample solutions and calculate the potency of the sample as follows:

(*a*) *Preparation of working standard solution.* Dissolve and dilute an accurately weighed portion of the cyclacillin working standard in sufficient distilled water to obtain a concentration of 1.25 milligrams of cyclacillin per milliliter.

(*b*) *Preparation of sample solution.* Reconstitute the sample as directed in the labeling. Place an accurately measured aliquot of the sample into an apprporiate-sized volumetric flask and dilute to volume with distilled water to yield a concentration of 1.25 milligrams of cyclacillin per milliliter. Mix well. Filter, if necessary.

(*c*) *Calculations.* Calculate the cyclacillin content as follows:

$$\text{Milligrams of cyclacillin per 5 milliliters of sample} = \frac{A_u \times P_a \times d}{A_s \times 1{,}000}$$

Where:

A_u = Absorbance of sample solution;

P_a = Potency of working standard in micrograms per milliliter;

A_s = Absorbance of working standard solution;

d = Dilution factor of the sample.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the drug reconstituted as directed in the labeling.

(4) *Identity.* Proceed as directed in § 436.327 of this chapter, preparing the sample as follows: Dilute an accurately measured representative portion of the reconstituted suspension with 0.1*N* sodium hydroxide to obtain a solution containing 1 milligram of cyclacillin per milliliter. Allow the sample solution to stand 45 minutes before using.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the **Federal Register** (January 13, 1981). However, interested persons may, on or before February 12, 1981, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this rule. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before February 12, 1981, a written notice of participation and request for hearing, and (2) on or before March 16, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing.

making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order, with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 13, 1981.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357))

Dated: January 6, 1981.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81-1060 Filed 1-12-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Parts 430, 436, and 444

[Docket No. 80N-0292]

Antibiotic Drugs for Human Use; Sisomicin Sulfate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for certification of a new antibiotic drug, sisomicin sulfate. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective January 13, 1981; comments by February 11, 1981.

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

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new antibiotic drug, sisomicin sulfate. The agency concludes that the data supplied by the manufacturer on sisomicin sulfate are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 444 (21 CFR Parts 430, 436, and 444) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 430, 436, and 444 are amended to read as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended:

a. In § 430.4 by adding paragraph (a)(47) to read as follows:

§ 430.4 Definitions of antibiotic substances.

(a) * * *

(47) *Sisomicin.* A specific one of the antibiotic substances produced by the growth of *Micromonospora inyoensis*, and the same substance produced by any other means, is a kind of sisomicin.

* * * * *

b. In § 430.5 by adding paragraphs (a)(69) and (b)(69) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(69) *Sisomicin.* The term "sisomicin master standard" means a specific lot of sisomicin that is designated by the Commissioner as the standard of comparison in determining the potency of the sisomicin working standard.

(b) * * *

(69) *Sisomicin.* The term "sisomicin working standard" means a specific lot of a homogeneous preparation of sisomicin.

* * * * *

c. In § 430.6 by adding paragraph (b)(71) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(71) *Sisomicin.* The term "microgram" applied to sisomicin means the sisomicin activity (potency) contained in 1.00 microgram of the sisomicin master standard expressed on an anhydrous basis.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended:

a. In § 436.33(b) by alphabetically inserting a new item in the table to read as follows:

§ 436.33 Safety test.

* * * * *

(b) * * *

Antibiotic drug	(Diluent diluent number as listed in § 436.31)	Test dose: Concentration in units or milligrams of activity per milliliter	Test dose: Volume in milliliters to be administered to each mouse	Route of administration as described in paragraph (c) of this section
* * *	*	*	*	*
Sisomicin sulfate	4	0.6 mg	0.5	Intravenous.
* * *	*	*	*	*

* * * * * * *

b. In § 436.105 (a) and (b) by alphabetically inserting a new item in the respective tables to read as follows:

§ 436.105 Microbiological agar diffusion assay.

(a) * * *

Antibiotic	Media to be used (as listed by medium number in § 436.102(b))		Milliliters of media to be used in the base and seed layers		Test organism	Suggested volume of standardized inoculum to be added to each 100 milliliters of seed agar	Incubation temperature for the plates
	Base layer	Seed layer	Base layer	Seed layer			
Sisomicin	11	11	21	4	D	0.03	36–37.5

(b) * * *

Antibiotic	Working standard stock solutions					Standard response line concentrations	
	Drying conditions (method number as listed in § 436.200)	Initial solvent	Diluent (solution number as listed in § 436.101(a))	Final concentration units or milligrams per milliliter	Storage time under refrigeration	Diluent	Final concentrations, units or micrograms of antibiotic activity per milliliter
Sisomicin*	Not dried	P	3	1 mg	14 days	3	0.064, 0.080, 0.100, 0.125, 0.156 μg.

*Working standard should be stored below minus 20° C under an atmosphere of nitrogen. Sisomicin is hygroscopic and care should be exercised during weighing.

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

3. Part 444 is amended:

a. In Subpart A by adding new § 444.62 to read as follows:

§ 444.62 Sisomicin sulfate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Sisomicin sulfate is the sulfate salt of *O*-3-deoxy-4-*C*-methyl-3-(methylamino)β-L-arabinopyranosyl(1→4)-*O*-[2,6-diamino-2,3,4,6-tetradeoxy-α-D-*glycero*-hex-4-enopyranosyl(1→6)-2-deoxy-L-streptamine. It is a hygroscopic powder. It is so purified and dried that:

(i) Its potency is not less than 580 micrograms of sisomicin per milligram on an anhydrous basis.

(ii) It passes the safety test.

(iii) Its loss on drying is not more than 15.0 percent.

(iv) Its pH in an aqueous solution containing 40 milligrams per milliliter is not less than 3.5 and not more than 5.5.

(v) Its residue on ignition is nor more than 1.0 percent.

(vi) Its specific rotation in an aqueous solution containing 10 milligrams per milliliter at 25° C is not less than +100° and not more than +110°.

(vii) It gives a positive identity test for sisomicin.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, loss on drying, pH, residue on ignition, specific rotation, and identity.

(ii) Samples required: 12 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay.* Sisomicin is hygroscopic and care should be exercised during storage and weighing of samples.

(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to give a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 3 to the reference concentration of 0.1 microgram of sisomicin per milliliter (estimated).

(2) *Safety.* Proceed as directed in § 436.33 of this chapter.

(3) *Loss on drying.* Proceed as directed in § 436.200(c) of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 40 milligrams of sisomicin per milliliter.

(5) *Residue on ignition.* Proceed as directed in § 436.207(a) of this chapter.

(6) *Specific rotation.* Accurately weigh the sample to be tested in a volumetric flask and dilute with sufficient distilled water to give a solution containing approximately 10 milligrams per milliliter. Proceed as directed in § 436.210 of this chapter, using a 1.0 decimeter polarimeter tube and calculate the specific rotation on an anhydrous basis.

(7) *Identity.* Proceed as directed in § 436.318 of this chapter, except:

(i) Prepare sample and standard solutions containing 10 milligrams of sisomicin per milliliter;

(ii) Use 5 microliters of the solutions to spot the chromatographic plates;

(iii) Remove the plate from the tank after 3 hours; and

(iv) The compound appears as a brown spot.

b. In Subpart C by adding new § 444.262 to read as follows:

§ 444.262 Sisomicin sulfate injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Sisomicin sulfate injection is an aqueous solution of sisomicin sulfate and one or more suitable buffers, chelating agents, and preservatives. Each milliliter contains sisomicin sulfate equivalent to 50 milligrams of sisomicin. Its potency is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of sisomicin that it is represented to contain. It is sterile. It is nonpyrogenic. It passes the safety test. Its pH is not less than 2.5 and not more than 5.5. The sisomicin sulfate used conforms to the standards prescribed by § 444.62(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The sisomicin sulfate used in making the batch for potency, safety, loss on drying, pH, residue on ignition, specific rotation, and identity.

(*b*) The batch for potency, sterility, pyrogens, safety, and pH.

(ii) Samples required:

(*a*) The sisomicin sulfate used in making the batch: 12 packages, each containing approximately 500 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 1^ vials.

(*2*) For sterility testing: 20 immediate containers collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) Potency. Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dilute an accurately measured representative portion of the product with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to the reference concentration of 0.1 microgram of sisomicin per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(a) of this chapter, using a solution containing 10 milligrams of sisomicin per milliliter.

(4) *Safety test.* Proceed as directed in § 436.33 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the **Federal Register** (January 13, 1981). However, interested persons may, on or before February 12, 1981, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this rule. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before February 12, 1981, a written notice of participation and request for hearing, and (2) on or before March 16, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order, with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 13, 1981.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357))

Dated: January 6, 1981.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81-1065 Filed 1-12-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 436

[Docket No. 80N-0296]

Erythromycin Ethylsuccinate-Sulfisoxazole Acetyl for Oral Suspension

AGENCY: Food and Drug Adminstration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for the certification of a new antibiotic drug, erythromycin ethylsuccinate-sulfisoxazole acetyl for oral suspension. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective January 13, 1981. Comments by February 12, 1981.

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

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new antibiotic drug, erythromycin ethylsuccinate-sulfisoxazole acetyl for oral suspension. The agency concludes that the data supplied by the manufacturer on erythromycin ethylsuccinate-sulfisoxazole acetyl for oral suspension are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 436 and 452 (21 CFR Parts 436 and 452) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979, 44 FR 71742), that this action is of a type that does not individualy or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 436 and 452 are amended as follows:

1. Part 436 is amended by adding new § 436.328 to read as follows:

§ 436.328 High pressure liquid chromatographic assay for sulfisoxazole acetyl content.

(a) *Equipment.* A suitable high pressure liquid chromatograph, such as a Waters Associates Model 244 [1] or equivalent equipped with:

(1) A low dead volume cell 8 to 20 microliters;

(2) A light path length of 1 centimeter;

(3) A suitable ultraviolet detection system operating at a wavelength of 254 nanometers;

(4) A suitable recorder of at least 25.4 centimeter deflection;

(5) A 30-centimeter column having an inside diameter of 4.0 millimeters and packed with a suitable reverse phase packing such as: Waters Associates, Micro-Bondapak C18; [1] and

(6) A suitable integrator.

(b) *Reagents*—(1) *Mobile phase.* Mix acetonitrile (high pressure liquid chromatography grade): water (40:60). Filter the mobile phase through a suitable glass fiber filter or equivalent which is capable of removing particulate contamination to 1 micron in diameter. De-gas the mobile phase just prior to its introduction into the chromatograph pumping system.

(2) *Internal standard solution.* Dissolve 0.33 milligram of benzanilide per milliliter in acetonitrile (high pressure liquid chromatography grade). Filter the solution through a suitable glass fiber filter or equivalent which is capable of removing particulate contamination to 1 micron in diameter.

(c) *Operating conditions.* Perform the assay at ambient temperature with a typical flow rate of 1.2 milliliters per minute. Use a detector sensitivity setting that gives a peak height for reference standard that is at least 50 percent of scale. The mimimum between peaks must be no more than 2 millimeters above the baseline.

(d) *Preparation of the working standard and sample solutions*—(1) *Working standard solution.* Prepare a solution containing 1.0 milligram per milliliter of sulfisoxazole acetyl in the internal standard solution.

(2) *Sample solution.* Reconstitute the sample as directed in the labeling. Allow to stand for 1 hour. Shake gently and transfer 5.0 milliliters of the sample to a separatory funnel. Extract the suspension three times with 75-milliliter portions of chloroform. Collect the chloroform layers in a 250-milliliter volumetric flask. Dilute the flask to volume with chloroform and mix. Filter a portion of the solution through a suitable glass fiber filter or equivalent which is capable of removing particulate contamination to 1 micron in diameter. Transfer a 4.0-milliliter aliquot of the filtrate into a 25-milliliter glass-stoppered flask and evaporate to dryness under a stream of dry air. Dissolve the residue in 10.0 milliliters of the internal standard solution, stopper, and mix.

(e) *Procedure.* Using the equipment, reagents, and operating conditions listed in paragraph (a), (b), and (c) of this section, inject 5 microliters of sample or working standard solution prepared as described in paragraph (d) of this section, into the chromatograph. Allow an elution time sufficient to obtain satisfactory separation of expected components. The elution order is void volume, sulfisoxazole acetyl and benzanilide.

(f) *Calculations.* Calculate the sulfisoxazole content as follows:

$$\text{Milligrams of sulfisoxazole per milliliter of sample} = \frac{A}{B} \times \text{concentration of the standard solution in milligrams per milliliter} \times 125 \times 0.864$$

where:

*A*A = Area of sample peak (at a retention time equal to that of the standard) divided by the area of the internal standard peak;

*B*B = Area of the standard peak divided by the area of the internal standard peak;

0.864 = The molecular weight of sulfisoxazole divided by the molecular weight of sulfisoxazole acetyl.

2. Part 452 is amended by adding new § 452.125e to read as follows:

§ 452.125e Erythromycin ethylsuccinate-sulfisoxazole acetyl for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Erythromycin ethylsuccinate-sulfisoxazole acetyl for oral suspension is a dry mixture of erythromycin ethylsuccinate and sulfisoxazole acetyl with suitable and harmless flavorings, buffers, surfactants, colorings, and suspending agents. When reconstituted as directed in the labeling, each milliliter will contain erythromycin ethylsuccinate equivalent to 40 milligrams of erythromycin and sulfisoxazole acetyl equivalent to 120 milligrams of sulfisoxazole. Its erythromycin ethylsuccinate content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of erythromycin that it is represented to

[1] Available from: Waters Associates, Inc., Maple Street, Milford, MA 10757.

contain. Its sulfisoxazole acetyl content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of sulfisoxazole that it is represented to contain. Its loss on drying is not more than 1.0 percent. When reconstituted as directed in the labeling, its pH is not less than 5.0 and not more than 7.0. The erythromycin ethylsuccinate used conforms to the standards prescribed by § 452.25(a)(1). The sulfisoxazole acetyl used conforms to the standards prescribed by the U.S.P.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The erythromycin ethylsuccinate used in making the batch for potency, safety, moisture, pH, residue on ignition, identity, and crystallinity.

(*b*) The sulfisoxazole acetyl used in making the batch for all U.S.P. specifications.

(*c*) The batch for erythromycin content, sulfisoxazole content, loss on drying, and pH.

(ii) Samples required:

(*a*) The erythromycin ethylsuccinate used in making the batch: 10 packages each containing approximately 500 milligrams.

(*b*) The batch: A minimum of 10 immediate containers.

(b) *Tests and methods of assay*—(1) *Erythromycin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Reconstitute the sample as directed in the labeling. Allow to stand for 1 hour. Shake gently and transfer 5 milliliters of the well-shaken suspension into a high-speed glass blender jar containing 195 milliliters of methyl alcohol. Blend for 3 to 5 minutes. Further dilute an aliquot with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

(2) *Sulfisoxazole acetyl content.* Proceed as directed in § 436.328 of this chapter.

(3) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the suspension reconstituted as directed in the labeling.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's become effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the **Federal Register**. However, interested persons may, on or before (insert date 30 days after date of publication in the **Federal Register**), submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this rule. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before February 12, 1981, a written notice of participation and request for hearing, and (2) on or before March 16, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order, with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 13, 1981.

(Sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357))

Dated: January 6, 1981.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81-1063 Filed 1-12-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 442

[Docket No. 80N-0305]

Cepha Antibiotic Drugs; Cefadroxil Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for the certification of a new strength of cefadroxil capsule. The manufacturer has supplied sufficient data and information to establish the drug's safety and efficacy.

DATES: Effective January 13, 1981. Comments by February 12, 1981.

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

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new strength (250 milligrams) of cefadroxil capsule. The agency concludes that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as

directed in the labeling and that the regulations should be amended in Part 442 (21 CFR Part 442) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 442 is amended in § 442.106 by revising the second sentence after the heading in paragraph (a)(1) to read as follows:

§ 442.106 Cefadroxil capsules.

(a) * * *

(1) *Standards of identity, strength, quality, and purity.* * * * Each capsule contains either 250 or 500 milligrams of cefadroxil. * * *

* * * * *

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the **Federal Register** (January 13, 1981). However, interested persons may, on or before February 12, 1981, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this rule. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or bfore February 12, 1981, a written notice of participation and request for hearing, and (2) on or before March 13, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday and Friday.

Effective date. This regulation shall be effective January 13, 1981.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357))

Dated: January 6, 1981.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81–1062 Filed 1–12–81; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 442

[Docket No. 80N–0371]

Cepha Antibiotic Drugs; Cefadroxil Monohydrate Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for the certification of a new antibiotic dosage form, cefadroxil monhydrate tablets. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective January 13, 1981. Comments by February 12, 1981.

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

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new antibiotic dosage form, cefadroxil monohydrate tablets. The agency concludes that the data supplied by the manufacturer concerning cefadroxil monohydrate tablets are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Part 442 (21 CFR Part 442) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 442 is amended by redesignating § 442.106 as § 442.106a and adding new § 442.106 and § 442.106b, to read as follows:

§ 442.106 Cefadroxil monohydrate oral dosage forms.

§ 442.106a Cefadroxil monohydrate capsules.

* * * * *

§ 442.106 Cefadroxil monohydrate tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefadroxil monohydrate

tablets are composed of cefadroxil monohydrate and one or more suitable and harmless binders and lubricants. Each tablet contains cefadroxil monohydrate equivalent to 1,000 milligrams of cefadroxil. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cefadroxil that it is represented to contain. Its moisture content is not more than 8.0 percent. The tablets disintegrate within 15 minutes. The cefadroxil monohydrate used conforms to the standards prescribed by § 442.6(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The cefadroxil monohydrate used in making the batch for potency, safety, moisture, pH, absorptivity, identity, and crystallinity.

(*b*) The batch for potency, moisture, and disintegration time.

(ii) Samples required:

(*a*) The cefadroxil monohydrate used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch: A minimum of 36 tablets.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods; however, the results obtained from the hydroxylamine colorimetric assay shall be conclusive.

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar containing sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to obtain a stock solution of convenient concentration. Blend for 3 to 5 minutes. Further dilute an aliquot of the stock solution with solution 1 to the reference concentration of 20 micrograms of cefadroxil per milliliter (estimated).

(ii) *Hydroxylamine colorimetric assay.* Proceed as directed in § 442.40(b)(1)(ii) of this chapter, except prepare the working standard and sample solutions and calculate the cefadroxil content as follows:

(*a*) *Preparation of working standard solution.* Dissolve and dilute an accurately weighed portion of the cefadroxil working standard in sufficient distilled water to a final concentration of 1 milligram of cefadroxil per milliliter.

(*b*) *Preparation of sample solution.* Blend a representative number of tablets in a high-speed glass blender jar with sufficient distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of this solution with distilled water to a concentration of 1 milligram of cefadroxil per milliliter (estimated).

(*c*) *Calculations.* Calculate the cefadroxil content as follows:

$$\text{Milligrams per tablet} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000 \times n}$$

where:

A_u = Absorbance of sample solution;
P_s = Potency of working standard in micrograms per milligram;
d = Dilution factor for sample;
A_s = Absorbance of working standard solution;
n = Number of tablets in the sample assayed.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Disintegration time.* Proceed as directed in § 436.212 of this chapter, using the procedure described in paragraph (e)(1) of that section.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the **Federal Register** (January 13, 1981). However, interested persons may, on or before February 12, 1981, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this rule. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before February 12, 1981, a written notice of participation and request for hearing, and (2) on or before March 13, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 13, 1981.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357))

Dated: December 19, 1980.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81-1064 Filed 1-12-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 444

[Docket No. 80N-0299]

Gentamicin Sulfate Injection

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to (1) provide for the certification of a new strength of gentamicin sulfate injection for intrathecal administration and (2) provide for the use of nonsterile bulk drug in the manufacture of gentamicin sulfate injection to reflect current certification practices. The manufacturer has supplied sufficient data and information to establish the safety and efficacy of gentamicin sulfate injection for intrathecal use.

DATES: Effective January 13, 1981; comments by February 12, 1981.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new strength (2 milligrams) of gentamicin sulfate injection for intrathecal administration. The agency concludes that the data supplied by the manufacturer concerning this antibiotic drug product are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Part 444 (21 CFR Part 444) to provide for its certification. In addition, Part 444 is amended in § 444.220 to provide for the use of nonsterile bulk drug in the manufacture of gentamicin sulfate injection. This change will result in a more accurate and usable regulation that reflects current certification practices.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979, 44 FR 71742), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 444 is amended in § 444.220 by revising paragraphs (a)(1), (a)(3)(i)(*a*), (a)(3)(ii) (*b*)(*1*), and (b)(4) to read as follows:

§ 444.220 Gentamicin sulfate injection.

(a) * * *

(1) *Standards of identity, strength, quality, and purity.* Gentamicin sulfate injection is an aqueous solution of gentamicin sulfate with or without one or more suitable buffers, sequestering agents, tonicity agents, or preservatives. Each milliliter contains gentamicin sulfate equivalent to either 2.0 milligrams, 10.0 milligrams, or 40.0 milligrams of gentamicin. Its potency is satisfactory if it contains not less than 90 percent nor more than 125 percent of the number of milligrams of gentamicin that it is represented to contain. It is sterile. It passes the safety test. It is nonpyrogenic. Its pH is not less than 3.0 nor more than 5.5. The gentamicin sulfate used conforms to the standards prescribed by § 444.20(a)(1).

* * * * *

(3) * * *

(i) * * *

(*a*) The gentamicin sulfate used in making the batch for potency, safety, loss on drying, pH, specific rotation, content of gentamicins C_1, C_{1a}, C_2, and identity.

* * * * *

(ii) * * *

(*b*) * * *

(*1*) For all tests except sterility: A minimum of 40 containers if each milliliter contains the equivalent of 2.0 milligrams or 10.0 milligrams of gentamicin or a minimum of 12 containers if each milliliter contains the equivalent of 40.0 milligrams of gentamicin.

* * * * *

(b) * * *

(4) *Pyrogens.* Proceed as directed in § 436.32(a) of this chapter, using a solution containing 10.0 milligrams of gentamicin per milliliter, except if it is intended for intrathecal administration, use 5.0 milliliters of the undiluted solution.

* * * * *

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the **Federal Register** (January 13, 1981). However, interested persons may, on or before February 12, 1981, submit to the Dockets Management Branch (FDA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this rule. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before February 12, 1981, a written notice of participation and request for hearing, and (2) on or before March 16, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order, with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 13, 1981.

(Sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357))

Dated: December 19, 1980.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81-1066 Filed 1-12-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 452

[Docket No. 80N-0298]

Macrolide Antibiotic Drugs; Erythromycin Topical Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for the certification of a new antibiotic dosage form, erythromycin topical solution. The manufacturers have supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective January 13, 1981; comments by February 12, 1981.

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

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new antibiotic dosage form, erythromycin topical solution. The agency concludes that the data supplied by the manufacturers on erythromycin topical solution are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Part 452 (21 CFR Part 452) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979, 44 FR 71742), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 452 is amended by adding new § 452.510b to read as follows:

§ 452.510b Erythromycin topical solution.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Erythromycin topical solution contains in each milliliter 15.0 or 20.0 milligrams of erythromycin. It may also contain one or more suitable and harmless solvents, surfactants, buffer substances, diluents, and perfumes. Its potency is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of milligrams of erythromycin that it is represented to contain. If it contains 15.0 milligrams of erythromycin per milliliter, its moisture content is not more than 5.0 percent. If it contains 20.0 milligrams of erythromycin per milliliter, its moisture content is not more than 8.0 percent. Its pH is not less than 8.0 and not more than 10.5. The erythromycin used conforms to the standards prescribed by § 452.10(a)(1), except safety and heavy metals.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The erythromycin used in making the batch for potency, moisture, pH, residue on ignition, identity, and crystallinity.

(*b*) The batch for potency, moisture, and pH.

(ii) Samples required:

(*a*) The erythromycin used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch: A minimum of 6 immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Using a suitable hypodermic needle and syringe, remove an accurately measured representative portion of the sample and dilute with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 3 to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using a 1:1 dilution of the sample with distilled water.

This regulation announces standards that FDA has accepted in a request for approval of antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the **Federal Register** (January 13, 1981). However, interested persons may, on or before February 12, 1981, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this rule. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before February 12, 1981, a written notice of participation and request for hearing, and (2) on or before March 16, 1981, the

data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies identified with the docket number appearing in the heading of this order, with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, Md 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 13, 1981.

(Sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357))

Dated: January 6, 1981.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81-1081 Filed 1-12-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 453

[Docket No. 80N-0302]

Lincomycin Antibiotic Drug; Clindamycin Phosphate Topical Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for the certification of a new antibiotic dosage form, clindamycin phosphate topical solution. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective January 13, 1981; comments by February 12, 1981.

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

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new antibiotic dosage form, clindamycin phosphate topical solution. The agency concludes that the data supplied by the manufacturer concerning this antibiotic drug product are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Part 453 (21 CFR Part 453) to provide for the drug's certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 453 is amended as follows:

1. In Subpart A by adding new § 453.22 to read as follows:

§ 453.22 Clindamycin phosphate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Clindamycin phosphate is a water-soluble ester of clindamycin and phosphoric acid. It occurs as a white to off-white powder. It is so purified and dried that:

(i) Its clindamycin content is not less than 758 micrograms of clindamycin per milligram calculated on an anhydrous basis.

(ii) Its microbiological activity is not less than 758 micrograms of clindamycin per milligram calculated on an anhydrous basis.

(iii) It passes the safety test.

(iv) Its moisture content is not more than 6.0 percent.

(v) Its pH in an aqueous solution containing 10 milligrams per milliliter is not les than 3.5 and not more than 4.5.

(vi) It is crystalline.

(vii) It passes the identity test for clindamycin phosphate.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for clindamycin content, microbiological activity, safety, moisture, pH, crystallinity, and identity.

(ii) Samples required: 10 packages, nine containing approximately 300 milligrams and one containing 1.5 grams.

(b) *Tests and methods of assay*—(1) *Clindamycin content (vapor phase chromatography).* Proceed as directed in § 436.304 of this chapter.

(2) *Microbiological activity (microbiological agar diffusion assay).* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Accurately weigh approximately 12 milligrams of the clindamycin phosphate sample into a 50-milliliter glass-stoppered centrifuge tube. Pipet 25 milliliters of the pH 9.0 borate buffer into the centrifuge tube. Add 10 milliliters of chloroform and shake vigorously for 15 minutes. Centrifuge the resulting mixture and pipet a 20-milliliter aliquot of the aqueous phase into a 35-milliliter centrifuge tube. Add a weighed amount of intestinal alkaline phosphatase equivalent to 50 units of activity[1] and allow the solution to stand until the enzyme has completely dissolved. Place the tube into a water bath at 37° C ±2° C for 2.5 hours. After the 2.5-hours hydrolysis, allow the solution to cool. Further dilute an aliquot of the solution with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to the reference concentration of 1.0 microgram of clindamycin per milliliter (estimated).

(3) *Safety.* Proceed as directed in § 436.33 of this chapter.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

[1] Defined such that 50 units hydrolyzes at least 20 micromoles of a clindamycin phosphate authentic sample under the assay conditions described in this section.

(6) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(7) *Identity.* Proceed as directed in § 436.211 of this chapter, using the sample preparation method described in paragraph (b)(2) of that section, except dry the sample for 2 hours at 100° C and allow to equilibrate with the atmosphere for 1 hour.

2. By reserving Subparts D and E and adding new Subpart F to read as follows:

Subpart D and E [Reserved]

Subpart F—Dermatologic Dosage Forms

§ 453.522 Clindamycin phosphate topical solution.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Clindamycin phosphate is a solution of clindamycin phosphate in a suitable and harmless vehicle. Each milliliter contains 10 milligrams of clindamycin activity. Its clindamycin content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of clindamycin that it is represented to contain. Its pH is not less than 4.0 and not more than 7.0. The clindamycin phosphate used conforms to the standards prescribed by § 453.22(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The clindamycin phosphate used in making the batch for clindamycin content, microbiological activity, moisture, pH, crystallinity, and identity.

(*b*) The batch for clindamycin content and pH.

(ii) Samples required:

(*a*) The clindamycin phosphate used in making the batch: 6 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay*—(1) *Clindamycin content (vapor phase chromatography).* Proceed as directed in § 436.304 of this chapter, except prepare the sample for assay and calculate the clindamycin content as follows:

(i) *Preparation of the sample.* Accurately transfer a volume of sample equivalent to approximately 20 milligrams of clindamycin activity to a 50-milliliter volumetric flask. Evaporate the sample to near dryness under a stream of nitrogen. Dilute to 50 milliliters with pH 9.0 borate buffer and mix well. Place 25.0 milliliters of this solution into a 50-milliliter stoppered centrifuge tube. Add 10 milliliters of chloroform. Shake vigorously for 15 minutes and centrifuge to obtain adequate phase separation of the chloroform and aqueous phase. Transfer 20 milliliters of the aqueous phase from the tube into a 35-milliliter stoppered centrifuge tube. Add to the tube a weighed amount of intestinal alkaline phosphatase equivalent to 50 units of activity [3] and allow to stand until the phosphatase has dissolved completely. Place the centrifuge tube into a water bath at 37° C ± 2° C for 2.5 hours. After the 2.5-hours hydrolysis, allow the solution to cool.

(ii) *Calculations.* Calculate the clindamycin content as follows:

$$\text{Clindamycin content per milliliter} = [(R_u)(W_s)(d)(f)]/[(R_s)(V)]$$

where:

R_u = Area of clindamycin sample peak/Area of internal standard;

R_s = Area of clindamycin standard peak/Area of internal standard;

W_s = Weight of clindamycin working standard in milligrams;

d = Dilution factor;

f = Potency of clindamycin working standard in milligrams of clindamycin per milligram;

V = Volume of sample in milliliters.

(2) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted drug.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the **Federal Register** (January 13, 1981). However, interested persons may, on or before February 12, 1981, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this rule. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before February 12, 1981, a written notice of participation and request for hearing, and (2) on or before March 16, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order, with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective January 13, 1981.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357))

Dated: January 6, 1981.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 81–1059 Filed 1–12–81; 8:45 am]

BILLING CODE 4110–03–M

[3] Defined such that 50 units hydrolyzes at least 20 micromoles of a clindamycin phosphate authentic sample under the assay conditions described in § 436.304 of this chapter.

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Chorionic Gonadotropin

Correction

In FR Doc. 80-37892, published at page 81037, in the issue of Tuesday, December 9, 1980 make the following correction:

In § 522.600 (c), in the table under (2), in the first column of page 81038, the columns were inadvertently transposed. The entry should read:

(2) * * *

Drug labeler code	*Firm name and address*
* *	* * *
000469	Lypho-Med, Inc., 4020 W. Division St., Chicago, Il. 60651.
* *	* * *

BILLING CODE 1505-01-M

21 CFR Part 601

[Docket No. 80N-0377]

Licensing; Sale of Biological Products Under Development

Correction

In FR Doc. 80-34463, appearing at page 73922 in the issue of Friday, November 7, 1980, the second line of the second full paragraph in column two on page 73923 should read, "Act (5 U.S.C. 553 (b) and (d)) and 21" and the date in the eleventh line of the same paragraph should read, "January 6, 1981".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[T.D. 7753]

Manufacturers and Retailers Excise Taxes; Tax-Free Sales of Articles To Be Used for, or Resold for, Further Manufacture

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to tax-free sales of articles to be used for, or resold for, further manufacture. The regulations clarify the existing excise tax law with respect to sanctions applicable to a taxpayer who purchases parts tax free without intending to use them for an exempt purpose. The regulations affect manufacturers who buy or sell parts intended to be used for, or resold for, further manufacture.

DATE: The regulations are effective for sales in calendar quarters beginning after January 13, 1981.

FOR FURTHER INFORMATION CONTACT: Robert B. Coplan of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T), 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1980, the **Federal Register** published proposed amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) under section 4221 of the Internal Revenue Code of 1954 (45 FR 44965). The amendments were proposed to clarify the excise tax regulations dealing with the tax-free sale of truck parts which are to be used for, or resold for, further manufacture. A public hearing was held on October 28, 1980. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

In General

Under § 48.4221-2, articles that would otherwise be subject to the manufacturers excise tax may be sold by the manufacturer free of tax for use by the purchaser for further manufacture or for resale by the purchaser to a second purchaser for use by the second purchaser in further manufacture. Generally, purchasers who intend to use articles in further manufacture must comply with the registration requirements under § 48.4222(a)-1. Section 48.4221-1(c)(1) of the existing regulations also requires such purchasers to certify to the manufacturer the exempt purpose for which the articles are being purchased as evidence in support of a tax-free sale. A manufacturer who accepts such a certification in good faith will be relieved from liability for the manufacturers excise tax under section 4221(c) of the Code.

Changes Made in Response to Comments Received

The proposed regulations attempted to clarify the good faith standard under section 4221(c) by amending § 48.4221-2(a)(1) to provide that a manufacturer may not sell parts tax free if the circumstances of the sale indicate that some or all of the parts are intended for resale as replacement parts or for some other non-exempt use. The proposed regulations mentioned individual packaging of parts and identifiable coding of parts based on the purchaser's intended use as two examples of circumstances indicating that parts are intended for use as replacement parts.

A few comments from parts manufacturers expressed concern that the proposed regulations would impose an obligation on them (1) to determine the validity of a purchaser's certification that the parts are intended for use in further manufacture, and (2) to verify that the parts are actually used for the stated purpose. One comment stated that individually packaged parts are sometimes used in further manufacture, especially in warranty repair, and that the extent of such use by the purchaser cannot be foreseen by the manufacturer. Another comment suggested that the Internal Revenue Service should use its authority under section 4222(c) of the Code to revoke or suspend the registration of any purchaser who submits improper certificates in order to purchase parts tax free.

In response to these comments, the final regulations contain a cross-reference to the standards in § 48.4222(c)-1 for revoking or suspending a person's registration in place of the material contained in the notice of proposed rulemaking. In addition, a new paragraph (b) has been added to § 48.4222(c)-1 to provide that a purchaser who buys articles tax free without intending at the time of purchase to use them for an exempt purpose may have its registration revoked or suspended. The regulations provide that a purchaser who has a practice of purchasing articles tax free without regard to a reasonable estimate of the quantity of such articles it needs for exempt purposes such as further manufacture, may have its registration revoked or suspended under section 4222(c) and § 48.4222(c)-1.

One comment expressed concern that the proposed regulations would place an additional burden on truck manufacturers to maintain separate inventories for parts purchased tax paid and those either purchased tax free or manufactured by the truck manufacturer. However, the Code and the existing regulations do not permit a manufacturer to submit a certificate in support of a tax-free purchase of parts if the quantity of parts purchased tax free exceeds a reasonable estimate of the quantity of such parts it needs for the exempt purpose stated in the certificate.

Drafting Information

The principal author of these proposed regulations is Robert B. Coplan of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 48 is amended as follows:

Paragraph 1. Paragraph (a)(1) of § 48.4221–2 is amended by adding a new sentence at the end thereof to read as set forth below:

§ 48.4221–2 Tax-free sales of articles to be used for, or resold for, further manufacture.

(a) *Further manufacture*—(1) *In general.* * * * See § 48.4222(c)–1 for circumstances under which a person's registration and its right to sell or purchase articles tax free under this section may be revoked or suspended.

* * * * *

Par. 2. Section 48.4222(c)–1 is amended by inserting paragraph designation "(a)" and a heading immediately before the first sentence, and by adding a new paragraph (b) after newly designated paragraph (a) to read as set forth below:

§ 48.4222(c)–1 Revocation or suspension of registration.

(a) *In general.* * * *

(b) *Purchaser's improper use of registration.* A purchaser's registration and right to buy articles tax free may be revoked or suspended under paragraph (a) of this section if it buys articles tax free without intending at the time of purchase to use them for an exempt purpose. Revocation or suspension may be imposed even though the purchaser intends to pay, and actually pays, the manufacturer's excise tax when it uses the articles for a non-exempt purpose. A purchaser will be considered to have intended to use articles for an exempt purpose if it bases its orders on a reasonable estimate of the quantity of articles it will use for exempt purposes. However, a purchaser who has a practice of purchasing articles tax free without regard to a reasonable estimate of its needs for exempt purposes, may, in addition to other penalties, have its registration revoked or suspended under this section.

(Secs. 4222 (72 Stat. 1284; 26 U.S.C 4222) and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: December 19, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 81-1141 Filed 1-12-81; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 70, 240, 245, 250, 270, and 275

[T.D. ATF-77; Notice No. 341]

Electronic Fund Transfer for Certain Alcohol and Tobacco Products Excise Taxpayments and Other Provisions

AGENCY: The Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Final regulation (Treasury decision).

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is publishing a final regulation that would require alcohol and tobacco products excise taxpayers, who pay a net amount of five million dollars or more in excise taxes in a fiscal year (large taxpayers), to pay these taxes by electronic fund transfer. This electronic fund transfer will provide the U.S. Treasury with immediate credit of funds and made them available for use on the actual date the excise taxes are due rather than several days later. Taxpayment by electronic fund transfer is in the public interest because the new requirement provides the most expeditious method of collecting alcohol and tobacco products excise taxpayments into the Treasury Account. The Federal Government will gain three or four days of use of this money whereas before the use of this money was delayed due to checks or other acceptable forms of payment being cleared through the banks.

This final regulation is classified as major and is supplemented by a final regulatory analysis.

EFFECTIVE DATE: June 1, 1981.

ADDRESS: For a copy of the final regulatory analysis, write to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Post Office Box 385, Washington,

FOR FURTHER INFORMATION CONTACT:

For information on the final regulations, contact Armida N. Stickney or James A. Hunt at 202/566–7626. For information on the regulatory analysis, contact Cliff A. Mullen at 202/566–7531.

SUPPLEMENTARY INFORMATION:

Discussion of Proposed Regulations

This Treasury decision is the result of a notice of proposed rulemaking published in the **Federal Register** on June 6, 1980 (Notice No. 341; 45 FR 38258). Notice No. 341 proposed that those taxpayers who paid five million dollars or more in alcohol or tobacco products excise taxes during the previous fiscal year use electronic fund transfers for the payment of their excise taxes. The taxpayments would be made to the Account of the U.S. Treasury at the Federal Reserve Bank of New York.

The proposal is in response to recommendations made in 1978 by the President's Reorganization Project regarding cash management initiatives within Government operations. The net effect of the proposal is improved cash management by reducing the length of time between excise taxpayments from the alcohol and tobacco products industry and the use of those funds by the Federal Government. As a result, the Office of Management and Budget (OMB) and the U.S. Department of Treasury adopted a policy of reducing interest lost on excise taxes due but not received through the use of improved methods of collection—i.e., electronic fund transfer.

Public Participation

Interested persons were afforded an opportunity of 90 days to comment on the proposed amendments to 27 CFR Parts 19, 70, 240, 245, 250, 270, and 275; and due consideration was given to the 51 comments received in response to the notice. As a result of comments received, some changes were made to the proposed amendments. The Director determined that a public hearing was not necessary.

Discussion of Issues Raised by Comments

The majority of the commenters to Notice No. 341 opposed the proposal. A few commenters offered suggestions. Major issues raised by the commenters are briefly discussed as follows:

Taxpayer as tax collector. Assertions were made that the distiller, manufacturer of tobacco products, winemaker, and brewer are tax collectors for the Federal Government and should be allowed a benefit for performing this tax service.

The laws and regulations covering these taxpayers, however, view them solely as taxpayers and do not provide for them to receive any economic or

financial benefit for these collections. The taxpayer collects excise taxes as a part of the cost of the product. In reviewing the legislative history of the Internal Revenue Code of 1954, ATF found no indication that Congress established the tax return system as a form of benefit or compensation to the alcohol and tobacco products industries in return for performing a tax collection service for the Federal Government.

"Taxes not due and payable until the income giving rise to the taxes is earned." It was argued that a basic tenet of the Federal taxation system is that taxes ordinarily are payable upon accrual or on a pay-as-you-go basis. That is to say, most of the Federal tax revenue is paid immediately upon the payment of income that gives rise to the taxes. The examples used to exemplify this basic tenet involved such taxes as income tax withholdings and FICA tax from wages and salaries and are not analogous to alcohol and tobacco products excise taxes. Moreover, the industry practice of extending credit and payment terms to their customers is not mandated by law. This practice is of its own choosing. Improvement of cash management by both the industry and the Federal Government can be achieved by expediting receipts to the greatest extent possible.

Against the intent of the Trade Agreements Act of 1979. It was also asserted that the new requirement is contrary to the intent of the Congress in the passage of the Trade Agreements Act of 1979, in particular, the portion dealing with the Distilled Spirits Tax Revision Act of 1979 which repealed the wine gallon and proof gallon provisions of 26 U.S.C. 5001. In an effort to give the domestic distilled spirits industry relief over a law that otherwise would have favored imported bottled distilled spirits, the Congress amended 26 U.S.C. 5061 to increase the deferral time for tax payment by five additional days in 1980, 10 additional days in 1981, and 15 additional in 1982 and subsequent years. Some commenters asserted that the new requirement would take away or, at least, lessen the relief granted by Congress.

Contrary to this assertion, the extended deferral periods for the entire domestic distilled spirits industry remain unchanged; thus, the new requirement is not contrary to the stated intent of the Congress, nor the provisions of 26 U.S.C. 5061. Noteworthy is the legislative history of the Trade Agreements Act of 1979 on the additional deferral period which stresses that the granting of the additional time dealt with "unique circumstances" and was not "precedent for any other area".[1] The Administration and the Congress, therefore, did not intend that the additional deferral period be interpreted as meaning anything other than the time periods established by that law. As noted above, the new requirement does not alter the time periods established.

Small taxpayer versus large taxpayer. Another matter raised in opposition was that small taxpayers also should be required to pay their excise taxes by electronic fund transfer; otherwise, the proposal is discriminatory. When the President's Reorganization Project team recommended the use of electronic transfer, they decided that the five-million-dollar figure was sufficiently equitable in establishing a class of taxpayers.

Unemployment. A few commenters indicated that there could be loss of employment. Sufficient information was not made available to ATF to determine the precise impact, if any, on the employment situation of the affected industry. For a discussion on the employment impact of electronic fund transfer, refer to the material entitled, "Impact on the General Economy," of the final regulatory analysis.

Inflationary impact. ATF agrees that, because of accelerated taxpayments by electronic fund transfer, some segments of the affected industries would incur costs to finance these taxes. This would increase the cost of doing business and could possibly result in product price increases.

Reversal of tax policy. Several commenters felt the new requirement is a complete reversal of tax policy that has been in motion for the past 25 years. However, ATF believes that the collection of tax on the date due is not a reversal of tax policy; and also the technology of electronic fund transfer has not become of age. Electronic fund transfer is a method of collecting the tax within existing tax policy.

Advantage of importers over domestic taxpayers. ATF is aware that importers will continue to enjoy the benefits of delayed tax transmittals whereas the domestic large taxpayers would have a cost disadvantage until the U.S. Customs Service adopts a similar method for the payment of excise taxes on the same products. Therefore, the effective date of this rule has been deferred to June 1, 1981, to allow the U.S. Customs Service to proceed to develop a comparable requirement for electronic fund transfer to be imposed on parties which pay tobacco and alcohol excise taxes through the U.S. Customs Service.

Other issues raised by commenters are discussed in the regulatory analysis.

[1] House Report No. 96-317, 96th Cong. 1st Session 169 (1979).

Discussion of Changes to the Proposed Regulations

For purposes of clarity and to avoid possible confusion in the banking community, the following changes have been made to the proposed amendatory language in Notice No. 341:

(1) The titles of 27 CFR 19.523a, 240.591a, 245.117a, 250.112a, 270.165a, 175.115a have been entitled, "Payment of tax by electronic fund transfer".

(2) The paragraph entitled, "Other cross references", in the above-cited sections has been deleted.

(3) The definitions for "bank", "electronic fund transfer or EFT", and "Treasury Account" have been revised.

(4) The definitions for "authorized commercial bank", "Government depositaries", and "nonmember clearing banks" have been dropped in favor of the term "commercial bank". The term "Government depositaries" was specifically deleted so that many commercial banks which can effect electronic fund transfers would not be excluded.

(5) Taxpayments shall be considered as made when a large taxpayer "unconditionally" directs his bank to immediately effect an electronic fund transfer in accordance with the established procedures by the bank. As a result, paragraph (c)(3) of each of the above-cited sections has been clarified to show that the large taxpayers should not be held liable for failures beyond their control in a system they are required to use for the benefit of the Government. Conversely, the banking institution should not be held responsible for taxpayments not received from the taxpayer in the manner prescribed by regulations and within the time limit established by the banking institution.

(6) Instead of prescribing a notice form as proposed in 27 CFR 19.523b, 240.591b, 245.117b, 250.112c, 270.165b, and 275.115b, the regulations prescribed the issuance of an ATF procedure entitled, Payment of Tax by Electronic Fund Transfer (ATF Publication 5000.8). This procedure will provide specific information and instructions on how to make the taxpayment by electronic fund transfer and depicts a facsimile of the information a large taxpayer must give to his bank.

(7) When a large taxpayer will discontinue remitting the excise tax by electronic fund transfer, he will notify ATF and the director of the service center or the Office-in-Charge, as the

case may be, by means of a written notification attached to his tax return in lieu of an information return.

(8) Prepayment of alcohol and tobacco products excise taxes by a large taxpayer in Puerto Rico will not be remitted by electronic fund transfer. It is administratively unfeasible to require prepayment of the tax. In the case of alcoholic beverages, the Office-in-Charge has to certify receipt of the tax payment prior to the removal of the alcoholic beverages and forward the certification to the revenue agent of the Commonwealth of Puerto Rico. In the case of tobacco products, the prepayment of tax by electronic fund transfer would result in the tax being paid before actually due.

Other amendment are editorial in nature.

Drafting Information

The principal author of this final rule is A. N. Stickney of the Research and Regulations Branch, ATF. Other personnel of ATF and other offices of the Department of the Treasury participated in developing this final regulation, both as to matters of substance and style.

Compliance with Executive Order 12044

In compliance with Executive Order 12044, a final regulatory analysis has been prepared to accompany this final regulation. This regulatory analysis reflects the economic consequences to the large taxpayers and the benefit to the Federal Government. Copies of the regulatory analysis are available upon request, and a copy is available for public inspection during normal business hours at the ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C.

Authority and Adoption of Amendments to the Regulations

The Director is issuing this Treasury decision under the authority contained in 26 U.S.C. 7805 (68A Stat. 917).

Accordingly, 27 CFR Parts 19, 70, 240, 245, 250, 270, and 275 are amended by adopting, subject to the foregoing changes, the amendatory language proposed in Notice No. 341 in the Federal Register on June 6, 1980 (45 FR 38258).

PART 19—DISTILLED SPIRITS PLANTS

1. The table of sections to 27 CFR Part 19 is amended to read as follows:

Subpart O—Transfers and Withdrawals

* * * * *

19.523a Payment of tax by electronic fund transfer.

* * * * *

2. Section 19.11 is amended to read as follows:

§ 19.11 Meaning of terms.

* * * * *

ATF officer. * * *

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

* * * * *

CFR. * * *

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

* * * * *

District director. * * *

Electronic fund transfer or EFT. Any transfer of funds effected by a proprietor's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

* * * * *

Fiduciary. * * *

Fiscal year. The period which begins October 1 and ends on the following September 30.

* * * * *

Secretary. * * *

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

* * * * *

Transfer in bond. * * *

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

* * * * *

3. Section 19.519 is revised to read as follows:

§ 19.519 Methods of taxpayment.

The tax on spirits shall be paid pursuant to a return on Form 5110.35, filed as provided in § 19.523 or § 19.523(a) and § 19.524. Except for remittance to be effected by electronic fund transfer under § 19.523(a), remittance for the tax in full shall accompany the return and may be in any form which the district director is authorized to accept under the provisions of 26 CFR 301.6311–1 (Payment by check or money order) and which is acceptable to him. However, where a check or money order tendered in payment for taxes is not paid on presentment, or where the taxpayer is otherwise in default in payment, any remittance made during the period of such default, and until the regional regulatory administrator finds that the revenue will not be jeopardized by the acceptance of a personal check (if acceptable to the district director), shall be in cash or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or a money order, as provided in 26 CFR 301.6311–1. Checks and money orders shall be made payable to "Internal Revenue Service".

(Act of August 16, 1954, Ch. 736, 68A Stat. 777, as amended (26 U.S.C. 6311); Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 19.523 [Amended]

4. Section 19.523 is amended by changing the prepositional phrase, "with remittance", wherever it appears, to read "and remittance as required by § 19.523a or § 19.524".

5. Section 19.523a is new. As added, § 19.523a reads as follows:

§ 19.523a Payment of tax by electronic fund transfer.

(a) *General.* Notwithstanding any provision of §§ 19.522 and 19.523, except as provided by this section, a proprietor who pays an amount of five million dollars or more in excise taxes during a fiscal year shall use a commerical bank in making payment of the tax on spirits for the succeeding fiscal year. For purposes of this section, the dollar amount of payments is defined as the net amount of taxes due and payable on returns required to be filed in the fiscal year after any authorized credits.

(b) *Requirements.* (1) On or before October 10 of each fiscal year, except for a proprietor already remitting the tax by EFT, each proprietor who paid an amount of five million dollars or more in excise taxes in the previous fiscal year shall notify the regional regulatory administrator of that fact, in writing, and that the remittances for the current fiscal year will be effected by EFT.

(2) The proprietor shall, for each return period, direct his bank to effect a transfer of funds to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer

of funds to be effected to the Treasury Account by no later than the time for filing returns as provided in § 19.523. The request shall take into account any time limit established by the bank.

(3) If a proprietor paid less than five million dollars by EFT in the preceding fiscal year, he may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 19.524. During the first return period in which the proprietor chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return to the district director, the proprietor shall notify the director of the service center and the regional regulatory administrator by attaching a written notification to Form 5110.32 or Form 5110.35, stating that no taxes are due by EFT, because the amount of taxes paid during the preceding fiscal year was less than five million dollars and that the tax return, accompanied by remittance, will be filed with the district director.

(c) *Remittance.* (1) Each proprietor shall show on the return, Form 5110.32 or 5110.35, information about remitting the tax for that return period by EFT and shall file the return with the director of the service center.

(2) The proprietor shall direct his bank to effect an EFT message as required by paragraph (b)(2) of this section. The proprietor will be furnished, through normal banking procedures, with transfer data which will serve as his record of payment and which shall be retained as part of his records.

(3) Remittances shall be considered as made when the proprietor unconditionally directs his bank to immediately effect an EFT in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(d) *Failure to request an EFT message.* For provisions relating to the penalty for failure to request an EFT message within the prescribed time, see the provisions in 26 U.S.C. 6656.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional regulatory administrator will issue to the proprietor an ATF procedure entitled, Payment of Tax by Electronic Fund Transfer (ATF P 5000.8). This publication outlines the procedure a proprietor is to follow when preparing returns and remittances and when instructing the bank to effect an EFT.

(f) *Effective date.* In the case of the fiscal year which begins after September 30, 1980, any proprietor who paid an amount of five million dollars or more in excise tax during October 1, 1979, and September 30, 1980, shall begin paying the remittances by EFT, as required by this section, for the tax return period beginning June 1, 1981.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 101(j)(37))

6. Section 19.524 is amended by adding a new sentence at the end of paragraph (a) and reads as follows:

§ 19.524 Manner of filing returns.

(a) * * * All returns on Form 5110.32 and Form 5110.35 that require remittances to be effected by electronic fund transfer under § 19.523a shall be filed with the director of the service center.

* * * * *

PART 70—PROCEDURE AND ADMINISTRATION

1. The table of sections to 27 CFR Part 70 is amended by adding a new subpart, Subpart D—Use of Commercial Banks—and by listing a new section pertaining to this new subpart. As amended, the table of sections reads as follows:

Subpart D—Use of Commercial Banks

Sec.
70.51 Use of commercial banks.
* * * * *

2. Section 70.1 is revised to read as follows:

§ 70.1 General.

This part sets forth the procedural and administrative rules of the Bureau of Alcohol, Tobacco and Firearms for—

(a) The issuance and enforcement of summonses, examination of books of account and witnesses, administration of oaths, entry of premises for examination of taxable objects, granting of rewards for information, canvass of regions for taxable objects and persons, and authority of ATF officers; and

(b) The use of commercial banks for payment of excise taxes imposed by 26 U.S.C. Subtitles E and F.

3. Section 70.11 is amended to read as follows:

§ 70.11 Meaning of terms.

* * * * *

CFR. * * *

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

Director. * * *

Electronic fund transfer or EFT. Any transfer of funds effected by a taxpayer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

* * * * *

Special agent in charge. * * *

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

* * * * *

4. Subpart D and § 70.51 are added to 27 CFR Part 70 and read as follows:

Subpart D—Use of Commercial Banks

§ 70.51 Use of commercial banks.

For provisions relating to the use of commercial banks and electronic fund transfer of taxpayment to the Treasury Account, see the regulations relating to the particular tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 775 (26 U.S.C. 6301); June 29, 1956, ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

PART 240—WINE

1. The table of sections to 27 CFR Part 240 is amended to read as follows:

Subpart AA—Tax Payment of Wine

* * * * *

240.591 Payment of tax by check, cash, or money order.
240.591a Payment of tax by electronic fund transfer.
* * * * *
240.594 Prepayment of tax; general.
* * * * *
240.595 Prepayment of tax; proprietor in default.
* * * * *

2. Section 240.10 is amended to read as follows:

§ 240.10 Meaning of terms.

* * * * *

ATF officer. * * *

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

Bonded wine cellar. * * *

Business day. Any day, other than a Saturday, Sunday, or a legal holiday. (The term legal holiday includes all holidays in the District of Columbia and statewide holidays in a particular State in which a claim, report, or return, as the case may be, is required to be filed, or the act is required to be performed.)

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal

Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

* * * * *

Effervescent wine. * * *

Electronic fund transfer or EFT. Any transfer of funds effected by a proprietor's commercial bank, either directly or though a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

* * * * *

Exception. * * *

Fiscal year. The period which begins October 1 and ends on the following September 30.

* * * * *

Same kind of fruit. * * *

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

* * * * *

Total solids. * * *

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

* * * * *

§ 240.590a [Amended]

3. Paragraph (b) of § 240.590a is amended by changing the prepositional phrase, "with remittances", wherever it appears, to read "and remittances as required by § 240.591 or § 240.591a,".

4. The title to § 240.591 and the first sentence of paragraph (a) are amended to read as follows:

§ 240.591 Payment of tax by check, cash, or money order.

(a) *General.* The tax on wine shall (unless prepaid) be paid by semimonthly return on Form 2050, which shall be filed with remittance, for the full amount of tax due as shown on the return in a manner authorized under 26 CFR 301.6311–1 (Payment by check or money order). * * *

5. Section 240.591a is new. As added, § 240.591a reads as follows:

§ 240.591a Payment of tax by electronic fund transfer.

(a) *General.* Notwithstanding any provision of § 240.591, except as provided in this section, a proprietor who pays an amount of five million dollars or more in wine excise taxes during a fiscal year shall use a commercial bank in making payment of the tax on wine for the succeeding fiscal year. For purposes of this section, the dollar amount of payments is defined as the net amount of taxes due and payable on returns required to be filed in the fiscal year after any authorized credits.

(b) *Requirements.* (1) On or before October 10 of each fiscal year, except for a proprietor already remitting the tax by EFT, each proprietor who paid an amount of five million dollars or more in excise taxes in the previous fiscal year shall notify the regional regulatory administrator, in writing, of that fact and that the remittances for the current fiscal year will be effected by EFT.

(2) The proprietor shall, for each return period, direct his bank to effect a transfer of funds to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be effected to the Treasury Account by no later than the third calendar day next succeeding the last day of each return period. The request shall take into account any time limit established by the bank. However, a proprietor who is qualified for extended deferral, as provided in § 240.590a, shall file returns and shall remit the tax by EFT, for each return period, not later than the last day of the return period next succeeding that period.

(3) If a proprietor paid less than five million dollars by EFT in the preceding fiscal year, the proprietor may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 240.591. During the first return period in which the proprietor chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return to the district director, the proprietor shall notify the director of the service center and the regional regulatory adminstrator by attaching a written notification to Form 2050, stating that no taxes are due by EFT, because the amount of taxes paid during the preceding fiscal year was less than five million dollars and that the tax return, accompanied by remittance, shall be filed with the district director.

(c) *Remittance.* (1) Each proprietor shall show on the return, Form 2050, information about remitting the tax for that return period by EFT and shall file the return with the director of the service center.

(2) The proprietor shall direct his bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section. The proprietor will be furnished, through normal banking procedures, with transfer data which will serve as his record of payment and which shall be retained as part of his records.

(3) Remittances shall be considered as made when a proprietor unconditionally directs the bank to immediately effect an EFT in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(d) *Failure to request an electronic fund transfer message.* For provisions relating to the penalty for failure to request an EFT message within the prescribed time, see the provisions in § 240.593.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional regulatory administrator will issue to the proprietor an ATF procedure entitled, Payment of Tax by Electronic Fund Transfer (ATF P 5000.8). This publication outlines the procedure a proprietor is to follow when preparing returns and remittances and when instructing the bank to effect an EFT.

(f) *Effective date.* In the case of the fiscal year which begins after September 30, 1980, any proprietor who paid an amount of five million dollars or more in excise tax during October 1, 1979, and September 30, 1980, shall begin paying the remittances by EFT, as required by this section, for the tax return period beginning June 1, 1981.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 101(j)(37))

5. Section 240.594 is revised to read as follows:

§ 240.594 Prepayment of tax; general.

(a) A proprietor shall, before removal of the wine for consumption or sale, file with the district director a wine tax return, Form 2052, with remittance, where (1) he is required to prepay tax under § 240.595, (2) his tax deferral bond (or bonds), Form 2053, is not in the maximum penal sum and the tax determined and unpaid at any one time exceeds the penal sum of such bond by more than $100, or (3) he does not have an approved tax deferral bond, Form 2053, and the total amount of tax unpaid at any one time exceeds $100. The return, with remittance, shall be filed by forwarding or delivering it to the district director. For the purpose of complying with this section, the term "forwarding" shall mean deposit in the U.S. mail, properly addressed to the district director.

(b) However, when a proprietor is required by § 240.591a to deliver payment of tax by electronic fund transfer, the proprietor shall prepay the tax before any wine can be removed for consumption or sale by (1) completing

the return, Form 2052, and by mailing it, as instructed on the return, to the director of the service center and to the regional regulatory adminstrator and (2) by directing the proprietor's bank to effect an EFT.

(Aug. 16, 1954, ch. 736, 68A Stat. 775 (26 U.S.C. 6301); Aug. 16, 1954, ch. 736, 68A Stat. 777 (26 U.S.C. 6311); June 29, 1956, ch. 462, 70 Stat. 391 (26 U.S.C.6302))

6. Section 240.595 is revised to read as follows:

§ 240.595 Prepayment of tax; proprietor in default.

When a payment of taxes on wine is not made on presentment of check or money order tendered, or when the proprietor is otherwise in default in payment of the tax under § 240.591 or § 240.591a, no wine shall be removed for consumption or sale until the tax has been paid as provided in § 240.594, for the period of the default and until the regional regulatory administrator finds the revenue will not be jeopardized by deferred payment of the tax as provided in § 240.591 or § 240.591a. Any remittance made during the period of the default shall be in cash, or shall be in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or in the form of a money order, as provided in 26 CFR 301.6311–1 (Payment by check or money order), or in the form of an electronic fund transfer.

(Aug. 16, 1954, ch. 736, 68A Stat. 775 (26 U.S.C. 6301); Aug. 16, 1954, ch. 736, 68A Stat. 777 (26 U.S.C. 6311); June 29, 1956, ch. 462, 70 Stat. 391 (26 U.S.C. 6302))

7. Section 240.596 is revised to read as follows:

§ 240.596 Date of mailing and delivering of returns.

(a) When the proprietor sends the tax return, Form 2052 or Form 2050, as the case may be, by U.S. mail, with remittance to the office of the district director or without remittance to the director of the service center, the official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. When the postmark on the cover is illegible, the proprietor shall prove when the postmark was made.

(b) When the proprietor sends the tax return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the tax return and, if accompanied, of the remittance.

8. Section 240.901 is amended to read as follows:

§ 240.901 Form 2050.

* * * Form 2050, as instructed on the form, shall be prepared and filed with the district director as provided in § 240.591 or with the director of the service center if taxpayment is made by electronic fund transfer as provided in § 240.591a; and, at the same time, a copy of Form 2052 shall be forwarded to the regional regulatory administrator.

9. Section 240.902 is revised to read as follows:

§ 240.902 Form 2052.

(a) When the proprietor is required to prepay tax, as provided in §§ 240.594(a) and 240.595, the proprietor shall first prepare Form 2052, as instructed on the form, in an amount sufficient to cover the tax on the quantity of wine proposed to be removed that day. Form 2052 shall be delivered to the district director or deposited in the U.S. mail properly addressed to the district director, together with a remittance as provided in § 240.594(a), prior to removal of the wine. At the same time, a copy of Form 2052 shall be forwarded to the regional regulatory administrator.

(b) In the case of a prepayment of tax by electronic fund transfer as provided in §§ 240.594(b) and 240.595, the proprietor shall (1) prepare Form 2052, as instructed on the form, in an amount sufficient to cover the tax on the quantity of wine proposed to be removed that day; (2) file Form 2052 with the director of the service center and, at the same time, a copy shall be forwarded to the regional regulatory administrator; and (3) direct his bank to effect an EFT.

(c) Form 2052 will be serially numbered by the proprietor, commencing with "1" on January 1 of each year. Form 2052 shall be executed by the proprietor under penalties of perjury. Credit for the amount prepaid on Form 2052 will be taken on the tax return, Form 2050, covering all removals for consumption or sale for the period covered by the return.

PART 245—BEER

1. The table of sections to 27 CFR Part 245 is amended to read as follows:

Subpart N—Tax on Beer

* * * * *

245.112 Method of tax payment.

* * * * *

245.117 Semimonthly return.

245.117a Payment of tax by electronic fund transfer.

245.117b ATF Publication 5000.8, Payment of Tax by Electronic Fund Transfer.

245.117c Brewer in default; tax to be prepaid.

245.117d Prepayment of tax.

245.117e Employer identification number.

245.117f Application for employer identification number.

245.117g Execution of Form SS–4.

* * * * *

2. Section 245.5 is amended to read as follows:

§ 245.5 Meaning of terms.

* * * * *

ATF officer. * * *

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

* * * * *

Cereal beverage. * * *

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

* * * * *

District director. * * *

Electronic fund transfer or EFT. Any transfer of funds effected by a brewer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Executed under penalties of perjury. * * *

Fiscal year. The period which begins October 1 and ends on the following September 30.

* * * * *

Secretary. * * *

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

This chapter. * * *

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

* * * * *

§ 245.110b [Amended]

3. Paragraph (a) of § 245.110b is amended by changing (1) the section citation "§ 245.117a" to read "§ 245.117 or § 245.117a" and (2) the section citation "§ 245.117c" to read "§ 245.117d".

4. Section 245.112 is amended to read as follows:

§ 245.112 Method of tax payment.

The tax on beer shall be paid by return on Form 2034, as provided in §§ 245.117, 245.117a, 245.117c, and 245.117d. The tax shall be paid by remittance at the time the tax return is rendered. The remittance shall be made in cash, by check or money order made payable to the "Internal Revenue Service" and delivered to the district director; or shall be effected by an electronic fund transfer.* * *

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); Aug. 16, 1954, ch. 736, 68A Stat. 777 (26 U.S.C. 6311); sec. 201, Pub. L. 85-859, 72 Stat. 1335 (26 U.S.C. 5061))

§ 245.117a [Redesignated as § 245.117]

5. Section 245.117a is redesignated as § 245.117 and is amended by changing in paragraph (a) the section citation "§ 245.117c" to read "§ 245.117d" and by changing in paragraph (e) the prepositional phrase, "with remittance" to read ", and remittance as required by this section or § 245.117a,". Moreover, paragraph (f) is revised to read as follows:

§ 245.117 Semimonthly return.

* * * * *

(f) *Timely filing.* (1) When the brewer sends the semimonthly return by U.S. mail, with remittance as required by this section to the office of the district director or without remittance as required by § 245.117a to the director of the service center, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the return and, if accompanied, the date of delivery of the remittance. When the postmark on the cover is illegible, the brewer shall prove when the postmark was made.

(2) When the brewer sends the semimonthly return with or without remittance by registered mail or by certified mail, the date of registery or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the semimonthly return and, if accompanied, of the remittance.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85-859, 72 Stat. 1335 (26 U.S.C. 5061))

6. The provisions of § 245.117a are new. As added, § 245.117a reads as follows:

§ 245.117a Payment of tax by electronic fund transfer.

(a) *General.* Notwithstanding any provision of § 245.117, except as provided in this section, a brewer who pays an amount of five million dollars or more in excise taxes on beer during a fiscal year (including a brewer who is eligible to pay at the reduced rate of tax under § 245.110a) shall use a commercial bank in making payment of the tax for the succeeding fiscal year. For purposes of this section, the dollar amount of payments is defined as the net amount of taxes due and payable on returns required to be filed in the fiscal year after any authorized credits.

(b) *Requirements.* (1) On or before October 10 of each fiscal year, except for a brewer already remitting the tax by EFT, each brewer who paid an amount of five million dollars or more in excise taxes in the previous fiscal year shall notify the regional regulatory administrator, in writing, of that fact and that the remittances for the current fiscal year shall be delivered by EFT.

(2) The brewer shall, for each return period, direct his bank to effect a transfer of funds to the Treasury Account as provided in § 245.117b. The request shall be made to the bank early enough for the transfer to be effected to the Treasury Account by no later than the close of the last full calendar day of the return period next succeeding that period. The request shall take into account any time limit established by the bank.

(3) If a brewer paid less than five million dollars by EFT in the preceding fiscal year, he may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed in § 245.117. During the first return period in which the brewer chooses to discontinue delivering his remittance by EFT and to begin sending his remittance with the tax return to the district director, the brewer shall notify the director of the service center and the regional regulatory administrator by attaching a written notification to Form 2034 (5130.7), stating that no taxes are due by EFT, because the amount of taxes paid during the preceding fiscal year was less than five million dollars and that the tax return, accompanied by remittance, shall be filed with the district director.

(c) *Remittance.* (1) Each brewer shall show on the return, Form 2034 (5130.7), information about remitting the tax and shall file the return with the director of the service center for that return period by EFT.

(2) The brewer shall direct his bank to effect an EFT message as required by paragraph (b)(2) of this section. The brewer will be furnished, through normal banking procedures, with transfer data which will serve as his record of payment and which shall be retained as part of his records.

(3) Remittances shall be considered as made when the brewer unconditionally directs his bank to immediately effect an EFT in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(d) *Failure to request an EFT message.* For provisions relating to the penalty for failure to request an EFT message within the prescribed time, see the provisions in 26 U.S.C. 6656.

(e) *Effective date.* In the case of the fiscal year which begins after September 30, 1980, any brewer who paid an amount of five million dollars or more in excise tax during October 1, 1979, and September 30, 1980, shall begin paying the remittances by EFT, as required by this section and by § 245.117b, for the tax return period beginning June 1, 1981.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 101(j)(37))

§ 245.117b [Redesignated as § 245.117c]

7. Section 245.117b is redesignated as § 245.117c and is revised to read as follows:

§ 245.117c Brewer in default; tax to be prepaid.

(a) When a remittance in payment of taxes on beer is not paid on presentment of check or money order tendered, or when the brewer is otherwise in default in payment of tax under § 245.117 or § 245.117a, no beer shall be removed for consumption or sale or taken from the brewery for removal for consumption or sale until the tax has been prepaid as provided in § 245.117d. The brewer shall continue to prepay during the time that he is in default and thereafter until the regional regulatory administrator finds the revenue will not be jeopardized by deferred payment of tax under the provisions of this subpart.

(b) Any remittance made while the brewer is required to prepay under this section shall be in cash, in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or in the form of a money order, as provided in 26 CFR 301.6311-1 (Payment by check or money order), or shall be effected in the form of an electronic fund transfer as provided by §§ 245.117a and 245.117b.

8. The provisions of § 245.117b is new. As added, § 245.117b reads as follows:

§ 245.117b ATF Publication 5000.8, Payment of Tax by Electronic Fund Transfer.

Upon the notification required under § 245.117a(b)(1), the regional regulatory administrator will issue to the brewer an ATF procedure entitled, Payment of Tax by Electronic Fund Transfer (ATF P 5000.8). This publication outlines the procedure a brewer is to follow when preparing returns and remittances and when instructing the bank to effect an EFT.

§ 245.117c [Redesignated as § 245.117d]

9. Section 245.117c is redesignated as § 245.117d and is revised to read as follows:

§ 245.117d Prepayment of tax.

(a) *General.* When a brewer is required to prepay tax under § 245.117c, or when the penal sum of the bond(s), form 1566, is insufficient for deferral of payment of tax on beer to be removed for consumption or sale, or when a brewer is not entitled to defer the tax under the provisions of this subpart, the brewer shall prepay the tax before any beer is removed for consumption or sale, or taken out of the brewery for removal for consumption or sale.

(b) *Method of prepayment.*

(1) Prepayment shall be made by forwarding or delivering to the district director a tax return, Form 2034 (5130.7), with remittance, covering the tax on beer. The word "Prepayment" shall be prefixed to the title of the return.

(2) However, if a brewer is required by § 245.117a to effect Payment of Tax by Electronic Fund Transfer, the brewer shall prepay the tax before any beer can be removed for consumption or sale by completing the return and by delivering or forwarding it to the director of the service center and by delivering or forwarding a copy to the regional regulatory administrator. At the same time, the brewer shall direct his bank to effect an EFT.

(3) For the purposes of complying with paragraph (b) of this section, the term "forwarding" means depositing in the U.S. mail, properly addressed to the district director, director of the service center, on the regional regulatory administrator, as the case may be.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); Aug. 16, 1954, ch. 736, 68A Stat. 777 (26 U.S.C. 6311); sec. 201, Pub. L. 85-859, 72 Stat. 1335 (26 U.S.C. 5061))

§§ 245.117d-245.117f [Redesignated as §§ 245.117e-245.117g]

10. Sections 245.117d, 245.117e, and 245.117f are redesignated as §§ 245.117e, 245.117f, and 245.117g, respectively.

11. Section 245.227 is revised to read as follows:

§ 245.227 Beer tax return; Form 2034 (5130.7).

All entries in the return, Form 2034 (5130.7), shall be fully supported by accurate and complete records. The brewer shall file the copy returned to him by the director of the service center or the district director as a part of his records at the brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, 1390, 1395 (26 U.S.C. 5061, 5415, 5555))

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

1. The table of sections to 27 CFR Part 250 is amended to read as follows:

Subpart E—Taxpayment of Liquors and Articles in Puerto Rico

* * * * *

Payment of Tax by Return

* * * * *

250.112a Payment of tax by electronic fund transfer.

* * * * *

2. Section 250.11 is amended by adding several new definitions. As amended, § 250.11 reads as follows:

§ 250.11 Meaning of terms.

* * * * *

ATF officer. * * *

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

* * * * *

Chief, Puerto Rican Operations. * * *

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

* * * * *

District director of customs. * * *

Electronic fund transfer or EFT. Any transfer of funds effected by a proprietor's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Executed under penalties of perjury. * * *

Fiscal year. The period which begins October 1 and ends on the following September 30.

* * * * *

Taxpaid. * * *

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

* * * * *

3. Section 250.112(e) is revised to read as follows:

§ 250.112 Taxes to be collected by returns for semimonthly periods.

* * * * *

(e) *Filing.* The original and two copies of returns on Forms 5110.52, 2927, or 2929, with remittance covering the full amount of the tax, shall be filed with the Officer-in-Charge not later than the last day for filing as prescribed by paragraph (f) or (g) of this section. The tax shall be paid in full by remittance at the time the return is rendered, except as prescribed in § 250.112a.

The remittance may be in any form the Officer-in-Charge is authorized to accept under the provisions of 26 CFR 301.6311-1 (Payment by check or money order) and which is acceptable to the Officer-in-Charge. The remittance by check or money order, accompanying the return, shall be made payable to the "Internal Revenue Service". When the return and remittance are delivered by U.S. mail to the office of the Officer-in-Charge, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return and remittance were mailed shall be treated as the date of delivery. If the last day for filing a return under this paragraph falls on a Saturday, Sunday, or legal holiday in the District of Columbia or in the Commonwealth of Puerto Rico, the filing of the return and remittance shall be considered timely if accomplished on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

* * * * *

4. Section 250.112a is new. As added, § 250.112a reads as follows:

§ 250.112a Payment of tax by electronic fund transfer.

(a) *General.* Notwithstanding any provision of § 250.112, except as provided in this section, a proprietor who pays an amount of five million dollars or more in excise taxes during a fiscal year shall use a commercial bank in making payment of the tax on distilled spirits, wine, and beer for the succeeding fiscal year. For purposes of this section, the dollar amount of payments is defined as the net amount of taxes due and payable on returns required to be filed in the fiscal year after any authorized credits.

(b) *Requirements.* (1) On or before October 10 of each fiscal year, except for a proprietor already remitting the tax by EFT, each proprietor who paid an amount fo five million dollars or more in excise taxes in the previous fiscal year shall notify the regional regulatory administrator, in writing, of that fact and that the remittances for deferred taxes on Form 5110.52, 2927, or 2929 for the current fiscal year will be effected by EFT.

(2) The proprietor shall, for each return period, direct his bank to send an EFT message, as provided in paragraph (e) of this section, to the Treasury Account. The request shall be made to the bank early enough for the transfer to be effected to the Treasury Account by no later than the last day for filing the return as prescribed in § 250.112 (f) and (g). The request shall take into account any time limit established by the bank.

(3) If a proprietor paid less than five million dollars by EFT in the preceding fiscal year, he may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 250.112. During the first return period in which the proprietor chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the proprietor shall notify the Officer-in-Charge and the regional regulatory administrator by attaching a written notification to Form 5110.52, 2927, or 2929, stating that no taxes are due by EFT, because the amount of taxes paid during the preceding fiscal year was less than five million dollars and that the remittance shall accompany the tax return.

(c) *Remittances.* (1) Each proprietor shall show on the return, Form 5110.52, 2927, or 2929, information about remitting the tax for that tax period by EFT and shall file the return with the Officer-in-Charge.

(2) The proprietor shall direct his bank to effect an EFT message as required by paragraph (b)(2) of this section. The proprietor will be furnished, through normal banking procedures, with transfer data which will serve as his record of payment and which shall be retained as part of his records.

(3) Remittances shall be considered as made when the proprietor unconditionally directs his bank to immediately effect an EFT in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(d) *Failure to request an EFT message.* For provisions relating to the penalty for failure to request an EFT within the prescribed time, see the provisions of 26 U.S.C. 6656.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional regulatory administrator will issue to the proprietor an ATF procedure entitled, Payment of Tax by Electronic Fund Transfer (ATF P 5000.8). This publication outlines the procedure a proprietor is to follow when preparing returns and remittances and when instructing the bank to effect an EFT.

(f) *Effective date.* In the case of the fiscal year which begins after September 30, 1980, any proprietor who paid an amount of five million dollars or more in excise tax during October 1, 1979, and September 30, 1980, shall begin paying the remittances by EFT, as required by this section, for the tax return period beginning June 1, 1981.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 101(j)(37))

PART 270—MANUFACTURE OF CIGARS AND CIGARETTES

1. The table of sections to 27 CFR Part 270 is amended to read as follows:

Subpart H—Operations by Manufacturers

* * * * *

270.165a Payment of tax by electronic fund transfer.

* * * * *

2. Section 270.11 is amended to read as follows:

§ 270.11 Meaning of terms.

* * * * *

ATF officer. * * *

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

* * * * *

Cigarette. * * *

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank in New York.

* * * * *

Director. * * *

Director of the service center. The Director, Internal Revenue Service Center, in any of the Internal Revenue regions.

District director. * * *

Electronic fund transfer or EFT. Any transfer of funds effected by a manufacturer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

* * * * *

Factory. * * *

Fiscal year. The period which begins October 1 and ends on the following September 30.

* * * * *

Removal or remove. * * *

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

* * * * *

Tobacco products. * * *

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

* * * * *

3. Section 270.162(a) is revised to read as follows:

§ 270.162 Semimonthly tax return.

(a) *Requirement for filing.* Every manufacturer of tobacco products shall file, for each of his factories, a semimonthly tax return on Form 3071 for each return period, including any period during which a manufacturer begins or discontinues business. Except when the tax is paid by EFT, the return shall be filed, as instructed on the form, with the district director of the internal revenue district in which the factory is located. When the tax is paid by EFT, the return shall be filed, as instructed on the form, with the director of the service center serving the factory location; and a copy shall be sent to the regional regulatory administrator. The manufacturer shall file the return at the time specified in § 270.165 regardless of whether cigars or cigarettes are removed or whether tax is due for that particular return period. However, when the manufacturer requests by letter, in duplicate, and the regional regulatory administrator grants specific authorization, the manufacturer need not during the term of such authorization file a tax return for any period for which tax is not due or payable. The manufacturer shall retain the receipted copy of each tax return transmitted to him by the district director or the director of the service center.

* * * * *

4. Section 270.165 is amended by revising paragraph (c) to read as follows:

§ 270.165 Times for filing semimonthly returns.

* * * * *

(c) Definitions, etc. When the manufacturer sends the tax return by U.S. mail with the remittance to the director or the district director or without remittance to the director of the service center, the official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. When the postmark is illegible, the manufacturer shall prove when the postmark was made. When the proprietor sends the tax return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the tax return and, if accompanied, of the remittance. As used in this section, the term "business day" means any day other than Saturday, Sunday, a legal holiday in the District of Columbia, or a statewide legal holiday in the State wherein the return is required to be filed. If the last day for filing a return under this section falls on Saturday, Sunday, or a legal holiday in the District of Columbia, or on a statewide legal holiday in the State wherein the return is required to be filed, the filing of the tax return and remittance required with the return shall be considered timely if accomplished on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

5. Sections 270.165a is new. As added, § 270.165a reads as follows:

§ 270.165a Payment of tax by electronic fund transfer.

(a) *General.* Notwithstanding any provision of § 270.168, except as provided in this section, a manufacturer of tobacco products who pays an amount of five million dollars or more in tobacco products excise taxes for his factory during a fiscal year shall use a commercial bank in making payment of the tax on cigars and cigarettes for the next succeeding fiscal year. For purposes of this section, the dollar amount of payments is defined as the net amount of taxes due and payable on returns required to be filed in the fiscal year after any authorized credits.

(b) *Requirements.* (1) On or before October 10 of each fiscal year, except for a manufacturer already remitting the tax by EFT, each manufacturer who paid an amount of five million dollars or more in tobacco products excise taxes in the previous fiscal year shall notify the regional regulatory administrator, in writing, of that fact and that the remittances for the current fiscal year will be effected by EFT.

(2) The manufacturer shall, for each return period, direct his bank to effect a transfer of funds to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be effected to the Treasury Account by not later than the third business day following the last day of each return period prescribed in § 270.163. The request shall also take into account any time limit established by the bank. However, a manufacturer who is qualified for extended deferral, as provided in § 270.165(b), shall file returns and send remittances by EFT, for each return period, not later than the last day of the next succeeding return period.

(3) If a manufacturer paid less than five million dollars by EFT in the preceding fiscal year, he may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 270.168. During the first return period in which the manufacturer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return to the district director, the manufacturer shall notify the director of the service center and the regional regulatory administrator by attaching a written notification to Form 3071, stating that no taxes paid are due by EFT, because the amount of taxes during the preceding fiscal year was less than five million dollars and that the tax return, accompanied by remittance, shall be filed with the district director.

(c) *Remittances.* (1) Each manufacturer shall show on the return, Form 3071, information about remitting the tax for that return period by EFT and shall file the return with the director of the service center.

(2) The manufacturer shall direct his bank to effect an EFT message as required by paragraph (b)(2) of this section. The manufacturer will be furnished, through normal banking procedures, with transfer data which will serve as his record of payment and which shall be retained as part of his records.

(3) Remittances shall be considered as made when the manufacturer unconditionally directs his bank to immediately effect an EFT in the amount of the taxpayment to the Treasury Account, in accordance with the established procedures of the bank.

(d) *Failure to request an EFT message.* For provisions relating to the penalty for failure to request an EFT message within the prescribed time, see the provisions of 26 U.S.C. 6656.

(e) *Procedure.* Upon the notitfication required under paragraph (b)(1) of this section, the regional regulatory administrator will issue to the manufacturer an ATF procedure entitled, Payment of Tax by Electronic Fund Transfer (ATF P 5000.8). This publication outlines the procedure a manufacturer is to follow when preparing returns and remittance and when instructing the bank to effect an EFT.

(f) *Effective date.* In the case of the fiscal year which begins after September 30, 1980, any manufacturer who paid an amount of five million dollars or more in excise tax during October 1, 1979, and September 30, 1980, shall begin paying the remittance by EFT, as required by this section, for the tax return period beginning June 1, 1981.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 101(j)(37))

6. Section 270.166 is amended to read as follows:

§ 270.166 Default, prepayment of tax required.

* * * Any remittance made during the period of a default shall be in cash, or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or in the form of a U.S. postal money order or other money order, and defined in 26 CFR 301.6311-1 (Payment by check or money order), or shall be delivered in the form of an electronic fund transfer message as provided in § 270.165a.

(Aug. 16, 1954, ch. 736, 68A Stat. 707 (26 U.S.C. 5703); Aug. 16, 1954, ch. 736, 68A Stat. 777 (26 U.S.C. 6311))

7. Section 270.167 is amended by (1) redesignating the existing text of the section as paragraph (a); (2) adding a new paragraph (b); and (3) updating the citation of authority. As amended, § 270.167 reads as follows:

§ 270.167 Prepayment tax return.

(a) * * *

(b) However, if a manufacturer is required by § 270.165a to pay the tax by electronic fund transfer, the manufacturer shall prepay the tax before any cigars or cigarettes can be removed for consumption or sale by completing the return and filing it, as instructed on the return, with the director of the service center and by forwarding a copy to the regional regulatory administrator. At the same time, the manufacturer shall direct his bank to effect an EFT.

(Sec. 202, Pub. L. 85-859, 68A Stat. 1417 (26 U.S.C. 5703); sec. 202, Pub. L. 85-859, 72 Stat.

1423, as amended (26 U.S.C. 5741); (Aug. 16, 1954, ch. 736, 68 Stat. 775, as amended (26 U.S.C. 6302))]

8. Section 270.168 is amended to read as follows:

§ 270.168 Remittance with return.

Except when an electronic fund transfer has been made under § 270.165a for the full amount of tax due, the tax on cigars and cigarettes shown to be due and payable on any return shall be paid by remittance in full with the tax return. The remittance may be in the form which the district director is authorised to accept under 26 CFR 301.6311–1 (Payment by check or money order) and which is acceptable to him, except as otherwise specified in § 270.166. Checks and money orders shall be made payable to the "Internal Revenue Service". * * *

(Aug. 16, 1954, ch. 736, 68A Stat. 707, as amended (26 U.S.C. 5703))]

PART 275—IMPORTATION OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

1. The table of sections to 27 CFR Part 275 is amended to read as follows:

Subpart G—Puerto Rican Cigars, Cigarettes, and Cigarette Papers and Tubes Brought Into the United States

* * * * *

275.115a Payment of tax by electronic fund transfer.

* * * * *

2. Section 275.11 is amended to read as follows:

§ 275.11 Meaning of terms.

* * * * *

ATF officer. * * *

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

* * * * *

Cigarette tube. * * *

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank in New York.

* * * * *

District director of customs. * * *

Electronic fund transfer or EFT. Any transfer of funds effected by a bonded manufacturer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Factory. * * *

Fiscal year. The period which begins October 1 and ends on the following September 30.

* * * * *

Tobacco products. * * *

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

* * * * *

3. Section 275.114 is revised to read as follows:

§ 275.114 Time of filing.

(a) Every semimonthly tax return under this subpart shall be filed by the bonded manufacturer not later than the third business day succeeding the last calendar day of the return period. However, if a bonded manufacturer is qualified for extended deferral, as provided in § 275.114a, he shall file tax returns, for each return period, not later than the last day of the next succeeding return period. The tax shall be paid in full by remittance at the time the return is rendered as prescribed in § 275.115 or § 275.115a.

(b) If the return, and remittance as the case may be, are delivered by U.S. mail to the office of the Officer-in-Charge, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return, and remittance as the case may be, were mailed shall be treated as the date of delivery.

(c) If the last day for filing a return under this section falls on a Saturday, Sunday, or legal holiday in the District of Columbia or in the Commonwealth of Puerto Rico, the filing of the return and remittance shall be considered timely if accomplished on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

(d) The Officer-in-Charge will transmit a receipted copy of the semimonthly tax return to the bonded manufacturer who filed the return and paid the tax, retain one copy, and forward one copy to the Regional Regulatory Administrator, New York, N.Y. 10008.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302))

4. Section 275.115 is amended to read as follows:

§ 275.115 Remittance with return.

Remittance of the full amount of internal revenue tax computed during the return period shall accompany the return, except as prescribed in § 275.115a. Such remittance may be in any form the Officer-in-Charge is authorized to accept under the provisions of 26 CFR 301.6311–1 (Payment by check or money order) and which is acceptable to that officer. * * *

5. Section 275.115a is new. As added, § 245.115a reads as follows:

§ 275.115a Payment of tax by electronic fund transfer.

(a) *General.* Notwithstanding any provision of § 275.115, except as provided in this section, a bonded manufacturer of cigars or cigarettes who pays an amount of five million dollars or more in tobacco products excise taxes during a fiscal year shall use a commercial bank in making payment of the tax on tobacco products for the next succeeding fiscal year. For purposes of this section, the dollar amount of payments is defined as the net amount of taxes due and payable on returns required to be filed in the fiscal year after any authorized credits.

(b) *Requirements.* (1) On or before October 10 of each fiscal year, except for a bonded manufacturer already remitting the tax by EFT, each bonded manufacturer who paid an amount of five million dollars or more in tobacco products excise taxes in the previous fiscal year shall notify the regional regulatory administrator, in writing, of that fact and that the remittances for deferred payment of taxes on Form 2988 for the current fiscal year will be effected by EFT.

(2) The bonded manufacturer shall, for each return period, direct his bank to effect a transfer of funds to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be effected to the Treasury Account by not later than the third business day succeeding the last calendar day of the return period. The request shall take into account any time limit established by the bank. However, a bonded manufacturer who is qualified for extended deferral, as provided in § 275.114a, shall file returns and send remittances by EFT, for each return period, no later than the last day of the next succeeding return period.

(3) If a bonded manufacturer paid less than five million dollars by EFT in the preceding fiscal year, he may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 275.115. During the first return period in which the bonded manufacturer chooses to discontinue sending his remittance by EFT and to begin sending his remittance with the tax return, the

bonded manufacturer shall notify the Officer-in-Charge and the regional regulatory administrator by attaching a written notification to Form 2988, stating that no taxes are due by EFT, because the amount of taxes paid during the preceding fiscal year was less than five million dollars and that the remittance shall accompany the tax return.

(c) *Remittance.* (1) Each bonded manufacturer shall show on the return, Form 2988, information about remitting the tax for that return period by EFT and shall file the return with the Officer-in-Charge.

(2) The bonded manufacturer shall direct his bank to effect an EFT message as required by paragraph (b)(2) of this section. The proprietor will be furnished, through normal banking procedures, with transfer data which will serve as his record of payment and which shall be retained as part of his records.

(3) Remittances shall be considered as made when the bonded manufacturer unconditionally directs his bank to immediately effect an EFT in the amount of the taxpayment to the Treasury Account, in accordance with the procedure established by the bank.

(d) *Failure to request an EFT message.* For provisions relating to the penalty for failure to request an EFT message within the prescribed time, see the provisions of 26 U.S.C. 6656.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional regulatory administrator will issue to the bonded manufacturer an ATF procedure entitled, Payment of Tax by Electronic Fund Transfer (ATF P 5000.8). This publication outlines the procedure a bonded manufactuer is to follow when preparing returns and remittances and when instructing the bank to effect an EFT.

(f) *Effective date.* In the case of the fiscal year which begins after September 30, 1980, any bonded manufacturer who paid an amount of five million dollars or more in excise tax during October 1, 1979, and September 30, 1980, shall begin paying the remittances by EFT, as required by this section, for the tax return period beginning June 1, 1981.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 101(j)(37))

Signed: November 14, 1980.

G. R. Dickerson,

Director.

Approved: January 8, 1981.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations)

[FR Doc. 81-1177 Filed 1-8-81; 10:45 am]

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DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 541

Defining and Delimiting the Terms "Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity (Including any Employee Employed in the Capacity of Academic Administrative Personnel or Teacher in Elementary or Secondary Schools), or in the Capacity of Outside Salesman"

AGENCY: Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: This final rule increases the salary levels used to determine eligibility for a special exemption under the Fair Labor Standards Act (FLSA). Section 13(a)(1) of the FLSA provides an exemption from the minimum wage and overtime compensation protections of the Act for "any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary of Labor * * *)." The regulations provide that in order to be exempt as a bona fide executive, administrative or professional employee, an individual must meet certain tests of job duties and responsibilities and must be compensated at no less than a specified amount on a salary basis. The current salary tests were adopted on an interim basis effective April 1, 1975. They are no longer high enough to be even a rough guide to exempt status, because employees at this time who satisfy the tests for duties and responsibilities are generally paid much higher salaries than the current salary test levels.

The new salary tests required for exemption under section 13(a)(1) will be:

	Executive and administrative	Professional	"Upset" salary test [1]
Effective:			
2/13/81	$225	$250	$320
2/13/83	250	280	345
For employees in Puerto Rico, the Virgin Islands or American Samoa, the corresponding new tests will be:			
Effective:			
2/13/81	180	225	260
2/13/83	200	250	285

[1] Employees who meet the higher "upset" salary test level are not required to meet as many of the duties and responsibilities tests in order to be classified as exempt.

The special compensation test for employees in the motion picture producing industry will be $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983.

DATE: These salaries shall become effective beginning on February 13, 1981 or February 13, 1983, as stated in the summary section above.

FOR FURTHER INFORMATION CONTACT: James L. Valin, Director, Division of Minimum Wage and Hour Standards, Office of Fair Labor Standards, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 (202) 523-7043.

SUPPLEMENTARY INFORMATION:

Classification:

This final rule is not classified as a "significant" regulatory action under the Department of Labor's procedures for implementing Executive Order 12044, "Improving Government Regulations." Although not required under the Department of Labor's procedures, a regulatory analysis has been prepared.

Regulatory Analysis

The Regulatory Analysis examines the various alternatives that the Department considered in preparing this rule, considers the cost and program implications of the alternatives, and explains the Department's reasons for making the choices resulting in the final rule. It is added as an appendix to this final rule.

Background

Section 13(a)(1) of the Fair Labor Standards Act (29 U.S.C. 213 (a)(1)) provides an exemption from minimum wage and overtime protection for "any employee employed in a bona fide executive, administrative or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and

delimited from time to time by regulations of the Secretary of Labor, subject to the provisions of the Administrative Procedure Act. * * *]"

Under regulations which have been in force virtually since the enactment of the FLSA in 1938, employees are considered to be exempt as bona fide executive, administrative or professional employees if they meet specified test of duties and responsibilities and if they are paid a salary of at least a stated amount. Where the salary is above a higher, so-called "upset" level, fewer duties and responsibilities tests need to be met in order for the exemption to apply.

The purpose of the salary test has always been to prevent evasion of the FLSA by the designation of an excessive number of workers as executives, administrators or professionals, with minimal or nominal duties designed to barely meet the duties and responsibilities requirements of the exemption.

As explained by the presiding officer at one of the first hearings on the regulations, if an employer asserts that particular employees are bona fide executive, administrative or professional employees, the best single test of the employer's good faith in attributing importance to the employees' service is the amount he pays for them. See *"Executive, Administrative, Professional * * * Outside Salesman" Redefined* (Report and Recommendations of the Presiding Officer at Hearings Preliminary to Redefinition), U.S. Department of Labor, Wage and Hour Division, Washington, D.C., 1940, p. 19 ("Stein Report").

These salary tests have to be increased periodically to take into account the higher salary levels that occur with each passing year and are in fact paid to bona fide executive, administrative and professional employees. The current salary tests were adopted effective April 1, 1975, more than 5½ years ago, on an interim basis. Under these tests, in order to qualify as a bona fide executive or administrative employee, an employee must be paid at a rate of not less than $155 per week on a salary basis ($130 per week if employed in Puerto Rico, the Virgin Islands or American Samoa). The requirement may also be met by an administrative employee who is compensated on a fee basis of not less than this stated amount. In order to qualify as a bona fide professional, an employee must be paid at a rate of not less than $170 per week on a salary or fee basis ($150 per week if employed in Puerto Rico, the Virgin Islands or American Samoa). These regulations also contain a special high salary, or "upset" salary test of $250 per week or more ($200 per week in Puerto Rico, the Virgin Islands or American Samoa).

In addition, the special compensation test for employees in the motion picture producing industry is $250 per week. Under 29 CFR 541.5a, an employee in the motion picture producing industry, even if not paid on a salary basis, is nevertheless classified as exempt if he or she meets the duties and responsibilities tests and is compensated at a "base rate" of at lease $250 per week. This is explained more fully in 29 CFR 541.601.

On April 7, 1978, notice of proposed rulemaking and hearing thereon was published in the **Federal Register** (43 FR 14688) to increase the salary test levels described above. The interim salary tests established in April 1975 had become obsolete, as a result of the higher salary levels that were in fact being paid to executive, administrative and professional employees who met the duties and responsibilities tests necessary for exempt status.

It was, therefore, proposed that the salary test in § 541.1(f) and § 541.2(e) be increased to $225 for executive and administrative employees ($200 a week if employed in Puerto Rico, the Virgin Islands or American Samoa), and that the salary test in § 541.3(e) be increased to $250 a week for professional employees ($225 a week if employed in Puerto Rico, the Virgin Islands or American Samoa). It was further proposed that the upset salary test in § 541.1(f), § 541.2(e) and § 541.3(e) be increased to $350 per week ($300 per week if employed in Puerto Rico, the Virgin Islands or American Samoa), and that the special "base rate" test for the motion picture industry in § 541.5a be increased to $350 per week.

These proposed increases, as stated in the preamble to the proposed regulation, were based on an analysis of increases in the Consumer Price Index, increases in the average weekly earnings of production and non-supervisory employees, increases in the average weekly earnings of selected white-collar employees, and legislated increases in the FLSA minimum wage.

[1] Title 29 of the Code of Federal Regulations specifies a $200 "base rate" in § 541.5a and a $250 "base rate" in § 541.52. The correct rate, as originally proposed on August 16, 1974 (39 FR 29603) and adopted on February 19, 1975 (40 FR 7091), is $250. However, as a result of a typographical error at the time of adoption, the $250 rate was incorrectly included in § 541.52, rather than in § 541.5a. When the $250 rate was codified in the Code of Federal Regulations, it was added as an entirely new section, rather than replacing § 541.5a. That error is corrected in this final rule, which eliminates § 541.52 altogether and establishes the proper "base rate" in § 541.5a.

Comments Received on Proposal

The hearing on the proposed rule was held May 8, 9, and 10, 1978. Twenty-two witnesses representing employers, employer associations, unions, and professional employee groups gave oral testimony on the proposed increase in the salary tests. In addition, sixty-two written statements were placed into the record during the three-day hearing. These written statements came from individuals, business firms, hospitals, colleges, and employer and employee organizations and associations. One hundred twenty-seven written comments were received from similar sources between the close of the oral proceedings and June 10th, when the record was closed. Numerous comments received after June 10th were also given consideration.

The many written and oral comments can be conveniently divided into two general categories. First, there were comments relating to the appropriate economic index or indices and the appropriate base year on which to calculate increases in the salary test levels. For example, both employer and employee representatives relied on the *National Survey of Professional, Administrative, Technical and Clerical Pay* ("PATC Survey"), an annual survey by the Bureau of Labor Statistics, as an appropriate indicator of the salaries in fact paid to employees whose duties and reponsibilities would qualify them for the exemption.

On the basis of their analysis of the PATC Survey, the employer representatives tended to assert that the Department's proposed salary test levels were too high, whereas the employee representatives stated that the proposed levels were too low. Other commenters stated that the increase in salary levels should not exceed the increase in the Consumer Price Index (CPI) since the salary test was last changed in April 1975. Still other commenters stated that the proposed salary levels were lower than the average hourly wages paid in many industries to nonexempt employees. Several commenters stated that it would be inappropriate to use the CPI or hourly wage indices, because these measures did not necessarily reflect salaries actually paid to exempt employees.

Apart from comments about the methodology by which to adjust the levels of the salary tests, there were also comments predicting the impact of changing the salary test levels. Some employers, particularly those with fixed or declining revenues, stated that they would have no option but to lay off some of their employees, if the levels

were raised. Other comments from employer representatives were to the effect that higher salary tests would increase employer costs; these increases, it was asserted, coupled with increases in energy, materials, and Social Security payroll tax costs, would impose too great a burden.

Employee representatives, in commenting on the impact of salary test adjustments, suggested only a slight impact, in view of the level of average hourly wages paid to nonexempt employees. In many industries, according to the commenters, average hourly wages were significantly higher than the salary tests being proposed. Inasmuch as exempt employees are generally paid more than nonexempt employees, these comments suggested that many exempt employees were already being paid more than the salary test levels proposed at that time.

As a result of comments and data received, and intensive review was undertaken of the methodology used for arriving at the higher salary tests proposed in April 1978, and of the likely impact of any increase in the salary tests. On the basis of this review, the Department has reached several conclusions.

First, of the various indices mentioned in the preamble to the April 1978 proposal, the Department has decided that the most appropriate is the increase in average weekly earnings of selected white-collar employees. The most reliable measure of such earnings is the PATC Survey. As indicated previously, the hearing record shows that several commenters, both labor and management, used PATC data as a reliable indicator of salaries paid executive, administrative, and professional employees and the changes in such salaries. The reasons why the PATC Survey is the most appropriate index, and the manner in which it has been used in this regulation, are explained more fully in the appended Regulatory Analysis.

Second, the Department has decided, after full consideration in light of the comments received, that the appropriate base year from which to measure the increase in average PATC Survey earnings is 1970 and not 1975. The salary tests adopted in 1970 were an accurate reflection of salaries actually being paid at that time to those employees who minimally met the duties and responsibilities tests necessary for exempt status. The 1975 salary test levels, on the other hand, did not fully reflect post-1970 increases in salaries that were being paid to such employees; hence the tests were adopted on an interim basis. Accordingly, in order for the salary test established by this regulation to be at the proper level, 1970 must be used as the base year. In this connection, also see the Regulatory Analysis.

Third, the Department has decided that although some of the salary tests adopted herein to take effect on February 13, 1983 are higher than those originally proposed in April 1978, there is no need to reissue the higher tests in proposed form and invite comments thereon. The reason for this conclusion is in part the fact that this final regulation is a logical outgrowth of the original proposal. When the proposed increase in the salary test levels was published for comment in April 1978, it was anticipated that those levels (or depending on the comments, some roughly equivalent levels) would be adopted and published in the latter part of 1978. As a result of unexpected delays, no final decision has been made to raise the salary tests until now. In the meantime the salary levels in the PATC Survey (and indeed all of the economic indices considered in the 1978 salary test proposal) have generally increased. For this reason, some of the salary test levels established by this regulation are higher than those originally proposed. Moreover, a significant number of commenters on the April 1978 proposal advocated higher salary tests than those proposed by the Department. Accordingly, there was adequate notice to affected parties that the final salary levels adopted by the Department could well be higher than the levels originally proposed.

The other reason why reissue of the salary tests in proposed form is not necessary is that any comments on the new salary levels would not be likely to differ significantly from the comments made on the original proposal in 1978. The original comments on the proper methodology by which to compute an appropriate increase in the salary test levels were extensive and thorough. In view of this fact, the Department does not believe that further opportunity for comment would result in any significantly new methodological approaches to adjustments in the salary test levels. The various approaches were fully discussed in 1978.

Nor does the Department believe that the original comments on the predicted impact of the salary test levels proposed in 1978 would be significantly different if the new salary test levels were to be subjected to comments today. The 1978 comments on impact, insofar as they opposed the increase proposed at that time, are similar to comments that have historically been made when increases in the salary tests have been suggested. Predictions by employers of substantially increased compensation costs and of the dangers of having to lay off some workers tend to ignore the level of salaries actually being paid to employees who meet the duties and responsibilities tests, and also misconstrue the application of the exemption.

The salary tests have generally been raised every four or five years, rather than on an annual basis. During the four or five years between increases, the actual salary levels of employees who satisfy the duties and responsibilities tests have generally gone up. As a result, most employees who meet the duties and responsibilities tests are already paid at the higher salary test levels which the Department periodically adopts. Accordingly, the Department does not believe that comments on the impact of these new salary test levels would be significantly different from the 1978 comments.

The FLSA does not require any employer to pay employees at the salary level established here. Only employers who wish to take advantage of the exemption need to pay such salaries. This misconception about the exemption was particularly true of those commenters who asserted that the salary increases proposed in 1978 were too high. The prevalence of this misconception suggests that if comments were solicited on the salary tests here adopted, many of the comments would reflect the same misunderstanding as in 1978.

As for those comments in 1978 which advocated even higher salary test levels than those proposed by the Department at that time, there is no reason to believe that new comments on the impact of still higher salary tests than those here established would be significantly different today.

The new salary test levels adopted by this final rule are being implemented in two phases with part of the increase scheduled to take effect on February 13, 1981 and the remainder on February 13, 1983. This policy has been adopted to take into account the nearly six years which have elapsed since the last change in the salary test levels and the magnitude of the change required as a result of the increase in salary levels since that time. The two-phase approach will give those employers who wish to claim the exemption a full two-year period to adapt their pay practices to the final salary test levels to become effective on February 13, 1983.

Accordingly, the Department of Labor, having reached its conclusions in light of the comments as described above,

hereby increases the salary levels necessary for exempt status. Specifically, the 1970 salary test levels have been increased by the percentage changes since 1970 in average salaries paid in the selected PATC Survey categories, as shown in the 1980 PATC Survey. This computation yields the salary test levels shown in the last line of Table 1 of this preamble. Those levels have been rounded up to the nearest dollar amount divisible by five in order to establish the new salary test levels. The interim salary test levels to be effective February 13, 1981 and the final salary test levels to be effective February 13, 1983 are as follows:

	Executive and administrative	Professional	"Upset" salary test
Effective:			
2/13/81	$225	$250	$320
2/13/83	250	280	345
For employees in Puerto Rico, the Virgin Islands or American Samoa, the corresponding new tests will be:			
Effective:			
2/13/81	180	225	260
2/13/83	200	250	285

The special compensation test for employees in the motion picture producing industry will be $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983.

The final salary test levels calculated using this methodology appear reasonable when compared to actual entry-level salaries paid employees in professional and administrative occupations as indicated by the 1980 PATC Survey. In fact, the final test levels are below the entry rates for these categories. See Table 2.

Table 1.—*Salary Tests of March 1970 Projected to March 1980 on the Basis of Increases in Average Salaries of Professional, Administrative and Technical-Support Occupations*

Date	Percent increase in average salaries from prior year[1]	$125 executive and administrative	$140 professional
March,			
1970			
1971	6.7	$133	$149
1972	5.5	140	157
1973	5.4	148	165
1974	6.3	157	175
1975	6.3	170	190
1976	6.7	181	203
1977	7.1	194	217
1978	8.3	210	235
1979	7.7	226	253
1980	9.3	247	277

[1] PATC Surveys have been conducted in March of each year since 1972. The 1970 and 1971 surveys were conducted in June.

Source: U.S. Department of Labor, Bureau of Labor Statistics, National Survey of Professional, Administrative, *Technical, and Clerical Pay, March 1979*, Bulletin 2045, p. 3; and Press Release 80-416, July 1, 1980, *White-Collar Salaries, March 1980*.

Table 2.—*Average Entry-Level Salaries of Employees in Selected White-Collar Occupations in Private Establishments, March 1980*

Occupation and level	Average monthly salary	Weekly equivalent salary[1]
Accountants I	$1,262	$291
Auditors I	1,238	286
Public accountants I	1,247	288
Chief accountants I	2,362	545
Attorneys I	1,743	403
Buyers I	1,238	286
Job analysts I	1,338	309
Directors of personnel I	2,060	476
Chemists I	1,350	312
Engineers I	1,618	374

[1] The weekly equivalent salary is computed by multiplying the monthly salary by 12 in order to compute an annual salary, and then dividing the annual salary by 52.

Source: U.S. Department of Labor, Bureau of Labor Statistics, Press Release 80-416, July 1, 1980, *White-Collar Salaries, March 1980*.

This document was prepared under the direction and control of Herbert J. Cohen, Assistant Administrator, Office of Fair Labor Standards, Wage and Hour Division, U.S. Department of Labor.

For the reasons set out in the preamble and the appended Regulatory Analysis, 29 CFR Part 541 is amended to read as follows:

PART 541—DEFINING, AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESMAN"

1. Paragraph (f) of § 541.1 is revised to read as follows:

§ 541.1 Executive.

The term "employee employed in a bona fide executive . . . capacity" in section 12(a)(1) of the act shall mean any employee:

* * * * *

(f) Who is compensated for his services on a salary basis at a rate of not less than $225 per week beginning February 13, 1981 and $250 per week beginning February 13, 1983 (or $180 per week beginning February 13, 1981 and $200 per week beginning February 13, 1983. If employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided*, That an employee who is compensated on a salary basis at a rate of not less than $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983 (or $260 per week beginning February 13, 1981 and $285 per week beginning February 13, 1983, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section.

2. Paragraph (e) of § 541.2 is revised to read as follows:

§ 541.2 Administrative.

The term "employee employed in a bona fide . . . administrative . . . capacity" in section 13(a)(1) of the act shall mean any employee:

* * * * *

(e)(1) Who is compensated for his services on a salary or fee basis at a rate of not less than $225 per week beginning February 13, 1981 and $250 per week beginning February 13, 1983 ($180 per week beginning February 13, 1981 and $200 per week beginning February 13, 1983, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, or

(2) Who, in the case of academic administrative personnel, is compensated for services as required by paragraph (e)(1) of this section, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which employed: *Provided*, That an employee who is compensated on a salary or fee basis at a rate of not less than $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983 ($260 per week beginning February 13, 1981 and $285 per week beginning February 13, 1983, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all the requirements of this section.

3. Paragraph (e) of § 541.3 is revised to read as follows:

§ 541.3 Professional.

The term "employee employed in a bona fide . . . professional capacity" in section 13(a)(1) of the act shall mean any employee:

* * * * *

(e) Who is compensated for services on a salary or fee basis at a rate of not less than $250 per week beginning February 13, 1981 and $280 per week beginning February 13, 1983 ($225 per week beginning February 13, 1981 and $250 per week beginning February 13, 1983 if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983 (or $260 per week beginning February 13, 1981 and $285 per week beginning February 13, 1983 if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa) exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a)(1) or (3) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

4. § 541.5a is revised to read as follows:

§ 541.5a Special provision for motion picture producing industry.

The requirement of §§ 541.1, 541.2, and 541.3 that the employee be paid "on a salary basis" shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983 (exclusive of board, lodging, or other facilities).

§ 541.52 [Removed]

5. § 541.52 is removed in its entirety.

6. Paragraphs (a) and (b) of § 541.117 are revised to read as follows:

§ 541.117 Amount of salary required.

(a) Except as otherwise noted in paragraph (b) of this section, compensation on a salary basis at a rate of not less than $225 per week beginning February 13, 1981 and $250 per week beginning February 13, 1983, exclusive of board, lodging, or other facilities, is required for exemption as an executive. The $225 a week or $250 a week may be translated into equivalent amounts for periods longer than 1 week. For example, based on $250 a week, the requirement will be met if the employee is compensated biweekly on a salary basis of $500, semimonthly on a salary basis of $541.67 or monthly on a salary basis of $1083.33. However, the shortest period of payment which will meet the requirement of payment "on a salary basis" is a week.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an "executive" is $180 per week beginning February 13, 1981 and $200 per week beginning February 13, 1983 for other than an employee of the Federal Government.

* * * * *

7. Paragraph (b) of § 541.118 is revised to read as follows:

§ 541.118 Salary basis.

* * * * *

(b) *Minimum guarantee plus extras.* It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of $250 or more a week and in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of the branch, if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that the employee will receive not less than the amount specified in the regulations in any week in which the employee performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis". For example, a salary of $300 in each week in which any work is performed, and an additional $55 which is made subject to deductions which are not permitted under paragraph (a) of this section.

* * * * *

8. Section 541.119 is revised to read as follows:

§ 541.119 Special proviso for high salaried executives.

(a) Except as otherwise noted in paragraph (b) of this section, § 541.1 contains an upset or high salary proviso for managerial employees who are compensated on a salary basis at a rate of not less than $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983 exclusive of board, lodging, or other facilities. Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (f) of § 541.1 if the employee's primary duty consists of the management of the enterprise in which employed or of a customarily recognized department or subdivision thereof and includes the customary and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test that employee's qualifications in detail under paragraphs (a) through (f) of § 541.1 of this Part.

(b) In Puerto Rico, the Virgin Islands, and American Samoa the proviso of § 541.1(f) applies to those managerial employees (other than employees of the Federal Government) who are paid on a salary basis at a rate of not less than $260 per week beginning February 13, 1981 and $285 per week beginning February 13, 1983.

(c) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

9. Paragraphs (a) and (b) of § 541.211 are revised to read as follows:

§ 541.211 Amount of salary or fees required.

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than $225 per week beginning February 13, 1981 and $250 per week beginning February 13, 1983,

exclusive of board, lodging or other facilities, is required for exemption as an administrative employee. For example, based on $250 a week, the requirement will be met if the employee is compensated biweekly on a salary basis of $500 semimonthly on a salary basis of $541.67 or monthly on a salary basis of $1083.33.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an administrative employee is $180 per week beginning February 13, 1981 and $200 per week beginning February 13, 1983 for other than an employee of the Federal Government.

* * * * *

10. Section 541.214 is revised to read as follows:

§ 541.214 Special proviso for high salaried administrative employees.

(a) Except as otherwise noted in paragraph (b) of this section, § 541.2 contains a special proviso including within the definition of "administrative" an employee who is compensated on a salary or fee basis at a rate of not less than $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983, exclusive of board, lodging, or other facilities, and whose primary duty consists of either the performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers, or the performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein, where the performance of such primary duty includes work requiring the exercise of discretion and independent judgment. Such a highly paid employee having such work as his or her primary duty is deemed to meet all the requirements in § 541.2(a) through (e). If an employee qualifies for exemption under this proviso, it is not necessary to test the employee's qualifications in detail under § 541.2(a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the proviso of § 541.2(c) applies to those administrative employees other than an employee of the Federal Government who are compensated on a salary or fee basis of not less than $260 per week beginning February 13, 1981 and $285 per week beginning February 13, 1983.

11. Paragraphs (a) and (b) of § 541.311 are revised to read as follows:

§ 541.311 Amount of salary or fees required.

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than $250 per week beginning February 13, 1981 and $280 per week beginning February 13, 1983, exclusive of board, lodging or other facilities, is required for exemption as a "professional employee." For example, based on $280 a week, an employee will meet this requirement if paid a biweekly salary of $560, a semi-monthly salary of $606.67 or a monthly salary of $1,213.33.

(b) In Puerto Rico, the Virgin Islands, and American Samoa the salary test for exemption as a "professional" for other than employees of the Federal Government is $225 per week beginning February 13, 1981 and $250 per week beginning February 13, 1983.

* * * * *

12. Paragraphs (c) and (d) of § 541.313 are revised to read as follows:

§ 541.313 Fee basis

* * * * *

(c) Examples of the adequacy of certain fee payments follow. For example, whether a fee payment amounts to payment at a rate of not less than $280 per week to a professional employee or at a rate of not less than $250 per week to an administrative employee can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate specified in the regulations in Subpart A of this part the amount paid to the employee will be tested by reference to a standard workweek of 40 hours. Thus compliance will be tested in each case of a fee payment by determining whether the payment is at a rate which would amount to a least $280 per week to a professional employee or at a rate of not less then $250 per week to an administrative employee if 40 hours were worked.

(d) The following examples will illustrate the principle stated above:

(1) A singer receives $50 for a song on a 15-minute program (no rehearsal time is involved). Obviously the requirement will be met since the employee would earn $280 at this rate of pay in far less than 40 hours.

(2) An artist is paid $150 for a picture. Upon completion of the assignment, it is determined that the artist worked 20 hours. Since earnings at this rate would yield the artist $300 if 40 hours were worked, the requirement is met.

(3) An illustrator is assigned the illustration of a pamphlet at a fee of $180. When the job is completed, it is determined that the employee worked 60 hours. If the employee worked 40 hours at this rate, the employee would have earned only $120. The fee payment of $180 for work which required 60 hours to complete therefore does not meet the requirement of payment at a rate of $280 per week and the employee must be considered nonexempt. It follows that if in the performance of this assignment the illustrator worked in excess of 40 hours in any week, overtime rates must be paid. Whether or not the employee worked in excess of 40 hours in any week, records for such an employee would have to be kept in accordance with the regulations covering records for nonexempt employees (Part 516 of this chapter).

13. Section 541.315 is revised to read as follows:

§ 541.315 Special proviso for high salaried professional employees.

(a) Except as otherwise noted in paragraph (b) of this section, the definition of "professional" contains a special proviso for employees who are compensated on a salary or fee basis at a rate of at least $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983, exclusive of board, lodging, or other facilities. Under this proviso, the requirements for exemption in § 541.3 (a) through (e) will be deemed to be met by an employee who receives the higher salary or fees and whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning, or work as a teacher in the activity of imparting knowledge, which includes work requiring the consistent exercise of discretion and judgment, or consists of the performance of work requiring invention, imagination, or talent in a recognized field of artistic endeavor. Thus, the exemption will apply to highly paid employees employed either in one of the "learned" professions or in an "artistic" profession and doing primarily professional work. If an employee qualifies for exemption under this proviso, it is not necessary to test the employee's qualifications in detail under § 541.3 (a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa the second proviso of § 541.3(c) applies to those "professional" employees (other than employees of the Federal government) who are compensated on a salary or fee basis of not less than $260 per week beginning February 13, 1981 and $285 per week beginning February 13, 1983.

14. Section 541.601 is revised to read as follows:

§ 541.601 Special provision for motion picture producing industry.

Under § 541.5a, the requirement that the employee be paid "on a salary basis" does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983 (exclusive of board, lodging, or other facilities. Thus, an employee in this industry who is otherwise exempt under §§ 541.1, 541.2, or 541.3 and who is employed at a base rate of at least $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983 is exempt if he is paid at least prorata (based on a week of not more than 6 days) for any week when he does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if he is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and his daily base rate would yield at least $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983 if 6 days were worked; or (b) the employee is in a job category having a weekly base rate of at least $320 per week beginning February 13, 1981 and $345 per week beginning February 13, 1983 and his daily base rate is at least one-sixth of such weekly base rate.

The higher minimum salary test will be effective on February 13, 1981, and February 13, 1983, respectively.

(Sec. 13, 52 Stat. 1067, as amended; 29 U.S.C. 213; Reorganization Plan No. 6 of 1950 (3 CFR 1945–53 comp. p. 1004); Secretary's Order No. 16–75, 40 FR 55913, December 2, 1975; and Employment Standards Order No. 78–1, 43 FR 51469, November 3, 1978)

Signed at Washington, D.C. on this 9th day of January 1981.

Donald Elisburg,

Assistant Secretary for Employment Standards Administration.

Regulatory Analysis for the Department of Labor's Decision To Increase the Salary Tests for Executive, Administrative and Professional Employees Under the Fair Labor Standards Act

Statement of the Problem

The Fair Labor Standards Act (FLSA) provides minimum wage and overtime protection for workers. While most nonsupervisory workers are subject to the Act, executive, administrative and professional (EAP) employees are statutorily exempt. This exemption stemmed from the recognition that such personnel have special work responsibilities, compensatory privileges and benefits which are superior to those of other employees. Exempt EAP employees are defined by a series of regulations (29 CFR 541) that specify their duties and responsibilities combined with a supporting salary test.

Because the salary test levels are not indexed, they must be periodically adjusted to reflect increases in the average salaries of EAP employees. The latest (interim) adjustment in the salary test levels was made in 1975 and did not fully reflect the increases in various economic indices that had occurred subsequent to the 1970 increase in these levels. Subsequent increases in actual salaries paid have seriously outdated these interim levels. The resulting ineffectiveness of the salary test in demarcating EAP personnel has caused serious administrative and legal problems in enforcing the Act.

The salary test levels have long provided employers desirous of complying with the law with clear guidelines as to the appropriate demarcation between EAP employees and other workers. Formerly, employers could rely on the salary test as a good indicator of whether an employee was likely to be exempt or not. Now that the test levels are lagging so far behind actual salaries, employers who do so could be misled into inadvertent noncompliance with the FLSA. As the gap between salary test levels and actual EAP salaries widens, greater emphasis must be put on the time-consuming and more complex "duties and responsibilities" portion of the regulations. The duties-and-responsibilities provisions and the salary tests serve as complementary standards in defining EAP employees.

Description of the Parties Affected

The major parties affected by this proposed regulatory change are: employers, employees and their representatives, a number of federal agencies including the Department of Labor, the National Labor Relations Board, and the Office of Personnel Management. State and local governments frequently utilize these test levels as guidelines for their personnel policies.

Major Alternative Regulatory Action Considered

(A) *Continue to use the 1975 interim salary test levels.*

The growing gap between salary test levels and actual salaries paid EAP employees has made the salary test virtually useless as a guide for employers and the Department of Labor in determining FLSA exemption status. A policy of doing nothing at this time would only magnify the increasingly adverse effects on the administration of the FLSA.

(B) *Update the salary test levels by applying the percentage increase in the CPI since 1970.*

We believe that the salary tests should more appropriately be indexed to a wage series that reflects conditions in EAP labor markets. Also, the CPI approach would result in salary test levels above those determined by most wage series, which would impose an unnecessary additional cost burden on employers.

(C) *Set the salary test levels at the entry levels for the various professional and administrative occupational classifications in the National Survey of Professional, Administrative, Technical, and Clerical Pay (PATC) survey.*

The PATC survey is restricted to only 10 professional and administrative occupations and the sample size is relatively small within *some* of the individual categories such as specific entry level occupations. Also, the sample is restricted to larger establishments, generally those with 100 employees or more. For these reasons, we do not believe that the *entry-level data* are sufficiently representative of EAP employees to be used in determining the new salary test levels.

(D) *Set the salary test levels in two phases using the data on the increase in the average salaries paid to employees in the relevant PATC categories using March 1970 data as the base for computations for the final salary test levels.*

Averages of the range of salaries paid in each category are more representative of the broad trends in actual EAP salaries.

This method most closely reflects relative changes in the actual salaries paid EAP employees as determined by supply and demand conditions. The salary test levels calculated using this methodology appear reasonable when compared to actual entry-level salaries paid employees in professional and administrative occupations as indicated by the latest PATC survey. In fact, the test levels are below the entry rates for these categories.

The two-phased approach will allow employers who choose to claim the exemption two full years in which to adapt their pay practices to the new salary test levels.

(E) *Set the salary test levels using the PATC percentage increases from March 1975 to March 1980 with 1975 as the base.*

The 1975 levels were not permanent but only modest interim adjustments, which did not fully reflect increases in EAP salaries through that time. The PATC percentage increases applied to them would result in substantially lower salary test levels thus failing to narrow sufficiently the gap between the test levels and actual salaries being paid to EAP employees.

Proposed Option and Economic Consequences

Selected Option. Reviewing the administrative, procedural, and economic consequences of each option leads us to select Option D—*Set final salary test levels in two phases using the data on the increases in the average salaries paid to employees in the relevant PATC categories.* The final salary test levels, effective February 13, 1983, calculated using Option D are:

—$250 per week for executive and administrative employees.
—$280 per week for professional employees.

(In Puerto Rico, the Virgin Islands and American Samoa, the new salary test levels are $200 per week for executive and administrative employees, and $250 per week for professional employees.)

Cost Impacts. The costs of the increases in the salary test levels can be estimated with appropriate assumptions on the number of EAP employees affected by a change in exemption status and the likely magnitude of their pay increases. It is estimated that only 0.8 percent of EAP employees would receive a salary increase of $53 million (on an annual basis) as of February, 1981, or a rise of .03 percent in the aggregate EAP salary bill and of .01 percent in total wages and salaries for all workers (Table 1). The salary test levels effective February, 1983, will not require an increase in the annual wage and salary bill for EAP employees. This is a result of the expected increase in salary levels that will have occurred by February, 1983.

It is assumed that employers will raise an EAP employee's salary to the proposed new test level *only* if the resulting cost would be no more than paying this worker on an hourly basis with premium pay for overtime. The choice that an individual employer will make depends on the economic position of the firm and the relative costs of complying with FLSA provisions. The cost estimates for the selected option are based on the data collected by the BLS in a nationwide survey of salaries and hours of exempt EAP employees.

Other options produced salary test levels as indicated in Table 2.

Description of assumptions and Basic Source Material Assumptions

(1) The 1970 salary test levels accurately reflected the general level of EAP salaries paid to employees at that point in time.

(2) The PATC survey is an accurate representation of the salaries of EAP employees.

(3) The firm will raise an employee's salary to the new test level only if the resulting cost would be no more than paying the worker on an hourly basis with premium pay for overtime.

Source Material. (1) U.S. Department of Labor, Bureau of Labor Statistics, *National Survey of Professional, Administrative, Technical, and Clerical Pay*, March 1979, Bulletin 2045, p. 3; and Press Release 80–416, July 1, 1980, *White Collar Salaries, March 1980.*

Table 1.—*Impact of Salary Tests of $225 a Week for Executive and Administrative Employees and $250 a Week for Professional Employees on Feb. 13, 1981, and $250 and $280 a Week, Respectively, on Feb. 13, 1983*

First phase: $225 for executive and administrative employees and $250 for professional employees on Feb. 13, 1981.

	Annual Amount (in millions)	As a percent of total annual EAP salary bill	As a percent of total annual wage and salary bill	Percent of employees affected
All industries	$53	0.03	0.01	0.8
Retail	20	.10	.02	4.0
Services	11	.03	.01	1.1
Other	22	.02	(1)	.1

[1] Indicates less than 0.005.

Second phase: $250 or executive and administrative employees and $280 for professional employees on Feb. 13, 1983. Based on expected changes in salary levels, the salary tests under the second phase will not increase the total wage and salary bill in 1983.

Table 2.—*Possible Options for Setting Weekly Salary Test Levels for Executive, Administrative, and Professional Employees*

Option	Salary level	
	Executive and administrative	Professional
A. Do nothing—continue existing levels	$155	$170
B. Base adjustments on changes in the CPI from March 1970 to March 1980	265	295
C. Base adjustments on current PATC entry rates in Professional and Administrative categories, March 1980 (10 entry levels)	335	335
D. Base adjustments on the percentage changes in the average salaries paid in Professional, Administrative, and Technical support categories of the PATC Survey using the 1970 salary test base. New salary test levels will be effective in two phases, from March 1970 to March 1980	[1] 250	[1] 280
E. PATC percentage increases from March 1975 to March 1980 using the 1975 salary test base	230	250

[1] Option adopted by Department of Labor.

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BILLING CODE 4510-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

[AS FRL 1724-6]

General Grant Regulations and Procedures; Class Deviation

AGENCY: Environmental Protection Agency.

ACTION: Deviation to rule.

SUMMARY: EPA is issuing a class deviation from a provision of its general grant regulations to redefine "nonexpendable personal property". On October 1, 1980, the Office of Management and Budget issued a memorandum allowing all Federal

agencies to use the definition of "nonexpendable personal property" in Circulars A-21 and A-122 for grantees governed by Circulars A-102 and A-110. EPA is implementing the change by class deviation. The class deviation is published with this document.

DATE: The class deviation is effective for new awards after January 14, 1981. Grantees who were awarded grants after October 1, 1980, and before this deviation was signed may apply the new definition if they desire.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Pippen, Jr., Director, Grants Administration Division (PM-216), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202) 755-0850.

Dated: January 5, 1981.

C. William Carter,

Assistant Administrator for Planning and Management (PM-208).

United States Environmental Protection Agency

Date: January 5, 1981.
Subject: Class Deviation from 40 CFR 30.810-1(d).
From: Harvey Pippen, Jr., Director, Grants Administration Division (PM-216).
To: Regional Administrators.

Action

I am approving a class deviation from 40 CFR 30.810-1(d) to redefine "nonexpendable personal property" as property with a useful life of at least two years and an acquisition cost of $500 or more. This deviation will standardize the definition of nonexpendable personal property. It will permit grantees to classify more property as expendable, thus reducing their record keeping.

This deviation is effective for new awards after January 14, 1981. Grantees who were awarded grants after October 1, 1980, and before this deviation was signed may apply the definition if they desire.

Background

On October 1, 1980, the Office of Management and Budget (OMB) issued a memorandum allowing all Federal agencies to use the definition of "nonexpendable personal property" in Circulars A-21 and A-122 for grantees governed by Circulars A-102 and A-110. OMB has expanded the definition of "nonexpendable personal property" in Circulars A-21 and A-122 to include property with a useful life of two or more years and acquisition cost of $500 or more. Circulars A-102 and A-110 limit the property useful life to one year and a cost of $300. OMB is planning to revise the definitions in Circulars A-102 and A-110 to make them the same as Circulars A-21 and A-122.

Dated: January 5, 1981.

Concur:

C. William Carter,

Assistant Administrator for Planning and Management (PM-208).

[FR Doc. 81-1117 Filed 1-12-81; 8:45 am]

BILLING CODE 6560-36-M

40 CFR Part 180

[OPP-260039; PH-FRL 1725-6]

Tolerance for Pesticide Residues in Rotational and Follow-Up Crops, Meat, Milk, Poultry and Eggs, and for Other Indirect or Inadvertent Residues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending 40 CFR 180.29 to announce a general statement of policy, a statutory interpretation, and certain procedural rule changes, all relating to the establishment of tolerances for pesticide residues under sec. 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. sec. 346a(e), in cases where the residue does not result from use of the pesticide to produce, store, or transport the commodity in question.

EFFECTIVE DATE: This Final Rule Becomes effective on February 12, 1981.

FOR FURTHER INFORMATION CONTACT: James W. Akerman, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202/755-1806).

SUPPLEMENTARY INFORMATION: The notice announces the Agency's interpretation that tolerances for residues not resulting from the use of the pesticide to produce, store or transport the commodity in question, can be issued only under FFDCA sec. 408(e), and not under sec. 408(d). The notice also states the Agency's interpretation that present 40 CFR 180.29(a) is inconsistent with FFDCA sec. 408(e) in that it forbids registrants and applicants under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. sec. 136, from requesting the issuance of tolerances under FFDCA sec. 408(e).

The notice also states that EPA will follow a general policy of responding to requests by setting tolerances, at appropriate levels, under FFDCA sec. 408(e) for pesticide residues resulting from certain crop rotation or crop replacement practices.

Finally, this notice announces procedural changes designed to allow the interpretations and policy just discussed to be implemented.

Background

Sections 402 and 408 of the FFDCA provide that unless a tolerance [a regulation describing the maximum permissible pesticide residue level on a raw agricultural commodity (RAC) or unprocessed food] or an exemption from the requirement of a tolerance has been established, the presence of a pesticide residue at any level in or on the RAC renders the RAC adulterated and subject to seizure.[1] Any person who introduces any adulterated food (including a RAC bearing unauthorized pesticide residues) into interstate commerce may be subject to criminal penalties. Registration under FIFRA authorizes marketing of pesticides in the United States. Among the conditions necessary to obtain registration are adequate labeling and prior establishment of appropriate tolerances for pesticide residues in food or feed items which would result from the pesticide's use. Adequate directions on the label include restrictions on timing of pesticide applications as well as harvesting and/or grazing limitations needed to ensure that the tolerance limits would not be exceeded.

Not all pesticide residues on raw agricultural commodities result from the use of the pesticide to control pests on, or regulate the growth of, the commodity in question. Use of a pesticide in the production or storage of one agricultural commodity can cause the presence of pesticide residues in or on other agricultural commodities. This can occur because of persistence of the pesticide in soil used for growing crops. For example, an insecticide may be applied to growing corn to control a pest that attacks only corn. During the next growing season the farmer might wish to plant soybeans in the same field; but if the corn insecticide is still present in the soil, the soybeans may be found to contain measurable residues of the corn insecticide. Similar results could occur if, because of crop failure, a second (different) crop is planted in the same field during the same growing season.

Meat, milk, poultry, and eggs are also considered raw agricultural commodities. The consumption by meat animals, dairy animals, or poultry of animal feed or forage which bears residues of the pesticide used in producing or storing that feed or forage can lead to pesticide residues in the meat, milk, or eggs from those animals or poultry.

In all such cases the presence of pesticide residues in the raw agricultural

[1] There is an exception in the case of pesticides which are "generally recognized as safe for use." See FFDCA sec. 408(a) and 40 CFR 180.2.

commodity would render the commodity "adulterated" under the FFDCA unless a tolerance or exemption for that pesticide in or on that commodity has been established.

Two methods could be used to avoid the major problem for farmers, food processors, consumers, and pesticide registrants that could result if raw agricultural commodities bearing inadvertent or indirect pesticide residues were regarded as "adulterated." First, FIFRA label instructions could be used to forbid agricultural practices which could lead to adulteration of commodities for which appropriate tolerances have not been established.

For instance, to avoid pesticide residues in rotational or replacement crops, pesticide users could be prohibited by the FIFRA pesticide label from planting such crops in a treated field until enough time had passed for the pesticide in the soil to degrade to the point where the rotational or replacement crop would contain no pesticide residues. To avoid meat, milk, poultry or egg adulteration, the FIFRA label could impose preharvest intervals, preslaughter intervals, or grazing restrictions, or could prohibit use of the treated commodity (or its byproducts such a cotton forage) for animal feed purposes.

The second means of dealing with the problem of indirectly or inadvertently caused pesticide residues is for EPA to establish tolerances authorizing the presence of those residues on the raw agricultural commodity, after examining data concerning toxicity and residue levels.

Until now, EPA has attempted to deal with the problem of pesticide residues in rotational and replacement crops by means of FIFRA label restrictions alone, and has not used its statutory authority to set tolerances for residues on such crops.

Label statements, in some cases, have been so restrictive as to preclude normal agricultural practices and thus could impose a significant economic impact on growers. For example, it is not uncommon for residues resulting from an application to an agricultural crop to remain in the soil at detectable levels for a period greater than 12 months. When rotational crop uptake studies show that other crops would be expected to contain residues as a result of the carryover of the residue in the soil, a label restriction such as "Do not rotate other crops within 18 months of application of this product" has been required. Under normal agricultural practices, however, crops often are rotated at intervals of less than 18 months. Thus, a pesticide product with the 18 month crop rotation restriction may have very limited legal use, and may be subject to misuse.

Another problem associated with this type of restriction arises when a user is forced to replant his field to a different crop after his initial planting results in a poor crop stand. An example might involve planting soybeans after adverse weather conditions had affected the cotton stand. If the grower had applied a pre-emergent cotton herbicide and the label for the pre-emergent herbicide contained a restriction against replanting (other than cotton) within 6 months, the grower could not legally replant the field to soybeans.

In addition to the economic difficulties label restrictions on rotational or replacement crops can cause, label restrictions also may effectively discourage or preclude farmers from using crop rotation to improve soil quality and reduce the need for chemical fertilizers. Because crop rotation can also lessen the need for pesticide use in some situations, crop rotation is a prime component of many integrated pest management programs.

Policy

EPA has determined that from now on its general policy will be to establish tolerances, when requested, for pesticide residues on replacement or rotational crops where the residues result from carryover in soil of pesticide residues from treatment of previous crops. Such tolerances will be set at levels found appropriate after examination of toxicity and residue data submitted to the Agency by the person(s) requesting establishment of the tolerance.

The Agency's past practice with respect to preventing potentially illegal pesticide residues on meat, milk, poultry and eggs has been somewhat different. EPA has used various label restrictions to prevent agricultural practices which could allow the use of pesticides to result in unauthorized residues in meat, milk, poultry or eggs; but in many cases EPA has also issued tolerances authorizing pesticide residues in such commodities which result from pesticide use in growing or storing animal feed commodities. In the past such tolerances have been issued under FFDCA sec. 408(d); for the reasons discussed below, in the future FFDCA sec. 408(e) will be used instead, because EPA's legal authority for issuing such tolerances under sec. 408(e) is much clearer.

FFDCA sec. 408 provides two different mechanisms for the granting of tolerances. Under sec. 408(d), a person who is a FIFRA registrant (or registration applicant) may petition EPA for the issuance of a tolerance regulation. Under FFDCA sec. 408(e), EPA may itself propose a tolerance, either on its own initiative or at the request of "any interested person."

A prerequisite of issuance of a tolerance or exemption under sec. 408(d) is a finding by EPA under sec. 408(l) that the pesticide chemical in question "is useful for the purpose for which [the] tolerance or exemption is sought," sec. 408(l)(1). EPA interprets this phrase and its legislative history as requiring a finding that the pesticide "is useful in controlling insects or other pests which affect specified raw agricultural commodities for which the tolerance or exemption is sought." [2] Thus, a sec. 408(d) tolerance cannot be issued to authorize pesticide residues on a RAC other than the commodity intended to be treated with the pesticide.

FFDCA sec. 408(e), however, does not refer to the need for a finding of usefulness as a prerequisite to the proposal of a tolerance or exemption by the Agency. Accordingly, EPA legally may propose and issue tolerances under sec. 408(e) authorizing pesticide residues in or on raw agricultural commodities other than those to which the pesticide is intentionally applied, including such cases as:

1. Crops with "carryover" pesticide residues resulting from application of pesticides to other crops grown earlier in the same location;

2. Meat, milk, poultry or eggs with pesticide residues resulting from the consumption by meat or dairy animals or poultry of feed bearing pesticide residues resulting from preharvest or feed-storage application of pesticides to the feed; and

3. Raw agricultural commodities bearing residues resulting from treatment of structures and other indirect or inadvertent mechanisms.

Sec. 408(e) also may be used to issue tolerances for residues resulting from intentional treatment of the crop or commodity to which the tolerance relates; user groups, states, the IR–4 program, federal agencies, and others who cannot petition under sec. 408(d) (because they are not FIFRA registrants or applicants) can request issuance of sec. 408(e) tolerances for such purposes.

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[2] S. Rep. No. 1635, Senate Comm. on Agriculture and Forestry, 83rd Cong., 2 Sess. (1954) reprinted in 1954 U.S. Code Cong. and Adm. News 2626, 2636. See also Hearing on H.R. 4277, House Comm. on Interstate and Foreign Commerce, 83rd Cong., 1st Sess. (July 14, 1953), at 68,74 (statement of L. S. Hitchner, representing National Agricultural Chemicals Association).

Revisions of Procedural Regulations

The Agency expects that in most cases the person requesting issuance of a tolerance of the type discussed in the last paragraph will be a FIFRA registrant, or applicant for registration, of a product containing the pesticide chemical in question. Since pesticide registrants are often the person most able (and with the most economic incentive) to generate the required data, and since it is now the Agency's policy to consider requests for tolerances of this type, it is important to remove arbitrary procedural barriers to requests by FIFRA registrants or applicants for FFDCA sec. 408(e) tolerances.

Although FFDCA sec. 408(e) clearly allows "any interested person" to request that EPA propose and issue a tolerance, the current regulation implementing that statutory authorization under 40 CFR 180.29 severely restricts that broad grant by excluding from the class of persons who can make such requests anyone who is a registrant (or registration applicant) under FIFRA. EPA has concluded that the clear words of FFDCA sec. 408(e) are at variance with this restriction. 40 CFR 180.29 also fails to state clearly that the Administrator may initiate a sec. 408(e) action on his or her own initiative, although the statute itself is clear on this subject as well.

Accordingly, the Agency is taking steps to modify 40 CFR 180.29 by deleting the exclusion of registrants and applicants from the class of "interested persons," by stating clearly in the regulation that tolerances may be proposed on the Administrator's own initiative, and by stating that any petition for a sec. 408(d) tolerance or exemption will be treated as a request for a sec. 408(e) tolerance if, under the interpretation of sec. 408(l) announced today, the "certification of usefulness" requirement could not be met because the pesticide is not used directly to aid in producing or storing the commodity in question.

As a result of the statement of policy, statutory interpretation, and procedural regulation amendments announced in this document, any interested person will be able to request the issuance of a tolerance for residues which may occur in or on any raw agricultural commodity as the indirect or inadvertent result of legal use of a pesticide in the production or storage of other commodities, or for other legal pesticide uses where the tolerance commodity is not directly benefited by the pesticide's use. All such tolerances will be processed in a manner which is consistent with and clearly authorized by law. No changes will be made by this document in the kind or amount of data required for a tolerance.

With respect to rotational or replacement crops, EPA will continue to insist an FIFRA label restrictions sufficient to guard against foreseeable pesticide residues not permitted by tolerances. Under this new approach it often will be possible to lessen or even remove such use restrictions, if the registrant chooses to generate and submit data sufficient to enable EPA to authorize the resulting residues by issuing a sec. 408(e) tolerance. If the registrant chooses the latter course, he would identify the rotational (including replacement) crops in question. As tolerances for such crops are established, the label for the pesticides can be amended to identify the rotational crops that can be planted in treated fields, the remaining restrictions (if any) on planting those crops, and the restrictions on planting other rotational crops for which tolerances have not yet been established.

Regarding pesticide residues in meat, milk, poultry or eggs, if the pesticide is applied to or fed to the animals or poultry for pesticidal purposes, sec. 408(d) normally will be used to set meat, milk, poultry or egg tolerances. For example, chemicals being applied directly to livestock or poultry to control insects such as fleas, lice or chicken mites would be considered a pesticidal purpose and thus, 408(d) will normally be used to set the tolerance for meat, milk, poultry or eggs. When pesticide residues result in meat, milk, poultry or eggs as a result of the presence of residues in or on feed, then sec. 408(e) will be used to set such tolerances. In an instance where both purposeful and inadvertent residues would result in meat, milk, poultry or eggs, then only one tolerance, the higher tolerance, will be established. If any pesticide's use might foreseeably cause unauthorized pesticide residues in meat, milk, poultry or eggs, FIFRA label use restrictions will be required to prevent unauthorized residues, just as is now the case. Also, if residues concentrate, such as in soybean fractions (soybean oil, soapstock), an appropriate food additive tolerance(s) will be established under section 409 of FFDCA. The "rotational" crop tolerances will be distinguished in the **Federal Register** from other pesticide tolerances which imply a registered use.

With respect to data requirements, the residue chemistry and toxicology data required to support a petition for tolerance in rotational crops will be the same as those required for a conventional tolerance.

Rotational crop tolerances will be considered to contribute to the total residue burden for a given pesticide. The theoretical maximal residue concentration (TMRC) and acceptable daily intake (ADI) calculations will be required just as for conventional tolerances.

Under the Administrative Procedure Act, 5 U.S.C. sec. 553(b), the Agency need not use notice-and-comment procedures to promulgate rules which are interpretative rules, general statements of policy, or rules of agency procedure or practice. The changes of 40 CFR 180.29 announced by this notice all belong to one or more of those categories; accordingly, these amendments will become effective February 12, 1981.

These amendments to 40 CFR 180.29 are made under the authority granted by FFDCA sec. 701(a), 21 U.S.C. sec. 371, and Reorganization Plan No. 3 of 1970.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA calls these other regulations "specialized." This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: January 5, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

In 40 CFR 180.29, paragraph (a) is revised to read as follows:

§ 180.29 Adoption of tolerance on initiative of Administrator or on request of an interested person.

(a) Upon the Administrator's own initiative, or at the written request of any interested person furnishing reasonable grounds therefor and such fees or deposits as are prescribed by § 180.33, the Administrator may propose, under sec. 408(e) of the Federal Food, Drug, and Cosmetic Act, the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance. As used in the preceding sentence, "reasonable grounds" shall include a statement describing the nature of the requestor's interest in issuance of such a tolerance or exemption, and adequate data on subjects outlined in sec. 408(d)(1) (A) through (F) of the Federal Food, Drug, and Cosmetic Act. Any petition received by the Agency which requests establishment of a tolerance or exemption for pesticide residues in or on a raw agricultural commodity that result

from any pesticide use not directly associated with producing, storing, or transporting that commodity, will be treated by the Agency as a request for issuance of the tolerance or exemption under sec. 408(e) of that Act. (As the Agency interprets that Act, the certification of usefulness which is a prerequisite of issuing a regulation under sec. 408(d) can only be made with respect to pesticides used to help produce, store, or transport the commodity for which the tolerance or exemption is sought.) Requests shall be submitted in duplicate to: Registration Division (TS-767), Environmental Protection Agency, Washington, D.C. 20460. If any part of the request or supporting data is in a language other than English, it must be accompanied by a complete and accurate English translation. If the Administrator decides that a request does not warrant a proposal for the issuance of a regulation, he shall so inform the requestor and state the reasons for his decision.

* * * * *

[FR Doc. 81-1155 Filed 1-12-81; 8:45 am]

BILLING CODE 6560-32-M

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40 CFR Part 257

[SWH-FRL 1725-3]

Criteria for Classification of Solid Waste Disposal Facilities and Practices; Interim Final Regulations

AGENCY: Environmental Agency.

ACTION: Extension of comment period.

SUMMARY: On November 18, 1980 (45 FR 76147), EPA made available for public review and comment the following two documents describing the factors affecting accumulation of cadmium by food chain crops grown on land amended with solid waste containing cadmium:

(1) Effects of Sewage Sludge on the Cadmium and Zinc Content of Crops, Council for Agricultural Science and Technology (CAST), Report No. 83, September 1980 (SW-881);

(2) Report from the Western Regional Committee, W-124, Science and Education Administration-Cooperative Research (SEA-CR) Technical Research Committee, January 1980 (SW-882).

The comment period for the above two documents was to close on January 2, 1981. EPA received a request for an extension of the public comment period for thirty (30) days, until February 2, 1981. The Agency believes such an extension is warranted because of the technical nature of the information in the documents, and because the comment period spanned the Thanksgiving, Christmas and New Year's holidays, thus reducing the effective working time available to review the two documents.

DATES: Comments on these documents are due no later than February 2, 1981.

ADDRESSES: Comments should be addressed to Robert J. Tonetti, Docket 4004.1, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9120.

Copies of these documents are available from Ed Cox, Solid Waste Information, U.S. EPA, 26 W. Saint Clair Street, Cincinnati, Ohio 45268, (513) 684-5362. Please use the SW number when requesting copies. If available copies run out, the Agency may charge $0.20 per page for photocopying.

FOR FURTHER INFORMATION CONTACT: Robert J. Tonetti, (202) 755-9120.

SUPPLEMENTARY INFORMATION: These documents are made available to the public to solicit comments on the accuracy of the data presented and the validity of the conclusions reached. This is not to be construed as a reopening of the comment period on the Agency's interim final regulations, and commenters should limit their comments accordingly.

Dated: January 8, 1981.

Steffen W. Plehn,

Deputy Assistant Administrator.

[FR Doc. 81-1125 Filed 1-12-81; 8:45 am]

BILLING CODE 6560-30-M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

41 CFR Ch. 101

[FPMR Temp. Reg. D-65, Supp. 2]

Federal Employee Parking; Temporary Regulations

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: To continue the Federal employee parking program pending resolution of a recent U.S. district court ruling, this supplement extends indefinitely the expiration date of FPMR Temporary Regulation D-65.

DATES: Effective date: January 13, 1981. Expiration date: December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Paul H. Herndon III, Director, Space Management Division, Office of Space Management (202-566-1875).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purpose of Executive Order 12044. (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 426(c))

In 41 CFR Chapter 101, this temporary regulation is added to the end of Subchapter D.

January 2, 1981.

Federal Property Management Regulations; Temporary Regulation D-65, Supplement 2

To: Heads of Federal agencies

Subject: Federal employee parking

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D-65.

2. *Effective date.* This regulation is effective January 13, 1981.

3. *Expiration date.* This regulation expires on December 31, 1981.

4. *Explanation of changes.* Pending resolution of legal issues raised as a result of the recent U.S. district court ruling regarding the Federal employee parking program, the expiration date in paragraph 3 of FPMR Temporary Regulation D-65 is extended.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 81-1143 Filed 1-12-81; 8:45 am]

BILLING CODE 6820-23-M

Automated Data and Telecommunications Service

41 CFR Ch. 101

[FPMR Temp. Reg. F-497]

Hardware and Data Transmission Standards; Temporary Regulations

AGENCY: Automated Data and Telecommunications Service, General Services Administration.

ACTION: Temporary regulations.

SUMMARY: This regulation provides standard terminology to be used in solicitation documents and guidance regarding the application of Federal Information Processing Standards Publication (FIPS PUB) 71, Advanced Data Communications Control Procedures (ADCCP), and Federal Standard (FED-STD) 1003, Synchronous Bit-Oriented Data Link Procedures (Advanced Data Communication Control Procedures). The publication of FIPS PUB 71 and FED-STD 1003, both addressing the same technical area yet not published as a joint FIPS PUB/FED-STD, created the need for this action. The intent of this regulation is to

provide a uniform basis upon which agencies can determine which standard to apply.

DATES: Effective date: February 12, 1981. Expiration date: September 30, 1982. Comments due on or before: April 13, 1981.

ADDRESS: Comments should be addressed to: General Services Administration (CPEP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: David R. Mullins, Procurement Policy and Regulations Branch (CPEP), Policy and Analysis Division (202–566–0194).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044. (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the Appendix at the end of Subchapter F to read as follows:

January 6, 1981.

Federal Property Management Regulations; Temporary Regulation F–497

To: Heads of Federal agencies
Subject: Hardware and data tramsmission standards

1. *Purpose.* This regulation provides standard terminology to be used in solicitation documents and guidance regarding application of Federal Information Processing Standards Publication (FIPS PUB) 71, Advanced Data Communications Control Procedures (ADCCP), and Federal Standard (FED–STD) 1003, Synchronous Bit-Oriented Data Link Procedures (Advanced Data Communication Control Procedures).

2. *Effective date.* This regulation is effective February 12, 1981, but may be observed earlier.

3. *Expiration date.* This regulation expires September 30, 1982.

4. *Background.* a. The publication of FIPS PUB 71 and FED–STD 1003, both addressing the same technical area yet not published as a joint FIPS PUB/FED–STD, created the need for this action. The intent of this regulation is to provide a uniform basis upon which agencies can determine which standard to apply; both standards are intended to reduce costs of data transmission networks and ensure interoperability.

b. FIPS PUB 71 establishes data link control procedures for data processing systems, equipment, and services using synchronous, bit-oriented data communications. FED–STD 1003 specifies the frame structure, elements of procedure, and classes of procedure for data communications systems that transmit synchronous binary data. The two standards are technically consistent, except that FED–STD 1003 contains additional requirements necessary to ensure interoperability with National Communications System (NCS) component networks.

c. The Department of Commerce plans to issue FIPS PUB 78, Guideline for Implementing Advanced Data Communication Control Procedures (ADCCP). This FIPS PUB will contain guidance regarding the planning, acquisition, and operation of ADCCP.

5. *Explanation of changes.* Two new sections are added to Subpart 101–36.13:

a. A new subsection is added to FPMR section 101–36.1304 as follows:

§ 101–36.1304–X FIPS PUB 71, Advanced Data Communications Control Procedures

(a) FIPS PUB 71 provides that it shall be applied in the design and procurement of all ADP systems, ADP terminal equipment, and ADP services that are to be employed in computer networking or teleprocessing environments that use bit-oriented synchronous data communications. Requirements for interoperability with telecommunications networks embodying National Communications System (NCS) facilities are not provided for in FIPS PUB 71. Therefore, FED–STD 1003 (and not FIPS PUB 71) should be used in the design and procurement of data communications systems and equipment using bit-oriented link control procedures when an agency determines that NCS interoperation requirements are needed.

(b) Applicability wavier authority for FIPS PUB 71 is vested in the Secretary of Commerce rather than in the agency having the ADP requirement. Therefore, each egency should be aware that if waivers are considered appropriate, requests should be initiated early in the agency requirements determination process to avoid delay.

Note.—When bit-oriented data link control procedures are not used, FIPS PUB 71 is not applicable; therefore, waiver procedures do not apply.

(c) In determining interoperability requirements, an agency should recognize the requirements of Presidential Directive/NSC–53, dated November 15, 1979, regarding national security telecommunications policy.

(d) Before the acceptance of applicable ADP equipment or service required to conform to FIPS PUB 71, this conformance shall be verified by demonstration or other means acceptable to the Government.

(e) The standard terminology for use in solicitation documents is:

Unless a waiver is granted following the procedures specified in FIPS PUB 71 or unless the Government's requirements include interoperation with the component networks of the National Communications System (NCS), all ADP systems, equipment, and services that are to be employed in computer networking or teleprocessing environments using bit-oriented synchronous data communications, offered as a result of this solicitation, will implement the class(es) of procedures specified in FIPS PUB 71 as stated therein.

Note.—FED–STD 1003 (and not FIPS PUB 71) is applicable when (1) the system, equipment, or services offered as a result of this solicitation use bit-oriented synchronous data link control procedures; (2) the Government determines that it has a requirement for interoperability with NCS component networks; and (3) the equipment is not being procured as replacement for, or extension to, existing systems that do not use bit-oriented data link control procedures.

b. A new subsection is added to FPMR section 101–36.1308 as follows:

§ 101–36.1308–X FED–STD 1003, Synchronous Bit-Oriented Data Link Control Procedures (Advanced Data Communication Control Procedures)

(a) FED-STD 1003, shall be applied in the design and procurement of systems and equipment by the Federal Government that use synchronous bit-oriented data link control procedures and that are determined by the requiring agency to require interoperability with the component networks of the National Communications System (NCS). The standard also provides that its application is not mandatory for equipment that is being procured as a complete or partial replacement for, or extension to, existing systems that do not use bit-oriented data link control procedures.

(b) In determining interoperabilility requirements, an agency should recognize the requirements of Presidential Directive/NCS–53, dated November 15, 1979, regarding national security telecommunications policy.

(c) The standard terminology for use in solicitation documents is:

All data communications systems and equipment using bit-oriented data link control procedures, offered as a result of this solicitation, will implement the class(es) of procedure specified in FED–STD 1003 as stated therein unless the Government determines that it does not have a requirement for interoperability with National Communications System

(NCS) facilities or unless the requipment is being procured as replacement for, or extension to, existing systems that do not use bit-oriented data link control procedures.

Note.—When the Government does not have a requirement for interoperation with NCS facilities, FIPS PUB 71 (and not FED-STD 1003) shall apply to all ADP systems, equipment, and services that are to be employed in computer networking or teleprocessing environments offered as a result of this solicitation.

6. *Comments.* Comments are invited concerning the effect or impact of this regulation and the policy and procedures that should be adopted in the future. Comments should be forwarded to the General Services Administration (CPEP), Washington, DC 20405, on or before April 13, 1981.

7. *Effect on other directives.* This temporary regulation supplements 41 CFR Chapter 101, Subchapter F (Part 101-36).

Ray Kline

Acting Administrator of General Services.

[FR Doc. 81-1144 Filed 1-12-81; 8:45 am]

BILLING CODE 6820-25-M

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41 CFR Part 101-38

[FPMR Amdt. G-50]

Motor Equipment Management; Revised Policies and Procedures for the Preparation and Control of Standard Form 149, U.S. Government National Credit Card

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation provides revised policy and procedures concerning the acquisition and use of Standard Form 149, U.S. Government National Credit Card. Additional instructions and information have been incorporated in the Federal Supply Schedule FSC 75, Part VII, to simplify the preparation procedures for ordering and replacing U.S. Government National Credit Cards and to assist in maintaining an accurate data file at the embossing contractor.

EFFECTIVE DATE: This regulation is effective August 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Lowell A. Stockdale, Director, Federal Fleet Management Division, Transportation and Public Utilities Service (202-275-1021).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

Subpart 101-38.12—Preparation and Control of Standard Form 149, U.S. Government National Credit Card

1. Section 101-38.1200 is revised to read as follows:

§ 101-38.1200 General.

(a) Standard Form 149, U.S. Government National Credit Card, is authorized for use by Federal agencies to obtain services and supplies at service stations dispensing items provided by contractors listed in the Defense Fuel Supply Center publication "Government Vehicle Operators Guide—Your Guide to Service Stations for Gasoline, Oil, and Lubrication" (DFSC H 4280.1). Activities requiring copies of the publication should submit requests to: Commander, Defense Fuel Supply Center, Attention: DFSC:OD, Cameron Station, Alexandria, VA 22314.

(b) Procedures for obtaining Standard Form 149, U.S. Government National Credit Card, are found in § 101-26.406-5 and the current Federal Supply Schedule 75, Part VII.

2. Section 101-38.1201 is revised to read as follows:

§ 101-38.1201 Billing code.

The billing code is a 10-digit number and is embossed on the first line of the Standard Form 149.

(a) The first nine digits shall be assigned by the using agency in accordance with the following instructions:

(1) The first three digits of the billing code shall always be 000 for all Federal agencies other than the General Services Administration, the Department of Agriculture, and the Department of Defense. The Department of Defense shall use 002, and the Department of Agriculture and the General Services Administration shall use 003.

(2) The fourth digit may be used by civilian agencies to designate the vehicle class or for other purposes to meet the agency's requirements. If not used for any designation, the fourth digit shall be 0. Components of the Department of Defense shall use the following in the fourth position: 1, Navy; 2, Army; 3, Air Force; 4, Marine Corps; 7, Defense Logistics; and 0, all independent Department of Defense agencies.

(3) The fifth and sixth digits for all civilian agencies shall be the agency code, unless otherwise authorized by GSA. Agency codes are shown in the Department of the Treasury booklet "Federal Account Symbols and Titles." For all Department of Defense activities, the fifth through the ninth digits shall be the station accounting number for the particular activity authorized to use the credit card.

(4) For civilian agencies, the seventh, eighth, and ninth digits indicate the agency billing address code number, unless otherwise authorized by GSA. Each agency shall assign its own billing address code numbers when the seventh, eighth, and ninth digits are used for that purpose.

(b) The tenth digit is the validation number for use in automated billing operations of the petroleum contractors. This number is not assigned by the agency, but will be determined by the embossing contractor listed in the Federal Supply Schedule, FSC 75 Part VII. The validation number will be computed in accordance with American Standard X4.13-1971, section 5.3.

3. Section 101-38.1201-1 is revised to read as follows:

§ 101-38.1201-1 Billing address.

The billing address is the name of the agency and the address to which petroleum contractors should send statements or invoices covering the purchase of supplies and services by the user of Standard Form 149, U.S. Government National Credit Card. The billing address will not be embossed on the Standard Form 149, but shall be maintained on file by the contractor providing the credit cards and by the petroleum contractors listed in the Defense Fuel Supply Center publication "Government Vehicle Operators Guide—Your Guide to Service Stations for Gasoline, Oil, and Lubrication" (DFSC H 4280.1).

(a) Agency identifier. The agency identifier is a one-line entry of a maximum of 22 characters embossed on the third line of the Standard Form 149. (The second line of the card is blank). It identifies the agency or agency department which is authorized to use the Standard Form 149. No Government employee's name will be embossed on the card.

(b) [Reserved]

4. Section 101-38.1202 is revised to read as follows:

§ 101-38.1202 Administrative control of credit cards.

(a) It is essential that Federal agencies ensure that supplies and services procured with Standard Form 149, U.S. Government National Credit Card, are for the official use of the agency involved and that administrative control is maintained to prevent unauthorized use of credit cards. Administrative

control shall include the following as a minimum:

(1) The license tag number of the vehicle, a sequential series number, or other identification shall be embossed on the fourth line of the credit card. These data, which shall be limited to a maximum of nine characters (exclusive of the prefix), shall be preceded by one of the following prefixes: "TAG" for the vehicle license tag number; "SER" for a card in a series sequence; or "ID" for other appropriate identification. Alpha or numeric characters, or a combination thereof, may be used but it is a mandatory requirement that the maximum of nine characters (exclusive of the prefix) not be exceeded. When a license tag number is embossed on the fourth line, the card is to be used to procure supplies and services for that vehicle only. If a series number or ID designation is embossed on the card, the credit card may be used to obtain supplies and services for any properly identified U.S. Government vehicle, boat, small aircraft, nonvehicular equipment, or motor vehicle that is leased or rented for 60 continuous days or more and is officially identified in accordance with § 101–38.305–1; and

(2) A replacement code will be embossed on the fifth line at the extreme right side to indicate the number of times a credit card has been replaced as a result of being reported lost or stolen (e.g., R–1).

(b) Agencies shall establish procedures to provide for the following:

(1) Prompt written notification to the credit card contractor of lost or stolen cards (notification shall include the date each card was initially reported lost or stolen). This notification is mandatory to enable the contractor to purge the data file if the credit card is not replaced. If a replacement card is requested, the contractor will so annotate the files.

(2) Prompt written notification to the credit card contractor of changes or deletions to billing account numbers and/or addresses; and

(3) Notification to the contractor of any cards that have to be removed from the system. (Note: When a card reaches its expiration date, it is automatically invalid and removed from the system). The removal codes are as follows: "L" = Lost, "S" = Stolen, "B" = Broken, "D" = Debossed, "E" = Expiring (use only if a replacement is needed and the card has not passed its expiration date), and "A" = All Other Reasons (such as a vehicle removed from the fleet). The schedule provides the necessary formats and allows for replacement cards, if needed.

(4) Prompt and positive destruction of all credit cards that have been replaced for any reason, and of lost or stolen credit cards recovered after being reported and/or replaced; and

(5) Destruction of credit cards bearing an expiration date that has passed or credit cards bearing an invalid license tag number, series, or identification designation; e.g., the number of a tag that has been replaced or destroyed.

5. Section 101–38.1202–1 is revised to read as follows:

§ 101–38.1202–1 Expiration date.

At the time the Standard Form 149, U.S. Government National Credit Card, is embossed, an expiration date (month, day, year) of not more than 2 years shall be embossed on the extreme right side of the fourth line of the credit card by the contractor. An expiration date of less than 2 years may be requested by the ordering agency. If an expiration date is not furnished by the agency, the contractor will emboss an expiration date of 2 years from the date of the request.

6. Section 101–38.1203 is revised to read as follows:

§ 101–38.1203 Centralized administrative control of credit cards.

(a) GSA will provide centralized management and control of the Standard Form 149, U.S. Government National Credit Card program. Inquiries concerning the policy and administration of the program shall be directed to GSA (TMM), Washington, D.C. 20406.

(b) Agency requests for credit cards shall be submitted directly to the contractor and shall conform to the requirements of this regulation. Changes in billing codes and addresses shall also be furnished promptly to the contractor so that there will be proper control of the billing procedures.

(c) After the determination has been made that the billing code(s) and the billing address(es) submitted are correct and are not duplicates, the contractor will process the request and emboss and issue the cards.

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

Dated: January 2, 1981.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 81–1142 Filed 1–12–81; 8:45 am]

BILLING CODE 6820–AM–M

41 CFR Part 101–26

[FPMR Amdt. E–244]

Procurement Sources and Programs; Use of U.S. Government National Credit Card for Obtaining Service Station Deliveries and Services

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation provides revised policy and procedures concerning the acquisition and use of Standard Form 149, U.S. Government National Credit Card for obtaining service station deliveries and services. Additional instructions and information have been incorporated in the Federal Supply Schedule FSC 75, Part VII, to simplify the preparation procedures for ordering and replacing U.S. Government National Credit Cards and to assist in maintaining an accurate data file at the embossing contractor.

EFFECTIVE DATE: This regulation is effective August 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Lowell A. Stockdale, Director, Federal Fleet Management Division, Transportation and Public Utilities Service (202–275–1021).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

PART 101–26—PROCUREMENT SOURCES AND PROGRAMS

1. The table of contents for Part 101–26 is amended by adding the following entry:

Sec. 101–26.406–6 Controlled Shipment of U.S. Government National Credit Cards.

Subpart 101–26.4—Purchase of Items From Federal Supply Schedule Contracts

2. Section 101–26.406.1 is revised to read as follows:

§ 101–26.406–1 General.

(a) Standard Form 149, U.S. Government National Credit Card (illustrated in § 101–26.4901–149), is authorized for use by Federal agencies to obtain authorized services and supplies at service stations dispensing items provided by contractors listed in the Defense Fuel Supply Center publication "Government Vehicle Operators Guide—Guide to Service Stations for Gasoline, Oil, and

Lubrication" (DFSC H 4280.1). Activities requiring copies of the publication should submit requests to: Commander, Defense Fuel Supply Center, Attention: DFSC:OD, Cameron Station, Alexandria, VA 22314.

(b) Standard Form 149 is the only Government-wide credit card approved for use by Federal agencies for the procurement of gasoline and services at service stations dispensing items provided by the contractors listed in the Defense Fuel Supply Center publication referenced in paragraph (a) of this section. However, agencies need not use Standard Form 149 for motor vehicles used for purposes in which identification as Government vehicles would interfere with the performance of the functions for which the vehicles were acquired and are used. (See § 101–38.602.)

(c) Information concerning billing data, expiration dates to be embossed on Standard Form 149, and administrative control of the credit card program is in Subpart 101–38.12 and the Federal Supply Schedule FSC 75, Part VII.

3. Section 101–26.406–5 is revised to read as follows:

§ 101–26.406–5 Methods of obtaining Standard Form 149, U.S. Government National Credit Card.

(a) All agency requests for embossed Standard Form 149 shall be forwarded to the contractor in the format specified in Federal Supply Schedule 75, Part VII. Requests should be submitted with a GSA Form 300, Purchase Order; DD 1155, Order for Supplies or Service, Request for Quotation; or the purchase order normally used by the ordering agency. Unembossed or partially embossed Standard Forms 149 shall not be provided. Specific ordering instructions are in the Federal Supply Schedule FSC 75, Part VII; however, the following information will assist agencies ordering embossed Standard Form 149.

(1) Any order that does not include all of the required data elements or that contains inaccurate information will be returned to the sender. Cards ordered for replacement must be in the exact format and contain the exact information as the original card, including spaces, punctuation, and character field.

(2) The contractor will bill the ordering agency directly for embossing services and mailing charges.

(3) The type of format to be used when embossing Standard Form 149 shall conform with the requirements of the Federal Supply Schedule FSC 75, Part VII.

(4) Agencies are encouraged to use the blanket purchase arrangement (BPA), thus eliminating the costly processing of individual purchase orders. Credit cards can then be ordered against the BPA by letter, giving complete embossing information and referencing the BPA number.

(5) Instructions for requisitioning Standard Form 149 by means of electronic data transmission will be made available upon request to the Federal Fleet Management Division (TMM), General Services Administration, Washington, DC 20406.

4. Section 101–26.406–6 is added to read as follows:

§ 101–26.406–6 Controlled shipment of U.S. Government National Credit Cards.

Because the embossing contractor is required to maintain, on file, a receipt for all credit card shipments, each shipment of credit cards shall be made using "return receipt" procedures. Costs incurred by the embossing contractor in ensuring the safe, controlled shipment of all credit cards shall be paid by the ordering agency.

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

Dated: January 2, 1981.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 81–1173 Filed 1–12–81; 8:45 am]

BILLING CODE 6820–AM–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

Atlantic Tuna Fisheries

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

ACTION: Final rule.

SUMMARY: This regulation implements one of two conservation recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT) at its sixth annual regular meeting (Madrid, November 14–20, 1979). The effective conservation measure is a limitation on the catch or landing of bigeye tuna less than seven pounds. The second conservation measure, an international port inspection scheme for tunas under regulation by ICCAT, was published as proposed regulations (45 CFR 68412) but has not been formally approved by the required number of ICCAT member countries. If approved, final regulations will be published in the **Federal Register.**

The International Commission adopted the same size limit for both bigeye tuna and yellowfin tuna, two species similar in appearance, thereby eliminating any advantage to identifying yellowfin tuna as bigeye tuna. Conservation measures for bigeye tuna are now the same as those for yellowfin tuna. Economic impact on the U.S. fleet will be minimal as only a small amount of bigeye tuna less than seven pounds are landed by the U.S. fleet.

EFFECTIVE DATE: Minimum size restriction on bigeye tuna effective February 12, 1981.

FOR FURTHER INFORMATION CONTACT:

J. Gary Smith, (Chief, Fisheries Management Division), 213–548–2518.

SUPPLEMENTARY INFORMATION: At its sixth regular meeting ICCAT adopted two conservation measures: (1) that member countries take the necessary measures to limit the taking and landing of bigeye tuna (*Thunnus obesus)* weighing less than seven pounds (3.2 kg.) until December 31, 1983, and (2) that an international port inspection scheme be implemented for tuna under regulation by ICCAT. Proposed rulemaking was published on pages 68412–68414 of the **Federal Register** of October 15, 1980, and invited comments for 30 days ending November 14, 1980. Public hearings were held on October 22, 1980 at the National Marine Fisheries Service Conference, Room 300 South Ferry Street, Terminal Island, California 90731, and at the National Marine Fisheries Service Conference Room, 14 Elm Street, Gloucester, Massachusetts 01930. Comments were not received on the proposed regulations for the size restriction on tunas.

The size limit on bigeye tuna has been approved by the Commission and will become effective immediately.

The Assistant Administrator of the National Marine Fisheries Service has determined that these regulations do not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. As an amendment to an existing significant regulation, this final rulemaking does not require separate regulatory analysis for purposes of Executive Order 12044.

Signed at Washington, D.C. this 6th day of January 1981.

Terry L. Leitzell,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Atlantic Tunas Convention Act of 1975, Pub. L. 94–70, 16 U.S.C. 971–971h).

For the reasons set out in the preamble, 50 CFR Part 285—Atlantic Tuna Fisheries, is amended as follows:

1. The title of Subpart C is amended to read as follows:

Subpart C—Yellowfin Tuna (Thunnus albacares) and Bigeye Tuna (Thunnus obesus)

2. Section 285.50 is revised to read as follows:

§ 285.50 is Authorized fishing.

Except as provided in § 285.52, fishing in the regulatory area by persons or fishing vessels subject to the jurisdiction of the United States is authorized only for yellowfin or bigeye tuna that weigh seven pounds round weight (3.2 kg.) or more. The prohibition against fishing for bigeye tuna less than seven pounds is to remain in effect until December 31, 1983.

3. Section 285.52 is revised to read as follows:

§ 285.52 Incidental catch.

Persons or fishing vessels subject to the jurisdiction of the United States may take yellowfin tuna or bigeye tuna or both that weigh less than seven pounds round weight incidental to authorized fishing in the regulatory area for yellowfin tuna or bigeye tuna with the following provision. Landing of incidental catch shall not exceed 3 percent by weight per trip of all yellowfin tuna and bigeye tuna weighing seven pounds or more.

4. Subpart D, § 285.81 is revised to read as follows:

§ 285.81 Species subject to regulation.

The species of tuna currently subject to regulation by recommendation of the Commission within the meaning of Section 6(c) are yellowfin tuna, bigeye tuna, and Atlantic bluefin tuna.

[FR Doc. 81-1151 Filed 1-12-81; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 46, No. 8
Tuesday, January 13, 1981

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, Bulletin 345–52, REA Standards PC–5A, Service Entrance and Station Protector Installations and PC–5B, Station Installations

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend Appendix A—REA Bulletins to issue a revised Bulletin 345–52 to include the newly completed PC–5B, Station Installation, as a portion of this document. This completes the action published as a Final Rule in the Federal Register on January 22, 1980, revising Bulletin 345–52 to issue the PC–5A, Service Entrance and Station Protector Installations.

DATE: Public comments must be received by REA no later than March 13, 1981.

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) 447–3827. The Draft Impact Analysis Statement 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 issue revised Bulletin 345–52 to include the existing PC–5A, Service Entrance and Station Protector Installations and the newly developed PC–5B, Station Installations. This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 to implement Executive Order No. 12044 and has been classified not significant.

This program is listed in the Catalog of Federal Domestic Assistance as 10.851 Rural Telephone Loans and Loan Guarantees.

REA, in its effort to assure the best, most cost-effective telecommunications service for rural America, proposes to revise Bulletin 345–52 to include the newly prepared PC–5B. This action will provide REA borrowers, contractors, engineers, and other interested parties with detailed information on station installation practices. All written submissions made pursuant to this action will be made available for public inspection during regular business hours, at the above address.

Dated: December 19, 1980.

John H. Arnesen,

Assistant Administrator—Telephone.

[FR Doc. 81–802 Filed 1–12–81; 8:45 am]

BILLING CODE 3410–15–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 7

Contract Market Rules; Disapproval and Alteration

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Rule.

SUMMARY: The Commission is publishing notice of its proposed disapproval of the Chicago Board of Trade's ("CBT" or "Exchange") proposed rules which restrict the ability of customers to arbitrate Exchange-related claims and its proposed alteration of the Exchange's arbitration rules to assure the participation of Exchange members and employees thereof in Exchange arbitration proceedings. The Commission is acting because the CBT has failed to make such amendments in response to the Commission's request under Section 8a(7) of the Commodity Exchange Act ("Act"). If the Commission alters the CBT's arbitration rules, those rules would require Exchange members and their employees to participate in Exchange arbitration proceedings when customers choose that forum, as required under Section 5a(11) of the Act and implemented under Part 180 of the Commission's regulations thereunder.

DATE: Comments must be received on or before February 12, 1981.

ADDRESS: Interested persons should submit comments to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581; Attention: Office of the Secretariat.

FOR FURTHER INFORMATION CONTACT: Christine A. Rock, Attorney Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581; Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: By letter dated July 8, 1980, the Commission requested, pursuant to Section 8a(7) of the Act,[1] that the CBT alter or supplement its arbitration regulations. The Commission acted because the CBT's existing regulations governing the arbitration of Exchange-related claims do not provide for the mandatory participation of members of the Exchange or employees thereof in arbitration proceedings initiated by customers, as required by Section 5a(11) of the Act[2] and implemented by the Commission's regulations thereunder, 17 CFR Part 180 (1980). The Commission stated in its letter that if the CBT did not submit new proposed regulations to the Commission under Section 5a(12) of the Act[3] within 60 days of the date of the letter, the Commission would, pursuant to Section 8a(7) of the Act, consider whether it would be necessary or appropriate to alter or supplement the Exchange's regulations relating to arbitration proceedings invoked by customers. Further, the Commission advised the CBT that if the Exchange failed to amend its rules as requested, the Commission would consider whether proposed regulations 620.01(B) and 640.04, as initially submitted by the Exchange, should be disapproved pursuant to Section 5a(12) of the Act.[4]

[1] 7 U.S.C. 12a(7) (1976).

[2] 7 U.S.C. 7a(11) (1976), (Supp. III 1979).

[3] 7 U.S.C. 7a(12) (1979) (Supp. III 1979).

[4] Proposed regulations 620.01(B) and 640.04 initially were submitted to the Commission in a letter dated February 3, 1977, from Gerald Beyer.

Footnotes continued on next page

Proposed regulations 620.01(B) and 640.04, as interpreted by the CBT, would permit members of the Exchange or employees thereof to refuse to participate in proceedings initiated by customers.[5]

To date, the CBT has failed to amend its rules governing arbitration proceedings as requested by the Commission and required by Section 5a(11) of the Act and implemented by Part 180 of the Commission's [6] regulations. Accordingly, the Commission is proposing to disapprove CBT proposed regulations 620.01(B) and 640.04 which, as interpreted by the CBT, would not require members or their employees to participate in arbitration proceedings initiated by customers. In addition, the Commission is proposing to alter and supplement existing CBT rules concerning Exchange arbitration procedures so that a customer will have an opportunity, as set forth in Section 5a(11) of the Act, to require a member or its employee to participate in an Exchange-sponsored arbitration proceeding. The reasons for the Commission's action are stated in its letter to the CBT, by which the Commission requested that these alternations be made. The text of that letter is as follows:

July 8, 1980.

Re: Customer Arbitration; Request Pursuant to Section 8a(7) of the Commodity Exchange Act.

Mr. Thomas R. Donovan,

Secretary, Chicago Board of Trade, 141 West Jackson Boulevard, Chicago, Illinois 60606.

Dear Mr. Donovan: The Commission has reviewed proposed regulations 620.01(B) and 640.04 (formerly proposed regulations 1705(B) and 1725 respectively) of the Chicago Board of Trade ("Exchange"). These proposed regulations were submitted for Commission approval, pursuant to Section 5a(12) of the Commodity Exchange Act, as amended ("Act").

As part of its examination of these new regulations, the Commission has considered the information provided by the Exchange in letters dated March 11, 1977, October 27, 1978, and March 6, 1979. Based on that information, the Commission understands that these regulations, as interpreted by the Exchange, would permit a member of the Exchange or an employee of a member to refuse to submit to arbitration of claims even if a customer chooses that forum. The Commission believes that proposed regulations 620.01(B) and 640.04, as so interpreted, may violate certain provisions of the Act and be contrary to the public interest. For the following reasons, the Commission does not believe that the Exchange's justification of these proposed new regulations is persuasive.

Section 5a(11) of the Act

Section 5a(11) of the Act places an affirmative duty on a contract market to provide customers with a "fair and equitable procedure" for the settlement of their claims. Part 180 of the Commission's regulations sets forth minimum requirements to be followed by a contract market when adopting a customer claim and grievance procedure. These requirements would be meaningless and of no effect if exchanges did not require contract market members to participate in arbitration proceedings initiated by customers.

Section 5a(11)(i) of the Act

The provision in Section 51(11)(i) of the Act that "the use of such procedure by a customer shall be voluntary" refers specifically to customers, not members or employees of a contract market. In the absence of that language, Section 5a(11) would require the contract market to establish an arbitration procedure which either customers or members of the Exchange could invoke and enforce against each other as a matter of right. By specifically providing that the use of arbitration by customers shall be voluntary, the Commission does not believe that Congress intended members to be able to refuse to be subject to exchange arbitration proceedings. As further evidence of this intent, the Commission notes that the term "parties" is used in Section 5a(11)(iii) of the Act where Congress clearly intended to adopt a standard equally applicable to both customers and members.

Section 5a(11)(iii) of the Act

The Commission is aware that Section 5a(11)(iii) of the Act provides that the arbitration procedure established by the contract market "shall not result in any compulsory payment except as agreed upon between the parties." Section 5a(11) would have little purpose or meaning if proviso (iii) were interpreted to permit members or employees to refuse to participate in an arbitration proceeding brought by a customer. The reference in proviso (iii) to any "compulsory payment" resulting from "the procedure" refers to a payment other than or in addition to the award rendered on the merits of a claim or grievance—payments involving, for example, counterclaims which are beyond the subject of the original claim.

* * * * *

Pursuant to Section 8a(7), the Commission hereby requests that the Exchange alter or supplement its arbitration regulations to require members to submit to customer arbitration and, within sixty days of the date of this letter, file with the Commission new proposed regulations under Section 5a(12) of the Act. Attached are proposed regulations which the Commission believes would comply with the Act and applicable Commission regulations.

If the Exchange fails to file such a submission, the Commission will, pursuant to Section 8a(7) of the Act, consider whether it would be necessary or appropriate to alter or supplement the Exchange's rules relating to arbitration with respect to requiring members to submit to arbitration proceedings invoked by customers to protect persons trading, and to insure fair dealing, in commodities traded on the Chicago Board of Trade and consider whether regulations 620.01(B) and 640.04, as submitted and interpreted by the Exchange, should be disapproved pursuant to Section 5a(12) of the Act.

Very truly yours,

Jane K. Stuckey,

Secretary of the Commission.

As noted in the letter, the Commission attached proposed language by which the Exchange could amend regulations 620.01 and 640.04 in a manner consistent with the concerns expressed in the Commission's letter. The Commission has set forth below the changes in the CBT's proposed regulations which it believes are necessary to respond to those concerns. The Commission notes that, upon further consideration of the language of these proposed regulations, it is suggesting one additional language change (discussed below) which it believes is necessary to assure Arbitration Committee or Mixed Panel

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Footnotes continued from last page

then Secretary of the CBT, to the Executive Secretariat of the Commission.

[5] In a series of letters to the Commission and its staff, the CBT took the position that Section 5a(11), as implemented under 17 CFR Part 180, does not require members of the Exchange to submit to the arbitration of claims when a customer initiates such a proceeding. Letters from Bernard F. Doyle, Jr., then House Counsel of the CBT, to John G. Caine, General Counsel of the Commission, dated March 6, 1978; to William F. Teuting, then Associate Director of the Division of Trading and Markets, dated October 27, 1978; to Barbara Salmanson, then Staff Attorney of the Division of Trading and Markets, dated March 11, 1977; and to the Executive Secretariat of the Commission, dated March 7, 1977. All other exchanges have submitted arbitration rules which, in accordance with Section 5a(11) of the Act and implemented by Part 180 of the Commission's regulations, require their members to participate in arbitration proceedings initiated by customers, and the Commission has approved all such rules.

[6] The CBT responded to the Commission's request with letters dated August 29, and September 15, 1980, by which it submitted, pursuant to Section 5a(12) of the Act, revised versions of proposed regulations 620.01(B) and 640.04 as well as proposed amendments to regulation 603.01(B). As required by Commission regulation 1.41(b)(2), the CBT represented in its August 29 and September 15 submissions that its Board of Directors had approved the prpoosals pursuant to CBT rule 132.00 and that such approval constituted final Exchange action upon the proposals. Contrary to its earlier representation that all necessary Exchange action on the proposals had been completed, the CBT later determined that a membership vote on the new proposals was required and, by letter dated October 21, 1980, the CBT requested withdrawal of its submission of the revised version of proposed regulations 620.01(B), 640.04 and the amendments to regulation 603.01(B). On November 25, 1980, the CBT's membership voted 411 to 229 4/6 against the revised version of the CBT's proposed customer arbitration regulations. The CBT's initial proposal, as submitted in 1977, remains pending before the Commission and is the subject of this proposed disapproval action.

jurisdiction over all customer-initiated claims.[1]

CBT regulation 620.01 as currently proposed by the Exchange requires all parties to an arbitration proceeding to sign an arbitration agreement as a condition for initiating an Exchange arbitration proceeding. In addition to altering the CBT's arbitration regulations explicitly to require that members or employees thereof submit to a customer-initiated arbitration proceeding, the Commission would also alter the CBT's regulations to assure that the refusal of a member or an employee thereof to sign an arbitration submission agreement would not deprive the Arbitration Committee or a Mixed Panel of jurisdiction to arbitrate a customer's claim. The text of the Commission's proposed alterations of the CBT's arbitration regulations follows:

§ 7.201 Regulation 620.01(B).

Customers' Claims and Grievances. The Arbitration Committee and Mixed Panels constituted pursuant to Regulation 1706 have jurisdiction to arbitrate all customers' claims and grievances not in excess of $15,000 against any member or employee thereof which have arisen prior to the date the customer's claim is asserted. If the customer elects to initiate an arbitration proceeding of any customer claim or grievance, the member shall submit to arbitration in accordance with these Arbitration Rules and Regulations. The arbitration shall be initiated by delivery to the Administrator of (1) a Statement of Claim and a "Chicago Board of Trade Arbitration Submission Agreement for Customers' Claims and Grievances" signed by the customer or (2) a Statement of Claim and another arbitration agreement between the parties, which agreement conforms in all respects with any applicable requirements prescribed by the Commodity Futures Trading Commission. The refusal of any member or employee to sign the "Chicago Board of Trade Arbitration Submission Agreement for Customers' Claims and Grievances" shall not deprive the Arbitration Committee or a Mixed Panel constituted pursuant to Regulation 1706 of jurisdiction to arbitrate customers' claims under these Arbitration Rules and Regulations. The Committee and Mixed Panels have jurisdiction to arbitrate a counterclaim asserted in such an arbitration, but only if it arises out of the transaction or occurrence that is the subject of the customers' claim or grievance, does not require for adjudication the presence of essential witnesses, parties or third persons over whom the Association does not have jurisdiction, and is not for an amount in excess of $15,000. Other counterclaims are subject to arbitration by the Committee, or a Mixed Panel, only if the customer agrees to the submission after the counterclaim has arisen, and if the aggregate monetary value of the counterclaim is capable of calculation and does not exceed $15,000.

§ 7.202 Regulation 640.04.

Arbitrators may decline jurisdiction in any case, except as may be asserted by a customer under regulation 620.01(B) or as provided by law. The Arbitrators may at any time during the proceeding, other than a proceeding initiated by a customer pursuant to regulation 620.01(B) or as provided by law, and shall, upon joint request of the parties, dismiss the proceeding.

In view of the foregoing, the Commission hereby gives notice of its proposal to alter or supplement, pursuant to Section 8a(7) of the Act, the arbitration regulations of the CBT and to consider disapproval, pursuant to Section 5a(12) of the Act, of proposed regulations 620.01(B) and 640.04 as submitted by the Exchange. Any person interested in submittting written data, views and arguments on this matter should submit such comments by February 12, 1981, to Jane K. Stuckey, Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

Issued in Washington D.C., on January 7, 1981, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-1166 Filed 1-12-81; 8:45 am]

BILLING CODE 6351-01-M

[1] The Commission notes that the objective of this proceeding under Section 8a(7) of the Act is not to alter the CBT's regulations with particular language, but rather to assure that the objective of an Exchange forum for customer-initiated arbitration proceedings is assured. The Commission notes further that in suggesting proposed language for the alteration of the CBT's arbitration regulations, it essentially has taken language proposed by the CBT, amending that language only to assure the objectives of Section 5a(11) of the Act, as implemented by Part 180 of the Commission's regulations. The Commission will consider alternative language proposed by commentators by which the CBT's regulations could provide equal assurance of an unimpeded opportunity for the arbitration of customer claims against members or employees thereof.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 20, and 899

[Docket No. 80N-0002]

Alpha-Fetoprotein Test Kits; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is granting requests to extend the time for submission of comments on the proposed rule to restrict the sale, distribution, and use of alpha-fetoprotein test kits and is denying requests to reschedule to a later date the hearing on this proposal.

DATE: The deadline for written comments is extended until February 20, 1981.

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

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Bureau of Medical Devices (HFK-70), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7114.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 7, 1980 (45 FR 74158), FDA published for public comment a proposed rule that would, if published as a final rule, restrict the sale, distribution, and use of alpha-fetoprotein test kits. The proposed rule was subject to a 60-day comment period which was scheduled to close January 6, 1981, and a public hearing to be held on January 15, 1981. FDA has received several requests to extend the comment period and to reschedule the public hearing, because of the complexity of the proposal and the intervening holiday period.

FDA agrees that the proposal is complex and potentially far-reaching and believes that it is in the public interest to grant additional time for the preparation and submission of meaningful comments. The Commissioner of Food and Drugs, therefore, finds in accordance with section 520(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.

360j(d)(2)) that good cause exists to grant, and is granting, a 45-day extension of the comment period to February 20, 1981.

The request to reschedule the public hearing to a later date is denied because all arrangements have been made and FDA has already received over 40 notices of participation from persons planning to attend the hearing as scheduled.

Dated: January 5, 1981.

Joseph P. Hile

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-938 Filed 1-7-81; 3:05 pm]

BILLING CODE 4110-03-M

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21 CFR Parts 16, 20, 899

[Docket No. 80N-0002]

Alpha-Fetoprotein Test Kits

Correction

In FR Doc. 80-34052, appearing at page 74158 in the issue of Friday, November 7, 1980, the following changes should be made:

1. On page 74159, second column, the ninth line of the first complete paragraph should read, "under section 520(e) of the act (21 U.S.C.".

2. On page 74160, first column, between the first and second words in the third line of the first complete paragraph, insert the words, "on which FDA particularly seeks comments. In addition to these questions".

3. On page 74169, third column, the fourth and fifth lines of the first complete paragraph should read, "given to funding participation in formal evidentiary public hearings under Part 12".

BILLING CODE 1505-01-M

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21 CFR Part 310

[Docket No. 80N-0357]

Hair Grower and Hair Loss Prevention Drug Products for Over-the-Counter Human Use

Correction

In FR Doc. 80-34724, appearing at page 73955 in the issue of Friday, November 7, 1980, the third line of the paragraph beginning, "For Further Information Contact:" should read, "(HFD-510), Food and Drug".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 114

[Docket No. R-81-903]

Prohibitions Against Discrimination; Transmittal of Proposed Rule to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of Transmittal of Proposed Rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review. This rule would describe HUD's interpretation of the Federal Fair Housing Law, Title VIII of the Civil Rights Act of 1968, including: the scope of coverage of Title VIII, the types of complaints which will be accepted for investigation, the standards HUD will use in determinating whether an alleged discriminatory housing practice has occurred, and the conduct made unlawful by Title VIII in matters relating to Sales and Rental/Steering, Financing, Property Insurance, and Appraisal activities.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street SW., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document: 24 CFR Part 114, Subparts A through I—Prohibitions Aganist Discrimination.

(Sec. 7(o), Department of HUD Act, 42 U.S.C. 3535(o); sec. 324 Housing and Community Development Amendments of 1978).

Issued at Washington, D.C. January 8, 1981.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 81-1145 Filed 1-12-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Surface Coal Mining and Reclamation and Enforcement Under Federal Program for Kentucky

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Notice of intent to prepare Federal Program, Suspension of Kentucky schedule for State program resubmission, and Notice of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) was advised by the State of Kentucky of the existence of an restraining order issued on October 31, 1980, by the Martin Circuit Court for Martin County, Kentucky, enjoining the State from submitting or resubmitting a State program to the Department of the Interior. Accordingly, the Secretary of the Interior is temporarily suspending the Kentucky schedule for resubmission and is initiating action to prepare a Federal program for the regulation of surface coal exploration, mining and reclamation on non-Federal and non-Indian lands in Kentucky. The Federal program will not be implemented before December 22, 1981, unless the restraining order ends or is no longer determined effective under Section 503(d) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* In any event, Kentucky will be given the opportunity to resubmit a state program before a Federal program is implemented. If Kentucky does resubmit, the program will be reviewed in accordance with the Secretary's regulations. A Federal program will be implemented only if the State fails to resubmit, or if the resubmitted program is disapproved. Public comment is also being sought on the preparation of a Federal program for Kentucky and on Kentucky's actions under the interim program.

DATE: Public comments must be received by OSM by 5:00 p.m., February 12, 1981.

ADDRESS: Information and comments should be sent to: Office of Surface Mining, Room 153, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, OSM, State and Federal Programs, 1951 Constitution Avenue, N.W., U.S.

Department of the Interior, Washington, D.C. 20240, (202) 343–4225.

SUPPLEMENTARY INFORMATION: Under the Surface Mining Control and Reclamation Act of 1977, a State which seeks to regulate surface coal mining and reclamation operations within its border may apply to the Secretary of the Interior for approval of a State program. In order for a program to be approved, a State must develop a program that contains laws and regulations which are consistent with the Act and the regulations of the Secretary of the Interior. The Act says that once a State makes a program submission, the Secretary of the Interior has six months in which to consider the State's application. At the end of that six-month period, the Secretary has to decide whether to approve, conditionally approve, approve in part and disapprove in part, or completely disapprove the State program submission. If the Secretary only partially or completely disapproves the State program submission, the State, under normal conditions, has sixty days to revise and resubmit its program. The statute then gives the Secretary sixty days to consider the resubmitted program and to make a final decision. If, after the end of this ten month period, the Secretary is unable to approve or conditionally approve the State program, he is required to promulgate a Federal program.

As announced in the October 22, 1980, **Federal Register** notice, 45 FR 69940, the Secretary of the Interior reviewed the State of Kentucky's initial program submission and partially approved and partially disapproved that program. Kentucky had until December 22, 1980, to resubmit a revised program.

By letter on November 6, 1980, Elmore C. Grim, Commissioner of Kentucky's Bureau of Surface Mining Reclamation and Enforcement, informed the Office of Surface Mining that the Kentucky Department for Natural Resources and Environmental Protection was enjoined on October 31, 1980, by the Martin Circuit Court of Martin County, Kentucky, from submitting to the Secretary of the Interior a State program for the regulation of surface coal mining and reclamation operations. The Restraining Order by the Martin Circuit Court remains in effect until further order of the court. Kentucky did not resubmit a program by the December 22, 1980, deadline.

Section 503(d) of the Surface Mining Control and Reclamation Act provides:

> . . . [T]he inability of State to take any action, the purpose of which is to prepare, submit or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result * * * in the imposition of a Federal program. Regulations of the surface coal mining and reclamation operations covered or to be covered by the State program subject to an injunction shall be conducted by the State pursuant to Section 502 of this Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of Section 503 and 504 shall again be fully applicable.

The Secretary has completed all the actions in the review of the Kentucky State program that can be done without further participation by the State of Kentucky. Because the Secretary of the Interior has received notification that the State of Kentucky is enjoined from taking further formal action, the Secretary is temporarily suspending the State program approval process for Kentucky as of October 31, 1980, (the date of the restraining order), which was the 9th day of the 60 days that Kentucky had for resubmission.

The effect of this action is that federal enforcement of the interim program requirements, e.g., two federal inspections per year of each mine or regulated facility, will continue until the restraining order is lifted, expires, or is determined not to invoke the operation of Section 503(d). Since the Act allows the State access to its reserved portion of the Abandoned Mine Land Fund only after it has achieved regulatory primacy, Kentucky's access to the Fund must be delayed. The amount currently reserved for Kentucky is $43,102,928.35.

The Secretary has considered various options in rescheduling Kentucky's State program approval process. First, because the 60 day resubmission period expired on December 22, 1980, and because the restraining order gives Kentucky more time than the 60 days normally allowed, Kentucky could be required to resubmit its State program on the day the restraining order is lifted. However, an immediate deadline for resubmission after the restraining order is lifted appears abrupt and would ignore the fact that Kentucky still had 51 days remaining in its 60-day resubmittal period when the restraining order was issued. Second, Kentucky could be given 60 days after the lifting of the restraining order to resubmit its State program. However, 60 additional days appears excessive, because (1) Kentucky has already had 9 days to develop its resubmission, (2) it would be unfair to other States which only had 60 days to resubmit and (3) the operation of the restraining order has already given Kentucky considerably more time than the normal 60 days to develop an acceptable program. Third, Kentucky could be given the amount of time it had remaining to resubmit its program, 51 days. This would take into account the time Kentucky already had for resubmission, would be fair to other States involved in the process, and would be a reasonable deadline for the State to meet.

The Secretary has chosen the third option. Beginning on October 31, 1981, or, if the restraining order is lifted or determined to be ineffective before that date, then on the date when the restraining order is lifted or determined ineffective, Kentucky will have 51 days to resubmit an acceptable program. In any event, the deadline for Kentucky's resubmission will not be later than December 22, 1981. The Secretary will make every effort to notify Kentucky by letter prior to that date for resubmission in order to assist Kentucky in meeting the deadline.

The legislative history of Section 503(d) indicates that its purpose is to avoid penalizing States which make good faith efforts to comply with the Act but are prevented by court action from achieving full compliance. Where, however, attendant circumstances lead the Secretary to determine that an injunction does not invoke the operation of Section 503(d), or that the State has failed to make a good faith effort to comply with the Act, the Secretary will not suspend the statutory timetable for State programs beyond the date of such determination. The Secretary has not yet determined, at this time, whether Section 503(d) is applicable in Kentucky. The Secretary is reviewing the circumstances under which the restraining order was entered and the jurisdictional competence of the State court to hear the matter. The Secretary believes that the delay and relief available under Section 503(d) is limited to those States which are seeking in good faith to prepare and adopt a permanent surface coal mining and reclamation program. Section 503 is not meant to be used as an artifice or device to avoid the requirements of the Surface Mining Act. Section 503(d) does not provide general authority to extend the statutory timetable established under that Act. Accordingly, the Secretary requests public comment on the issues bearing upon the applicability of Section 503(d) in Kentucky. If, after review, the Secretary determines that Section 503(d) is inapplicable to Kentucky under the circumstances, Kentucky will have 51 days from the date of such determination within which to resubmit an acceptable State program. If it fails to do so, the Secretary will implement a Federal program for Kentucky in

accordance with Section 504 of the Act. Until a determination is made, the Secretary will presume that Section 503(d) applies, and thus will suspend the running of the resubmission period provided by Section 503(c). However, the Secretary expressly reserves the right to take appropriate action if he concludes that the circumstances surrounding the entry of the injunction warrant doing so.

Section 503(d) also requires a State which is subject to an injunction prohibiting resubmission of a State program to regulate surface coal mining and reclamation operations pursuant to Section 502 of the Act (the interim program) until such time as the injunction terminates or until one year after the injunction is entered, whichever comes first. The Secretary construes Section 503(d) of the Act to authorize implementation of a Federal program if a State fails to implement Section 502 during the term of an injunction. Thus, while the Secretary fully endorses the intent of Congress to have the State assume regulatory primacy under the Act, he also is required to implement a Federal program in cases where that becomes necessary because of a State's failure to carry out its responsibilities under Section 502.

Consequently, the Secretary is also examining the compliance by the State of Kentucky with Section 502 of the Surface Mining Control and Reclamation Act and the interim program regulations issued by the Department of the Interior related to Section 502 (42 FR 62639, December 13, 1977). Within the next three months and after receipt of public comments and completion of this preliminary analysis, the Secretary will decide what further steps are necessary and should be taken. At that time, he may conclude that there is no basis for further examination because the State of Kentucky is adequately enforcing the requirements of Section 502 of the Act; alternatively, he may decide that there is the need for a public hearing or additional public comment. If the Secretary ultimately determines there is a lack of compliance, he will recommence the State program review process after appropriate notice to Kentucky.

One additional effect of the restraining order, if it runs a full year, is to delay the permanent program in Kentucky for a period of approximately eight to twelve months beyond that applicable to most other States in the country. In addition, if Kentucky is ultimately unsuccessful in obtaining approval of its program, the Secretary will then have to adopt a Federal program for that State. This could cause an additional delay of six months or more if the process for adoption of the Federal program were delayed until after the injunction is lifted.

To reduce the potential dely in the application of the permanent surface coal mining reclamation program in Kentucky if a Federal program becomes necessary, the Secretary has decided to begin preparation of a Federal program for Kentucky within the next three months. This action is considered necessary both to reduce the time during which the environmental objectives established by Congress are not fully achieved because a permanent program has not been implemented and to reduce the potential for competitive economic disadvantages among States because implementation of permanent programs in the different States are unlikely to be concurrent. The Secretary will not actually implement this program until Kentucky either fails to meet the 51 day deadline to resubmit its program or resubmits but fails to obtain approval of its program.

In the meantime, the Secretary has instructed the Director of the Office of Surface Mining to make every effort during the period of the restraining order to accomplish the following: (1) work with the State toward correcting the remaining deficiencies in its proposed program to the extent the State can participate in such an effort, given the existence of the restraining order; (2) ensure that the Federal enforcement program under Section 502 is diligently pursued in order to obtain compliance with the provisions of the Act and the interim program regulations; and (3) determine whether Kentucky is adequately carrying out its responsibilities under Section 502 of the Act.

A major purpose of this notice is to seek public comment on preparing a Federal program in Kentucky and to receive specific suggestions for how the Secretary of the Interior ought to adopt or modify the permanent program regulations to meet the local conditions in the State of Kentucky. Section 504(a) of the Act and 30 CFR 736.22(a)(1) require that each Federal program consider the nature of the topography soils, climate and biological, chemical, geological, hydrological, agronomic and other physical conditions of the State involved. For important information, the reader is referred to "General Background on the Permanent Program" and "Criteria for Promulgating Federal programs" previously published in the **Federal Register** on May 16, 1980 (45 FR 32328). That notice explains how the Secretary will consider unique conditions in a State, how existing State laws will be considered, and what standards will be used in adopting regulations. The reader should also refer to the Secretary's decision concerning the Kentucky program published in the **Federal Register** on October 22, 1980. (45 FR 68940 *et seq.*)

This action of proposing the preparation of a contingent Federal program for Kentucky is not significant under the criteria of Executive Order 12044 and 43 CFR Part 14 and does not require preparation of regulatory analysis, nor is this action a major Federal action significantly affecting the environment under the National Environmental Policy Act.

Public Comment Period: the comment period announced in this notice will extend until February 12, 1981. All written comments must be received at the address given above by 5:00 p.m. on the date.

Comments on the preparation of a Federal program received after that hour will not be considered in drafting the proposed Federal program; they will be considered to the extent applicable in subsequent actions under that program.

Dated: January 6, 1981.

Joan Davenport,

Assistant Secretary, Energy and Minerals.

[FR Doc. 81-1183 Filed 1-12-81; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[OPTS 00020; TSH-FRC 1724-4]

Administrator's Toxic Substances Advisory Committee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule related notice.

SUMMARY: There will be a meeting of the Administrator's Toxic Substances Advisory Committee to discuss matters related to EPA's implementation of the Toxic Substances Control Act (Pub. L. 94-569). The meeting will be open to the public.

DATES: The meeting will be held from 9:15 a.m. to 5:00 p.m. on Thursday, January 29, 1981, and from 8:30 a.m. to 12:45 p.m. on Friday, January 30, 1981.

ADDRESS: The meeting will be held in: Environmental Protection Agency, Rm. 3906-Rm. 3908, Waterside Mall, 401 M Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Marsha Ramsay, Executive Secretary, Administrator's Toxic Substances Advisory Committee (TS-777), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, (202-755-4854).

SUPPLEMENTARY INFORMATION: The Thursday agenda includes a presentation and discussion of "Supporting Innovation: A Policy Study," which was prepared under the direction of Professor Nicholas Ashford of the Massachusetts Institute of Technology. At the Thursday afternoon session, time will be set aside for study group work sessions. On Friday, January 30, an update on the implementation of the Toxic Substances Control Act will be presented.

The meeting will be open to the public and time will be set aside for public comments concerning the work of the Committee. Any member of the public wishing to present an oral or written statement relating to the Committee's work should contact Ms. Marsha Ramsay at the address or phone number listed above.

Dated: January 6, 1981.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 81-1111 Filed 1-12-81; 8:45 am]

BILLING CODE 6560-31-M

40 CFR Part 61

[AD-FRL 1725-1]

National Emission Standards for Hazardous Air Pollutants; Test Methods—Revisions and Addition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of Public Comment Period.

SUMMARY: The public comment period for the proposed revisions to test Methods 101 and 102, and the addition of test Method 111, to the National Emission Standards for hazardous air pollutants has been extended 60 days to allow sufficient time for interested parties to review and comment. The extension is being made due to delay in distributing copies of the Federal Register notice.

DATES: *Comments.* Written comments (in duplicate if possible) must be postmarked no later than February 13, 1981.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket Number A-79-45, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Shigehara (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION: On October 15, 1980, EPA proposed in the **Federal Register** (45 FR 68514) revisions to Methods 101 and 102 and addition of Method 111. Methods 101 and 102 are used to determine mercury emissions from chlor-alkali plants and Method 111 is used to determine mercury emissions from sewage sludge incinerators.

Today's notice extends the public comment period for the proposed revisions and addition.

Dated: January 6, 1981.

Edward F. Tuerk,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 81-1168 Filed 1-12-81; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 136

[RD-FRL 1724-5]

Guidelines Establishing Test Procedures for the Analysis of Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of Comment Period on Proposed Rulemaking.

SUMMARY: EPA is today making available for public comment the transcript of a meeting held on January 5, 1981 between EPA staff personnel and representatives of the Analytical Task Group of the Chemical Manufacturing Association. EPA Is also making available certain documents which were mentioned or discussed at that meeting. EPA invites the public to review these materials and comment on them. The comment period is hereby reopened until 20 days from the date of publication of this notice to allow comments on these materials.

DATES: Comments on these reports are due no later than February 2, 1981.

ADDRESSES: Comments should be addressed to Dr. Robert B. Medz, Monitoring Technology Division, Office of Research and Development, Environmental Protection Agency (RD-680) 401 M St. SW., Washington, D.C. 20460. Copies of the meeting transcript and other documents described in this notice are available for reading at the EPA Public Information Reference Unit (Room 2404) at 401 M St. SW., Washington, D.C. and at all EPA Regional Office libraries during the hours of 9 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Robert B. Medz at the address listed above or call (202) 426-4727.

SUPPLEMENTARY INFORMATION: On December 3, 1979 EPA proposed to amend its lists of approved analytical techniques by adding test procedures for 113 organic toxic pollutants, a procedure for carbonaceous BOD_5 and requirements for sample preservation and holding times (44 FR 69464 et seq. December 3, 1979). All comments were due on or before February 1, 1980. The comment period was thereafter extended to April 28, 1980. Subsequently, at the request of the Analytical Task Group of the Chemical Manufacturers Association, a meeting was held at EPA headquarters upon January 5, 1980, to afford the Task Group an opportunity to make further comments on the proposal. Comments received at this meeting were limited entirely to technical issues relating to the proposed test methods. The transcript of that meeting and materials discussed at the meeting are hereby made available for public review and comment, and the comment period is reopened for a 20 day period for this purpose.

Dated: January 6, 1981.

Courtney Riordan,

Acting Assistant Administrator for Research and Development.

[FR Doc. 81-1169 Filed 1-12-81; 8:45 am]

BILLING CODE 6560-35-M

40 CFR Part 763

[OPTS-61004A; TSH-FRC 1725-2]

Friable Asbestos-Containing Materials in Schools; Proposed Identification and Notification; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: In the **Federal Register** issue of September 17, 1980 (45 FR 61966), EPA issued a proposed rule to reduce risks of exposure to asbestos-containing materials in schools. This notice corrects the numbering assignment of sections in Subpart F of Part 763.

FOR FURTHER INFORMATION CONTACT: John Richards, Chief, Federal Register Staff (TS-788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. EB-42, 401 M St. SW., Washington, DC 20460 (202-426-2432).

SUPPLEMENTARY INFORMATION: On September 17, 1980 (45 FR 61966), EPA

issued a proposed rule to reduce risks of exposure to asbestos-containing materials in schools. The numbering assignments of section in Subpart F of Part 763 of the proposal were incorrect. Accordingly, the section numbers in FR Doc. 80-28624, appearing at page 61966 are corrected wherever they appear, to read as follows:

New No.	Subject	Old No.
763.100	Scope and purpose	763.1
763.103	Definitions	763.2
763.105	Inspection for friable materials	763.3
763.106	Sampling friable materials	763.4
763.107	Analyzing friable materials	763.5
763.113	Warnings and notification	763.6
763.116	Recordkeeping	763.7
763.117	Optional recording form for schools	763.8
763.118	Compliance	763.9
763.119	Exemptions	763.10

Dated: January 8, 1981.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 81-1110 Filed 1-12-81; 8:45 am]

BILLING CODE 6560-31-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1307

Benzene-Containing Consumer Products; Proposed Withdrawal of Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Proposal to withdraw proposed ban.

SUMMARY: Based on information indicating that benzene, as currently used in consumer products, does not present a significant risk to consumers, the Commission proposes to withdraw its proposed ban of consumer products, except gasoline and solvents or reagents for laboratory use, containing benzene as an intentional ingredient or as a contaminant at a level of 0.1 percent or greater by volume. The proposed ban was published on May 19, 1978. January 13, 1981 is the date on which the Commission is now obligated to either publish a final banning rule or withdraw the proposal to ban. Since the Commission wishes to obtain public comments on withdrawal of the proposed ban before the effective date of the withdrawal, the Commission extends its decision date from January 13, 1981 to May 13, 1981.

DATE: Comments, preferably in five copies, are due on or before March 13, 1981. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments on this proposal to withdraw the proposed ban should be addressed to: Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Copies of the staff briefing packages and related materials on benzene are available at the Office of the Secretary, 1111 18th St., N.W., 3rd Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Rory Sean Fausett, Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6984.

SUPPLEMENTARY INFORMATION:

Background

On May 19, 1978, the Commission proposed a ban under section 8 of the Consumer Product Safety Act (CPSA) of all consumer products, except gasoline and solvents or reagents for laboratory use, containing benzene as an intentional ingredient or as a contaminant at a level of 0.1 percent or greater by volume. (See 43 FR 21838.) Based on the information discussed in the proposal, the Commission had preliminarily concluded that benzene-containing consumer products present an unreasonable risk of injury to the public because benzene inhalation can cause blood disorders, chromosomal abnormalities, and leukemia. The Commission also preliminarily concluded that no feasible safety standard could adequately protect the public from these risks.

The Commission received a total of 44 written comments as well as 6 oral presentations concerning the proposed ban. Many of the comments criticized the proposal and raised complex scientific and technical issues, including the claim that there is no evidence that low levels of exposure to benzene constitute a health hazard, the assertion that the Commission's risk assessment was inadequate, and the claim that the proposed contamination level is neither justified nor commercially feasible. In order to address these comments adequately and to obtain and evaluate additional scientific and economic data, the Commission, on October 10, 1978 (43 FR 47197), on April 16, 1979 (44 FR 22499), on April 15, 1980 (45 FR 25409), and on October 16, 1980 (45 FR 68662) extended the time in which it must publish a final rule or withdraw the proposal. This time currently expires on January 13, 1981.

It should also be noted that on July 1, 1980, the Commission issued a general order (see 45 FR 44554) requiring any firms which have manufactured, imported, or labeled any consumer products, except gasoline, containing benzene as an intentional ingredient since January 1, 1979 to provide the Commission with specified information concerning such products. In addition, firms are required to update the information or report new uses of benzene as an intentional ingredient in consumer products for a one year period. The Commission received six responses to the general order, all indicating no use of benzene as an intentional ingredient in consumer products.

Economic Information

At the time the regulation was proposed, information available to the Commission indicated that there were only two classes of consumer products which contained benzene as an intentional ingredient: paint strippers and rubber cements. Four producers of these products were known at that time to be using benzene as an intentional ingredient. Contact with these firms by Commission staff in September, 1978 revealed that all of the firms, including one other firm that repackaged pure benzene, had stopped buying benzene and would be out of benzene inventories by the end of 1978. This information is consistent with the conclusion of a report prepared for the Commission by Battelle, Columbus Laboratories, that benzene is no longer used intentionally in consumer products. (See "Analysis of Technical and Economic Feasibility of a Ban on Consumer Products Containing 0.1 Percent or More Benzene," December, 1978. Copies of this report are available in the Office of the Secretary of the Commission.) The information is also consistent with the responses to the benzene general order, discussed above, all of which indicated that benzene is not currently used as an intentional ingredient in consumer products. Based on this information, the Commission staff has concluded that it is likely that only a very small and diminishing amount of products containing benzene as an intentional ingredient remain available for sale at the retail level.

The proposed banning regulation noted that there were some consumer products which contained benzene as a contaminant at a level of 0.1 percent or greater and which would be affected by the ban. However, the ban was not expected to be burdensome to manufactures or consumers since supplies of solvents with low benzene contamination levels were sufficiently available for consumer product needs. Subsequent to the proposal, the Battelle report, cited above, concluded that, except for stove and lantern fuel and

engine oil flush, consumer products were being or easily could be formulated to contain less than 0.1 percent benzene contaminant. The report also noted that the benzene levels of the commercially available hydrocarbon solvents that typically contain contaminant benzene (i.e., toluene, hexane, heptane, rubber solvent, lacquer diluent) vary from less than 0.1 to greater than one percent benzene.

In early 1980, the Commission staff conducted a limited market survey of selected consumer products to determine their benzene content. Thirteen product classifications, including penetrating oils, carburetor cleaners, contact cements, model cements and paints, stove and lantern fuels, paint brush cleaners, lacquer thinners, oil-base wood stains, leather stains, paint removers, rubber cements, cigarette lighter fluids, and leather waterproofing agents, were analyzed for their benzene content. The data obtained from this limited survey indicated that benzene is not an intentional ingredient in these products. Approximately 10 percent of the products surveyed contained over 0.1 percent benzene; these products were in four classes: stove and lantern fuel, brush cleaners, lacquer thinners, and rubber cements. However, none of the products contained over 0.25 percent benzene. (See "Benzene Analysis of Consumer Products (STI 80–0034)", CPSC staff memo from Doris Hodgkins, March 11, 1980, on file at the Office of the Secretary.)

Exposure and Risk Assessment

The proposed banning regulation summarized the adverse health effects associated with benzene inhalation. The major health effects observed have been reductions in the cellular elements of the blood (anemias and pancytopenia), reductions of hematopoietic precursor (bloodforming) cells in the bone marrow (aplastic anemia), and various leukemias.

Subsequent to the proposal, a study was conducted to obtain precise information on the extent of the risk to consumers from exposure to consumer products with typical levels of benzene. This study of benzene air levels resulting from the use of paint removers in a controlled atmosphere exposure chamber was conducted for the Commission at the Army Chemical Systems Laboratory (ACSL). From the results of the study, the Commission staff has concluded that consumer exposures to benzene in a range from one to 10 parts per million (ppm), five hour time-weighted-average (TWA), could occur if the product contains at least 0.1 percent benzene, sixteen ounces or more of which are used in a poorly ventilated, enclosed room (8' x 11' x 8'), and the product is spread over a large surface area.* The Commission staff further concluded that five hour TWA exposures of up to 10 ppm could be expected from paint and lacquer products, paint removers, and contact cements if they contained over 0.1 percent benzene, since all of these products are intended to be applied to large surface areas. Products such as penetrating oils, cigarette lighter fluids, model cements and paints, rubber cements, stove and lantern fuels, and paint brush cleaners are believed to be used infrequently, in small quantities, on limited surface areas, or outdoors by the general consumer. Thus, use of these products would be unlikely to result in 5 hour TWA exposures of 10 ppm of benzene vapor. (See "An Assessment of Potential Human Exposure to Benzene," CPSC staff memo from Warren Porter, November 10, 1980, on file at the Office of the Secretary.)

Using the test conditions from the Edgewood exposure study, and epidemiological data on benzene from occupational populations, the CPSC staff have calculated an excess lifetime incidence of leukemia deaths of 0.7 (range 0.2 to 2.7) per million quart uses of paint remover containing 0.1 percent benzene. Although experimental exposure data are not available for other classes of consumer products, if it is assumed that the use patterns of the other products are similar to that of paint removers and if they contain greater than 0.1 percent benzene, Commission staff estimates that the increased lifetime risk would not be more than twice that projected for paint removers. Of the products analyzed in the market survey, one rubber cement which contained 0.23 percent benzene was estimated to result in 1.6 (range 0.5 to 6.2) excess lifetime deaths per million quart uses. The size of typical retail units of rubber cement (about 4 ounces) indicates that the projected 1.6 excess incidence of lifetime deaths due to leukemia is probably high for the general population, but may reflect a risk for certain hobbyists and artists. The Commission staff further believes that the risk from the other consumer products analyzed in the market survey, if used under the ACSL exposure criteria, would be less than the above estimates. These estimates were made assuming a benzene content of 0.1 percent, whereas the market survey may indicate benzene content of less than 0.1 percent in 90 percent of the products. (See "Benzene Risk Assessment", CPSC staff paper from White, Cohn, and Porter, on file at the Office of the Secretary).

*It should be noted that the current maximum permissible occupational exposure level for benzene, averaged over an 8 hour day, is 10 ppm. On February 10, 1978, the Occupational Safety and Health Administration (OSHA) issued a permanent standard for the regulation of benzene which lowered the maximum permissible exposure level in the workplace from 10 ppm of airborne benzene, averaged over an eight-hour period, to 1 ppm. (43 FR 5917). The U.S. Supreme Court subsequently upheld the Fifth Circuit Court of Appeals which had overturned this standard and the current permissible level remains at 10 ppm. (See *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute et al., Secretary of Labor* v. *American Institute, et al.*, 100 S. Ct. 2844 (1980)).

Conclusion

The Commission has reviewed the most recent economic and risk data on current benzene use in consumer products, discussed above. Based on this information, the Commission has decided to propose to withdraw its proposed ban of consumer products containing benzene as an intentional ingredient and as a contaminant at level of 0.1 percent or greater by volume.

The Commission notes that since the proposal of the ban, benzene use as an intentional ingredient in consumer products has ceased. Furthermore, information available to the Commission appears to indicate that approximately 90 percent of current benzene contaminated products are at or below the proposed 0.1 percent level. The market survey also indicated that those products which do not meet the 0.1 percent level are primarily products such as stove and lantern fuel, brush cleaners, and rubber cements that are generally used in small quantities rather than intended to be spread over large surface areas. The Commission, therefore, concludes that a ban of benzene-containing consumer products is not reasonably necessary at this time to eliminate or reduce an unreasonable risk of injury associated with such products.

The Commission, however, remains concerned about the possible reintroduction into commerce of selected products intended to be used on large surface areas that contain benzene at or above 0.1 percent.

The Commission has instructed the staff to continue to monitor the marketplace for benzene use in these products so that the Commission may respond in an expeditious fashion to any need for future regulation in this area.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Commission certifies that this proposed rule withdrawing the proposed benzene ban will not, if promulgated, have a

significant economic impact on a substantial number of small entities. In contrast with a final rule setting requirements that are being or will be enforced, the proposed ban which is proposed to be withdrawn at this time is not binding, creates no obligations, and has no legal impact. Thus, any action to withdraw the proposed ban will also not have a significant impact on small entities.

Accordingly, pursuant to section 9(a)(1)(B) of the CPSA, the Commission proposes to withdraw proposed Part 1307 and solicits public comment on this proposal. The Commission also proposes to withdraw its proposed rule, issued at the same time as the banning regulation, to regulate consumer products containing benzene under the CPSA (16 CFR 1145.6; see 43 FR 21838) as well as its proposed amendments to rules under the Federal Hazardous Substances Act (FHSA) and the Poison Prevention Packaging Act of 1970 (PPPA) concerning benzene. The amendments would have exempted from the FHSA and PPPA rules products covered by the benzene ban. (16 CFR 1500.14(b)(3)(iv) and 16 CFR 1700.14(a)(15); see 43 FR 21838.)

In order to receive and evaluate comments on this proposal, the Commission for good cause as an administrative matter extends from January 13, 1981 to May 13, 1981, the period in which it must either publish a final benzene banning rule or withdraw the proposal.

Dated: January 12, 1981.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 81-1351 Filed 1-12-81; 11:17 am]

BILLING CODE 6355-01-M

Notices

Federal Register
Vol. 46, No. 8
Tuesday, January 13, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Economics and Statistics Service

Changes in Fresh Market Vegetable Estimating Program

Notice is hereby given that effective with the January 8, 1981 *Vegetable* report, the Economics and Statistics Service (EES) is implementing a revised vegetable estimating program. Input received from data users in response to requests for reaction to proposed revamping of the vegetable program indicates that the effects of day-to-day economic situations and weather can best be evaluated by utilizing planted acreage as a base in making marketing decisions. Basic program changes are: (1) discontinuing *forecasts* of harvested acres and production for most fresh market vegetables, (2) publishing planted acreages by area within selected States, and (3) discontinuance of current May *forecast* of onion production in California and Arizona. Consequently, quarterly acreage *estimates* will be confined to planted acreage for fresh market snapbeans, broccoli, cabbage, cantaloups, carrots, cauliflower, sweet corn, cucumbers, eggplant, escarole/endive, honeydew melons, lettuce, green peppers, spinach, tomatoes, and watermelons. Planted acres will be published by "deal" or area in major States having a demonstrated industry need and local capability for producing estimates at less than State totals. Quarterly estimates of planted acres will be published in January, April, July, and October, along with usual harvest dates associated with those acres. The current May, August, and November *forecasts* of harvested acreage, yield, production and value would be discontinued and be replaced by *estimates* of harvested acres, yield and production published in July and December for the preceding six month period. Estimates for fresh and processed vegetables will remain unchanged.

Done at Washington, D.C., this 8th day of January 1981.

William E. Kibler,
Acting Administrator.

[FR Doc. 81-1134 Filed 1-12-81; 8:45 am]

BILLING CODE 3410-18-M

CIVIL AERONAUTICS BOARD

[Docket 38955]

Global International Airways Corporation; Fitness Investigation

Reassignment of Proceeding

This proceeding has been reassigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to Judge Kane.

Dated at Washington, D.C., January 7, 1981.

Joseph J. Saunders,
Chief Administrative Law Judge.

[FR Doc. 81-1129 Filed 1-12-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket 39106]

ICB International Airlines Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 12, 1981, at 10:00 a.m. (local time) in Room 1003, Hearing Room "B", Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C. before the undersigned.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and two copies to the judge of (1) proposed statements of issues (2) proposed stipulations, (3) proposed requests for information and evidence, (4) proposed procedural dates, and (5) proposals for expediting this proceeding.

The Bureau of International Aviation shall deliver its material on or before January 27, 1981 and any other party shall deliver its material on or before February 6, 1981. The submissions of other parties shall be limited to points on which they differ with BIA, and shall follow the numbering and lettering used by BIA to facilitate cross referencing. Dates specified herein are dates of *delivery*.

John M. Vittone,
Administrative Law Judge.

[FR Doc. 81-1130 Filed 1-12-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket 39106]

ICB International Airlines Fitness Investigation

Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications should be addressed to Judge Vittone.

Dated at Washington, D.C., January 7, 1981.

Joseph J. Saunders,
Chief Administrative Law Judge.

[FR Doc. 81-1131 Filed 1-12-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket 36115]

South Pacific Island Airways Fitness Investigation

Reassignment of Proceeding

This proceeding has been reassigned to Administrative Law Judge William A. Pope, II. Future communications should be addressed to Judge Pope.

Dated at Washington, D.C., January 8, 1981.

Joseph J. Saunders,
Chief Administrative Law Judge.

[FR Doc. 81-1132 Filed 1-12-81; 8:45 am]

BILLING CODE 6320-01-M

[Order 80-12-96; Docket 31290]

Establishment of the Interim Standard Industry Fare Level; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 18th day of December 1980.

The Airline Deregulation Act of 1978 (ADA) requires that the Board compute a "standard industry fare level" (SIFL) based upon the fare level in effect on July 1, 1977, and, not less than semiannually, update the SIFL by increasing or decreasing it by the percentage change in actual operating costs per available seat-mile (ASM) for interstate and overseas transportation combined. Once computed, the SIFL

becomes the benchmark for measuring the statutory zone of reasonableness.

The Board has periodically adjusted the SIFL on July 1, September 1, and November 1, 1979, January 1, March 1, May 1 and July 1, 1980. The September and November adjustment reflected changes caused by the rapid inflation in fuel expenses solely. With the January 1, 1980 adjustment (Order 79–12–162) we adopted the policy of adjusting non-fuel costs on a bi-monthly basis as well. The bi-monthly SIFL adjustments for fuel costs were adopted because of the rapid escalation in fuel prices which were being experienced during this period. (See Order 79–8–184). Subsequently, however, with our last SIFL order, because of lessened volatility in fuel costs and current policies of interim expanded fare flexibility, we returned to the six-month SIFL adjustment period set forth in Section 1002(d)(6)(B) of the ADA for both fuel and non-fuel cost adjustments.

We note, however, that fuel prices have recently moderated and over the past four months have actually declined from the high of 88.69¢ reached in July. As a result of fuel prices holding relatively constant, our current SIFL computation of anticipated fuel costs is substantially overstated. We projected fuel costs of 98.21 cents per gallon as of October 1, 1980, whereas actual October fuel costs were only 87.59 cents. We are concerned, however, that future fuel costs could be understated, particularly in view of pending OPEC increases, if we were to continue our normal fuel projection using a four-month moving average for projecting fuel costs for the next six months. We have decided, therefore, to project the SIFL effective January 1, 1981, for three months, instead of the usual six. This will permit us to keep a closer watch on fuel price changes and to make appropriate adjustments should fuel costs increase within this period.

Applying our methodology to the year ended September 1980 financial data and October 1980 fuel costs [1] and projecting fuel and non-fuel costs to February 15, 1981, the midpoint of the January-March period results in a cost escalation factor of 1.5450 over July 1, 1977 or a reduction below the last SIFL adjustment of about 3.68 percent. (See Appendix) [2]

This reduction in the SIFL adjustment factor also necessitates a revision in our Statements of General Policy, 14 CFR Part 399, covering upward flexibility in connection with the zone of limited suspension for domestic passenger fares. Section 399.32(d)(1) provides flexibility up to 30 percent above the sum of the SIFL plus $15. These regulations also provide that each time the Board adjusts the SIFL for cost increases, it will adjust the $15 figure by the same percentage rounded to the nearest whole dollar. Consequently, the revised constant amount will be $14.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly section 1002:

1. We set the cost adjustment factor for the Standard Industry Fare Level effective January 1, 1981, to be 1.5450; and

2. The $15 figure appearing in 14 CFR 399.32(d)(1) as adopted by PS–98, 45 FR 70431, October 24, 1980, is adjusted in accordance with that section to $14.

3. We set the Standard Industry Fare Level formula effective January 1, 1981, as follows:

Terminal Charge, $24.97: Plus .1366/mile (0–500 miles); .1041/mile (501–1,500 miles); .1001/mile (over 1,500 miles).

Trunk and Local Service Carrier Scheduled Service Fuel Price Calculation

[Amounts in cents]

Month	Price per gallon	Change from prior month
July 1980	88.69	.57
August	88.64	(.05)
September	87.43	(1.21)
October	87.59	.16

This order shall be served on the Air Transportation Association of America, all certificated carriers, and shall be published in the **Federal Register.**

All Members concurred.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81–1128 Filed 1–12–81; 8:45 am]

BILLING CODE 6320–01–M

[1] Our methodology projects the average change in price over the last four months to the chosen future date, then adds the projected change to the current fuel price. In this case, we projected an average reduction of .13 cents per month for four months (to February 15, 1981), then subtract this .52 cents from the October price—projecting a cost of 87.07 cents per gallon as of February 15, 1981.

[2] Appendix—Methodology for Determining Change in Operating Expense Per Available Seat-Mile, is filed with the original document.

CIVIL RIGHTS COMMISSION

Connecticut Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 7:00 p.m., and will end at 9:00 p.m., on February 5, 1981, at the Lord Cromwell Inn, Route 72, Cromwell, Connecticut. The purpose of the meeting is discussion of the 1980 SAC reports on civil rights developments in Connecticut.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. John Rose, Jr., P.O. Box 3216, Hartford, Connecticut 06103, (203) 525–4700, or the New England Regional Office, 55 Summer Street, Boston, Massachusetts, 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 8, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81–1102 Filed 1–12–81; 8:45 am]

BILLING CODE 6335–01–M

New Hampshire Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene a meeting at 7:30 p.m., and will end at 9:30 p.m., on February 18, 1981, at the Federal Building, Conference Room, 275 Chestnut Street, Manchester, New Hampshire. The purpose of the meeting is discussion of the 1980 SAC reports on civil rights developments in New Hampshire.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mrs. Sylvia F. Chaplain, 7 Wendover Way, Bedford, New Hampshire 03102, (603) 625–5335, or the New England Regional Office, 55 Summer Street, Boston, Massachusetts, 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 8, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81–1103 Filed 1–12–81; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Ultramicrotomes With Cryosystems

The following is a consolidated decision on applications for duty-free entry of ultramicrotomes with cryosystems pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR) (See especially Section 301.11(e).)

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket Number 80-00158. Applicant: University of Pennsylvania School of Medicine, 36th and Hamilton Walk, Philadelphia, PA 19104. Article: Ultramicrotome Model LKB 2088 Ultrotome V and Cryokit. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: See Notice on page 27970 in the **Federal Register** of April 25, 1980. Advice submitted by: Department of Health and Human Services, June 6, 1980. Article ordered: December 9, 1979.

Docket Number 80-00214. Applicant: University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Dr., San Antonio, TX 78284. Article: Cryoultramicrotomy System. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: See Notice on page 27462 in the **Federal Register** of April 23, 1980. Advice submitted by: Department of Health and Human Services, July 17, 1980. Article ordered: June 14, 1979.

Comments: No comments have been received in regard to either of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for such purposes for which the articles are intended to be used, was being manufactured in the United States at the time the articles were ordered.

Reasons: Each foreign article provides a specimen temperature control accuracy of ±0.2 degrees Centigrade (°C). The MT 5000 ultramicrotome manufactured by the Dupont/Sorvall Division of the DuPont Company (Sorvall) became available on April 24, 1979. However at the time each foreign article was ordered the MT 5000 was not available with a cryosystem. Therefore at the time each foreign article was ordered the most closely comparable domestic instrument was Sorvall's Model MT-2B ultramicrotome with its cryosystem. The Department of Health and Human Services (HHS) advises in its respectively cited memoranda that (1) the specimen temperature control accuracy of ±0.2° C is pertinent to the purposes for which each foreign article is intended to be used and (2) the domestic Sorvall MT-2B with its cryosystem did not provide the pertinent features at the time each foreign article was ordered.

For these reasons, we find that the Sorvall Model MT-2B ultramicrotome with its cryosystem was not of equivalent scientific value to the foreign articles to which each of the foregoing applications relate, for such purposes as these articles are intended to be used, at the time each foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article to which the foregoing applications relate, for such purposes as these articles are intended to be used which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-1090 Filed 1-12-81; 8:45 am]

BILLING CODE 3510-25-M

Minnesota Department of Health; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket Number 80-00140. Applicant: Minnesota Department of Health, 717 Delaware Street, S.E., Minneapolis, Minnesota 55440. Article: Tilting Stage for Electron Microscope. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article is intended to be used for studies of microparticulates including asbestos and other mineral fiber particles. The experiments to be conducted will include: enumeration and identification of fibrous mineral particulates in environmental samples, differentiation of structure between true asbestos, and mechanically derived microfibers and identification of various microparticles in the occupational setting. The objective enumeration and identification of fibrous mineral particulates in environmental samples is to determine exposure levels of the people of the state. This information will be used in conjunction with on-going epidemiological studies to determine the health significance of these exposures.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to a compatible accessory for an instrument that has been previously imported for the use of the applicant institution. The article is being manufactured by the manufacturer which produced the instrument with which it is intended to be used. We are advised by the National Bureau of Standards in its memorandum dated July 11, 1980 and the Department of Health and Human Services in its memorandum dated May 7, 1980 that the accessory is pertinent to the applicant's intended uses and that it knows of no comparable domestic article.

The Department of Commerce knows of no similar accessory manufactured in the United States which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-1000 Filed 1-12-81; 8:45 am]

BILLING CODE 3510-25-M

National Aeronautics and Space Administration; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket Number 80-00284. Applicant: National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035. Article: Double-Tilt Specimen Holder, X-Ray Mode Unit, and Microdiffraction Unit. Manufacturer: Hitachi Corporation, Japan. Intended use of article: See Notice on page 47893 in the **Federal Register** of July 17, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to compatible accessories for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-1086 Filed 1-12-81; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Marine Mammals; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Gebruder Knie, Knie's Kinderzoo.

b. Address: 8640 Rapperswil, Switzerland.

2. Type of Permit: Public display.

3. Name and Number of Animals: Atlantic bottlenose dolphins (Tursiops truncatus)—1.

4. Type of take: To capture and export from the United States for public display.

5. Location of Activity: West Coast of Florida.

6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before February 12, 1981. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. a certification from such appropriate government agency verifying the information set forth in the application;

ii. a certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. a statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Division of International Traffic and Animal Welfare of Switzerland have been found appropriate and sufficient to allow consideration of this permit application.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: January 8, 1981.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 81-1152 Filed 1-12-81; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Schedule for Awarding Bonuses to Members of the Senior Executive Service; Submission

AGENCY: Commodity Futures Trading Commission.

ACTION: The Commission's schedule for awarding bonuses to its Senior Executive Service ("SES") members.

SUMMARY: Based upon the recommendations of the Commission's Performance Review Board concerning the performance of Commission SES members, the Commission plans to award bonuses to three of its career Senior Executives. These three Senior Executives will receive, respectively, and additional 14%, 10% and 10% of their basic salary as a bonus. All three of them were rated highly successful in their jobs. There are currently fifteen Senior Executives in the Commission of whom thirteen are careerists.

FOR FURTHER INFORMATION CONTACT: Fidelma Donahue, Personnel Section, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581 (202) 254–3131.

Issued in Washington, D.C., on January 7, 1981.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-1099 Filed 1-12-81; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[OFC Case No. 55288-9176-02-81]

J. P. Stevens and Co., Inc.; Termination of Prohibition Order Proceeding Under the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice Of Intent Not to Proceed With Prohibition Order Proceeding Pursuant To Sections 302 And 701 Of The Powerplant And Industrial Fuel Use Act of 1978.

SUMMARY: On July 19, 1980, pursuant to Sections 302(a) and 701(b) of the

Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) published in the Federal Register (45 FR 47906) notice of the issuance of proposed prohibition orders to J. P. Stevens and Co., Inc. (Stevens). The orders would, if finalized, prohibit the use of petroleum or natural gas as a primary energy source in two major fuel burning installations (MFBI's), identified as Boilers NO. 1 and No. 2, located at Stevens' Delta Finishing Plant in Wallace, South Carolina. ERA Hereby gives notice, pursuant to ERA rules implementing FUA, that it does not intend to proceed with the prohibition order proceeding instituted against Stevens.

FOR FURTHER INFORMATION CONTACT:

Willian L. Webb, Office of Public Information Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B–110, Washington, D.C. 20461, (202) 653–4055.

R. James Caverly, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3128, Washington, D.C. 653–4501.

Douglas F. Mitchell, Office of General Counsel, Department of Energy, 1000 Independence Ave., S.W., Room 6B–178, Washington; D.C. 20585, (202) 252–2967.

SUPPLEMENTARY INFORMATION: ERA rules pertaining to prohibition order proceedings are codified at 10 CFR Part 501, Subpart E. In accordance with Section 501.51(b), publication of the notice and issuance of the proposed prohibition orders to Boilers No. 1 and No. 2 at Stevens' Delta Finishing Plant began a three-month comment period, during which Stevens' and any other interested person could submit comments and evidence relating to the findings ERA must make under Section 302(a) of FUA in order to prohibit the use of petroleum or natural gas as a primary energy source in an existing MFBI. The comment period ended on October 13, 1980. On October 23, 1980, Steven's advised ERA that it had negotiated a contract with the pipeline company supplying natural gas to Stevens which, commencing October 15, 1980, enables Stevens to burn coal as the primary energy fuel in Boilers No. 1 and No. 2. Stevens also advised ERA that it intended to burn coal rather than natural gas in these boilers except in emergency situations.

Subsequent to the end of the first three-month comment period provided for in ERA rules, ERA is required to issue a notice of whether it intends to proceed with the prohibition order proceeding. 10 CFR 501.50(b)(4). In addition, Section 501.51(b)(9) provides that ERA may terminate a prohibition order proceeding at any time prior to the date a final order shall become effective. A material change in circumstances has occured since ERA issued a proposed prohibition order to Stevens in this case. The company no longer is contractually prohibited from burning fuels other than natural gas in Boilers No. 1 and No. 2 when natural gas is available. As a result, Stevens has voluntarily committed to use coal as a primary energy source in these boilers, both of which have present coal burning capability. In view of these changed circumstances, ERA has decided to terminate, and hereby gives notices that it has terminated, the prohibition order proceeding against Stevens' Delta Finishing Plant Boilers No. 1 and No. 2.

The public file containing a copy of this notice and other documents and supporting materials on this proceeding is available for inspection upon request at: ERA, Room B–110, 2000 M Street, N.W., Washington, D.C., Monday through Friday, 8:00 a.m.–4:30 p.m.

Issued in Washington, D.C. on January 7, 1981.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81–1078 Filed 1–12–81; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 3427]

Cascade Waterpower Development Corp.; Application for Preliminary Permit

January 6, 1981.

Take notice that Cascade Waterpower Development Corporation (Applicant) filed on September 12, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3427 to be known as McKay Hydroelectric Facility located on McKay Creek in Umatilla County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: David Holzman, P.O. Box 246, June Lake, California 93529. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description.—The proposed project would consist of: (1) a 825-foot long penstock with a 52-inch diameter built through the Water and Power Resource Service's McKay Dam; (2) a powerhouse with two 1.6 MW generating units; and (3) a 1-mile transmission line.

The Applicant estimates that the average annual energy output would be 8.4 GWh.

Purpose of Project.—The power developed by the proposed project would be sold to Pacific Power and Light Company.

Proposed Scope and Cost of Studies under Permit.—The Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would conduct environmental, hydraulic, power generation, construction, economic investigations and consult with appropriate Federal, State, and local agencies. The cost of these activities is estimated by the Applicant to be $45,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before March 12, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 11, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (C) (1980). A competing application

must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 12, 1981.

Filing and Service of Responsive Documents.—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3427. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, 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, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1156 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3684-000]

Chesdin Development Ltd.; Application for Preliminary Permit

January 6, 1981.

Take notice that Chesdin Development Ltd. (Applicant) filed on November 5, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for proposed Project No. 3684 to be known as the Locks Dam Project located on the Appomattox River in Dinwiddie and Chesterfield Counties, Virginia. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Kenneth Lever, Chesdin Development Ltd., 6566 France Avenue South, Minneapolis, Minnesota 55435. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (1) an existing 300-foot long and 10-foot high diversion dam; (2) an existing 1.2 mile long intake canal; (3) a proposed powerhouse with an estimated installed generating capacity of 4,500 kW; (4) an existing 5-acre reservoir having 50 acre-feet of storage capacity; (5) an existing 40-foot high overflow spillway at the downstream terminus of the canal; and (6) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 24,100 MWh.

Purpose of Project—Chesdin Development Ltd. proposes to develop the hydroelectric potential of the site and sell the power output to Virginia Electric Power Company.

Proposed Scope and Cost of Studies under Permit—The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated and assessed to support an investigation decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if the findings are positive, describe the steps required for implementation. The report will be prepared so that the information presented will be useful in preparing an application for license for the project. The Applicant's estimated total cost for performing a feasibility study is $100,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 12, 1981 either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 11, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 12, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all

capital letters the title "COMMENTS, NOTICE OF INTENT TO FILE COMPETING APPLICATION," as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3684. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to:

Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, 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, 400 First St., N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1157 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER81-31-000, ER80-458]

Green Mountain Power Corp., Order Accepting for Filing and Suspending Proposed Increased Rates, Imposing Condition With Respect to Acceptance for Certain Customers, Granting Waiver of Filing Requirements, Denying Waiver of Notice Requirements, Requiring Refunds, Granting Intervention, Providing for Hearing, and Establishing Procedures

Issued: December 12, 1980.

On October 14, 1980, Green Mountain Power Corporation (GMP) submitted for filing proposed changes in transmission rates and metering charges for transmission service to seven wholesale customers.[1] The proposed changes would result in an increase in revenues of approximately $53,527 (27.1%) for the twelve month period ending December 31, 1979. GMP requests waiver of the filing requirements currently in effect under section 35.13 of the Commission's regulations, and permission to use the revised abbreviated filing format which was adopted by Commission Order No. 91, Docket No. RM79-64, issued June 27, 1980. Further, GMP requests waiver of the notice requirements of section 35.11 to permit the proposed rates to become effective May 1, 1980. GMP asserts that each customer has been assessed and has paid the proposed increased charges as of June 1980, which billing period reflected the start of the summer power period that commenced May 1, 1980.

Notice of the filing was issued on October 21, 1980, with response due on or before November 10, 1980. On November 10, 1980, the Water and Light Departments of the Villages of Stowe and Morrisville, the Electric Departments of the Villages of Northfield and Hardwick, and the Washington Electric Cooperative, Inc., filed a joint protest, petition to intervene, opposition to GMP's request for waiver, and request for a maximum suspension of the proposed increased rates. In support of their petition to intervene, petitioners state that each purchases transmission service from GMP and that, with the exception of the Villages of Readsboro and Jacksonville, they respresent all of the customers affected by the proposed increases.

Discussion

The Commission finds that participation in this proceeding by each of the petitioners may be in the public interest. Accordingly, we shall grant their petition to intervene.

In its filing, GMP has utilized the abbreviated filing requirements adopted by the Commission in Order No. 91, and has sought waiver of the current section 35.13 filing requirements. The data submitted by GMP are sufficient for the Commission to conduct a preliminary analysis of GMP's rate proposal. Further, the Commission has encouraged utilities to adopt the revised filing requirements during the period prior to the effective date of the regulations, *i.e.*, December 27, 1980. Accordingly, GMP's request for waiver with respect to filing requirements will be granted.

In support of its requests for waiver of the 60-day notice requirements and for an effective date of May 1, 1980, GMP states that these requests would permit the company to bill the increased charges coincidentally with the start of the power period as stated in its applicable transmission contracts. GMP assets that the belated filing was due to the press of business primarily caused by a lengthy and complex retail rate proceeding, which involved key technical personnel.

Petitioners oppose the requested waivers stating that the requests are not compatible with existing contract provisions for rate changes. The contractual language to which petitioners refer provides, *inter alia*, that the ". . . revised charges per kilowatt will become effective *after notice* . . ." (emphasis added). Additionally, petitioners argue that GMP has unlawfully collected the increased rates without having first tendered those rates to the Commission for filing. As a result, petitioners contend that GMP should be ordered to refund with interest all amounts already collected in excess of the filed rates.

We shall deny GMP's request for waiver of the 60-day notice requirement. GMP has not shown good cause for such waiver. The Commission agrees that GMP has unlawfully departed from its filed rate schedules in contravention of the express provisions of the Federal Power Act.[2] Any internal administrative burdens which GMP might have encountered in submitting a timely rate change filing do not excuse such unlawful conduct. Accordingly, in addition to denying waiver of notice, we shall direct GMP to refund with interest the unauthorized amounts, which have been collected since June 1980.

Our analysis indicates that GMP's proposed rates have not been shown to be just and reasonable and that they may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing, as conditioned below, and suspend them as ordered below.

In a number of suspension orders,[3] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. No such circumstances have been presented here. However, we note that the contracts here state that any revised charges will take effect to coincide with a power period of the New England Power Pool. Petitioners recognize that provision and suggest that, in lieu of a full five month suspension period, they

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[1] Villages of Hardwick, Morrisville, Northfield, Stowe, Readsboro, and Jacksonville, Vermont, and Washington Electric Cooperative, Inc. *See* Attachment A for rate schedule designations.

[2] 16 U.S.C. § 824d. *See Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951).

[3] *E.g., Boston Edison Co.*, Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-500, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-488 (August 22, 1980) (one day suspension).

would consent to a suspension until May 1, 1981, the commencement of the next effective power period, rather than until May 13, 1981. We believe that petitioners' suggestion is well taken and will advance the public interest. Accordingly, we shall suspend the rates until May 1, 1981, when they shall become effective subject to refund.

With respect to the proposed increased rates to Readsboro and Jacksonville, we note that the underlying transmission contracts for that service were tendered for filing by GMP on June 16, 1980, in Docket No. ER80–458. That filing, however, was declared deficient by letters to GMP dated August 7, 1980, and November 17, 1980. To date, GMP has not completed its prior submittal. Nonetheless, GMP's letter of transmittal in the instant docket states that "service is being rendered to [Readsboro and Jacksonville] under FERC rate schedule [sic] filed under . . . Docket No. ER80–458. . . ." GMP has thus been serving these two customers under transmission rate schedules which have never become lawfully effective and GMP now seeks to increase the rates contained in the non-effective rate schedules. Because the current submittal, insofar as it applies to Readsboro and Jacksonville, is premised upon the prior filing in Docket No. ER80–458, and is therefore dependent upon the Commission's resolution of any issues presented by the earlier filing, we shall condition our acceptance for filing of GMP's proposed rate changes for these two customers upon the requirement that GMP complete its filing in Docket No. ER80–458 within thirty days of the issuance of this order. Upon such completion, the currently proposed rates for Readsboro and Jacksonville shall remain subject to the outcome of any proceedings that may be initiated in Docket No. ER80–458. In the event that this condition is not met, GMP's proposed rate changes for Readsboro and Jacksonville shall be deemed rejected.

The Commission orders:

(A) GMP's requests for waiver of the 60-day notice provision of section 35.3 of the Commission's regulations and a May 1, 1980 effective date for its proposed increased rates are hereby denied. Within thirty days of this order, GMP shall refund to each of the affected wholesale customers, together with interest computed in accordance with section 35.19a of the regulations, all amounts collected under the currently proposed rates which are hereby found to be in excess of those produced by the lawfully effective rates during that period. Within thirty days after such refunds have been made, GMP shall submit a refund summary and compliance report.

(B) GMP's request for waiver of the current filing requirements of section 35.13 of the regulations is hereby granted.

(C) With the exception of the rates applicable to the Villages of Readsboro and Jacksonville, the proposed rates filed by GMP in this docket are hereby accepted for filing and suspended to become effective May 1, 1981, subject to refund.

(D) With respect to the Villages of Readsboro and Jacksonville, GMP's proposed rate increases are hereby conditionally accepted for filing, and suspended to become effective May 1, 1981, subject to refund. Such acceptance shall be conditioned upon the requirement that GMP complete its filing in Docket No. ER80–458 within thirty (30) days of the date of this order; if the condition is not met, then GMP's instant submittal shall be deemed rejected with respect to Jacksonville and Readsboro upon expiration of the thirty (30) day period.

(E) The petitioners are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commisson: *Provided, however,* that participation by the intervenors shall be limited to matters set forth in their petition to intervene; and, *Provided, further,* that the admission of each intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I (1979)), a public hearing shall be held concerning the justness and reasonableness of the rates proposed herein by GMP.

(G) The Commission staff shall serve top sheets in this proceeding on or before December 18, 1980.

(H) A presiding administrative law judge to be designated by the Chief Administrative Law Judge for that purpose shall convene a conference in this proceeding to be held within twenty (20) days of the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The designated law judge is authorized to establish procedural dates, including dates for the filing of testimony and a case in chief if settlement is not reached at the ordered conference, and to rule on all motions (except motions to consolidate, sever, or dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Green Mountain Power Corp., Docket No. ER81-31-000, Rate Schedule Designations

Designation	Other party	Description
Supplement No. 3 to Rate Schedule FERC No. 60 (Supersedes Supplement No. 1).	Village of Hardwick	Transmission Service Rate.
Supplement No. 4 to Rate Schedule FERC No. 60 (Supersedes Supplement No. 2).	do	Metering Charge.
Supplement No. 3 to Rate Schedule FERC No. 64 (Supersedes Supplement No. 1).	Village of Northfield	Transmission Service Rate.
Supplement No. 4 to Rate Schedule FERC No. 64 (Supersedes Supplement No. 2).	do	Metering Charge.
Supplement No. 3 to Rate Schedule FERC No. 66 (Supersedes Supplement No. 1).	Village of Stowe	Transmission Service Rate.
Supplement No. 4 to Rate Schedule FERC No. 66 (Supersedes Supplement No. 2).	do	Metering Charge.
Supplement No. 3 to Rate Schedule FERC No. 68 (Supersedes Supplement No. 1).	Washington Electric Cooperative, Inc.	Transmission Service Rate.
Supplement No. 4 to Rate Schedule FERC No. 68 (Supersedes Supplement No. 2).	do	Metering Charge.
Supplement No. 3 to Rate Schedule FERC No. 62 (Supersedes Supplement No. 1).	Village of Morrisville	Transmission Service Rate.
Supplement No. 4 to Rate Schedule FERC No. 62 (Supersedes Supplement No. 2).	do	Metering Charge.

[FR Doc. 81-1158 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3716-000]

Mitchell Energy Co. Inc.; Application for Preliminary Permit

January 6, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 10, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for proposed Project No. 3716 to be known as the Keechelus Dam Hydroelectric Project located on Yakima River in Kittitas County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusettes 02116. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would be located at the existing U.S. Water and Power Resources Service's Keechelus Dam and would consist of a power plant with a rated capacity of 3 MW. The Applicant estimates that the average annual energy output would be 8 million kWhs.

Purpose of Project—Applicant states that during the permit period a power purchase agreement with a local utility will be negotiated.

Proposed Scope and Cost of Studies under Permit—Applicant seeks a preliminary permit for a period of 24 months during which it would conduct environmental engineering and economic studies to determine the feasibility of constructing and operating the proposed project. Applicant estimates that the cost of the feasibility studies would be about $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 11, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 11, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980). This application was filed as a competing application to the Kittitas County Public Utility District No. 1 and the City of Ellensburg's application for the Kachess Hydroelectric Project No. 3488, filed September 18, 1980.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 11, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, cometing applications, protests, or petitions to intervene must bear in all capital letters the title "Comments", "Notice of Intent To File Competing Application", "Competing Application", "Protest", or "Petition To Intervene", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3716. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies requried 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, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1159 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3733-000]

Mitchell Energy Co., Inc.; Application for Preliminary Permit

January 6, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 12, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for proposed Project No. 3733 to be known as Hiram M. Chittenden Locks Project located on Lake Washington Ship Canal in King County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize an existing government dam owned by the United States Corps of Engineers and would consist of a powerhouse with a total installed capacity of 5 MW.

The Applicant estimates that the average annual energy output would be 23,047,500 kWh.

Purpose of Project—Power generated by the project would be sold to the Puget Sound Power and Light Company or another local utility.

Proposed Scope and Cost of Studies Under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a

study of environmental impacts. Based on the results of the studies, Applicant would decide to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates the cost of the studies to be performed under the preliminary permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant). Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 11, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 11, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 11, 1981.

Filing and Service Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application", "Competing Application", "Protest", or "Petition to Intervene", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3733. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, 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, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1100 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3505-000]

Pacific Northwest Generating Co.; Application for Preliminary Permit

January 6, 1981.

Take notice that Pacific Northwest Generating Company (Applicant) filed on September 26, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3505 to be known as Jackson Lake Project located on the Snake River in Teton County, Wyoming, within Teton National Park. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: David E. Piper, Pacific Northwest Generating Company, 8383 N.E. Dandy Blvd., Suite 330, Portland, Oregon 97220. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize the existing Water and Power Resources Service Jackson Lake Dam and would consist of: (1) a new gated intake structure leading to (2) a new penstock integral with (3) a new powerhouse, in the right dam embankment adjacent to the existing concrete spillway, containing generating units having a total rated capacity of 8,600 kW; (4) a tailrace; (5) a new transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 30,000,000 kWh.

Purpose of Project—Project energy would be used to meet the needs of the Pacific Northwest Generating Company's members which number 18 at the present.

Proposed Scope and Cost of Studies under Permit—Applicant seek issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant will prepare an aplication for an FERC license. Applicant estimates the cost of the studies under the permit would be $59,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. [A copy of the application may be obtained directly from the Applicant.] Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 13, 1981, either the competing application itself or a notice

of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 12, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 13, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application", "Competing Application", "Protest", or "Petition to Intervene", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3505. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-1161 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-181-000]

Bangor Hydro-Electric Co. Tariff Change

December 31, 1980.

The filing company submits the following:

Take notice that Bangor Hydro-Electric Company, on December 22, 1980, tendered for filing proposed changes in the following FERC Electric Service Rate Schedules:

FERC No. 1 (Stonington and Deer Isle Power and Light Company)
FERC No. 4 (Lubec Water and Electric District)
FERC No. 5 (Union River Electric Cooperative, Inc.)
FERC No. — (Swan's Island Electric Cooperative)

The proposed changes, to be effective February 26, 1981, would increase revenues from jurisdictional sales and service by $194,136.00 based on the 12-month period ending December 31, 1979.

The proposed increase is required to reflect the increased cost of service since the Bangor Hydro-Electric Company's last rate change.

Copies of the filing were served upon the affected customers and upon the Maine Public Utilities Commission.

Any person desiring to be heard or to protest said application 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 § 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 15, 1981. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-532 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-188-000]

Central Maine Power Co.; Tariff Change

January 2, 1981.

The filing company submits the following:

Take notice that Central Maine Power Company (Central Maine) on December 23, 1980, tendered for filing as a supplement to existing FERC Electric Tariff, 3rd Revised Volume No. 1, Tariff Schedule W-3 as a noncontract rate for Madison Electric Works (MEW).

Central Maine states that Tariff Schedule W-3 is filed to allow MEW a fixed base for purchasing capacity and energy while allowing MEW to purchase their excess capacity and energy from other sources. The charges for fixed capacity and energy purchases are at the same rate as Tariff Schedule W-1 accepted by the Commission in Docket No. ER79-539. There is no increase to MEW in costs of electric service for capacity and energy up to the levels established in MEW's service contract with Central Maine which expired on September 30, 1980. Tariff Schedule W-3 established excess capacity and energy charges based on the cost of capacity and energy at Central Maine's William F. Wyman Unit No. 4, plus wheeling charges from Unit No. 4 to the MEW system.

Central Maine requests an effective date for Tariff Schedule W-3 of February 21, 1981, under statutory procedure.

Central Maine states that acceptance of Tariff Schedule W-3 will have no effect on any purchases by any other wholesale customer of Central Maine.

Central Maine further states that copies of the filing were served upon the Chairman and Superintendent of Madison Electric Works.

Any person desiring to be heard or to protest said application 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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 23, 1981. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-533 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-113]

Central Telephone and Utilities Corp.; Filing

December 31, 1980.

The filing company submits the following:

Take notice that on or about November 18, 1980, Central Telephone and Utilities Corporation (CTU) submitted for filing a letter indicating that it received no revenues in excess of those approved by the Commission in its letter order, issued October 24, 1980. Consequently, CTU maintains that refunds are not necessary and that a refund report need not be filed.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before January 15, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-534 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-165-000]

Connecticut Light & Power Co.; Filing of Tariff Change

December 31, 1980.

The filing company submits the following:

Take notice that The Connecticut Light and Power Company (the "Company") on December 11, 1980, tendered for filing a proposed "Rider B" to its FPC Electric Tariff Resale Service Rate R-4. The Company proposes that the tariff change become effective on January 15, 1981, and that billings pursuant to Rider B commence on the date upon which the Mt. Tom generating plant commences to burn coal as its primary fuel, which the Company estimates to be in January 1982.

The Company states that its charge to wholesale customers under its R-4 Rate reflect the fuel costs at the Mt. Tom plant, through the Company's participation in the Northeast Utilities Generation and Transmission Agreement. The Company states that conversion of he Mt. Tom plant from burning oil to burning coal is expected to result in lower fuel adjustment costs charges and that the proposed change to the R-4 Rate would add a temporary oil conservation adjustment "OCA" charge to permit payment of the Mt. Tom fuel conversion costs. The Company anticipates that conversion of the Mt. Tom plant can be partially accomplished in January 1982, and that the Mt. Tom plant can thereafter commence the use of coal as its primary fuel. The Company estimates that the proposed change to the R-4 Rate would produce revenues of approximately $289,000 during the twelve-month period following the date upon which the Mt. Tom plant commences burning coal as its primary fuel. However, during the same twelve-month period, operation of the R-4 Rate's fuel adjustment clause will reduce change to customers and the Company estimates that the net effect will be a rate reduction during the twelve-month period.

The Company has requested waiver of the requirements of § 35.3 of the Commission's regulations to permit its filing to be made more than 120 days prior to the date when charges are first proposed to be made and fewer than sixty days prior to the proposed effective date of January 15, 1981. Each of the customers to be served under the R-4 Rate at the time when the Company proposes to collect the OCA charges has submitted a statement supporting the proposed amendment.

The Company states that copies of the filing were served upon each of the Company's jurisdictional customers and the Connecticut Division of Public Utility Control.

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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1981. Protests will be considered by the Commission in determining the appropirate 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. 81-536 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-183-000]

Consolidated Edison Co., of New York, Inc.; Filing of Tariff Changes

January 2, 1981.

The filing company submits the following:

Take notice that on December 22, 1980, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing proposed changes in its rate schedule for transmission service to the Power Authority of the State of New York ("PASNY"), Con Edison Electric Rate Schedule FPC No. 42. The proposed Supplement No. 7 would increase revenues from jurisdictional service to PASNY by $10,375,952 annually.

The proposed increase represents the transmission charges for PASNY's proportionate share of rate increases now being sought by Con Edison before the New York Public Service Commission.

A copy of the filing has been served upon PASNY.

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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 23, 1981. Protests will be considered 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. 81-537 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-165-000]

Holyoke Power & Electric Co.; Filing of Rate Schedule Change

December 31, 1980.

The filing company submits the following:

Take notice that Holyoke Power and Electric Company (the "Company") on December 11, 1980, tendered for filing "Rider A" which supplements the rate schedule under which it sells a portion of the output of the Mt. Tom electric generating station to New England Power Company ("NEPCO") (the Company's FPC No. 1). The Company proposes that Rider A become effective on January 15, 1981, and that billings pursuant thereto commence on the date

upon which the Mt. Tom generating plant commences to burn coal as its primary fuel, which the Company estimates to be in January 1982.

The Company states that its charges to NEPCO reflect the fuel costs at the Mt. Tom plant. The Company states that conversion of the Mt. Tom plant from burning oil to burning coal is expected to result in lower fuel cost charges and that the proposed Rider A would add a temporary oil conservation adjustment "OCA" charge to permit payment of the Mt. Tom fuel conversion costs. The Company anticipates that conversion of the Mt. Tom plant can be partially accomplished in January 1982, and that the Mt. Tom plant can thereafter commence the use of coal as its primary fuel. The Company estimates that Rider A would produce revenues of approximately $6,928,000 during the twelve-month period following the date upon which the Mt. Tom plant commences burning coal as its primary fuel. However, during the same twelve-month period, fuel cost savings realized at Mt. Tom will reduce charges to NEPCO and the Company estimates that the net effect will be a rate reduction during the twelve-month period.

The Company has requested waiver of the requirements of § 35.3 of the Commission's regulations to permit its filing to be made more than 120 days prior to the date when charges are first proposed to be made and fewer than sixty days prior to the proposed effective date of January 15, 1981. NEPCO has submitted a statement approving the proposed amendment.

The Company states that copies of the filing were served upon NEPCO and the Department of Public Utilities of the Commonwealth of Massachusetts.

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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1981. 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. 81-538 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-165-000]

Holyoke Power & Electric Co.; Filing of Rate Schedule Change

December 31, 1980.

The filing company submits the following:

Take notice that Holyoke Power and Electric Company (the "Company") on December 11, 1980, tendered for filing a proposed "Rider A" to its Electric Service Agreement with the Town of South Hadley, Massachusetts (the Company's FPC No. 4). The Company proposes that Rider A become effective on January 15, 1981, and that billings pursuant to Rider A commence on the date upon which the Mt. Tom generating plant commences to burn coal as its primary fuel, which the Company estimates to be in January 1982.

The Company states that its charges to South Hadley under the rate Schedule reflect fuel costs at the Mt. Tom plant, through the Company's participation in the Northeast Utilities Generation and Transmission Agreement. The Company states that conversion of the Mt. Tom plant from burning oil to burning coal is expected to result in lower fuel adjustment charges and that the proposed change to the rate Schedule would add a temporary oil conservation adjustment "OCA" charge to permit payment of the Mt. Tom fuel conversion costs. The Company anticipates that conversion of the Mt. Tom plant can be partially accomplished in January 1982, and that the Mt. Tom plant can thereafter commence the use of coal as its primary fuel. The Company estimates that the proposed change to the rate schedule would produce revenues of approximately $56,000 during the twelve-month period following the date upon which the Mt. Tom plant commences burning coal as its primary fuel. However, during the same twelve-month period, operation of the rate Schedule's fuel adjustment clause will reduce charges to South Hadley and the Company estimates that the net effect will be a rate reduction during the twelve-month period.

The Company has requested waiver of the requirements of § 35.3 of the Commission's regulations to permit its filing to be made more than 120 days prior to the date when charges are first proposed to be made and fewer than sixty days prior to the proposed effective date of January 15, 1981. South Hadley has submitted a statement supporting the proposed amendment.

The Company states that copies of the filing were served upon South Hadley and the Department of Public Utilities of the Commonwealth of Massachusetts.

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 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1981. 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. 81-540 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-165-000]

Holyoke Water Power Co.; Filing of Rate Schedule Change

December 31, 1980.

The filing company submits the following:

Take notice that Holyoke Water Power Company (the "Company") on December 11, 1980, tendered for filing a proposed "Rider A" to its Resale Service Rate CD-1 under which it serves the City of Chicopee, Massachusetts. The Company proposes that Rider A become effective on January 15, 1981, and that billings pursuant to Rider A commence on the date upon which the Mt. Tom generating plant commences to burn coal as its primary fuel, which the Company estimates to be in January 1982.

The Company states that its charges to Chicopee under its CD-1 Rate reflect the fuel costs at the Mt. Tom plant, through the Company's participation in the Northeast Utilities Generation and Transmission Agreement. The Company states that conversion of the Mt. Tom plant from buning oil to burning coal is expected to result in lower fuel adjustment cost charges and that the proposed change to the CD-1 Rate would add a temporary oil conservation adjustment "OCA" charge to permit payment of the Mt. Tom fuel conversion

costs. The Company anticipates that conversion to the Mt. Tom plant can be partially accomplished in January 1982, and that the Mt. Tom plant can thereafter commence the use of coal as its primary fuel. The company estimates that the proposed change to the CD–1 Rate would produce revenues of approximately $137,000 during the twelve-month period following the date upon which the Mt. Tom plant commences burning coal as its primary fuel. However, during the same twelve-month period, operation of the CD–1 Rate's fuel adjustment clause will reduce charges to Chicopee and the Company estimates that the net effect will be a rate reduction during the twelve-month period.

The Company has requested waiver of the requirements of § 35.3 of the Commission's regulations to permit its filing to be made more than 120 days prior to the date when charges are first proposed to be made and fewer than sixty days prior to the proposed effective date of January 15, 1981. Chicopee has submitted a statement approving the proposed amendment.

The Company states that copies of the filing were served upon Chicopee and the Department of Public Utilities of the Commonwealth of Massachusetts.

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 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1981. 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. 81-539 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER80-520 and EL80-8]

Montaup Electric Co.; Order Accepting Revised Interim Rates for Filing

Issued January 2, 1981.

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., and George R. Hall.

The proceeding in Docket No. ER80-520 was initiated on July 11, 1980, when Montaup Electric Company (Montaup) submitted for filing revised rates applicable to six wholesale customers. At that time, Montaup also had pending before the Commission, in Docket No. EL80-8, an application to include construction work in progress (CWIP) in rate base. Prior to Commission action on Montaup's increased rate filing, Montaup advised the Commission by several letters that settlement discussions had been undertaken and that Montaup's proposed effective date for the revised rates should be deferred. On September 9, 1980, Montaup reported that a settlement in principle had been reached between the company and its affected customers. As a result, Montaup requested authorization to collect an interim settlement rate in lieu of the originally filed rate for the month of October. Montaup further stated that in the event that a final settlement was not forthcoming by October 31, 1980, the company would submit revised rates to become effective November 1, 1980.

By order issued September 30, 1980, the Commission, *inter alia*, accepted for filing and suspended the originally proposed rates, consolidated Docket Nos. ER80-520 and EL80-8, and allowed Montaup to collect its proposed interim rates from October 1, 1980, until new rates were filed consistent with the terms of the interim settlement agreement and the Commission's summary disposition of one issue.

On December 17, 1980, Montaup submitted revised interim rates, together with a request to collect such rates, subject to refund, as of December 1, 1980. Montaup now states that a final settlement in principle has been reached and that a document memorializing that agreement is currently being prepared. According to Montaup, the settlement agreement will provide that the interim settlement rate which became effective subject to refund on October 1, 1980, will become the final rate for the period October 1, 1980, through November 30, 1980. Under the agreement, the rates submitted on December 17, 1980, are then to become effective as of December 1, 1980. If the parties are unsuccessful in finalizing the anticipated settlement, Montaup has reserved the right to submit yet another revised rate to be collected as of February 1, 1981.

Discussion

In view of the unanimous customer consent [1] to the revised interim rate proposal, we believe it reasonable to authorize Montaup to implement the settlement rates on an interim basis. This is particularly true in view of the fact that the proposed settlement rates are lower than the previously accepted interim rates. Accordingly, we shall permit Montaup to collect the settlement rates tendered on December 17, 1980, subject to refund, from December 1, 1980, until such time as the Commission acts on the anticipated settlement agreement. If the agreement is disapproved, the originally filed rates as modified by the September 30, 1980 summary disposition, or such other rates as Montaup may submit in accordance with its December 17 memorandum of agreement, shall beome effective prospectively only and subject to refund from the date upon which the Commission's order rejecting the settlement becomes final. In the event that no settlement agreement is, in fact, submitted, the interim rates accepted for filing by this order shall remain in effect, subject to refund, pending the submittal of an alternative rate prior to February 1, 1981, and acceptance of such rate for filing, or a final decision on the merits in these dockets.

The Commission orders:

(A) Waiver of the requirements of §§ 35.8 and 35.1(e) of the Commission's regulations is hereby granted.

(B) Montaup is hereby authorized to collect the interim settlement rates submitted on December 17, 1980, subject to refund, beginning on December 1, 1980, and continuing until such time as the Commission acts on the anticipated settlement agreement. If the agreement is disapproved, or if no such agreement is forthcoming, the provisos contained in the body of this order shall apply.

(C) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-541 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[1] Montaup indicates that it has been unable to contact a representative of the Rhode Island state intervenors. As we noted in our order of September 30, 1980, in these dockets, our acceptance of the interim rate proposal will not affect the non-customer intervenors' right to oppose any final settlement agreement which may be filed.

[Docket No. ER81-180-000]

Montaup Electric Co.; Rate

December 31, 1980.

The filing utility represents the following:

Take notice that on December 19, 1980 Mantaup Electric Company ("Montaup") tendered for filing rate schedule revisions providing a new rate "M-6" for firm power at 115 kV. Montaup is a generating and transmission company chartered in Massachusetts and

responsible for the bulk power supply requirements of the two retail subsidiaries of Eastern Utilities Associates ("EUA"), a public utility holding company. These subsidiaries are Eastern Edison Company ("Eastern Edison") in Massachusetts and Blackstone Valley Electric Company ("Blackstone") in Rhode Island. Eastern Edison owns all of Montaup's securities.

The customers affected by this filing are Blackstone and Eastern Edison and four non-affiliated customers: Newport Electric Corporation, Pascoag Fire District, the Town of Middleborough, and the Tiverton Division of the Naragansett Electric Company. With the Exception of Middleborough, which is a Massachusetts municipality, each of Montaup's non-affiliated customers is located in Rhode Island.

The M-6 rate would increase Montaup's total revenue by $8,982,604 or by 4.3% above the level of the M-5 settlement rate. The increase is based on a cost of service for calendar year 1981 (Period II).

The filing is intended to recover cost increases which have eroded Montaup's return under the M-5 rate. Based on Montaup's Period II cost of service study, the M-5 settlement rate yields an overall rate of return of 9.15% and a return on common equity of 4.62%.

Montaup states that the M-6 rate increase is urgently needed to reverse a deterioration in earnings and enable the EUA System to raise capital for Montaup's construction program. Montaup requests that the filing be assigned an effective date of February 18, 1981 and suspended for one day.

Included with Montaup's filing are rate schedule revisions to increase the return on equity in agreements under which Blackstone and Eastern Edison rent 115 kV transmission facilities to Montaup and in an agreement under which Montaup rents certain transformers and substation facilities to Eastern Edison.

According to Montaup, copies of its filing have been served on the affected customers and, the Massachusetts Department of Public Utilities and the Rhode Island Public Utilities Commission.

Any person desiring to be heard or to protest said application 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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 15, 1981. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-518 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-186-000]

New Bedford Gas and Edison Light Co. Filing of Unit Power Sale Rate Schedule January 2, 1981.

The filing company submits the following:

Take notice that on December 23, 1980, New Bedford Gas and Edison Light Company ("New Bedford") filed a rate schedule governing the sale by New Bedford of a portion of its entitlement to capacity and related energy produced by Canal Electric Company's Unit No. 2 ("the Unit"). Said filing was made pursuant to § 35.12 of the Commission's Regulations.

By the provisions of the tendered rate schedule, New Bedford proposes to sell to Massachusetts Municipal Wholesale Electric Company 7.5702% of the Few Capability of the Unit (as defined at Article III of the tendered rate schedule) plus the energy related thereto for a six month period beginning November 1, 1980.

New Bedford requests that the Commission's notice requirements be waived pursuant to Section 35.11 of the Commission's Regulations in order to allow said filing to become effective November 1, 1980.

A copy of this filing has been served upon Massachusetts Municipal Wholesale Electric Company.

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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 23, 1981. 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. 81-519 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-59-002]

Northern Natural Gas Co.; Filing Substitute Tariff Sheets

January 2, 1981.

Take notice that on December 22, 1980, Northern Natural Gas Company (Northern) tendered for filing, as part of Northern's FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets:

Third Revised Volume No. 1

Substitute Twenty-Fourth Revised Sheet No. 4a.

Substitute Fourteenth Revised Sheet No. 4b.

Original Volume No. 2

Substitute Twenty-Fourth Revised Sheet No. 1c.

Such tariff sheets were filed in substitution for the tariff sheets filed by Northern in Docket No. TA81-01-59 by letter dated October 27, 1980.

This filing is being made in order to revise the base tariff rates in the October 27 filing to reflect the settlement rates agreed to in Docket No. RP80-88. The rates set forth on the tariff sheets filed herewith include, as base tariff rates, the Docket No. RP80-88 settlement rates, filed under letter dated December 9, 1980, to be effective October 27, 1980, as decreased by .01¢/Mcf for the R&D Tracker, plus the cumulative PGA adjustment reflected on the tariff sheets. The PGA, GRI and LFUT adjustments reflected on the attached tariff sheets are the same as those included in the original October 27 filing.

The Company states that copies of the filing have been mailed to each of the Gas Utility customers and interested State 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, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 13, 1981. 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. 81-520 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER77-5, E-8152]

Otter Tail Power Co.; Filing

December 31, 1981.

The filing party submits the following:

Take notice that on December 9, 1980, Otter Tail Power Company (Otter Tail) submitted for filing a compliance report pursuant to Commission Opinion No. 93, as amended by the order issued October 8, 1980, in the above referenced proceedings.

Otter Tail states that it has obtained signed agreements from the following municipalities:

1. Badger, South Dakota.
2. Bainesville, Minnesota.
3. Big Stone City, South Dakota.
4. Breckenridge, Minnesota.
5. Benson, Minnesota.
6. Detroit Lakes, Minnesota.
7. Lake Park, Minnesota.
8. Newfolden, Minnesota.
9. Nielsville, Minnesota.
10. Shelly, Minnesota.
11. Stephen, Minnesota.

Otter Tail further states that it has been unsuccessful in its attempts to secure signed agreements from the following municipalities:

1. Alexandria, Minnesota.
2. Elbow Lake, Minnesota.
3. Henning, Minnesota.
4. Ortonville, Minnesota.
5. Warren, Minnesota.

In order to make available additional time for action by these five municipalities, Otter Tail requests an extension of time pursuant to §§ 1.12, and 1.13 of the Commission's Rules of Practice and Procedure.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before January 15, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-521 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. SA81-3-000]

Peoples Natural Gas Company, Division of InterNorth, Inc.; Application for Adjustment and Request for Interim Relief

January 2, 1981.

On October 14, 1980, Peoples Natural Gas Company, Division of InterNorth, Inc., (Peoples) filed with the Federal Energy Regulatory Commission (Commission) an Application for Adjustment under Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432. Peoples seeks relief from Part 282 of the Commission's incremental pricing regulations insofar as they apply to its sales on its Texas Panhandle System. Peoples also requests interim relief pending determination of the Application.

Sections 282.601–.603 of the Commission's regulations require the filing of appropriate tariff sheets to implement the incremental pricing provisions of Title II of the NGPA, together with certain supplemental information and monthly reports. Peoples states that it has no non-exempt industrial boiler fuel facilities served directly or indirectly by its Texas Panhandle System and that it does not anticipate the addition of any such customers in the foreseeable future. For this reason, Peoples contends that the requirements of §§ 282.601–.603 are burdensome and unnecessary and it therefore requests an exemption from such requirements in order to prevent a special hardship associated with compliance with the requirements.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure (44 FR 18961, March 30, 1979).

Any person desiring to participate in this adjustment proceeding shall file a Petition to Intervene in accordance with the provisions of § 1.41. All petitions to intervene must be on file on or before January 28, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-522 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER78-409]

Philadelphia Electric Co.; Filing

January 2, 1981.

The filing company submits the following:

Take notice that on December 22, 1980, Philadelphia Electric Company submitted for filing a compliance report pursuant to the Commission's order of October 23, 1980, in the above-referenced proceeding.

A copy of this filing has been sent to the Borough of Lansdale, Pennsylvania and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before January 23, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-523 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-187-000]

Public Service Company of New Mexico; Change in Rate Schedule

January 2, 1981.

The filing company submits the following:

Take notice that Public Service Company of New Mexico (PNM), on December 23, 1980, tendered for filing proposed changes in rates to four wholesale customers, namely, Plains Electric Generation and Transmission Cooperative, Inc., Community Public Service Company, Department of Energy (DOE)-Los Alamos, and City of Farmington, New Mexico. The proposed changes would increase revenues from the sales and services by $13,121,000 on the basis of PNM's sales during Period II when compared to the settlement rates in Docket ER80-313.

The Company estimates it overall rate of return under presently effective rates during Period II would be 7.524 percent. This rate of return is not adequate to enable the Company to generate funds sufficient to meet its current construction program that is required to provide for substantial growth.

Copies of the filing were served upon the public utility's jurisdictional customers being served under these rate schedules and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said application 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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 23, 1981. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-524 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EF80-4031]

Southwestern Power Administration; Order Confirming and Approving Federal Rates

Issued January 2, 1981.

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., George R. Hall and J. David Hughes.

By letter filed June 9, 1980, the Assistant Secretary for Resource Applications (AS/RA) of the Department of Energy on behalf of the Southwestern Power Administration (SWPA), submitted a request for final confirmation and approval of an extension of rates for power marketed by SWPA from the Narrows Dam Project, for the period July 1, 1980, through August 2, 1981.[1] By Rate Order No. SWPA-5, dated June 6, 1980, AS/RA confirmed and approved the rate extension on an interim basis.

Notice of AS/RA's filing was published in the **Federal Register** on June 18, 1980, with protests or petitions to intervene due on or before July 7, 1980. No responses have been received.

The Narrows Dam Project, which is located on the Little Missouri River in Arkansas, is a multipurpose Corps of Engineers reservoir project. The power output from this project is marketed by SWPA as an isolated project. All such power is currenty purchased by Tex-La Electric Cooperative, Inc. (Tex-La), an organization of distribution cooperatives in eastern Texas and Louisiana.

The current contract rate was approved by the FPC for a period extending through June 30, 1980. However, the SWPA-Tex-La contract limits changes in the applicable rates to once every five years. Thus, under the contract, the existing rates would remain unchanged through August 2, 1981.

Discussion

Prior to the formation of the Department of Energy, the function of confirming and approving or disapproving SWPA's rates rested with the Federal Power Commission. After formation of the DOE, this function passed to the Secretary of Energy. By Delegation Order Number 0204-33, the Secretary of Energy delegated to this Commission the authority to confirm and approve on a final basis or to disapprove such rates. In accordance with the standards established in the Flood Control Act of 1944, the rates are to "encourage the most widespread use [of project power and energy] at the lowest possible rates to consumers consistent with sound business principles," and to recover "the cost of producing and transmitting such electric energy, including the amortization of the capital investment allocated to power over a reasonable period of years." [2]

The Commission finds it to be appropriate and in the public interest to approve and confirm the requested rate extension. The rates to be charged during the additional time period were previously approved by the FPC, and such extension will allow the rates to be consistent with the terms of the SWPA-Tex-La contract. As set out in AS/RA Rate Order No. SWPA-5, the additional time will "allow time to develop studies necessary for review of the present power rate and to undertake a public participation process in the event the rate requires adjustment."

These considerations, as well as the relatively short duration of the rate schedule and the lack of any protests to the rates, lead us to conclude that the proposed rates should be confirmed and approved.

The Commission orders

(A) The extension of rates charged by SWPA from the Narrows Dam Project for the period July 1, 1980 through August 2, 1981, as submitted by AS/RA on behalf of SWPA, is hereby confirmed and approved.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-525 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-29-000]

Start Oil Co.; Filing of Petition for Review

Issued January 2, 1981.

Take notice that Start Oil Company on December 4, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp. from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before January 16, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before January 16, 1981, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-526 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

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[1] These rates were previously approved by this Commission's predecessor, the Federal Power Commission, on August 3, 1976, in Docket No. E-6943.

[2] Section 5, Flood Control Act of 1944

[Docket No. RA80-63]

Tower Park; Filing of Petition for Review

Issued January 2, 1981.

Take notice that Tower Park on June 5, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp. from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before January 16, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before January 16, 1981, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-527 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-185-000]

Utah Power & Light Co.; Tariff Change

January 2, 1981.

The filing Company submits the following:

Take notice that Utah Power and Light Company (Utah Power), on December 19, 1980, tendered for filing a proposed cancellation of a service agreement with Lincoln Service Corporation (Lincoln), dated May 15, 1967 on file with the Federal Energy Regulatory Commission (FERC) as part of Utah Power's FERC Electric Tariff, Volume No. 1.

For a number of years, Lincoln Service has purchased its energy at wholesale from Utah Power under FERC Rate Schedule RS-2. Under an Agreement of Purchase and Sale between the parties, Utah Power will purchase the Lincoln properties and operate them as part of its interconnected system.

Any person desiring to be heard or to protest said application 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 §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 23, 1981. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-513 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-24-000]

Viacom Cablevision; Filing of Petition for Review

January 2, 1981.

Take notice that Viacom Cablevision on November 24, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp. from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before January 19, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before January 19, 1981, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-514 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-184-000]

West Texas Utilities Co.; Filing

January 2, 1981.

The filing company submits the following:

Take notice that on December 17, 1980, West Texas Utilities Company (WTU) submitted for filing a notice of cancellation of the Service Agreement between WTU and the City of Baird, Texas, under WTU's FERC Rate Schedule TR-1.

The Agreement between the City of Baird, Texas and WTU was cancelled because, as of October 9, 1980, WTU acquired the City's distribution system, and thus the city no longer serves its retail customers. Those customers are now served by WTU.

Any person desiring to be heard or to protest said application 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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 23, 1981. 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. 81-516 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-165-000]

Western Massachusetts Electric Co.; Filing of Tariff Change

December 31, 1980.

The filing company submits the following:

Take notice that Western Massachusetts Electric Company (the "Company") on December 11, 1980, tendered for filing a proposed "Rider A" to its FPC Electric Tariff Resale Service Rate RS-1 (FPC No. RS-1). The Company proposes that the tariff change become effective on January 15, 1981, and that billings pursuant to Rider A commence on the date upon which the Mt. Tom generating plant commences to burn coal as its primary fuel, which the Company estimates to be in January 1982.

The Company indicates that charges to wholesale customers under the RS-1 Rate reflect fuel costs at the Mt. Tom plant, through the Company's participation in the Northeast Utilities Generation and Transmission Agreement. The Company states that conversion of the Mt. Tom plant from burning oil to burning coal would result in lower fuel adjustment cost charges and that the proposed change to the RS-1 Rate adds a temporary oil conservation adjustment "OCA" charge to permit payment of the Mt. Tom fuel conversion costs. The Company anticipates that conversion of the Mt. Tom plant can be partially accomplished in January 1982, and that the Mt. Tom plant can thereafter commence the use of coal as its primary fuel. The Company estimates that the proposed change to the RS-1 Rate will produce revenues of approximately $10,125 during the twelve-month period following the date upon which the Mt. Tom plant commences burning coal as its primary fuel. However, during the same twelve-month period, operation of the RS-1 Rate's fuel adjustment clause will reduce charges to customers and the Company estimates that the net effect will be a rate reduction during the twelve-month period.

The Company has requested waiver of the requirements of § 35.3 of the Commission's regulations to permit its filing to be made more than 120 days prior to the date when charges are first proposed to be made and fewer than sixty days prior to the proposed effective date of January 15, 1981. Each of the customers to be served under the RS-1 Rate at the time when the proposed amendment is proposed to become effective has submitted a statement approving the proposed amendment.

The Company states that copies of the filing were served by it upon each of the Company's jurisdictional customers and the Department of Public Utilities of the Commonwealth of Massachusetts.

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 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1981. 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. 81-515 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-165-000]

Western Massachusetts Electric Co.; Filing of Rate Schedule Change

December 31, 1980.

The filing company submits the following:

Take notice that Western Massachusetts Electric Company (the "Company ") on December 11, 1980, tendered for filing a proposed "Rider A" to its Resale Service Rate CD-1. The company proposes that Rider A become effective on January 15, 1981, and that billings pursuant to Rider A commence on the date upon which the Mt. Tom generating plant commences to burn coal as its primary fuel, which the Company estimates to be in January 1982.

The Company states that its charges to wholesale customers under the CD-1 Rate reflect fuel costs at the Mt. Tom plant, through the Company's particiaption in the Northest Utilities Generation and Transmission Agreement. The Company states that conversion of the M. Tom plant from burning oil to burning coal is expected to result in lower fuel adjustment cost charges and that the proposed change to the CD-1 Rate would add a temporary oil conservation adjustment "OCA" charge to permit payment of the Mt. Tom fuel conversion costs. The Company anticipates that coversion of the Mt. Tom plant can be partially accomplished in January 1982, and the the M. Tom plant can thereafter commerce the use of coal as its primary fuel. The Company estimates that the proposed change to the CD-1 Rate would produce revenues of approximately $76,000 during the twelve-month period following the date upon which the Mt. Tom plant commences burning coal as its primary fuel. However, during the same twelve-month period, operation of the CD-1 Rate's fuel adjustment clause will reduce charges to customers and the Company estimates that the net effect will be a rate reduction during the twelve-month period.

The Company has requested waiver of the requirements of § 35.3 of the Commission's regulations to permit its filing to be made more than 120 days prior to the date when charges are first proposed to be made and fewer than sixty days prior to the proposed effective date of January 15, 1981. Each of the customers to be served under the CD-1 Rate at the time when the proposed amendment is proposed to become effective has submitted a statement approving the proposed amendment.

The Company states that copies of the filing were served upon the City of Westfield, Massachusetts, the only jurisdictional customer served under the CD-1 rate, and the Department of Public Utilities of the Commonwealth of Massachusetts.

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 §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1981. 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. 80-517 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-85-M

Office of Hearings and Appeals

Cases Filed; Week of November 7 through November 14, 1980

During the week of November 7 through November 14, 1980, 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.

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.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 7, 1981.

List of Cases Received by the Office of Hearings and Appeals

[Week of Nov. 7 through Nov. 14, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 7, 1980	Bon Wier Producing Company, Monroe, La	BEL-0067 to 0069.	Request for Temporary Exception. If granted: Bon Wier Producing Company would receive a temporary exception which would permit the firm to sell the crude oil produced from the Inman A-2, Inman B-1, and B-2 Wells located in Newton County, Texas, at upper tier ceiling prices.
Nov. 7, 1980	BYS, Inc. (Humble-Dody Fee Lease)	BXE-1524	Price Exception. If granted: BYS, Inc. would be permitted to sell the crude oil produced from the Humble-Dody Fee Lease located in Duval County, Texas, at upper tier ceiling prices.
Nov. 7, 1980	Fulbright & Jaworski, Washington, D.C.	BFA-0516	Appeal of a Information Request Denial. If granted: The October 6, 1980, Information Request Denial issued to Fulbright and Jaworski by the Office of Special Counsel would be recinded, and the firm would receive access to certain DOE materials.
Nov. 7, 1980	General Petroleum Products, Inc., Merrillville, Ind	BRH and BRD 1319.	Request for Evidentiary Hearing and Motion for Discovery. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by General Petroleum Products, Inc. in response to the Proposed Remedial Order (Case No. BRO-1319) issued to the firm.
Nov. 7, 1980	Navajo Refining Company, Houston, Tex	BEN-0073 to 0076.	Request for Interim Order. If granted: Navajo Refining Company would receive exception relief on an interim basis pending a final determination on its Application for Exception and Supplemental Order (Case Nos. BEE-0247, BEX-0014, 0131, and DEX-0122.)
Nov. 7, 1980	Navajo Refining Company Washington, D.C.	BEL-0070	Request for Temporary Exception from the Entitlements Program. If granted: Navajo Refining co. would receive a temporary exception from the provisions of 10 CFR 211.67 which would modify its entitlements purchase obligations.
Nov. 7, 1980	Tenneco Oil Company, Houston, Tex	BER-0073	Request for Modification/Recission. If granted: The September 24, 1980, Proposed Decision and Order issued to Tenneco Oil Co. (Case No. BEE-1401) regarding the pass-through costs of the Connecticut gross receipt tax liability would be modified.
Nov.10, 1980	Duncan, Allen & Mitchell (Ortman), Washington, D.C.	BFA-0520	Appeal of an Information Request Denial. If granted: The October 8, 1980, Information Request Denial issued by the Office of General Counsel would be rescinded and Duncan, Allen & Mitchell would receive access to information relating to the Proposed Delegation to FERC of Rate Confirmation Authority for DOE's Power Marketing Agencies.
Nov. 10, 1980	Johnson Oil Company, Salt Lake City, Utah	BFA-0519	Appeal of an Information Request Denial. If granted: The October 3, 1980, Information Request Denial issued by the Deputy General Counsel for Enforcement and Litigation would be rescinded, and Johnson Oil Co. would receive access to certain DOE materials.
Nov. 12, 1980	Allied Materials Corporation, Washington, D.C.	BEG-0038	Petition for Special Redress. If granted: Allied Materials Corporation would receive restitution for losses incurred in their participation in the Crude Oil Buy/Sell Program relating to the January 11, 1980, Decision and Order issued by the Economic Regulatory Administration.
Nov. 12, 1980	Blum & Nash, Washington, D.C.	BFA-0512	Appeal of an Information Request Denial. If granted: The October 14, 1980, Information Request Denial issued by the Office of Enforcement would be rescinded and Blum & Nash would receive access to information regarding the exchanges of crude oil product.
Nov. 12, 1980	Chevron U.S.A./Somerset Refining, Inc.	BEJ-0159	Motion for Protective Order. If granted: Chevron U.S.A. would enter into a Protective Order with Somerset Refining, Inc. regarding the release of proprietary information to Chevron in connection with Somerset Refining's Application for Exception (Cases No. BEE-1500).
Nov. 13, 1980	Mobil Oil Corporation, Washington, D.C.	BEA-0522	Appeal of the Canadian Crude Oil Allocation Notice. If granted: The August 29, 1980, Canadian Crude Oil Allocation Notice issued by the Economic Regulatory Administration would be modified regarding Mobil Oil Corporation's participation in the program.
Nov. 14, 1980	Vic & Lou's Union, San Francisco, Calif	BRR-0074	Request for Modification/Recission. If granted: The June 18, 1980, Remedial Order (Case No. BRO-0030) issued to Vix & Lou's Union would be modified regarding the firm's restitution of overcharges.

Notices of Objection Received

[Week of Nov. 11, 1980 to Nov. 14, 1980]

Date	Name and location of applicant	Case No.
11/7/80	Sunflower Fuel Alcohol Inc., Houston, Tex.	BEE-0935
11/7/80	Dean Oil Co., Cleveland, Ohio	BEE-0906
11/7/80	Art's Auto Sale, Malden, Mass	BEE-0807
11/10/80	McCall Marketing Co., Schaumburg, Ill.	BEE-1280
11/13/80	Lucia Lodge ARCO, Monterey, Calif.	BEE-5531
11/14/80	Energy Cooperative, Inc., Washington, D.C.	BEE-0506

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

[Week of Nov. 7, 1980 to Nov. 14, 1980]

If granted: The following firms would be granted relief which would increase their base period allocation of motor gasoline.

Name	Case No., date	State
L. H. Smith Oil Corp	BEE-1523, 11/13/80	Indianapolis, IN

[FR Doc. 81-1077 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of December 1 through December 5, 1980

During the week of December 1 through December 5, 1980, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings [10 CFR Part 205, Subpart D], any person who

will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Hearings and Appeals.

January 7, 1981.

Proposed Decisions and Orders

Mosinee Alcohol Inc., Mosinee, Wisconsin, BEE-0906, gasohol

Mosinee Alcohol Inc. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Mosinee to be assigned a base period supplier of motor gasoline and a base period volume of motor gasoline for the express purpose of producing denatured anhydrous alcohol to be used in blending gasohol. On December 2, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Purity Oil Co., Tulsa, Oklahoma, BEE-0894, gasohol

Purity Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol. On December 4, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Wolff Development, Inc., La Grande, Oregon, BEE-1498, gasohol

Wolff Development, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Wolff to receive an allocation of unleaded gasoline for the purpose of alcohol production and gasohol blending. On December 2, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exceptions from the provisions of the DOE Mandatory Petroleum Allocation Regulations. The exception request, if granted, would result in an increase in the firms' base period allocations of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

Company Name, Case Number and Location

Oklahoma Refining Co., DEE-5901, Washington, D.C.
Yellow Cab of Fort Lauderdale, BXE-1413, Washington, D.C.

The following firm filed an Application for Exception from the provisions of the DOE Mandatory Petroleum Allocation Regulations. The exception request, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued a Proposed Decision and Order which determined that the exception request be denied.

Company Name, Case Number, Location

Heather Hills Texaco, BEE-0800, Indianapolis, IN

[FR Doc. 81-1079 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Orders Filed; Week of December 1 through December 5, 1980

During the week of December 1 through December 5, 1980, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding conducted by the Department of Energy concerning the remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR § 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

January 7, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

Claypool Hill Exxon, Claypool Hill, Virginia, BRO-1339, motor gasoline

On December 3, 1980, Claypool Hill Exxon, Route No. 3, Box 84, Claypool Hill, Virginia, filed a Notice of Objection to a Proposed Remedial Order that the DOE Southeast District Office of Enforcement issued to the firm on November 3, 1980. In the PRO the Southeast District found that during the period August 1, 1979 to June 17, 1980, Claypool had committed pricing violations with respect to sales of motor gasoline.

According to the PRO the Claypool violation resulted in $15,289.26 of overcharges. This Notice of Objection has been transferred to the Southeast Regional Center of the Office of Hearings and Appeals for analysis.

Don's Texaco, Omaha, Nebraska, BRO-1340, motor gasoline

On December 4, 1980, Don's Texaco, 4420 Leavenworth, Omaha, Nebraska 68105, filed a Notice of Objection to a Proposed Remedial Order which the DOE Central District Office of Enforcement issued to the firm on September 28, 1979. In the PRO the Central Enforcement District found that during the period August 1, 1979 to September 28, 1979, Don's Texaco committed pricing violations with respect to sales of motor gasoline in the State of Nebraska.

According to the PRO, the firm's violation resulted in $13.35 of overcharges. This Notice of Objection has been transferred to the Central Regional Center of the Office of Hearings and Appeals for analysis.

Koch Industries, Inc., Wichita, Kansas, BRO-1341

On December 5, 1980, Koch Industries, Inc., P.O. Box 2256, Wichita, Kansas filed a Notice

of Objection to a Proposed Remedial Order which the DOE Southwest Refiner District Office of Special Counsel for Compliance issued to the firm on October 15, 1980. In the PRO, the Southwest Refiner District found that Koch Industries failed to supply West Side Distributing Company with its motor gasoline allocation during the period February through April 1979. The PRO would require Koch to supply this gasoline to West Side at the prices in effect at the time the gasoline should have been supplied.

[FR Doc. 81-1075 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of November 24 through November 28, 1980

During the week of November 24 through November 28, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Big K, Inc., Toledo, Ohio, BEO-1063, Motor Gasoline

Big K, Inc. filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was suffering a serious hardship, gross inequity, or unfair distribution of burdens. Accordingly, exception relief was denied.

Calaveras Transit Co., Vallecito, California, DEE-6797, Motor Gasoline

Calaveras Transit Company filed an Application for Exception from the provisions of 10 C.F.R., Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had not provided any evidence that its current allocation is inadequate to meet its needs or that it would experience any difficulty in obtaining additional gasoline at retail outlets should its allocation prove insufficient for its needs. Accordingly, exception relief was denied.

Chouteau Oil Company, El Paso, Texas, DEE-7837, Motor Gasoline

The Chouteau Oil Company filed an Application for Exception from the provisions of 10 C.F.R., Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

City of Long Beach, California, Long Beach, California, BXE-1410, Crude Oil

The City of Long Beach, California filed an Application for Extension of exception relief from the provisions of 10 C.F.R., Part 212, Subpart D. Exception relief was granted to permit Long Beach to sell at upper tier ceiling prices 77.78 percent of its working interest share of the crude oil produced from the Fault Block III Unit from November 1, 1980 to April 30, 1981. During this same period of time, Long Beach shall be permitted to sell 97.79 and 97.11 percent of the crude oil produced from the Fault Block III Unit at upper tier ceiling prices for the benefit of the other integrated and independent working interests, respectively.

Dollar Rent-A-Car, Frisco, Colorado, DEE-7215, Motor Gasoline

Dollar Rent-A-Car filed an Application for Exception from the provisions of 10 C.F.R., Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary in order to prevent the firm from experiencing a gross inequity. Accordingly, exception relief was granted.

Dr. Hooper Oil & Royalty Co., Houston, Texas, BEE-1118, Crude Oil

Dr. Hooper Oil & Royalty Company filed an Application for Exception from the provisions of 10 C.F.R., Part 212, Subpart D. Exception relief was granted which permits Dr. Hooper to sell 53.91 percent of the working interest share of the crude oil produced from the McComb Lease at market price levels.

Spring Creek Stores, Globe, Arizona, DEE-7533, Motor Gasoline

Spring Creek Stores filed an Application for Exception from the provisions of 10 C.F.R., § 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm failed to show that the motorists in its market area were experiencing an unfair distribution of burdens as a result of an unusual shortage of motor gasoline in the community. The firm also claimed that an increase in its base period allocation of motor gasoline was justified in order to permit it to realize the intended benefits of an investment it had made. In considering that claim, the DOE found that the firm had made its investment after the updating of the base period for motor gasoline. Therefore, any difficulties which the firm might be experiencing were the result of its own discretionary business decisions and were not attributable to the DOE allocation regulations. Accordingly, exception relief was denied.

Texas Oil Marketers Association, Austin, Texas, BEE-0436, Motor Gasoline

The Texas Oil Marketers Association (TOMA) filed an Application for Exception from the provisions of 10 C.F.R., § 212.93 in which the association sought an increase in its members' maximum allowable prices for motor gasoline to reflect increased non-product costs. In considering the request, the DOE found that TOMA members who were resellers or reseller-retailers had already received the requested relief by virtue of regulatory amendments and that there was no showing that exception relief continues to be necessary for these members of TOMA as a class. The DOE also determined that TOMA had failed to present sufficient information to support the approval of exception relief for its consignee members. Accordingly, the TOMA Application for Exception was denied. Finally, the DOE determined that, although temporary exception relief had been warranted when approved in December 1979, the regulatory amendments had eliminated the need for a continuation of that relief. Therefore, the temporary exception relief was terminated.

United Telephone Company of Kansas, Inc., Junction City, Kansas, BEO-0816, Temperature Restrictions

The United Telephone Company of Kansas, Inc. filed an Application for Exception from the provisions of 10 C.F.R., Part 490 in which the firm sought relief from the 65 degrees F heating restriction. In considering the request, the DOE determined that the firm failed to show that it was experiencing a special hardship, inequity, or unfair distribution of burdens as a result of the heating restriction. Accordingly, exception relief was denied.

Requests for Temporary Exception

Asamera Oil (U.S.) Inc., Washington, D.C., BEL-0071, crude oil

Asamera Oil (U.S.) Inc. filed an Application for Temporary Exception from the provisions of 10 CFR 211.67 in which the firm sought an increase in its entitlements sales obligation by an amount sufficient to bring the firm's post-entitlement crude oil costs into substantial parity with those of other refiners. In considering the request, the DOE found that in the absence of temporary exception relief the firm would suffer an irreparable injury. Accordingly, temporary exception relief was granted.

Monoco Oil Company, Rochester, New York, BEL-0066, crude oil

Monoco Oil Company filed an Application for Temporary Exception from the provisions of 10 CFR, 211.67 in which the firm sought permission to earn entitlements with respect to its purchases of residual fuel oil. In considering the request, the DOE found that the firm was not likely to succeed on the merits of its exception application because the firm's difficulties were not the result of a DOE regulatory program. In addition, the DOE concluded that Monoco would not suffer an irreparable injury in the absence of immediate relief. Accordingly, temporary exception relief was denied.

Requests for Stay

Alliance Oil and Refining Company, Houston, Texas, BRS-0114, crude oil

Alliance Oil and Refining Company filed an Application for Stay of the provisions of an Interim Remedial Order for Immediate Compliance (IROIC) which the DOE Office of Enforcement issued to the firm on October 24, 1980. In considering the Application, the DOE determined that the provision of the IROIC which requires Alliance to certify as "lower tier" all crude oil obtained pursuant to an exchange transaction and resold by the firm when the firm does not know the exact regulatory category of the crude oil to be

purchased to complete the exchange transaction, if implemented immediately, would cause Alliance to suffer irreparable financial injury and would not be in the public interest. Alliance's stay request was therefore granted in part.

Refinery Associates Oil-Tex Petroleum, Inc., San Antonio, Texas, BES-0018, BES-0019, crude oil

Refinery Associates and Oil-Tex Petroleum, Inc. filed Applications for Stay of the provisions of 10 CFR § 212.185(d) which require crude oil resellers to refund possible overcharges in resales of crude oil no later than November 30, 1980. In considering the requests, the DOE found that Refinery Associates and Oil-Tex would be unable to complete the refund process prior to November 30, 1980. Accordingly, the firm were granted a stay of the refund requirement until December 31, 1980.

Remedial Orders

Circle Service, San Francisco, California, BRO-1223, motor gasoline

Circle Service objected to a Proposed Remedial Order that the Office of Enforcement of the DOE issued to the firm on April 29, 1980. In the Proposed Remedial Order, the Office of Enforcement found that the Circle Service had charged prices higher than those permitted by 10 CFR § 212.93(a) (2) and had violated 10 CFR § 210.62(d)(1) by charging a cents-per-gallon fee for services associated with the sale of motor gasoline. The Office of Enforcement also found that the firm refused to make records available for inspection upon the request of the DOE in violation of 10 CFR § 210.92(b). After considering the firm's objections, the DOE concluded that the Proposed Remedial Order should be issued as a final Remedial Order. The important issues discussed in the Decision include: (i) whether charging a combined cents-per-gallon price for gasoline and service in excess of the maximum lawful selling price permitted by DOE regulations violates 10 CFR § 212.93(a)(2); and (ii) the procedural and substantive validity of 10 CFR § 210.62(d)(1).

Exeter Shell Service, Inc., Exeter, N.H., BRO-0620, motor gasoline

Exter Shell Service, Inc. objected to a proposed Remedial Order which the Office of Enforcement, Northeast District (Northeast Enforcement) issued to the firm on December 20, 1979. In the Proposed Remedial Order, Northeast Enforcement found that Exeter Shell charged prices for motor gasoline in excess of its maximum lawful levels during the period November 1, 1973 through April 30, 1974. In considering the firm's objections, the DOE found that Exeter Shell failed to demonstrate that Northeast Enforcement had erred in calculating the service station's overcharges or that the DOE had violated Exeter Shell's constitutional rights in the enforcement proceeding. The DOE therefore concluded that the Proposed Remedial Order should be issued as a final Order.

Supplemental Order

Warrior Asphalt Co. of Alabama, Inc., Washington, D.C. DEX-0093, crude oil

The Department of Energy conducted a year-end review of the exception relief from entitlement purchase obligations granted to Warrior during its fiscal year 1978. On the basis of the actual financial and operating data that Warrior submitted, the DOE found the firm had received excess relief in the amount of $416,834 during fiscal year 1978. The DOE ordered Warrior to refund the excess relief through entitlement purchases pursuant to the first Entitlements Notice published following the issuance of this Decision and Order

Petition Involving the Motor Gasoline Allocation Regulations

The following firm filed an Application for Exception from the provisions of the Motor Gasoline Allocation Regulations. The request, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued a Decision and Order which determined that the request be granted

Company Name, Case No., and Location

B&J Standard, BEO-0968, Riverview, MI.

The following firm filed an Application for Exception from the provisions of the Motor Gasoline Allocation Regulations. The request, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued a Decision and Order which determined that the request be denied.

Company Name, Case No., and Location

Howard O. Miller Co., DEE-3815, Pocatello, ID.

The following firm filed an Application for Exception from the provisions of the Motor Gasoline Allocation Regulations. The request, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued a Decision and Order which determined that the request be dismissed without prejudice to a refiling at a later date.

Company name, Case No., and Location

Farris Pasadena Free-WAY Shell, DEO-0336, Pasadena, TX.

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Name, Case No.

Baltimore Gas & Electric Co., DEA-0225.
City of Midland, Tex., BEO-1064.
Diamond Shamrock Corp., DEA-0469.
Exxon Co., U.S.A., BSG-0031.
J. J. Stafford & Sons, BEE-1533.
Oklahoma Publishing Co., BFA-0512.
Petrochemical Energy Group, DEA-0227.
Stephen M. Shaw, BFA-0529.
Werner Oil Co., BEE-0572.
Westate Oil Co., DEE-4076.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

January 7, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 81-1074 Filed 1-12-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

PF-211; PH-FRL 1725-4

Certain Pesticide Chemicals; Filing of Pesticide and Food Additive Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that certain companies have filed requests with the EPA to establish a food additive regulation and a pesticide tolerance.

ADDRESS: Written comments to: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-305, 401 M St. SW., Washington, D.C. 20460.

Written comments may be submitted while a petition is pending before the agency. The comments are to be identified by the document control number "[PF-211]" and the specific petition number. All written comments filed pursuant to this notice will be available for public inspection in the product manager's office form 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby (202-755-2562).

SUPPLEMENTARY INFORMATION: EPA gives notice that the following food additive petition and pesticide petition have been submitted to the agency to establish a food additive regulation and pesticide tolerance on certain raw agricultural commodities in accordance with the Federal Food, Drug, an Cosmetic Act. The analytical method for determining residues, where required, is given in each specific petition.

FAP 1H5281. BASF Wyandotte Corp., 100 Cherry Hill Road, Parsippany, NJ 07054, proposes amending 21 CFR Part 193 by establishing a regulation permitting the residues of the fungicide 2,6-dimethyl-4-tridecylmorpholine on the commodity dried tea at 50 parts per million.

PP OE2393. Mobay Chemical Corp., Box 4913, Kansas City, MO 64120, proposes amending 40 CFR Part 180 by establishing tolerances for the combined residues of 1-(4-cholorphenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy-alpha-1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol in or on the raw agricultural commodities cucumbers at 0.1 part per million, and tomatoes, whole fresh at 0.2 part per million (both for imported commodities only). The proposed analytical method for determining residues is gas-liquid chromatography utilizing a nitrogen-specific detector.

(Secs. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136); 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: January 6, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-1104 Filed 1-12-81; 8:45am]

BILLING CODE 6560-32-M

[OPP-50508A; PH-FRL 1725-5]

Fisons Inc.; Issuance of Experimental Use Permit; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice corrects a document that appeared in the **Federal Register** of November 26, 1980 (45 FR 78795), FR Doc. 80-36850. The pesticide and pesticide mixture appeared incorrectly.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Federal Register Staff (TS-788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. EB-42, 401 M St. SW., Washington, D.C. 20460, (202-426-2432).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of November 26, 1980 (45 FR 78795) that Fisons Inc. had been issued an experimental use permit for use of 2,300 pounds of the pesticide Nortron.

Please correct the 2nd column, 20th line to read: "Nortron in the following mixtures: Nortron Flowable— . . ."

(Sec. 5, 92 Stat. 819, as amended (21 U.S.C. 136))

Dated: January 6, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-1004 Filed 1-12-81; 8:45 am]

BILLING CODE 6560-32-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. B-17]

TV Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Released: January 8, 1981.

Cut-Off Date: February 19, 1981.

Notice is hereby given that the applications listed in the attached appendix are accepted for filing. Because the applications listed in the attached appendix are in conflict with applications which were accepted for filing and listed previously as subject to a cut-off date for conflicting applications, no application which would be in conflict with any application listed in the attached appendix will be accepted for filing.

Petitions to deny the applications listed in the attached appendix and minor amendments thereto must be on file with the Commission not later than the close of business on February 19, 1981. Any application previously accepted for filing and in conflict with any application listed in the attached appendix may also be amended as a matter of right not later than the close of business on February 19, 1981. Amendments filed pursuant to this notice are subject to the provisions of § 73.3572(b) of the Commission's Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Attachment.

BPCT-801121KE (new), Tucson, Arizona, Roman Catholic Church of the Diocese of Tucson, Channel 18, ERP: Vis. 1196 kW; HAAT: 3717 feet

BPCT-801121KF (new), Tucson, Arizona, Alden Communications Corp., Channel 18, ERP: Vis. 3810 kW; HAAT: 2012 feet

BPCT-801121KG (new), Tucson, Arizona, National Group Telecommunications of Tucson, Inc., Channel 18, ERP: Vis. 692 kW; HAAT: 2001 feet

BPCT-801121KH (new), Hollywood, Florida, Family Television 69, Inc., Channel 69, ERP: Vis. 1775 kW; HAAT: 1026 feet

BPCT-801121KI (new), Hollywood, Florida, Golden East Broadcaster, Inc., Channel 69, ERP: Vis. 2670 kW; HAAT: 1016 feet

BPCT-801121KJ (new), Hollywood, Florida, Christian Media of Florida, Inc., Channel 69, ERP: Vis. 5000 kW; HAAT: 978 feet

BPCT-801206KF (new), Oklahoma City, Oklahoma, TV 52 Broadcasting, Inc., Channel 52, ERP: Vis. 531 kW; HAAT: 1518 feet

[FR Doc. 81-1084 Filed 1-12-81; 8:45 am]

BILLING CODE 6712-01-M

[Gen. Docket No. 80-739; Report No. 16065]

Inquiry on Implementation of 1979 WARC Final Acts

November 26, 1980.

The Commission has adopted a first inquiry notice seeking public comment concerning proposed revisions to the FCC Table of Frequency Allocations (§ 2.106 of the rules) for the portion of the radio spectrum below 28 MHz. Comment is also sought on associated provisions of Part 2, Subpart B—Allocation, Assignment and Use of Radio Frequencies.

The inquiry notice was adopted in preparation for implementing the Final Acts of the 1979 World Administrative Radio Conference which become effective internationally on January 1, 1982, for those administrations which ratify the treaty, and will have the force of law in the United States.

The 1979 WARC was held in Geneva, Switzerland, between September 24 and December 6, 1979, to revise, as necessary, the international Radio Regulations. Of the 154 member nations of the International Telecommunication Union (ITU), 150 participated in the 1979 conference. Over 15,000 individual proposals dealing with numerous aspects of world telecommunications were considered by the conference. More than 900 of these were submitted by the United States, and most of the U.S. proposals were attained, either in entirety or in substantial part.

The Commission said its effort here was to compare the results of WARC and its in-going proposals in order to develop an appropriate domestic Table of Frequency Allocations. Therefore it is seeking comments on the proposed table, adding that the existing as well as the proposed table are set out in detail as Appendix A of the inquiry notice.

Comment dates will be announced later.

For further information contact Bill Torak, (202) 632-7025.

In an effort to minimize publishing costs, the entire text of this document will not be printed in the **Federal Register.** However, copies of the document in its entirety may be obtained from the Public Information Office, Room 202, 1919 M St., N.W., Washington, D.C. 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-1083 Filed 1-12-81; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Lousiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before February 2, 1981. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statements should indicate that this has been done.

Agreement No.: 57-117.

Filing Party: Edward D. Ransome, Esquire, Lillick McHose & Charles, Two Embarcadero Center, San Francisco 94111.

Summary: Agreement No. 57-117, among the member lines of the Pacific Westbound Conference, would extend the presently approved intermodal authority of the Conference for an unlimited period beyond the present expiration date of March 20, 1981, and reduce, from 60 to 30 days, the notice required for the member lines to take independent action on intermodal matters.

Agreement No. 9968-3.

Filing Party: Paul B. Thornquist, U.S. Representative, IAFC Puerto Rico and U.S. Virgin Islands Area, 17 Battery Place, Suite 801, New York, New York 10004.

Summary: Agreement No. 9968-3 amends Article 19 of the basic agreement of the Inter-American Freight Conference—Puerto Rico and U.S. Virgin Islands Area to require members to pay a penalty for failure to pay Conference expenses within 30 days of assessment.

Agreement No. 9968-4.

Filing Party: Paul B. Thornquist, U.S. Representative, IAFC Puerto Rico and U.S. Virgin Islands Area, 17 Battery Place, Suite 801, New York, New York 10004.

Summary: Agreement No. 9968-4 amends Article 18 of the basic agreement of the Inter-American Freight Conference—Puerto Rico and U.S. Virgin Islands Area to comply with the annual reporting under General Order 14, as revised, effective June 4, 1980.

Agreement Nos. 10045-4, 10105-2 and 10045-5, 10105-3.

Filing Party: Donald J. Brunner, Esquire, Ragan & Mason, 900 Seventeenth Street, N.W., Washington, D.C. 20006.

Summary: Agreement Nos. 10045-4, 10105-2 and 10045-5, 10105-3 will, respectively, permit the parties to the U.S. South Atlantic and Gulf/Panama and Costa Rica Rate Agreement and the U.S. South Atlantic and Gulf/Guatemala, Honduras and El Salvador Rate Agreement to (1) discuss and agree upon credit rules and to take telephone, telegraph or other telecommunication polls; and (2) discuss and agree upon brokerage and forwarders' compensation.

Agreement No. 10126-3.

Filing Party: Kenneth N. Tice, Secretary, Florida/Curacao, Aruba & Bonaire, Rate Agreement, Post Office Box 59-3037, AMF, Miami, Florida 33159.

Summary: Agreement No. 10126-3 amends the basic agreement of the Florida/Curacao, Aruba and Bonaire Rate Agreement to accomplish the following:

(1) Correction of typographical errors.

(2) Authority to appoint a neutral body for self-policing.

(3) Authority to adopt a cargo inspection program.

(4) Renumbering of agreement provisions.

By Order of the Federal Maritime Commission.

Dated: January 8, 1981.

Francis C. Hurney,

Secretary.

[FR Doc. 81-1068 Filed 1-12-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 81-2]

Port Authority of New York and New Jersey v. Trans Freight Line, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by The Port Authority of New York and New Jersey against Trans Freight Line, Inc. was served January 6, 1981. Complainant alleges that respondent has filed tariff supplements which apply rates on commodities to and from certain North Atlantic Ports that are different from rates it applies on the same commodities to and from other North Atlantic Ports.

This proceeding has been assigned to Administrative Law Judge William Beasley Harris. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 81-1162 Filed 1-12-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Privacy Act of 1974; Modification of Systems of Records

As required by the Privacy Act, 5 U.S.C. § 552a(e)(4), the Federal Trade Commission ("Commission") amends the system notice for Commission record system FTC-23, Financial Management System, to reflect a change in the routine use of the records maintained in the system. The most recent notice for the system appeared at 45 FR 1274 (1980). The revised notice is published below.

FTC-23

SYSTEM NAME:

Financial Management System-FTC

SYSTEM LOCATION:

Division of Budget and Finance, Federal Trade Commission, 6th Street and Pennsylvania Ave., N.W., Washington, D.C. 20580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FTC personnel who travel, receive salary compensation or who otherwise might be involved in reimbursement of expenses situations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name and employee number, or, in some cases, social security number of FTC personnel involved in incurring expenses to the Commission or otherwise reimbursed for expenses conducted in the performance of official duties of the FTC. Information relates to salary, travel and miscellaneous expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

21 U.S.C. and section 665; 5 U.S.C. Chapter 57; 15 U.S.C. and section 41 et seq.; OMB Circulars A-11 and A-34.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Recording and retrieving information relating to expenses incurred by FTC personnel in the performance of official duties, including summarized costing of employee activity reports for use in financial management reports by Commission managers.

Disclosure may be made to a congressional office from the record of an individual only when the congressional office makes the request on behalf of the private citizen.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Used by personnel of the Division of Budget and Finance in the performance of official duties.

STORAGE:

Computer hardcopy listings; computer tape files.

RETRIEVABILITY:

Indexed by name, employee number and, in some cases, social security numbers.

SAFEGUARDS:

Records are maintained in division files and computer files; access limited to Budget and Finance personnel.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Budget and Finance (same address as System Location).

NOTIFICATION PROCEDURE:

Records in this system are generally exempt from mandatory disclosure under 5 U.S.C. § 552a(k)(2). However, some individual records may be disclosable, and access to them may be requested by mailing or delivering a written request bearing the individual's name, return address, and signature addressed as follows: Privacy Act Request, Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Ave., N.W., Washington, D.C. 20580.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

FTC personnel and individuals on whom the record is maintained involved in travel reimbursement or salary payments.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. section 552a(k)(2), records in this system generally are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. section 552a. See Section 4.13(m) of the Federal Trade Commission Rules of Practice, 16 CFR section 4.13(m).

By direction of the Commission dated January 5, 1981

Carol M. Thomas,

Secretary.

[FR Doc. 81-1048 Filed 1-12-81; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Interstate Federal Savings & Loan Association is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of Metropolis Federal Savings & Loan Association. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Interstate Federal Savings & Loan Association. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-1037 Filed 1-12-81; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules:

SUMMARY: Kennecott Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Curtiss-Wright Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Kennecott. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antiturst Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-1038 Filed 1-12-81; 8:45 am]

BILLING CODE 7650-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Joe L. Allbritton is granted early termination of the waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of certain voting securities of the Riggs National Bank of Washington, D.C. The grant was made

by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Joe L. Allbritton. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-1039 Filed 1-12-81; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Seibels Bruce Group, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all stock of Rathbone, King & Seeley, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202–523–3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-1040 Filed 1-12-81; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Swissair, Swiss Air Transport Co., Ltd. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain assets of Loews Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-1041 Filed 1-12-81; 8:45 am]

BILLING CODE 6750-01-M

GREAT LAKES BASIN COMMISSION

Intent To Prepare Draft Environmental Impact Statement (DEIS) for an Element of the Great Lakes Basin Plan

AGENCY: Great Lakes Basin Commission.

ACTION: Notice of Intent to Prepare Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. The proposed element is a policy plan of the joint state-federal commission that is regional in scope, and consists of policy guidance for federal, state, local and private sectors in the Great Lakes basin. This element of the plan will develop and evaluate policy options which can guide decisionmakers in the funding of transportation improvements to enhance the efficiency and capability of the Great Lakes transportation system to meet the region's economic needs.

2. Alternatives will be considered including a no action plan.

3. (a) Scoping will be done with the Commission's Standing Committee on Transportation. This committee consists of member agencies used during the planning process include: (1) further coordination with appropriate individuals, industries, interest groups, and government agencies, (2) distribution of DEIS's to the public and agencies for their review and comment.

(b) Significant issues requiring in-depth analysis: none.

(c) Environmental review and consultation will be in accordance with the National Environmental Policy Act of 1969. The DEIS will be circulated for review and all comments will be considered in preparing the final environmental impact statement.

4. A scoping meeting will not be held, however activities as addressed in 3a will be considered.

5. The DEIS will be available during Phase II of the study which will begin in November, 1981.

ADDRESS: Requests for additional information or questions concerning this notice should be directed to the Great Lakes Basin Commission, Attn: Transportation Study Manager, Post Office Box 999, Ann Arbor, Michigan 48106, 313/668–2300.

DATED: December 30, 1980.

Lee Botts,

Chairman.

[FR Doc. 81-1112 Filed 1-12-81; 8:45 am]

BILLING CODE 6415-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 78N-0200; DESI 10029]

Combination Drugs Containing Hydrocortisone and Coal Tar for Topical Use; Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Applications

Correction

In FR Doc. 80-37888, published at page 81122, in the issue of Tuesday, December 9, 1980, make the following corrections:

1. On page 81123, first column, the first word in the first line now reading "lace" should read "lack".

2. In the same column, in the next paragraph, under **DATES,** the date for a hearing request in the second line, now reading "January 7, 1981" should read "January 8, 1981. In the last line of that paragraph, the date for supporting information, now reading "February 6, 1981" should read "February 9, 1981".

3. In the same column, under **FOR FURTHER INFORMATION CONTACT,** the second name in the next line now reading "Berstenzang" should read "Gerstenzang".

4. On the same page, third column, first full paragraph, in the third line from the bottom of the paragraph, the cite "3414.111(a)(5)(ii)(*C*)" should read "314.111(a)(5)(ii)(*c*)".

5. On page 81125, first column, second full paragraph, in the third line from the end of the paragraph:, "section 17(c)" should read "section 107(c)".

6. In the same column last paragraph, the date in the fourth line now reading "January 7, 1981" should read "January 8, 1981". The date in the seventh line now reading "February 6, 1981" should read "February 9, 1981".

BILLING CODE 1505-01-M

[Docket No. 80N-0467]

Safety of Certain Food Ingredients; Opportunity for Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces an opportunity for public hearing on the safety of bioflavonoids, enzyme-modified edible fats, activated carbon (charcoal), and smoke flavoring solutions to determine whether they are generally recognized as safe (GRAS) or subject to a prior sanction. This action accords with procedures of a comprehensive safety review the agency is conducting. Interested persons are invited to give their views on the safety of these substances.

DATE: Requests to make oral presentations at the public hearing must be postmarked on or before Feburary 12, 1981.

ADDRESSES: Written requests to the Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014, and to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Bureau of Foods (HFF-355), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 26, 1973 (38 FR 20053), FDA issued a notice advising the public that an opportunity would be provided for oral presentation of data, information, and views at public hearings to be conducted by the Select Committee on GRAS Substances of the Life Sciences Research Office, Federation of American Societies for Experimental Biology (the Select Committee) about the safety of ingredients used in food to determine whether they are GRAS or subject to a prior sanction.

The agency now announces that the Select Committee is prepared to conduct a public hearing on bioflavonoids, enzyme-modified edible fats, activated carbon (Charcoal), and smoke flavoring solutions for use as direct food ingredients. The public hearing will provide an opportunity, before the Select Committee reaches its final conclusions, for any interested person(s) to present to the Select Committee scientific data, information and views on safety of these substances, in addition to those previously submitted in writing under notices published in the **Federal Register** of July 26, 1973 (38 FR 20051, 20053), April 17, 1974 (39 FR 13798), and March 28, 1978 (43 FR 12941).

The Select Committee has reviewed all the available data and information on the food ingredients listed above and has reached one of the following five tentative conclusions on the status of each:

1. There is no evidence in the available information that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when it is used at levels that are now current or that might reasonably be expected in the future.

2. There is no evidence in the available information that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when it is used at levels that are now current and in the manner now practiced. However, it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard. (This finding does not apply to the substances covered by this notice.)

3. Although no evidence in the available information demonstrates a hazard to the public when it is used at levels that are now current and in the manner now practiced, uncertainties exist requiring that additional studies be conducted.

4. The evidence is insufficient to determine that the adverse effects reported are not deleterious to the public health when it is used at levels that are now current and in the manner now practiced. (This finding does not apply to the substances covered by this notice.)

5. The information available is not sufficient to make a tentative conclusion.

The Select Committee willl evaluate the information received at the public hearing and use it in reaching its conclusion.

The following table lists the ingredients, the Select Committee's tentative conclusions (keyed to the five types of conclusions listed above), and the available information on which the Select Committee reached its conclusions:

Substance	Select committee tentative conclusion	Order No., price code, price [1]		
		Scientific literature review	Animal study report	Other information
Bioflavonoids:				
Naringin	1	PB 289-600; A06; $9.00	1. A study of the effect of bioflavonoids on mouse fertility, 1954, by Primorganics, Inc.	1. Memorandum, April 7, 1980, F.R. Sent. FASEB, Bethesda, MD
Hesperidin	1			
Citrus bioflavonoid extracts	3			

Substance	Select committee tentative conclusion	Order No., price code, price [1] Scientific literature review	Animal study report	Other information
			2. Acute oral toxicity of hesperidin in rats, 1955, by Primorganics, Inc. 3. Acute Oral toxicity of lemon bioflavonoid complex in rats, 1956, by Primogranics, Inc. 4. Acute oral toxicity of lemon-orange flavonate glycoside in rats, 1956, by Primorganics, Inc.	2. Committee on GRAS list Survey—Phase III. The 1977 survey of industry on the use of food additives. (PB 80-113418; E19; $50.50) 3. Letter, April 25, 1980, D.B. Nelson, Sunkist Growers, Ontario, CA, to F.R. Senti, FASEB, Bethesda, MD. 4. Letter, May 9, 1980, D. B. Nelson, Sunkist Growers, Ontario, CA, to F.R. Senti, FASEB, Bethesda, MD. 5. Letter, June 4, 1980, D. B. Nelson, Sunkist Growers, Ontario, CA, to F.R. Senti, FASEB, Bethesda, MD. 6. Subcommittee on Review of the GRAS List—Phase II. A comprehensive survey of industry on the use of food chemicals generally recognized as safe (GRAS). (PB 221-921 through PB 221-949 or PB 221-920 for the set; E99; $173.00). 7. Letter, September 4, 1946, L. H. Van Buskirt, Columbus, OH, to G. H. Palmer, California Fruit Growers Exchange, Corona, CA. 8. Letter, April 7, 1961, E. T. Wulfsberg, FDA, Washington, DC, to R.C. Bruner, Sunkist Growers, Inc., Ontario, CA. 9. Letter, April 28, 1961, E. T. Wulfsberg, FDA, Washington, DC, to E. Gunsberg, U.S. Vitamin & Pharmaceutical Corp., Yonkers, NY.
Enzyme-modified edible fats	1	PB 287-763; A03; $6.00	1. Mutagenic evaluation of compound 124-07-2 caprylic acid (75-38), by Litton Bionetics, Inc., under FDA contract. (PB 257-872; A03; $6.00).	1. Letter, March 22, 1960, F.A. Cassidy, FDA, Washington, DC, to M.G. Farnham, Dairyland Food Laboratories, Inc., Waukesha, Inc. 2. Letter, April 21, 1964, F.A. Cassidy, FDA, Washington, DC, to J.H. Nelson, Dairyland Food Laboratories, Inc., Waukesha, WI. 3. Committee on GRAS List Survey—Phase III. 1975 Resurvey of the annual poundage of food chemicals generally recognized as safe (GRAS). (PB 228-081/AS; A03; $6.00). 4. "LBO" lipase modified butterfat products. Technical Bulletin No. 5101 (1980), Dairyland Food Laboratories, Inc., Waukesha, WI. 5. "LBO" products in coffee whiteners. Technical Bulletin No. 5121 (1980), Dairyland Food Laboratories, Inc., Waukesha, WI. 6. "LBO" products in typical candy formulas. Technical Bulletin No. 5141 (1980), Dairyland Food Laboratories, Inc., Waukesha, WI. 7. "Mil-Lait" enzyme modified whole milk powder. Technical Bulletin No. 51001 (1980), Dairyland Food Laboratories, Inc., Waukesha, WI. 8. Memorandum, February 11, 1980, F.R. Senti, FASEB, Bethesda, MD. 9. Letter, April 2, 1964, J.H. Nelson, Dairyland Food Laboratories, Inc., Waukesha, WI, to F.A. Cassidy, FDA, Washington, DC. 10. Evaluation of the health aspects of tallow, hydrogenated tallow, stearic acid and calcium stearate as food ingredients (SCOGS-54) (PB 261-661; A02; $5.00). 11. Evaluation of the health aspects of sodium oleate and sodium palmitate as substances migrating to food from paper and paper-board used in food packaging (SCOGS-86) (PB 276-414; A02; $5.00). 12. Evaluation of the health aspects of coconut oil, peanut oil, and oleic acid as they may migrate to food from packaging materials, and linoleic acid as a food ingredient (SCOGS-65) (PB 274-475; A02; $5.00).
Activated carbon (charcoal):				
Part of committee	1	PB 280-129/AS; A03; $6.00		1. Norit activated carbon. Bulletin No. PW-1-79 (1979), American Norit Co., Inc., Jacksonville, FL. 2. Committee on GRAS List Survey—Phase III. 1975 Resurvey of the annual poundage of food chemicals generally recognized as safe (GRAS). (PB 228-081/AS; A03; $6.00). 3. Letter, July 13, 1979, S. T. Cross, ICI Americas, Inc., Wilmington, DE, to F. R. Senti, FASEB, Bethesda, MD. 4. Letter, May 21, 1979, J. A. T. de Muynk, American Norit Co., Jacksonville, FL, to F. R. Senti, FASEB, Bethesda, MD. 5. Memorandum, February 24, 1978, L. Larsen, FDA, Washington, DC. 6. Letter, March 9, 1960, A. J. Lehman, FDA, Washington, DC, to O. F. Anstead, Ltd., Essex, England. 7. Operational aspects of granula activated carbon adsorption treatments (1978). O. T. Love and J. M. Symons, EPA, Municipal Environmental Research Laboratory, Cincinnati, OH. 8. Letter, February 9, 1979, J. H. Mahon, Calgon Corp., Pittsburgh, PA, to F. R. Senti, FASEB, Bethesda, MD.
Part of committee	5			

Substance	Select committee tentative conclusion	Order No., price code, price [1] Scientific literature review	Animal study report	Other information
				9. Letter, April 20, 1967, J. McLaughlin, FDA, Washington, DC, to T. Hughes, Keller and Heckman, Washington, DC. 10. Letter, June 8, 1979, J. P. Modderman, FDA, Washington, DC, to F. R. Senti, FASEB, Bethesda, MD. 11. An evaluation of activated carbon for drinking water treatment (1980). NRC, Subcommittee on Absorption of the Safe Drinking Water Committee, Washington, DC. 12. Introduction to activated carbon. Technical Bulletin (1979), Norit-Clydesdale Co., Ltd., Jacksonville, FL. 13. Subcommittee on Review of the GRAS List—Phase II. A comprehensive survey of industry on the use of food chemicals generally recognized as safe (GRAS). (PB 221-921 through PB 221-949 or PB 221-920 for the set; E99; $173.00). 14. Current industrial reports, inorganic chemicals (1977). Bureau of the Census, Department of Commerce, Washington, D.C. (M28A(77)-14). 15. Grade 209: beverage and food process water purification. Technical Bulletin No. W-2 (1979). Activated Carbon Division, Witco Chemical Corp., Houston, TX.
Smoke flavoring solutions and smoked yeast flavoring:				
Smoked flavoring solutions	3	PB 280-130; A04; $7.00	1. "Liquid smoke" flavor safety evaluation by oral administration to rats for 90 days. J.W. Johnson, G. Woodward, and M.T.I. Cronin, 1963, Woodward Research Corp.	1. Letter, February 26, 1964, O.L. Bennett, USDA, Washington, DC, to H.S. Weeks, Old Hickory Products Co., Woodstock, GA. 2. Letter, December 2, 1970, O.L. Bennett, USDA, Washington, DC, to C.M. Hollenbeck, Red Arrow Products Co., Manitowoc, WI. 3. Letter, January 26, 1979, J. Brudnak, Red Arrow Products Co., Manitowoc, WI, to F.R. Senti, FASEB, Bethesda, MD. 4. Letter, February 15, 1960, F.A. Cassidy, FDA, Washington, DC, to R.A. Kellerman, First Spice Mixing Co., Inc., San Francisco, CA. 5. Letter, June 8, 1960, F.A. Cassidy, FDA, Washington, DC, to C.M. Hollenbech, Wisconsin Mating Co., Manitowoc, WI. 6. Letter, March 15, 1962, F.A. Cassidy, FDA, Washington, DC, to M. Fellar, Fellar Laboratories, Chicago, IL. 7. Letter, December 16, 1964, F.A. Cassidy, FDA, Washington, DC, to C.M. Hollenbeck, Red Arrow Products Co., Manitowoc, WI. 8. Letter, October 12, 1959, A.A. Checchi, FDA, Washington, DC, to H.S. Weeks, Atlanta, GA. 9. Letter, October 16, 1959, A.A. Checchi, FDA, Washington, DC, to G.N. Friedman, Florasynth Laboratories, Inc., Chicago, IL. 10. Committee on GRAS List Survey—Phase III. 1975 Resurvey of the annual poundage of food chemicals generally recognized as safe (GRAS). (PB 228-081/AS; A03; $6.00). 11. Committee on GRAS List Survey—Phase III. The 1977 survey of industry on the use of food additives. (PB 80-113418; E19; $50.50). 12. Letter, March 7, 1979, D.E. Crace, Hickory Specialties, Inc., Crossville, TN, to F.R. Senti, FASEB, Bethesda, MD. 13. Letter, March 1, 1979, J.N. Czarnecki, Griffith Laboratories, Alsip, IL, to F.R. Senti, FASEB, Bethesda, MD. 14. Letter, July 17, 1978, C. Dame, Stange Co., Chicago, IL, to F.R. Senti, FASEB, Bethesda, MD. 15. Letter, May 1, 1979, C. Dame, Strange Co., Chicago, IL, to F.R. Senti, FASEB, Bethesda, MD. 16. Interaction of wood smoke components and foods. H. Daun, presented at the annual meeting of the Institute of Food Technologists, June 4-7, 1978, Dallas, TX. 17. Biological examination of food additives. Final report no. A-675 (1963), A.B. Eschenbrenner, Engineering Experiment Station, Georgia Institute of Technology, Atlanta, GA. 18. Letter, April 30, 1974, C.L. Ettinger, USDA, Washington, DC, to W.A. Brittin, Stange Co., Chicago, IL. 19. Letter, May 16, 1979 and September 2, 1980, R. A. Ford, Flavoring Extract Manufacturers' Association, Washington, DC, to C.I. Miles, FDA, Washington, DC. 20. Griffith Royal Smoke Codes AA, A, B, SF-12, SF-40. Technical Bulletin (1977). Griffith Laboratories, Alsip, IL.
Smoked yeast flavoring	5			

Substance	Select committee tentative conclusion	Order No., price code, price [1] Scientific literature review	Animal study report	Other information
				21. Liquid smoke flavorings—status of development. C.M. Hollenbeck, presented at the annual meeting of the Institute of Food Technologists, June 4–7, 1978, Dallas, TX. 22. Mutagenicity evaluation of natural hickory smoke flavor—code 402 in the Ames salmonella/microsome plate test. D.R. Jagannath and D.J. Brusik, 1979, Litton Bionetics, Inc., Kensington, MD. 23. Report on Analysis of polynuclear aromatic hydrocarbons in "Char-sol" (liquid smoke). R. Lechnir, 1977, WARF Institute, Inc., Madison, WI. 24. Report on benzo(a)pyrene analysis in "Royal Smoke". R. Lechnir 1978, WARF Institute, Inc., Madison, WI. 25. Report on determination of polynuclear aromatic hydrocarbons in aqueous liquid smoke flavors. R. J. Lechnir and R. M. Lusskin 1978, Raltech Scientific Services, Inc., Madison, WI. 26. Report on liquid smoke. R. H. T. Maffan, 1978, AGRI Laboratories, Inc., Los Angeles, CA. 27. Ames mutagenesis test: "charsol" (liquid smoke). W. J. Nitzke, 1977, WARF Institute, Inc., Madison, WI. 28. Letter, January 3, 1980, R. J. Pecore, Bakon-Yeast, Inc., Rhinelander, WI, to F. R. Senti, FASEB, Bethesda, MD. 29. Letter, March 25, 1980, R. J. Pecore, Bakon-Yeast, Inc., Rhinelander, WI, to F. R. Senti, FASEB, Bethesda, MD. 30. "Char-sol" assay report. R. Prier, 1961, WARF Institute, Inc., Madison, WI. 31. "Charsol" technical directory (1979). Red Arrow Products Co., Manitowoc, WI. 32. Letter, February 20, 1979, L. Sair, Griffith Laboratories, Chicago, IL, to F. R. Senti, FASEB, Bethesda, MD. 33. Analysis of "charsol" liquid C10 for nitrosamine, J. S. Scheidler, 1978, WARF Institute, Inc., Madison, WI. 34. Letter, September 21, 1971, C. H. Schroeder, WARF Institute, Inc., Madison, WI, to R. J. Pecore, Bakon-Yeast Inc., Rhinelander, WI. 35. Letter, January 4, 1960, C. G. Schultz, Lake States Division, Monarch Paper Corp., Rhinelander, WI, to F. R. Senti, FASEB, Bethesda, MD. 36. Subcommittee on Review of the GRAS List—Phase II. A comprehensive survey of industry on the use of food chemicals generally recognized as safe (GRAS). (PB 221-921 through PB 921-949 or PB 921-920 for the set; E99, $173.00). 37. Trace metal determination in liquid smoke products. J. B. Thompson, 1977, Trace Metal Research Laboratory, Homewood, IL. 38. Composition of wood smoke and application of liquified smoke. H. E. Wistreich, presented at the annual meeting of the Institute of Food Technologists, June 4–7, 1978, Dallas, TX.

[1] Price subject to change

Reports in the table with "PB" prefixes may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161.

In addition to the information contained in the documents listed in the table above, the Select Committee supplemented, where appropriate, its reviews with specific information from specialized sources as announced in a previous hearing opportunity notice published in the **Federal Register** of September 23, 1974 (39 FR 34218).

The Select Committee's tentative reports on bioflavonoids, enzyme-modified edible fats, activated carbon (charcoal), and smoke flavoring solutions are available for review at the office of the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and also at the Public Information Office, Food and Drug Administration, Rm. 3807, 200 C St. SW., Washington, DC 20204. In addition, all reports and documents used by the Select Committee to review the ingredients are available for review at the office of the Dockets Management Branch.

To schedule the public hearing, the Select Committee must be informed of the number of persons who wish to attend and the time required to give their views. Accordingly, any interested person who wishes to appear at the public hearing to make an oral presentation shall inform the Select Committee in writing addressed to the Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014. A copy of each request shall be sent to the Dockets Management Branch (address above). All requests will be placed on public display in that office. Any such request must be received by or postmarked on or before February 12, 1981. Requests shall state the substance(s) on which an opportunity to present oral views is requested and how much time is being requested for the presentation. Requests should specify the docket number found in brackets on the heading of this notice. As soon as possible after the request deadline, a notice announcing the date, time, place,

and scheduled presentations for any public hearing that has been requested will be published in the **Federal Register.**

The purpose of the public hearing is to receive data, information, and views not previously available to the Select Committee about the substances listed above. Information already contained in the scientific literature reviews and in the tentative Select Committee report shall not be duplicated, although views on the interpretation of this material may be presented.

Depending on the number of requests for opportunity to make oral presentations, the Select Committee may reduce the time requested for any presentation. Because of time limitations, individuals and organizations with common interests are urged to consolidate their presentations. Any interested person may, in lieu of an oral presentation, submit written views, which shall be considered by the Select Committee. Three copies of such written views, identified with the docket number found in brackets in the heading of this notice, shall be addressed to the Select Committee at the address noted above and must be postmarked not later than 10 days before the scheduled date of the hearing. A copy of any written views shall be sent to the Dockets Management Branch, Food and Drug Administration, and will be placed on public display in that office.

A public hearing will be presided over by a member of the Select Committee. Hearings will be transcribed by a reporting service, and a transcript of each hearing may be purchased directly from the reporting service and will be placed on public display in the office of the Dockets Management Branch (HFA-305), Food and Drug Administration.

Dated: January 6, 1981

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-909 Filed 1-12-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80M-0468]

Abbott Laboratories; Premarket Approval of Abbott Carcinoembryonic Antigen (CEA) Enzyme Immunoassay (EIA) Kit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Abbott carcinoembryonic antigen (CEA) enzyme immunoassay (EIA) kit (Abbott CEA-EIA kit) sponsored by Abbott Laboratories, North Chicago, IL. After reviewing the recommendation of the Immunology Device Section of the Immunology and Microbiology Devices Panel, FDA notified the sponsor that the application was approved because the device has been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by February 12, 1981.

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 (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry Goldstein, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8162.

SUPPLEMENTARY INFORMATION: The sponsor, Abbott Laboratories, North Chicago, IL, submitted to FDA on March 31, 1978 an application for premarket approval of the Abbott carcinoembryonic antigen (CEA) enzyme immunoassay (EIA) kit (Abbott CEA-EIA kit). This device is an in vitro diagnostic product used as an aid in the management of cancer in humans. In the **Federal Register** of September 5, 1980 (45 FR 58964) FDA announced that biological in vitro diagnostic products used as aids for the detection and management of cancer in humans are now considered medical devices, and that the responsibility for regulating them has been transferred from the Bureau of Biologics to the Bureau of Medical Devices. The application was reviewed by the Immunology Device Section of the Immunology and Microbiology Devices Panel, and FDA advisory committee, which recommended approval of the application. On October 15, 1980 FDA approved the application by a letter to the sponsor from the Acting Director of the 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. 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 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 February 12, 1981, file with the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, four 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: January 6, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-910 Filed 1-12-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80M-0469]

Abbott Laboratories; Premarket Approval of Abbott Carcinoembryonic Antigen (CEA) Radioimmunoassay (RIA) Kit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces approval of the application for

premarket approval under the Medical Device Amendments of 1976 of the Abbott carcinoembryonic antigen (CEA) radioimmunoassay (RIA) kit (Abbott CEA-RIA kit) sponsored by Abbott Laboratories, North Chicago, IL. After reviewing the recommendation of the Immunology Device Section of the Immunology and Microbiology 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 February 12, 1981.

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 (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry Goldstein, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8162.

SUPPLEMENTARY INFORMATION: The sponsor, Abbott Laboratories, North Chicago, IL, submitted to FDA on March 31, 1978 an application for premarket approval of the Abbott carcinoembryonic antigen (CEA) radioimmunoassay (RIA) kit (Abbott CEA-RIA kit). This device is an in vitro diagnostic product used as an aid in the management of cancer in humans. In the **Federal Register** of September 5, 1980 (45 FR 58964) FDA announced that biological in vitro diagnostic products used as aids for the detection and management of cancer in humans are now considered medical devices, and that the responsibility for regulating them has been transferred from the Bureau of Biologics to the Bureau of Medical Devices. The application was reviewed by the Immunology Device Section of the Immunology and Microbiology Devices Panel, an FDA advisory committee, which recommended approval of the application. On October 15, 1980 FDA approved the application by a letter to the sponsor from the Acting Director of the 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. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

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Petitioners may, at any time on or before February 12, 1981, file with the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, four 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: January 6, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-911 Filed 1-12-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80N-0461]

Pelvimetry X-Ray Examination; Availability of Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Bureau of Radiological Health of the Food and Drug Administration (FDA) is making available a report developed by a panel of physicians on the utility of pelvimetry x-ray examination. This report contains background information and a statement on the appropriate use of pelvimetry.

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

FOR FURTHER INFORMATION CONTACT: Phyllis Segal, Bureau of Radiological Health (HFX-76), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4600.

SUPPLEMENTARY INFORMATION: FDA's Bureau of Radiological Health is making available a report entitled "The Selection of Patients for X-Ray Examinations: The Pelvimetry Examination," HHS Publication (FDA) 80-8128. This report, developed by a panel of obstetricians and radiologists convened by FDA, contains background material and a statement on the use of pelvimetry, based on the scientific and clinical literature on the utility of pelvimetry x-ray examinations.

This panel approach to developing referral criteria was endorsed by participants in the National Conference on Referral Criteria for X-Ray Examinations, held in October 1978. The American College of Radiology and the American College of Obstetricians and Gynecologists have reviewed the pelvimetry statement, and both have endorsed its use as a "guide for clinical studies and, if affirmed, a model for good radiological practice." FDA has published this report to stimulate additional research, elicit comment, and to provide information on the latest clinical consensus on the utility of pelvimetry x-ray examinations.

The report and a related document, "The Selection of Patients for X-Ray Examinations," HEW Publication (FDA) 80-8104, which provides general information on patient selection, are available for public examination in FDA's Dockets Management Branch. Written requests for single copies of the report and the related document may be sent to the Food and Drug Administration, Bureau of Radiological Health, Publications Service (HFX-28), 5600 Fishers Lane, Rockville, MD 20857.

The agency invites and encourages additional data or clinical studies resulting from the use of the pelvimetry statement. Interested persons may submit written comments on the report to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. FDA will refer any such comments to the pelvimetry panel for consideration in

determining whether changes in the report are warranted. Comments should be in four copies (except that individuals may submit single copies) identified with the docket number found in brackets in the heading of this document. The report and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 6, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-912 Filed 1-12-81; 8:45 am]

BILLING CODE 4110-03-M

Health Resources Administration

Health Systems Agency Application Information; Arizona Health Service Area I

Pursuant to section 1515 of the Public Health Service Act notice is hereby given that application materials are available in DHHS Regional Office IX for entities interested in applying for designation as the Health Systems Agency (HSA) for Arizona Health Service Area 1. This health systems agency will be responsible for health planning for the health service area and for the promotion of the development of health services, manpower and facilities which meet identified needs, reduce documented inefficiencies and implement the health plans of the agency. See generally, 42 CFR Part 122.

There presently is a fully designated health systems agency, a private non-profit entity, for this health service area. However, this agency is precluded by Arizona law from assisting the State Health Planning and Development Agency in the review of New Institutional Health Services as required by section 1513(f) of the Public Health Service Act. Since the current agency is unable to perform this function, we have concluded that it cannot comply with the provisions of its designation agreement. Consequently we have decided not to renew the agency's designation agreement on June 1, 1981.

Those entities interested in applying for designation must file a letter of intent to apply for such designation with DHHS Regional Office IX by January 29, 1981 and an application by April 1, 1981.

Application materials and further information may be obtained from the Regional Health Administrator, DHHS Regional Office IX, 50 United Nations Plaza, San Francisco, California 94102. Interested parties are encouraged to request application materials at the earliest possible date.

Once the health systems agency is designated it will be entitled to receive a planning grant under section 1516 of the Act. The amount of the planning grant will be determined in accordance with a formula set forth in the regulations governing this program (42 CFR Part 122, Subpart C), and will be based, in part, upon a determination by the Secretary of the population of the health service area. Section 122.204 of the governing regulations provides that the Secretary will determine the populations of such areas based upon the latest available estimate from the Department of Commerce and will publish annually in the **Federal Register** a list of all health service areas and their populations.

Dated: January 7, 1981.

Karen Davis,

Administrator.

[FR Doc. 81-1054 Filed 1-12-81; 8:45 am]

BILLING CODE 4110-83-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environmental Quality

[Docket No. NI-40]

Cottonwood Development; Intended Environmental Impact Statement

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for the following project under HUD programs as described in the appendix to this Notice: Cottonwood Development, Douglas County, Colorado.This Notice is required by the Council on Environmental Quality under its rules (40 CFR 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

Issued at Washington, D.C., December 30, 1980.

Francis G. Haas,

Director, Office of Environmental Quality.

Appendix

EIS on the Cottonwood Development, Douglas County, Colorado

The HUD Area Office in Denver, Colorado, intends to prepare an EIS on the Cottonwood Development described below, and requests information and comments for consideration in the EIS.

Description. Approximately 1,752 dwelling units (single-family and multi-family) will be constructed in Douglas County, Colorado, in the northern portion of Douglas County along Parker Road.

Need. An EIS is required because the total number of dwelling units exceeds a HUD established threshold.

Alternatives. The alternatives are HUD participation in the development as proposed by the developer, participation in the development provided that HUD required modifications are implemented by the developer, or rejection of participation in the development.

Scoping. A scoping meeting will not be held. HUD will request input from the appropriate government agencies and service organizations. This notice will also appear in a paper of local circulation in Douglas County, Colorado.

Comments. Comments should be forwarded within 21 days following publication of this Notice in the **Federal Register** to Mr. Carroll F. Goodwin, Area Environmental Clearance Officer, U.S. Department of Housing and Urban Development/Area Office, 1405 Curtis Street, Executive Tower Inn, Denver, Colorado 80202. The commercial telephone number of this office is (303) 833-3102 and the FTS number is 327-3102.

[FR Doc. 81-1122 Filed 1-12-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Boise, Idaho, District Grazing Advisory Board; Meeting

In accordance with the Federal Advisory Committee Act, and the Federal Land Policy and Management Act, notice is given that the Boise, Idaho, District Grazing Advisory Board will meet on February 9 and 10, 1981.

The meeting will begin at 9:00 a.m. in the Boise District Conference Room at 3948 Development Avenue, in Boise.

The agenda for the meeting will include:

(1) Election of Officers.

(2) Review 1980 Range Betterment Projects.

(3) Discuss and recommend use of 1981 range betterment funds.

(4) Review 1980 Advisory Board Projects.

(5) Discuss 1981 Advisory Board fund expenditures.

(6) Update on Owyhee Grazing EIS Decisions and Allotment Management Plan Preparation.

(7) Committee Report on Pipeline Maintenance.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:00 and 3:00 p.m. on February 10, 1981, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, BLM, 3948 Development Avenue, Boise, Idaho 83705 by February 2, 1981. Depending on the number of statements, a person time limit may be established.

Minutes of the Board meeting will be maintained in the District Office and will be available for the public inspection within 30 days following the meeting.

James Gabettas,

Acting District Manager.

[FR Doc. 81-1108 Filed 1-12-81; 8:45 am]

BILLING CODE 4310-84-M

Boise District Advisory Council; Idaho; Meeting

In accordance with the Federal Advisory Committee Act and the Federal Land Policy and Management Act, notice is given that the Boise District Advisory Council will meet on February 12, 1981. The meeting will begin at 9:00 A.M. in the Boise District Conference Room at 3948 Development Avenue, Boise, Idaho. The agenda will include:

(1) Presentation by new District Manager on future direction in district and Idaho BLM proposed reorganization.

(2) Election of officers.

(3) Identification of issues for future recommendation by Council.

(4) Update on land use planning for Bruneau-Kuna and Jarbidge and public participation methods.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:00 P.M. and 2:00 P.M. Written statements may also be filed for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the above address by February 2, 1981. Depending upon the number of persons wishing to make an oral statement, a per person time limit may be considered.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

James Gabettas,

Acting District Manager.

[FR Doc. 81-1109 Filed 1-12-81; 8:45 am]

BILLING CODE 4310-84-M

[INT DES 81-2]

UTAH; Availability of Draft Environmental Impact Statement on Proposed Moon Lake Power Plant Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management and the Department of Agriculture, Rural Electrification Administration, have prepared a Draft Environmental Impact Statement for the proposed Moon Lake Power Plant Project, Units 1 and 2, Uintah County, Utah.

DATE: Written comments on the Draft EIS will be accepted until March 3, 1981.

ADDRESS: Written comments should be sent to: State Director (U-910), Utah State Office, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111.

FOR FURTHER INFORMATION CONTACT: Gregory F. Thayn, Team Leader, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111, Telephone (801) 524-5645, FTS 588-5645 or Frank W. Bennett, Director, Power Supply Division, USDA-REA, South Agriculture Bldg., Room 5831, Washington, D.C. 20250, Telephone (202) 447-6183 or FTS 447-6183.

SUPPLEMENTARY INFORMATION: The Draft EIS addresses the proposal by Deseret Generation and Transmission Cooperative (Deseret) to construct two 400 megawatt (MW) generating units northwest of Bonanza, Utah in Uintah County. The proposal involves piping of up to 17,470 acre-feet of water over approximately 19 miles from a collector well system located beside the Green River to the proposed Bonanza site. The proposed project would require up to 2.7 million tons of coal annually. Coal would be delivered to the site by a 35-mile-long electric railroad from a proposed underground coal mine northeast of Rangely, Colorado.

The electricity generated by Unit 1 of the proposed plant would be distributed by one 345-kilovolt (kV) alternating current (a.c.) line to a UP&L proposed substation near Mona, Utah in Juab County, and by three 138-kV a.c. lines to existing substations near Upalco, Utah in Duchesne, County; Vernal, Utah in Uintah County; and Rangely, Colorado, in Rio Blanco County. If Unit 2 were constructed, a second 345-kV line would be built from the plant site to the existing UP&L Ben Lomond substation near Ogden, Utah or to the oil shale fields in Utah and Colorado depending upon power demands. Several alternatives, including the proposed project and "no action" are discussed in the Draft EIS.

Notice is also hereby given that oral and/or written comments regarding the adequacy of the Draft EIS will be received at the following locations:

February 17, 1981, 7:00 p.m., Room 220, Salt Palace, Salt Lake City, Utah

February 18, 1981, 7:00 p.m., Courtroom, Uintah County Courthouse, Vernal, Utah

February 19, 1981, 7:00 p.m., Auditorium, Rangely High School, Rangely, Colorado

Requests to testify at the hearings should go to: State Director (U-910), Bureau of Land Management, Salt Lake City, Utah 84111, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111

Copies of the Draft EIS are available for review at the following locations:

Rural Electrification Administration, South Agriculture Bldg., Room 5831, Washington, D.C. 20250

Utah State Office, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111

Richfield District Office, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701

Craig District Office, Bureau of Land Management, 455 Emerson, Craig, Colorado 81625

Washington Office (WO-332), Bureau of Land Management, 18th and C Streets N.W., Washington, D.C. 20240

Vernal District Office, Bureau of Land Management, 170 South 5th East, Vernal, Utah 84078

Colorado State Office, Bureau of Land Management, 1600 Broadway, Room 700, Denver, Colorado 80202

A limited number of copies are available upon request from the addresses listed above.

Ed Hastey,

Associate Director.

Approved: December 31, 1980.

James H. Rathlesberger,

Special Assistant to Assistant Secretary of the Interior.

[FR Doc. 81-1110 Filed 1-12-81; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Proposed Guidelines for Handling Petitions To List Endangered and Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: A petition process whereby the public can request that species be added to or removed from the list of Endangered and Threatened species is provided for by the Endangered Species Act. The December 28, 1979, Amendments to the Endangered Species Act of 1973 require the Secretary to establish and publish in the **Federal Register** agency guidelines on the procedures for recording the receipt and disposition of petitions submitted. The 1979 Amendments also require that the criteria for making findings on the petitions be published. These proposed guidelines may be adopted by the Service after public comment. The public is urged to comment and offer suggestions on these guidelines.

DATES: Comments from the public must be received by March 16, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (703/235-2771).

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Office of Endangered Species, 1000 N. Glebe Road, Fifth Floor, Arlington, Viriginia.

BACKGROUND:

The Endangered Species Act of 1973, as amended, provides for a petition process whereby the public can request species be added to or removed from the list of Endangered and Threatened species.

Section 4(c)(2) provides the following:

(2) The Secretary shall, within 90 days of the receipt of the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct and publish in the **Federal Register** a review of the status of any listed or unlisted species proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review. Such review and finding shall be made and published prior to the initiation of any procedures under subsection (b)(1).

The rules for listing Endangered and Threatened species and designating Critical Habitat are codified at 50 CFR Part 424 and further explain the Service's handling of petitions.

Petitions: Additional Procedures

Based on the requirements outlined in the Act and the implementing rules the Service handles petitions as outlined in the following steps.

1. Receipt of a petition is recorded in the Office of Endangered Species petition log where all actions involving the petition are also recorded.

2. Petitioner is notified (by the Director) within 30 days by the Director that the petition was received by the Service.

3. The petition is evaluated by biologists in the Office of Endangered Species and Regional offices, as appropriate.

4a. If substantial evidence to support the requested measure has not been provided, the Director shall so inform the petitioner within 90 days.

4b. If substantial evidence to support the requested measure has been provided then the Director shall (1) promptly publish a notice in the **Federal Register** announcing this determination; (2) conduct and publish in the **Federal Register** a status review of the species that is the subject of the petition within 90 days of receipt of the petition and (3) indicate at the time the status review is published how the Service intends to proceed with respect to the listing, delisting, or reclassifying of the species.

Petitions: Evaluation Criteria

The criteria for making the findings required by Section 4(c)(2) on petitions are listed in the rules for listing Endangered and Threatened species in 50 CFR 424.14(b) (45 FR 1310, February 27, 1980).

Public Comments Solicited

The Director intends that the guidelines finally adopted will be as efficient and effective as possible in dealing with petitions on Endangered and Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these guidelines are hereby solicited.

Final development of these guidelines will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt final guidelines that differ from these proposed.

Author

These guidelines are being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884). The primary author of these proposed guidelines is Ms. E. LaVerne Smith, Washington Office of Endangered Species (703/235-1975).

Dated: January 2, 1981.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 81-1092 Filed 1-12-81; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Known Recoverable Coal Resource Area; Warrior Basin, Alabama; Revision

Under authority contained in Section 2 (a)(1) and 32 of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 189, 201) and the Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351–359), and delegations of authority in 220 Departmental Manual 4.1i, Geological Survey Manual 220.2.4, and Conservation Division Supplement (Geological Survey Manual) 220.2.1i, Federal lands within the state of Alabama have been determined to be subject to the coal leasing provisions of the Mineral Lands Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(1) Alabama

Revised Warrior Basin (Alabama) Known Recoverable Coal Resource Area (KRCRA); November 6, 1980; 8960 acres were added. total area now defined for leasing is 171,360 acres. A plat showing the revised boundary and acreage has been filed with the appropriate land office of the Bureau of Land Management. Copies of the plat and the land description may be obtained from the Regional Conservation Manager, Eastern Region, U.S. Geological Survey, Washington, D.C. 20006.

Dated: December 30, 1980.

John A. Lees

Acting Regional Conservation Manager, Eastern Region.

[FR Doc. 81-1121 Filed 1-12-81; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that C&K Petroleum, Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 2660, Block 237, East Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m. 3301 North Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 5, 1981.

E. A. Marsh,

Staff Assistant for Operations.

[FR Doc. 81-1149 Filed 1-12-81; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Davis Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 4194, Block 199, West Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 5, 1981.

E. A. Marsh,

Staff Assistant for Operations.

[FR Doc. 81-1150 Filed 1-12-81; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that ANR Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Leases OCS–G 3469 and 4554, Blocks 504 and 501, Brazos Area, offshore Texas.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4740, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 5, 1981.

E. A. Marsh,

Staff Assistant for Operations.

[FR Doc. 81-1148 Filed 1-12-81; 8:45 am]

BILLING CODE 4310-31-M

National Earthquake Prediction Evaluation Council; Notice of Public Meeting

Pursuant to Public Law 92–463, effective January 5, 1973, notice is hereby given that an open meeting will be held beginning at 9:00 a.m. (local time) on Monday, January 26, 1981, and continuing through Tuesday, January 27, 1981. The Council will meet at the U.S. Geological Survey Building on the campus of the Colorado School of Mines, Golden, Colorado.

(1) *Purpose.* To evaluate the prediction of a major earthquake off the coast of Peru.

(2) *Membership.* The Council is chaired by Dr. Clarence R. Allen and is composed of scientists from the academic and government institutions.

(3) *Agenda.* Presentation, discussion, and evaluation of the theory, data, and interpretations on which the prediction of a major earthquake off the coast of Peru in 1981 have been based.

For more detailed information about the meeting, please call Dr. John R. Filson, Chief, Office of Earthquake Studies, Reston, Virginia 22092 (703) 860–6471.

H. William Menard,

Director, U.S. Geological Survey.

[FR Doc. 80-1333 Filed 1-12-81; 8:45 am]

BILLING CODE 4310-31-M

Heritage Conservation and Recreation Service

U.S. World Heritage Nomination Process

AGENCY: Heritage Conservation and Recreation Service, Department of the Interior.

ACTION: Interpretive guidelines and request for public comment.

SUMMARY: The Department of the Interior, through the Heritage Conservation and Recreation Service, announces its interpretive guidelines for implementing the World Heritage Convention in accordance with Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515). The notice also sets forth the process that will be used in calendar 1981 to identify and prepare United States nominations to the World Heritage List. The Department solicits comments on the interpretive guidelines, as well as suggestions of properties for consideration as potential U.S. World Heritage nominations. The notice identifies minimum requirements that properties must satisfy to be considered as potential nominations. In addition, the notice lists the World Heritage criteria, and the 85 cultural and natural properties currently included on the World Heritage List.

DATES: Suggestions of cultural and natural properties for consideration as potential U.S. World Heritage nominations will be received until March 15, 1981. To ensure full consideration, suggestions should discuss in detail how the recommended property satisfies the World Heritage criteria. Comments on the interpretive guidelines will be received until March 15, 1981. Potential U.S. World Heritage nominations for 1982 will be selected by the Department and published in the **Federal Register** on or before April 15, 1981, with a request for public comment. Comments on the potential U.S. nominations will be received until May 15, 1981. A final list of proposed U.S. World Heritage nominations for 1982 will be published in the **Federal Register** on or before July 1, 1981. In November 1981, a Federal interagency panel for World Heritage will review the accuracy and completeness of the draft 1982 U.S. nominations, and will make recommendations to the Secretary of the Interior. The Secretary or his designee will then transmit any nominations(s) on behalf of the United States to the United Nations Educational, Scientific and Cultural Organization, through the Department of State, by December 1, 1981, for evaluation by the World Heritage Committee in 1982.

ADDRESS: Comments or suggestions should be sent to the Director, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243 (Attn: Division of State Heritage Programs).

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Ritsch, Acting Associate Director for Natural Programs, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243 (202-343-4278).

SUPPLEMENTARY INFORMATION: The guidelines set forth the interpretation that will be used by the Department of the Interior to implement Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515). Over the next year, the Department intends to promulgate formal rules to implement more fully the World Heritage responsibilities mandated by this new legislation. However, because other Federal agencies, State and local governments, and private organizations and individuals are in immediate need of definitive guidance for identifying and preparing U.S. nominations to the World Heritage List during 1981, these guidelines are to be considered effective immediately, consistent with Departmental policy as provided by 43 CFR 14.5(c), pending publication of formal program rules. Public comments concerning these interpretive rules (guidelines) will be considered at the formal rulemaking stage.

The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 52 other Nations as of this date, establishes a means by which natural and cultural properties of outstanding universal value to mankind may be recognized and protected.

Sites are identified and nominated by participating Nations for inclusion on the World Heritage List, which currently includes 85 properties. The 21-member Nation World Heritage Committee then judges the nominations against established criteria, which are listed below.

It is the policy of the Department of the Interior to implement its responsibilities under the World Heritage Convention in accordance with the statutory mandate of Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515), which reads as follows:

Title IV—International Activities and World Heritage Convention

Sec. 401 (a) The Secretary of the Interior shall direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation. Whenever possible, expenditures incurred in carrying out activities in cooperation with other Nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

(b) The Secretary of the Interior shall periodically nominate properties he determines are of international significance to the World Heritage Committee on behalf of the United States. No property may be so nominated unless it has previously been determined to be of national significance. Each such nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any such nomination, the Secretary shall notify the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

(c) No non-Federal property may be nominated by the Secretary of the Interior to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in writing to such nomination.

Sec. 402. Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.

In particular, the following clarify certain policy aspects of Title IV that relate to its implementation by the Department of the Interior:

(a) *"No property may be so nominated unless it has previously been determined to be of national significance."* For the purposes of this title, "national significance" refers to properties designated as National Historic Landmarks (36 CFR 1205) or National Natural Landmarks (36 CFR 1212) by the Secretary of the Interior under provisions of the 1935 Historic Sites Act (Pub L. 74-292; 49 Stat. 666; 16 U.S.C. 461 et seq.), or areas of national significance as established by the Congress of the United States.

(b) *"Each such nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection)."* To ensure that U.S. nominations to the World Heritage List represent the full range of internationally significant properties in this country, Federal, State, local, and/or private properties are considered eligible for consideration as nominations. The United States has an obligation, however, to ensure the preservation of the property and environment of all U.S. sites that are nominated and approved for the World Heritage List, regardless of ownership. At this time, in the case of properties owned or controlled by Federal, State, and/or local governments, such evidence of legal protection must include reference to all legislation establishing or preserving the area, and all

existing and proposed administrative measures that would ensure continued satisfactory maintenance and preservation of the property in perpetuity. In the case of properties owned or controlled by private organizations or individuals, such evidence must include a written covenant prohibiting, in perpetuity, any use that is not consistent with, or which threatens or damages the property's universally significant values, or other trust or legal arrangement which has that effect; the opinion of counsel on the legal status and enforcement of such a prohibition, including, but not limited to, enforceability by the Government or by interested third parties; and a right of first refusal for the Federal government to acquire the property in the event of any proposed sale, succession, voluntary or involuntary transfer, or in the event that the covenant proves to be inadequate to ensure preservation of the property's outstanding universal values.

It is recognized that some privately owned properties may possess universally significant cultural and/or natural values. However, until provisions of a protective agreement for private property are formally developed and adopted, U.S. World Heritage nominations will be limited to properties owned or controlled by Federal, State, and/or local governments.

(c) *"No non-Federal property may be nominated by the Secretary of the Interior to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in writing to such nomination."* In the case of properties owned or controlled by Federal, State, and/or local governments, a letter from the agency official(s) responsible for administering the property would demonstrate concurrence. In the case of private properties, the protection agreement outlined in (b) above would satisfy the requirement for owner concurrence.

A Federal interagency panel makes recommendations to the Secretary on proposed United States nominations. The panel includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the Heritage Conservation and Recreation Service, the National Park Service, and the U.S. Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; and the Department of State.

These policies shall guide the preparation of United States nominations to the World Heritage List during 1981, and the development of formal rules for implementing the Department's World Heritage mandate in accordance with Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515).

I. Suggestions for U.S. World Heritage Nominations

Any agency, organization, or individual wishing to recommend a property for consideration as a potential U.S. World Heritage nomination should submit a detailed discussion on how the property relates to and satisfies one or more of the World Heritage criteria listed below. This information will help provide the basis for evaluating the World Heritage potential of a particular cultural or natural property. In order for a United States property to be considered for nomination to the World Heritage List, it must satisfy the requirements set forth earlier, i.e., (a) it must have been previously determined to be of national significance, (b) its owner must concur in writing to such nomination, and (c) for 1981, the property must be owned or controlled by Federal, State, and/or local governments.

II. Criteria for World Heritage Properties

The following criteria are used by the World Heritage Committee in evaluating the World Heritage potential of cultural and natural properties nominated to it:

Criteria for the Inclusion of Cultural Properties on the World Heritage List

A monument, group of buildings or site—as defined in Article I of the Convention—which is nominated for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria *and* the test of authenticity. Each property nominated should therefore:

(a)(i) represent a unique artistic achievement, a masterpiece of the creative genius; or

(ii) have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or town-planning and landscaping; or

(iii) bear a unique or at least exceptional testimony to a civilization which has disappeared; or

(iv) be an outstanding example of a type of structure which illustrates a significant stage in history; or

(v) be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or

(vi) be directly and tangibly associated with events or with ideas or beliefs of outstanding universal significance; and

(b) meet the test of authenticity in design, materials, workmanship or setting.

The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List: (a) The state of preservation of the property should be evaluated relatively, that is, it should be compared with other property of the same type dating from the same period both inside and outside the country's borders; and (b) Nominations of immovable property which is likely to become movable will not be considered.

Criteria for the Inclusion of Natural Properties on the World Heritage List

A natural heritage property—as defined in Article 2 of the Convention—which is submitted for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria and fulfills the conditions of integrity set out below. Properties nominated should therefore:

(i) be outstanding examples representing *the major stages of the earth's evolutionary history.* This category would include sites which represent the major "eras" of geological history such as "the age of reptiles" where the development of the planet's natural diversity can well be demonstrated and such as the "ice age" where early man and his environment underwent major changes; or

(ii) be outstanding examples representing significant ongoing *geological processes, biological evolution, and man's interaction with his natural environment.* As distinct from the periods of the earth's development, this focuses upon ongoing processes in the development of communities of plants and animals, landforms, and marine and fresh water bodies. This category would include for example (a) as geological processes, glaciation and volcanism, (b) as biological evolution, examples of biomes such as tropical rainforests, deserts and tundra, (c) as interaction between man and his natural environment, terraced agricultural landscapes; or

(iii) contain *superlative natural phenomena, formations or features or areas of exceptional natural beauty,* such as superlative examples of the most important ecosystems, natural features, sweeping vistas covered by natural vegetation and exceptional combinations of natural and cultural elements; or

(iv) *contain the most important and significant natural habitats where threatened species of animals or plants of outstanding universal value* from the points of view of science or conservation still survive.

In addition to the above criteria, the sites should also fulfill the conditions of integrity:

(i) The areas described in (i) above should contain all or most of the key interrelated and interdependent elements in their natural relationships; for example, an "ice age" area would be expected to include the snow field, the glacier itself and samples of cutting patterns, deposition and colonization (striations, moraines, pioneer stages of plant succession, etc.).

(ii) The areas described in (ii) above should have sufficient size and contain the necessary elements to demonstrate the key aspects of the process and to be self-perpetuating. For example, an area of "tropical rain forest" may be expected to include some variation in elevation above sea level, changes in topography and soil types, river banks or oxbow lakes, to demonstrate the diversity and complexity of the system.

(iii) The areas described in (iii) above should contain those ecosystem components required for the continuity of the species or of the objects to be conserved. This will vary according to individual cases; for example, the protected area of waterfall would include all, or as much as possible, of the supporting upstream watershed; or a coral reef area would be provided with control over siltation or pollution through the stream flow or ocean currents which provide its nutrients.

(iv) The area containing threatened species as described in (iv) above should be of sufficient size and contain necessary habitat requirements for the survival of the species.

(v) In the case of migratory species, seasonable sites necessary for their survival, wherever they are located, should be adequately protected. The Committee must receive assurances that the necessary measures be taken to ensure that the species are adequately protected throughout their full life cycle. Agreements made in this connection, either through adherence to international conventions or in the form of other multilateral or bilateral arrangements, would provide this assurance.

The natural property should be evaluated relatively, that is, it should be compared with other properties of the same type both inside and outside a country's borders, within a biogeographic province, or in a migratory pattern.

III. WORLD HERITAGE LIST

The following 85 cultural and natural properties, arranged alphabetically by country, have been approved by the World Heritage Committee for inscription on the World Heritage List:

Algeria: Al Qal'â of Ben Hammad;
Brazil: Historic Town of Ouro Preto;
Bulgaria: Boyana Church; Madara Rider; Rock-hewn Churches of Ivanovo; and Thracian Tomb of Kazanlak;
Canada: Burgess Shale Site; Dinosaur Provincial Park; L'Anse aux Meadows; and Nahanni National Park;
Cyprus: Paphos;
Ecuador: Galapagos National Park; and Historic Center of Quito;
Ethiopia: Aksum; Fasil Ghebbi, Gondar Region; Lower Valley of the Awash; Lower Valley of the Omo; Rock-hewn Churches of Lalivela; Simien National Park; and Tiya;
Egypt: Abu Mena; Ancient Thebes with its Necropolis; Islamic Cario; Memphis and its Necropolis-the Pyramid Fields from Giza to Dahshur; and Nubian Monuments from Abu Simbel to Philae;
Federal Republic of Germany: Aachen Cathedral;
France: Chartres Cathedral; Decorated Grottoes of the Vezere Valley; Mont St. Michel and its Bay; Palace and Park of Versailles; and Vezelay, Church and Hill;
Ghana: Ashante Traditional Buildings; and Forts and Castles, Volta Greater Accra;
Guatemala: Antigua; and Tikal National Park;
Honduras: Maya Site of Copan;
Iran: Meidan-e Sha, Esfahan; Persepolis; and Tchogha Zanbil;
Italy: Church and Dominican Convent of Santa Maria delle Grazie with "The Last Supper" by Leonardo da Vinci; Historic Center of Rome; and Rock Drawings in Valcamonica;
Malta: City of Valetta; Ggantija Temples; and Hal Saflieni Hypogeum;
Nepal: Kathmandu Valley; and Sagarmatha National Park;
Norway: Bryggen; Roros; and Urnes Stave Church;
Pakistan: Archeological Ruins at Mohenjodaro; Buddhist Ruins at Takht-i-Bahi and Neighboring City Remains at Sahr-i-Bahlol; and Taxila;
Panama: Fortifications on the Caribbean side of Panama-Portobelo San Lorenzo;
Poland: Auschwitz Concentration Camp; Bialowieza Naional Park; Historic Center of Cracow; Historic Center of Warsaw; and Wieliczka Salt Mines;
Senegal: Island of Goree;
Syrian Arab Republic: Ancient City of Bosra; Ancient City of Damascus; and Site of Palmyra;
Tanzania: Ngorongoro Conservation Area;
Tunisia: Amphitheatre of El Djem; Archeological Site of Carthage; Ichkeul National Park; and Medina of Tunis;
United States of America: Everglades National Park; Grand Canyon National Park; Independence Hall, Mesa Verde National Park; Redwood National Park; and Yellowstone National Park;
Yugoslavia: Durmitor National Park; Historical Complex of Split with the Palace of Diocletian; Natural and Cultural-Historical Region of Kotor; Ohrid Region with its Cultural and Historical Aspects and its Natural Environment; Old City of Dubrovnik; Plitvice Lakes National Park; and Stari Ras and Sopocani;
Zaire: Garamba National Park; Kahuzi-Biega National Park; and Virunga National Park; and
International Canada/U.S.: Kluane National Park-Wrangell/St. Elias National Monument.

Dated: January 7, 1981.

David F. Hales,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-1042 Filed 1-12-81; 8:45 am]

BILLING CODE 4310-03-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-43 (Sub-56F)]

Illinois Central Gulf Railroad Co.; Abandonment Near Kevil and Barlow in Ballard and McCracken Counties, KY

Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by an administratively final decision decided December 11, 1980, the Commission found that, the public convenience and necessity permitted the abandonment by the Illinois Central Gulf Railroad Company of its line of railroad extending from milepost 239.5 near Kevil, KY, to milepost 251.59 near Barlow, KY, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Illinois Central Gulf Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 15 days from the date of publication, the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than January 23, 1981; and

(2) it is likely that such proffered assistance would:

(a) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance

of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-1090 Filed 1-12-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-150]

Minority Participation in the Motor Carrier Industry

AGENCY: Interstate Commerce Commission.

ACTION: Policy statement.

SUMMARY: Consistent with the mandate of the National Transportation Policy, 49 U.S.C. § 10101(a)(7)(g), the Commission is committed to the goal of increasing minority participation in the interstate motor carrier industry. This action is taken to affirm that policy and to set forth the cornerstone of the Commission's implementation program.

EFFECTIVE DATE: February 12, 1981.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard or Lee Alexander, (202) 275-7597.

SUPPLEMENTARY INFORMATION: The Motor Carrier Act of 1980 became effective on July 1, 1980. Among several new objectives, it is now a goal of the National Transportation Policy to promote greater participation by minorities in the motor carrier industry.

In order to meet this overall objective, the Commission is establishing a system to identify and measure minority firms involved in surface transportation. The names compiled from the identification system will constitute a register which will serve as a useful means of communicating with minority firms already in or interested in entering the trucking business. This information will be available to the Commission and the Congress, as well as other agencies and organizations, to assist in designing and delivering programs to address the specific needs of these firms. To measure and identify existing minority carriers, a questionnaire will be mailed to all ICC regulated carriers. Only minority carriers will be asked to respond. A questionnaire will also be mailed to each *new* applicant for authority. This latter step will enable the Commission to update the information generated by the one-time mailing and will enable us to measure the change in minority participation since enactment of the Motor Carrier Act of 1980.

In addition, the level of participation in the regulated motor carrier industry by females and owner-operators is of equal concern to this agency. Specifically, the Commission will identify three classes of holders of ICC authority: *Minorities* (Black, Spanish origin, Asian American, American Indian, Aleutian, Other), *Females*, and *Owner-Operators* (those who own and operate their own vehicle). For purpose of definition, the classification of "minorities," "females," and owner-operators" means those firms where the identified group owns more than 50 percent of the company.

Through contacts with other agencies and organizations, the Commission will also identify minority-and female-owned carriers which do not hold ICC authority. These may involve, for example, intrastate or exempt carriers. This listing will be used as a reference source for the Commission's outreach efforts to increase minority participation in the interstate motor carrier industry.

Any available information concerning the identity of minority-or female-owned surface transportation businesses will assist the Commission's program in this area. Persons or firms in the described category are invited to forward their name, address, telephone number, and motor carrier number (if any) to: Interstate Commerce Commission, Lee Gardner, Room 7359, Washington, DC 20423.

Since participation in this data collection program is voluntary and since promulgation of no rule is contemplated, notice and comment are unnecessary and are not required under section 553 of the Administrative Procedure Act. 5 U.S.C. 553.

This action will have no effect on the human environment or conservation of energy resources.

Issued under the authority of 5 U.S.C. 553 and 49 U.S.C. 10101 and 10321.

Dated: December 22, 1980

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-1096 Filed 1-12-81; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. OP2-138]

Motor Carrier Permanent Authority, Decision-Notice

Decided: December 19, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 C.F.R. 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 C.F.R. 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Enegy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before Feburary 27, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. 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.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. (Member Hill not participating).

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 125433 (Sub-456F), filed December 11, 1980. Applicant: F–B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting *general commodities*, between Minter City, MS, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier service for abandoned rail carrier service.

MC 150432 (Sub-12F), filed December 8, 1980. Applicant: H & M TRANSPORTATION, INC., U.S. 42 and 70, London, OH 43140. Representative: Owen B. Katzman, Suite 1111, 1828 L Street, NW, Washington, DC 20036. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, betweem points in the U.S.

MC 150602 (Sub-2F), filed December 9, 1980. Applicant: CHARLES A. McCAULEY, INC., 100 Industrial Way, Hawthorn, PA 16230. Representative: Larry D. McCauley (same address as applicant). Transporting (1) *general commodities*, between Bridgetown, Cheviot, Covedale, Dent, Homewood, Miami, and Willeys, OH, and Alum Rock, Blairs, Dudley, Jefferson, Ritts, St. Petersburg, Turkey, and Worthington, PA, on the one hand, and, on the other, points in the U.S., and (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Note.—The purpose of part (1) of this application is to substitute motor carrier service for abandoned rail carrier service.

[FR Doc. 81-1097 Filed 1-12-81; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Vol. No. OP4-393]

Motor Carrier Permanent Authority; Decision-Notice

Decided: January 6, 1981.

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register**. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for perfoming that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a)

[formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before February 12, 1981, or the application shall stand denied.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

MC 124887 (Sub-75F), filed February 22, 1979, previously published in the **Federal Register** issue of July 19, 1979, and republished this issue. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting *building and construction materials*, between points in AL, FL, GA, LA, MS, NC, SC, and TN.

Note.—The purpose of this republication is to remove the restriction.

[FR Doc. 81-1095 Filed 1-12-81; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 C.F.R. 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 C.F.R. 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

FINDINGS:

With the exception of those applications involving duly noted problems (e.g.s., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before February 27, 1981, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-141

Decided: December 29, 1980.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones. (Member Jones not participating.)

MC 146403 (Sub-3F), filed December 10, 1980. Applicant: ROGER LOVE, d.b.a. ROGER LOVE TRUCKING, Route 3, East Grand Forks, MN 56721. Representative: William J. Gambucci, Suite M-20, 400 Marquette Ave., Minneapolis, MN 55401. Transporting *food and other edible products* (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

Volume No. OP4-189

Decided: January 7, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

MC 153317F, filed December 16, 1980. Applicant: VINCE ZAMPINO, d.b.a. CARRIERS SERVICE, P.O. Box 1021, Sebring, FL 33870. Representative: James E. Wharton, Suite 811, Metcalf Bldg., 100 South Orange Ave., Orlando, FL 32801. As a *broker* to arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

Volume No. OP5-102

Decided: December 30, 1980.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill. (Member Fortier not participating.)

MC 142368 (Sub-34F), filed December 16, 1980. Applicant: DANNY HERMAN TRUCKING, INC., 1415 E. 9th St., Pomona, CA 91766. Representative: John Ruggles, P.O. Box 3048, City of Industry, CA 91744. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 147868 (Sub-1F), filed December 16, 1980. Applicant: OKLAHOMA WESTERN LINES, INC., Route 2, Box 73, Checotah, OK 74426. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 153218F, filed December 17, 1980. Applicant: UNITED OHIO CORPORATION, 35300 Lakeland Blvd., Eastlake, OH 44094. Representative:

Richard A. Zellner, 800 National City—East 6th Bldg., Cleveland, OH 44114. To engage in operations as a broker arranging for the transportation of *general commodities* (except household goods), between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-1099 Filed 1-12-81; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. OP2-139]

Motor Carrier Permanent Authority Decision-Notice

Decided: December 19, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed February 27, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. 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.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. (Member Hill not participating).

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 37203 (Sub-13F), filed December 10, 1980. Applicant: MILLSTEAD VAN LINES, INC., P.O. Drawer 878, Bartlesville, OK 74003. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. Transporting *household goods* as defined by the Commission, between points in KS, OK, and TX, on the one hand, and, on the other, points in NV, WA, OR, UT, ID, SD, ND, MN, CA, and WI.

MC 71593 (Sub-79F), filed December 12, 1980. Applicant: FORWARDERS TRANSPORT, INC., 1606 E. Second Street, Scotch Plains, NJ 07076. Representative: David W. Swenson (same as applicant). Transporting (1) *food and kindred products*, as described in Item 20 of the Standard Transportation Commodity Code Tariff, and (2) *materials, equipment and supplies* dealt in or used by restaurants, between points in the U.S., (except AK and HI), restricted to traffic originating at or destined to the facilities of the Burger King Corporation.

MC 99463 (Sub-1F), filed December 4, 1980. Applicant: SHIMA TRANSFER CO., a corporation, 74 Mission Rock St., San Francisco, CA 94107. Representative: Charles A. Webb, Suite 1111, 1828 L St. NW., Washington, DC 20036. Transporting *general commodities* (except those of unusual value, classes A and B explosives, and commodities in bulk), (1) between points in Alameda, Contra Costa, Fresno, Monterey, Placer, Sacramento, San Francisco, San Joaquin, Santa Clara, Stanislaus, and Yuba Counties, CA, and (2) between the points named in (1) above, on the one hand, and, on the other, points in Butte, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mendicino, Merced, Modoc, Napa, Nevada, Plumas, San Benito, San Mateo, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Tulare, and Yolo Counties, CA, restricted to traffic having a prior or subsequent movement by rail or water.

MC 99823 (Sub-5F), filed December 4, 1980. Applicant: JAMES E. GRIFFIN & SONS, INC., P.O. Box 1194, West Hanover, MA 02339. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. Transporting *new furniture*, from Baldwinville, MA, to points in Atlantic, Burlington, Camden, Cumberland, Gloucester, and Salem Counties, NJ, and points in PA and DE.

MC 107012 (Sub-628F), filed December 9, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same address as applicant). Transporting *metal articles*, from St. Louis, MO, to points in the U.S.

MC 107882 (Sub-49F), filed December 16, 1980. Applicant: ARMORED MOTOR SERVICE CORPORATION, 160 Ewingville Rd., Trenton, NJ 08638. Representative: Herbert Alan Dubin, 818 Connecticut Ave. NW., Washington, DC 20006. Transporting *blank security paper*, between points in the U.S., under continuing contract(s) with Crane & Company, Inc., of Dalton, MA.

MC 108703 (Sub-1F), filed December 16, 1980. Applicant: LEE & EASTES TANK LINES, INC., 2418 Airport Way South, Seattle, WA 98134. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. Transporting *commodities* in bulk, between points in CA, ID, MT, OR, and WA.

MC 111812 (Sub-749F), filed December 12, 1980. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: R. H. Jinks (same address as applicant). Transporting (1) *Foods or kindred products*, as described in Item 20 of the Standard Transportation Commodity Code Tariff, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities used by Stokely-Van Camp, Inc., in CA, FL, IL, IN, MN, NJ, OR, TX, WA, WI, and WY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 114552 (Sub-258F), filed December 11, 1980. Applicant: SENN TRUCKING COMPANY, a corporation, P.O. Drawer 220, Newberry, SC 29108. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting

general commodities (except those of unusual value) household goods, as defined by the Commission, and classes A and B explosives), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of United States Gypsum Company, at its subsidiaries.

MC 118803 (Sub-25F), filed December 16, 1980. Applicant: ATLANTIC TRUCK LINES, INC., 168 Town Line Rd., Kings Park, NY 11754. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting (1) *printed matter*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of printed matter, between points in the U.S., under continuing contract(s) with Time, Incorporated, of Chicago, IL.

MC 123392 (Sub-91F), filed December 9, 1980. Applicant: JACK B. KELLEY, INC., Rte. 1, Box 400, Amarillo, TX 79106. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768. Transporting *commodities*, the transportation of which, because of size or weight requires the use of special equipment, between points in Potter and Randall Counties, TX, on the one hand, and, on the other, points in AR, CO, KS, LA, MO, NE, NM, OK, and TX.

MC 125433 (Sub-457F), filed December 11, 1980. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting (1) *commodities* the transportation of which because of size or weight requires the use of special equipment or special handling, (2) *self-propelled articles*, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between points in Troup County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 128343 (Sub-69F), filed December 9, 1980. Applicant: C-LINE, INC., 303 Jefferson Blvd., Warwick, RI 02888. Representative: Ronald N. Cobert, 1730 M St. NW., Washington, DC 20036. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with L.I.G. of England, Ltd., of Providence, RI.

MC 128742 (Sub-2F), filed December 16, 1980. Applicant: HALLWAY, INC., 700 W. North St., P.O. Box 2480, Springfield, IL 62705. Representative: Steven J. Rosenberg, 111 W. Washington St., Chicago, IL 60602. Transporting *liquid fertilizer and fertilizer ingredients*, from points in IL to points in IA, WI, IN, MO, KY, and AR.

MC 129032 (Sub-129F), filed December 16, 1980. Applicant: TOM INMAN TRUCKING, INC., 5656 South 129th E Ave., Tulsa, OK 74145. Representative: Jerry Garland (same address as applicant). Transporting (1) *alcoholic liquors*, and (2) *materials, equipment, and suppliers* used in the manufacture and distribution of alcoholic liquors, between points in IL, on the one hand, and, on the other points in the U.S. (except AK and HI).

MC 135152 (Sub-46F), filed December 9, 1980. Applicant: CASKET DISTRIBUTORS, INC., Rural Route No. 2, P.O. Box 327. Representative: Jack B. Josselson, 700 Atlas Bank Bldg, 524 Walnut St., Cincinnati, OH 45202. Transporting (1) *agricultural implements* and *parts and accessories* for agricultural implements, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above between Troy and Waterford, NY and Burlington and Charlotte, VT, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 136432 (Sub-5F), filed December 8, 1980. Applicant: DAVID C. RICHARD, d.b.a. D & M EXPRESS, Rte. 19, Evans City, PA 16033. Representative: Arthur J. Diskin, 806 Frick Bldg., Pittsburgh, PA 15219. Transporting (1) *railway car and locomotive brakes shoes* and *parts* for brake shoes, (2) *grade crossings*, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, and (4) *railroad car wheels and rolled steel rings*, between points in the U.S., under continuing contract(s) with Railroad Friction Products Corporation, of Wilmerding, PA, and Edgewater Steel Company, of Oakmont, PA.

MC 139482 (Sub-184F), filed December 5, 1980. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Transporting (1) *lumber and wood products*, (except furniture), *fiberboard, glass and glass products, and building materials and supplies*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Newark, NJ, Norfolk, VA, Philadelphia, PA, New Orleans, LA, and points in Charleston County, SC, New Hanover and Brunswick Counties, NC, Chatham County, GA, Bristol County, TN, Westmoreland County, PA, and Harrison and Mason Counties, WV, on the one hand, and, on the other, those poins in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 139583 (Sub-2F), filed December 15, 1980. Applicant: DEDICATED FREIGHT SYSTEMS, INC., 5800 Grant Ave., Cleveland, OH 44105. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *motor vehicles and trailers*, between points in the U.S., under continuing contract(s) with Jartran, Inc., of Coral Gables, FL.

MC 139843 (Sub-14F), filed December 9, 1980. Applicant: VERNON G. SAWYER, P.O. Drawer B, Bastrop, LA 71220. Representative: Harry E. Dixon, Jr., P.O. Box 4319, Monroe, LA 71203. Transporting *clay*, from points in Tippah County, MS, to points in AL, AZ, AR, FL, GA, IL, IN, LA, MO, NM, OK, TN, and TX.

MC 140033 (Sub-94F), filed December 10, 1980. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. Transporting (1) *foodstuffs* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs, between points in the U.S., restricted to traffic originating at or destined to the facilities of Campbell Taggart, Inc., and its subsidiaries.

MC 140612 (Sub-86F), filed December 11, 1980. Applicant: ROBERT F. KAZIMOUR, 1200 Norwood Drive, SE, P.O. Box 2207, Cedar Rapids, IA 52406. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Ave., Sioux Falls, SD 57101. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodites in bulk, and those requiring special equipment), between points in the U.S.

MC 142603 (Sub-37F), filed December 8, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. Transporting (1) *pulp, paper and allied products* as described in Item 26 of the Standard Transportation Code Tariff and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Champion International Corporation, of Hamilton, OH.

MC 144452 (Sub-22F), filed December 9, 1980. Applicant: ARLEN LINDQUIST, d.b.a. ARLEN E. LINDQUIST

TRUCKING, 9172 Davenport St. NE., Minneapolis, MN 55434. Representative: William J. Gambucci, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. Transporting *lawn, garden, and landscaping materials*, from points in IA, IL, GA, and WY to points in MN, ND, SD, WI, and IA.

MC 144572 (Sub-46F), filed December 10, 1980. Applicant: MONFORT TRANSPORTATION COMPANY, P.O.B. G, Greeley, CO 80631. Representative: John T. Wirth, 717 17th St., Ste 2600, Denver, CO 80202. Transporting *foodstuffs* (except in bulk), from points in FL to Pueblo and Denver, CO.

MC 146083 (Sub-3F), filed December 16, 1980. Applicant: AIRFREIGHT TRANSPORTATION CORP. OF NEW JERSEY, 333 North Henry St., Brooklyn, NY 11222. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with LeeWards Creative Crafts, Inc., of Elgin, IL.

MC 146643 (Sub-64F), filed December 8, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East 114th St., Chicago, IL 60628. Representative: Donald B. Levine, 39 South LaSalle, Suite 600, Chicago, IL 60603. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with (a) Fedders Corporation, of Edison, NJ, (b) Motorola, Inc., of Schaumburg, IL, and (c) Belden Corporation, of Geneva, IL.

MC 149072 (Sub-1F), filed November 25, 1980. Applicant: ROBERT L. BELL, Skaar Route, Box 264, Sidney, MT 59270. Representative: David L. Jackson, 203 North Ewing St., Helena, MT 59601. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Roosevelt, Richland, McCone, Dawson, Prairie, and Wilbaux Counties, MT.

MC 149282 (Sub-1F), filed December 4, 1980. Applicant: CLIFFORD A. PARKHURST, 1229 Dakota North, Huron, SD 57350. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. Transporting (1) *food or kindred products* as described in Item 20 of the Standard Transportation Commodity Code Tariff, and (2) *materials, equipment and supplies* used in the production and distribution of the commodities in (1) above, between points in Brown and Eau Claire Counties, WI, and Beadle County, SD, on the one hand, and, on the other, points in the U.S. Condition: Issuance of this certificate is subject to prior or coincidental cancellation at applicant's written request of authority in MC–149282F.

MC 150953 (Sub-1F), filed December 10, 1980. Applicant: SEVERS YARN EXPRESS, INC., Suite 724, 3450 Drummond St., Montreal, Quebec, CD H3G 1Y2. Representative: Eric Meierhoefer, Suite 423, 1511 K St. NW., Washington, DC 20005. Transporting (1) *textiles and textile products*, and (2) *materials and supplies* used in the manfacture of the commodities in (1) above, AL, GA, SC, NC, and VA, on the one hand, and, on the other, ports of entry on the International boundary line between the United States and Canada in NY.

Note.—The person or person who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. § 11343 or submit an affadavit indicating why such approval is unnecessary.

MC 151173 (Sub-1F), filed December 8, 1980. Applicant: HAR-BET, INC., 7209 Tara Blvd., Jonesboro, GA 30236. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd. NE., Atlanta, GA 30326. Transporting *foodstuffs*, between points in Peoria and Vermilion Counties, IL, on the one hand, and, on the other, points in Fulton, DeKalb, Clayton, and Cobb Counties, GA.

MC 151433 (Sub-1F), filed December 11, 1980. Applicant: ZILA'S TRANSPORTATION CO., INC., 55 Caven Point Rd., Jersey City, NJ 07305. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Transporting *petroleum products and lube oil additives*, in bulk, in tank vehicles, from Marcus Hook and Philadephia, PA, to Edison, Elizabeth, and East Rutherford, NJ.

MC 151583 (Sub-1F), filed December 16, 1980. Applicant: UTF CARRIERS, INC., Benson Rd., Middlebury, CT 06749. Representative: William Q. Keenan, 7 Corporate Park Dr., Suite 109, White Plains, NY 10604. Transporting *general commodities*, between points in the U.S., under continuing contract(s) with (a) Uniroyal, Inc. and (b) USCO Services, Inc., both of Middleburg, CT. Condition: To the extent any permit issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

MC 151772 (Sub-1F), filed December 12, 1980. Applicant: TWH, INC., 221 S. Hayes St., Tehachapi, CA 93561. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306. Transporting (1) *cement*, in bulk, from points in Kern County, CA, to points in Clark, Lincoln, Esmeralda, and Nye Counties, NV, and (2) *gypsum and fluorspar*, in bulk, in the reverse direction.

MC 151943 (Sub-1F), filed December 12, 1980. Applicant: STRICKLAND UNLIMITED SERVICE, 3072–22nd Avenue, Oakland, CA 94602. Representative: James E. Strickland (same as applicant). Transporting (1) *such commodities* as are dealt in or used by hardware stores, drug stores, discount houses, grocery and food business houses (except frozen commodities and commodities in bulk), and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, between points in the U.S., under continuing contract(s) with the Clorox Company, of Oakland, CA.

MC 152133 (Sub-1F), filed December 4, 1980. Applicant: THE JOHN R. TRUCKING CO., INC., 321 E. Wyoming Ave., Lockland, OH 45219. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215. Transporting *roofing materials*, (except in bulk), between Cincinnati, OH, on the one hand, and, on the other, points in the KY and IN.

MC 152582 (Sub-1F), filed December 9, 1980. Applicant: DAVID E. PROPST, d.b.a. PROPST DISTRIBUTING COMPANY, Route 2, Box 795, Lincolnton, NC 28092. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. Transporting *furniture or fixtures* as described in Item No. 25 of The Standard Transportation Commodity Code Tariff, between points in the U.S. under continuing contract(s) with Southern Furniture Company, of Conover, Inc.

MC 153153F, filed December 12, 1980. Applicant: DIXIE CAROLINA EXPRESS, INC., P.O. Box 924, Douglasville, GA 30133. Representative: David L. Capps (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in Douglas, Gwinnett, Rockdale, Clayton, Cobb, DeKalb and Fulton Counties, GA, on the one hand, and, on the other, points in AL, FL, GA, NC, SC, TN, and VA.

MC 153162F, filed December 10, 1980. Applicant: PAUL H. HERSHEY, 121 Field Crest Lane, Gordonville, PA 17529.

Representative: John W. Metzger, Esquire, 49 North Duke Street, Lancaster, PA 17602. Transporting *agricultural limestone* (a) from points in Lancaster County, PA, to points in NY, NJ, DE, MD, and VA, and (b) from Viola and Laurel, DE, to points in MD and VA.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-1006 Filed 1-12-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or juridictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 2, 1981, (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 and effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-140

Decided December 24, 1980.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones. (Member Joyce not participating.)

MC 2202 (Sub-640F) (Correction), filed October 23, 1980, published in the **Federal Register**, issue of December 17, 1980, and republished, as corrected, this issue. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Boulevard, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Avenue, Suite 1010, Washington, D.C. 20014. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), I. *Regular routes:* (1) between Sacramento, CA and Marysville, CA, over CA Hwy 70; (2) between Sacramento, CA and Yuba City, CA, over CA Hwy 99; (3) between Sacramento, CA and Roseville, CA, over Interstate Hwy 80; (4) between San Rafael, CA and junction CA Hwys 29 and 37: from San Rafael over U.S. Hwy 101 to junction CA Hwy 128, then over CA Hwy 128 to junction CA Hwy 29, then over CA Hwy 29 to junction CA Hwy 37, and return over the same route; (5) between Napa, CA and junction CA Hwys 121 and 37, over CA Hwy 121 to junction CA Hwy 37; (6) between Monte Rio, CA and junction CA Hwys 12 and 121: from Monte Rio over CA Hwy 116 to junction CA Hwy 12, then over CA Hwy 12 to junction CA Hwy 121, and return over the same route; (7) between Merced, CA and Fresno, CA: from Merced over CA Hwy 140 to junction CA Hwy 33, then over CA Hwy 33 to junction CA Hwy 180, then over CA Hwy 180 to Fresno, and return over the same route. (8) between Swanton, CA and Carmel Valley, CA: from Swanton over CA Hwy 1 to junction CA Hwy G16, then over CA Hwy G16 to Carmel Valley, and return over the same route. (9) between the junction CA Hwys 152 and 156 and junction CA Hwys 152 and 1: from junction CA Hwys 152 and 156 over CA Hwy 152 to junction CA Hwy 1, and return over the same route. (10) between CA Hwy 156 and 152 and junction CA Hwys 129 and 152: from junction CA Hwy 156 and 152 over CA Hwy 156 to junction CA Hwy 129, then over CA Hwy 129 to junction CA Hwy 152, and return over the same route. (11) between Visalia, CA and junction CA Hwys 190 and 99: from Visalia over CA Hwy 198 to junction CA Hwy 65, then over CA Hwy 65 to junction CA Hwy 190, then over CA Hwy 190 to junction CA Hwy 99, and return over the same route. (12) between junction CA Hwy 1 and U.S. Hwy 101 near Gavista, CA and Los Alamos, CA: from junction CA Hwy 1 and U.S. Hwy 101 near Gavista, over CA Hwy 1 to junction CA Hwy 135, then over CA Hwy 135 to Los Alamos, and return over the same route; (13) between junction CA Hwy 111 and Interstate Hwy 10 near White Water, CA and junction CA Hwy 111 and Interstate Hwy 10 near Indio, CA: from junction CA Hwy 111 and Interstate Hwy 10 near White Water, over CA Hwy 111 to junction Interstate Hwy 10 near Indio, and return over the same route; (14) between Escondida and Oceanside, CA: from Escondida over CA Hwy S6 to junction CA Hwy 76, then over CA Hwy 76 to Oceanside, and return over the same route; (15) between murrieta and Escondida, CA, over Interstate Hwy 15; (16) between junction CA Hwy S13 and Interstate Hwy 15 and CA Hwys S13 and 76: from junction CA Hwy S13 and Interstate Hwy 15 over CA Hwy S13 to junction CA Hwy 76, and return over the same route: (17) between Pueblo and Colorado Springs, CO: from Pueblo over U.S. Hwy 50 to Canon City, then over CO Hwy 120 to junction CO Hwy 115, then over CO Hwy 115 to Colorado Springs, and return over the same route: (18) between Ontario and Nyssa, OR, over OR Hwy 201. Applicant intends to serve all intermediate points in parts (1) through (18).

II. *Irregular routes:* between points in Sacramento County, CA: Boulder, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo, Teller, and Weld Counties, CO: Ada, Bannock, Bingham, Bonneville, Canyon, Cassia, Gem, Gooding, Jefferson, Jerome, Kootenai, Latah, Lewis, Lincoln, Madison,

Minidoka, Nez Perce, Fayette, Power, Twin Falls, and Washington Counties, ID; Deer Lodge, Jefferson, Lewis & Clark, Powell, and Silverbow Counties, MT; Clark and Storey Counties, NV; Benton, Clarkamas, Clatsap, Columbia, Douglas, Jackson, Josephine, Lane, Linne, Marion, Multnomah, Polk, Washington, and Yamhill Counties, OR; Box Elder, Cache, Davis, Juab, Morgan, Salt Lake, Tooele, Utah and Weber Counties, UT; Asoitin, Benton, Clark, Chelan, Cowlitz, Franklin, Garfield, Grays Harbor, Island, King, Kitsap, Kittitas, Lewis, Mason, Pierce, Skagit, Snohomish, Spokane, Thurston, Walla Walla, Chatcom, and Yakima Counties, WA; and Albany, Laramie, and Natrona Counties, WY. Applicant intends to tack the authority in II above, with its existing authority, at all common points.

Note.—The purpose of this republication is to correct the territorial description.

MC 99123 (Sub-9F), filed December 5, 1980. Applicant: QUAST TRANSFER, INC., P.O. Box 7, Winsted, MN 55395. Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102. Over regular routes, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), (1) between Minneapolis and Eden Valley, MN, over MN Hwy 55, (2) between Minneapolis and Litchfield, MN, over U.S. Hwy 12, (3) between Minneapolis, MN and junction MN Hwys 7 and 22, over MN Hwy 7, (4) between Minneapolis and Stewart, MN, over U.S. Hwy 212, (5) between Minneapolis and Norwood, MN, over MN Hwy 5, (6) between Eden Valley, MN and junction MN Hwys 22 and 15, over MN Hwy 22, (7) between Kimball, MN and junction MN Hwy 15 and U.S. Hwy 212, over MN Hwy 15, (8) between Howard Lake, MN and junction MN Hwy 261 and U.S. Hwy 212: from Howard Lake over Wright and McLeod County Road 6 to junction MN Hwy 261, then over MN Hwy 261 to junction U.S. Hwy 212, and return over the same route, and (9) in connection with routes (1) through (8) above, serving (a) all intermediate points and (b) Green Isle and Fairhaven, MN, points in McLeod and Carver Counties, MN, those in Wright and Hennepin Counties, MN on and south of MN Hwy 55, and those in Meeker County, MN on and south of MN Hwy 55 and on and east of MN Hwy 22, as off-route points.

Note.—Applicant intends to tack the authority sought herein with its existing authority.

MC 107403 (Sub-1343F), filed December 15, 1980. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Transporting (1) *anhydrous ammonia*, between points in Grand Forks and McHenry Counties, ND, and Pine Bend and Pope Counties, MN, on the one hand, and, on the other, points in SD, (2) *lime*, in bulk, from Shelby County, AL, to points in GA, NC, SC, and TX, and (3) *ground limestone*, in bulk, from talladega County, AL, to points in CT, NY, NJ, PA, MD, DE, WV, VA, NC, WI, IL, OH, MI, KY, and DC.

MC 121342 (Sub-1F), filed December 4, 1980. Applicant: GALLO CONSTRUCTION CO., INC., 845 Sandwich Rd., P.O. Box 443, Sagamore, MA 02561. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. Transporting (1) *salt, in bulk*, between points in MA, on the one hand, and, on the other, points in ME, NH, VT, MA, RI, and CT, and (2) *general commodities* (except classes A and B explosives), between points in MA.

Note.—The purpose of part (2) is to convert its existing certificate of registration. Issuance of this certificate is subject to prior or coincidental cancellation of applicant's written request of Certificate No. MC-121342 Sub 1F, issued October 5, 1966.

MC 127922 (Sub-1F), filed December 15, 1980. Applicant: NELLO PISTORESI & SON, INC., P.O. B. 432, Toppenish, WA 98948. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. Transporting *meats, meat products and meat by-products, and articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions In Motor Carrier Certificates*, 61 M.C.C. 209 and 766, between points in the U.S., under continuing contract(s) with (a) Washington Beef Producers, Inc., (b) Worrell Meat Co., Inc., both of Yakima, WA, and (c) Schaake Packing Co., of Ellensburg, WA.

MC 141532 (Sub-105F), filed December 17, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., 10244 Arrow Hwy., Rancho Cucamonga, CA 91730. Representative: Michael J. Norton, 1905 South Redwood Rd., Salt Lake City, UT 84104. Transporting (1) *primary metal products;* including galvanized, except coating or other allied processing, (2) *fabricated metal products*, except ordnance, and (3) *machinery*, except electrical, as described in Items 33, 34, and 35, respectively, of the Standard Transportation Commodity Code Tariff, between points in Madera and Fresno Counties, CA, on the one hand, and, on the other, points in the U.S.

MC 150383 (Sub-2F), filed December 17, 1980. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, P.O. Box 266, North 6th St. Rd., Monmouth, IL 61462. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy, Ave., Park Ridge, IL 60068. Transporting (1) *meats, meat products, and meat by-products, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), and (2) *materials, equipment, and supplies*, used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in the U.S., under continuing contract(s) with Wilson Foods Corporation, of Oklahoma City, OK.

MC 151703 (Sub-4F), filed December 18, 1980. Applicant: NORSUB, INC., R.D. No. 1, Box 317, Evans City, PA 16033. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. Transporting *such commodities* as are dealt in or used by manufacturers of steel and aluminum, between points in the U.S., restricted to traffic originating at or destined to the facilities used by S. H. Bell Company and Derby & Co., Inc.

MC 153132 (Sub-1F), filed December 15, 1980. Applicant: TOW-LO EXPRESS, INC., One Notre Dame Dr., Greenville, SC 29609. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in SC, restricted to traffic having a prior or subsequent movement by rail.

MC 153143F, filed December 9, 1980. Applicant: GEORGE L. POWELL, 356 Dale Rd., Beaverton, MI 48612. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. Transporting *such commodities* as are dealt in or used by manufacture of laminated product, between points in the U.S., under continuing contract(s) with Michigan Maple Block Company, of Petoskey, MI.

MC 153183F, filed December 15, 1980. Applicant: GUILLERMO GUILLEN, d.b.a. GUILLEN & SON TRUCKING, 1811 South Seventh St., San Jose, CA 95112. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. Transporting *food or kindred products*, as described in Item 20 of the Standard Transportation Commodity Code Tariff, from points in Santa Clara and San

Benito Counties, CA, to points in NM and TX.

MC 153232F, filed December 16, 1980. Applicant: DAVID D. SALKA, d.b.a. DAVID D. SALKA FREIGHT LINES, 59 Valley View Drive, Meriden, CT 06450. Representative: John E. Fay, Esq., 663 Maple Avenue, Hartford, CT 06114. Transporting *such commodities* as are dealt in or used by manufactures of non-alcoholic beverages between Meriden, CT, on the one hand, and, on the other, points in MA, RI, NH, VT, ME, NY, NJ, PA, and MD, under continuing contract(s) with Conn. Seven Up Bottling Co., Inc., of Meriden, CT.

Volume No. OP2–142

Decided: December 29, 1980.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones. (Member Jones not participating.)

MC 110053 (Sub–1F), filed December 1, 1980. Applicant: ILLINOIS STATE MOTOR SERVICE, INC., 1800 W. 31st St., Chicago, IL 60608. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. Transporting *iron and steel articles* (1) between points in Putnam County, IL and points in MI, and (2) between Chicago, IL, on the one hand, and, on the other, points in Rock Island County, IL, and Scott County, IA.

MC 130453 (Sub–1F), filed December 11, 1980. Applicant: CRAWFORD TOURS, INC., 5418 William Flynn Hwy., Rte. 8, Gibsonia, PA 15044. Representative: Jerry Purcell, 16 Chatham Square, Pittsburgh, PA 15219. As a *broker*, at Gibsonia, PA, to arrange for the transportation of *passengers and their baggage*, in the same vehicle with passengers, in round-trip special and charter operations, beginning and ending at points in the U.S. (except OH, PA, and WV), and extending to points in the U.S. (including AK and HI).

MC 139083 (Sub-10F), filed December 8, 1980. Applicant: BUILDING SYSTEMS TRANSPORTATION, INC., P.O. Box 142, Washington Courthouse, OH 43160. Representative: Marshall Kragen, 1919 Pennsylvania Ave., NW., Suite 300, Washington, DC 20006.Transporting (1) *buildings, (2) iron and steel articles, (3) plastic and fiberglass pipe and (4) materials, equipment, and supplies* used in the manufacture, distribution, and sale of the commodities in (1) through (3) above, between points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NJ, NY, NC, OH, PA, SC, TN, TX, VT, VA, WV, WI, and DC.

MC 142603 (Sub-38F), filed December 9, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY Transporting *asbestos and asbestos fibre, and materials, equipment, and supplies* used in the manufacuture, sale and distribution of asbestos and asbestos fibre, between points in the U.S., under continuing contract(s) with Vermont Asbestos Group, Inc., of Morrisville, VT.

MC 150943 (Sub-2F), filed December 10, 1980. Applicant: F. H. SMITH TRANSPORT CO., INC., Rt. A, Box 83, Yellville, AR 72687. Representative: Thomas B. Staley, 1550 Tower Building, Little Rock, AR 72201. Transporting (1) *food or kindred products* as described in Item 20 of the Standard Transportation Commodity Code Tariff, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Marion County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151383 (Sub-2F), filed December 10, 1980. Applicant: NICKELL TRUCKING CO., a corporation, 4901 West 51st St., Tulsa, OK 74107. Representative: Fred Rahal, Jr., Suite 305 Reunion Center, 9 East 4th St., Tulsa, OK 74103. Transporting (1) *light poles, traffic signals, electrical substations, and iron and steel articles*, under continuing contract(s) with Jem Engineering and Manufacturing Company, Inc., of Tulsa, OK, (2) *machinery and pipe, and iron and steel articles*, under continuing contract(s) with Phennix & Scisson, Inc., of Tulsa, OK, (3) *commodities*, the transportation of which, because of size or weight, requires the use of special equipment, under continuing contract(s) with Gaffey, Inc., of Tulsa, OK, and (4) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), (2), and (3) above, between points in the U.S., under continuing contract(s) with the shippers named in (1), (2), and (3) above.

Volume No. OP5–100

Decided: December 30, 1980.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill. (Member Fortier not participating.)

MC 52858 (Sub-126F), filed November 20, 1980. Applicant: CONVOY COMPANY, a corporation, 3900 NW Yeon Ave., P.O. Box 10185, Portland, OR 97210. Representative: Raymond A. Greene, Jr., 100 Pine Street, Ste 2550, San Francisco, CA 94111. Transporting *automobiles and trucks*, in secondary movements, in a truckway service, between points in CO and NM.

Note.—The person or persons who appear to be engaged in common control with applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(a), or submit an affidavit indicating why such approval is unnecessary.

MC 80498 (Sub-11F), filed December 2, 1980. Applicant: EARL C. SMITH, INC., 1720 Dove St., Port Huron, MI 48060. Representative: Leo Shimsky, 6464 Strong Ave., Detroit, MI 48211. Over regular routes, transporting *general commodities* (except classes A and B explosives) (1) between Detroit, MI and Port Huron, MI over Interstate Hwy 94. (2) Between Detroit, MI and Flint, MI over Interstate Hwy 75. (3) Between Detroit, MI and junction of Interstate Hwy 94 and U.S. Hwy 12 at or near Ypsilanti, MI over Interstate Hwy 94. (4) Between Detroit, MI and Flint, MI over Interstate Hwy 96 to junction U.S. Hwy 23, then over U.S. Hwy 23 to Flint. (5) Serving all intermediate points on the routes in paragraphs 1–4 above. (6) Serving as off-route points the facilities of the General Motors Corporation at or near Ypsilanti, MI. Condition: Issuance of certificates in this proceeding are subject to the coincidental cancellation at appliant's written request, of its Certificates of Registration in MC–80498 Subs 4, 8, and 9.

Note.—The purpose of this application is to convert applicant's Certificate of Registration in MC–80498 Sub Nos. 4, 8, and 9 to Certificates of Public Convenience and Necessity.

MC 93318 (Sub-20F), filed December 17, 1980. Applicant: JOE D. HUGHES, INC., P.O. Box 96469, Houston, TX 77013. Representative: J. Marshall Forsyth (same address as applicant). Transporting I (1)*machinery, equipment, materials and supplies* used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products; (2) *machinery, materials, equipment and supplies* used in or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof; (3) *earth drilling machinery and equipment* and *machinery, equipment and supplies and pipe* incidental to, used in, or in connection with: (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites and (d) the injection or removal of

commodities into or from holes or wells, between points in AL, CO, CT, DE, FL, GA, KS, LA, ME, MD, MA, MS, MT, NH, NJ, NM, NY, NC, OK, RI, SC, TX, UT, VA, and WY, and II (1) *machinery, equipment, materials and supplies* used in, or in connection with, the drilling of water wells, *machinery and equipment* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of sulpher and its products, and (2) *materials and supplies* (not including sulphur) used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of sulphur and its products, between points in AL, CO, FL, GA, KS, LA, MS, MT, NM, OK, TX, UT, and WY. Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation at applicant's written request, of its Certificate of Public Convenience and Necessity in MC 93318 Sub-Nos. 7, 8, 9, 11, 13, 14, and 18 and gateway elimination "E1" authority.

MC 99848 (Sub-5F), filed December 16, 1980. Applicant: J. F. LUX TRANS CO., INC., 232 Ash Street, Reading, MA 01867. Representative: Joseph T. Bambrick, Jr., P.O. Box 216, Douglassville, PA 19518. Transporting *general commodities* between points in CT and points in Hillsboro, Merrimack, Rockingham and Stafford Counties, NH; MA, and RI.

MC 106398 (Sub-1090F), filed December 17, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson (same address as applicant). Transporting *fabricated metal products; except ordnance*, as described in Item 34 of the Standard Transportation Commodity Code Tariff, between Tulsa, OK, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 109818 (Sub-92F), filed December 16, 1980. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52804. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *frozen foods*, between points in Webster County, IA, on the one hand, and, on the other, points in CO, KS, MN, MO, NE, ND, SD, WI, and FL.

MC 119118 (Sub-67F), filed December 5, 1980. Applicant: MC CURDY TRUCKING, INC., P.O. Box 388, Latrobe, PA 15650. Representative: Richard C. McGinnis, 711 Washington Building, Washington, DC 20005. Transporting (1) *malt beverages*, in containers, and (2) *materials, equipment*, and *supplies* used in the manufacture and distribution of the commodities in (1), (a) between points in Butler County, OH, on the one hand, and, on the other, Alexandria, VA, and points in Lehigh County, PA, and Prince Georges County, MD, (b) between points in Lehigh County, PA, on the one hand, and, on the other, points in Chautauqua County, NY, (c) between Baltimore, MD, and points in Campbell County, KY, and Saginaw County, MI, on the one hand, and, on the other, Norfolk, VA, and points in Vanderburgh County, IN, and (d) between points in Evansville County, IN, on the one hand, and, on the other, Norfolk, VA.

MC 124109 (Sub-20F), filed December 16, 1980. Applicant: B.F.C. TRANSPORTATION, INC., P.O. Box 985, Cedar Rapids, IA 52406. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *materials, equipment, and supplies* used by processors of grain products and popcorn, between points in the U.S., under continuing contract(s) with National Oats Company, Inc., of Cedar Rapids, IA.

MC 128798 (Sub-8F), filed December 16, 1980. Applicant: GALASSO TRUCKING, INC., 8 Kilmer Rd., Larchmont, NY 10538. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022. Transporting (a) *such commodities* as are dealt in by department stores, and (b) *materials, equipment, and supplies* used in the conduct of such business, between points in the U.S., under continuing contract(s) with Federated Department Stores, Inc., of Cincinnati, OH.

MC 135598 (Sub-51F), filed December 15, 1980. Applicant: SHARKEY TRANSPORTATION, INC., P.O. Box 3156, Quincy, IL 62301. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S., under continuing contract(s) with American Cyanamid Company, of Wayne, NJ, its affiliates and subsidiaries.

Volume No. OP5-101

Decided: December 30, 1980.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill (Member Fortier not participating.)

MC 142059 (Sub-147F), filed December 16, 1980. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Rd., Joliet, IL 60436. Representative: Jack Riley, (same address as applicant). Transporting *furniture*, and *materials, equipment, and supplies* used in the manufacture and distribution of furniture, between points in Alexander County, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 144678 (Sub-25F), filed December 15, 1980. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th St., Overland Park, KS 66210. Representative: Harold H. Clokey (same address as applicant). Over regular routes, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), serving those points in that part of FL on, north, and west of a line beginning at Cedar Keys, FL and extending along FL Hwy 24 to Baldwin, FL, then over U.S. Hwy 90 to Jacksonville, FL, and then along FL Hwy 10 to Atlantic Beach, FL, as off-route points in connection with applicant's otherwise authorized regular-route operations.

MC 145108 (Sub-36F), filed December 5, 1980. Applicant: BULLET EXPRESS, INC., 5600 First Ave., Brooklyn, NY 11220. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *construction materials*, between points in the U.S., under continuing contract(s) with Dur-O-Wal, Inc., of Baltimore, MD.

MC 145149 (Sub-10F), filed December 1, 1980. Applicant: MATADOR SERVICE, INC., P.O. Box 2256, Wichita, KS 67201. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *butane, propane, natural gasoline*, and *molten sulfur*, between points in McKenzie County, ND, and Richland County, MT, on the one hand, and, on the other, points in CO, MT, MN, ND, SD, and WY. Condition: To the extent any certificate in this proceeding authorizes the transportation of propane or butane, it shall be limited to a period expiring 5 years from date of issuance.

MC 145359 (Sub-29F), filed December 16, 1980. Applicant: THERMO TRANSPORT, INC., P.O. Box 41587, Indianapolis, IN 46241. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *drugs, toilet preparations, and chemicals*, between Elkhart, IN and Dayton, OH, on the one hand, and, on the other, points in the U.S.

MC 150699 (Sub-2F), filed December 15, 1980. Applicant: RST INDUSTRIES, LTD., P.O. Box 1316, 225 Thorne Ave., St. John, New Brunswick, Canada E2L 4H8. Representative: Fritz R. Kahn, Suite 1100, 1660 L St. NW., Washington, DC 20036. In foreign commerce only.

transporting *gasoline, petroleum and petroleum products, chemicals and hazardous materials,* between points in the U.S., under continuing contract(s) with Irving Oil Limited, of St. John, New Brunswick, Canada.

MC 151849 (Sub-1F), filed December 9, 1980. Applicant: CALDWELL TRUCKING SERVICE, INC., P.O. Box 316, Imboden, AR 72434. Representative: James Caldwell (same address as applicant). Transporting *fertilizer ingredients,* in bulk in dump trucks, between points in the U.S., under continuing contract(s) with Frit Industries, Inc., of Ozark, AL.

MC 153028F, filed December 4, 1980. Applicant: DANIEL L. BOGARD, d.b.a. BOGARD DISTRIBUTING, P.O. Box 807, Greenwood, IN 46142. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN. 46240. Transporting *general commodities* (except A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S., under continuing contract(s) with Hoover Universal, Inc., of Georgetown, KY.

MC 153208F filed December 16, 1980. Applicant: AUG. DEIKE TRANSFER, INC., P.O. Box 727, Mankato, MN 56001. Representative: Timothy H. Butler, 4200 IDS Center, 80 South 8th St., Minneapolis, MN 55402. Transporting (1) *pulp, paper, or allied products* as described in Item 26 of the Standard Transportation Commodity Code, (2) *rubber, or miscellaneous plastics products* as described in Item 30 of the Standard Transportation Commodity Code, and (3) *machinery, except electrical,* as described in Item 35 of the Standard Transportation Commodity Code, between points in MN and points in WI.

MC 153219F filed December 17, 1980. Applicant: TIM'S TRANSFER, INC., 2250 Occidental Ave. So., Seattle, WA 98124. Representative: James T. Johnson, 1610 IMB Bldg., Seattle, WA 98101. Transporting *general commodities,* (except used household goods, commodities requiring special equipment, commodities in bulk, classes A and B explosives, and commodities requiring temperature control) between points in the U.S. under continuing contract(s) with Pacific Progress Shippers Association, Inc. of Seattle, WA.

Volume OP4–186

Decided: January 6, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

Mc 150406 (Sub-1F), filed November 13, 1980, previously published in the **Federal Register** issue of December 11, 1980 as MC 150404 (Sub-1F), and republished this issue. Applicant: MOTOR DRAYAGE CO., INC., 5215 Salem Hills Ln., Cincinnati, OH 45230. Representative: Ronald J. Denicola, 901 Fifth & Race Tower, Cincinnati, OH 45202. Transporting *valve, valve parts, rough castings, metal scraps, tools, and machinery,* between points in the U.S., under continuing contract(s) with Wm. Powell Company, of Cincinnati, OH.

Note.—The purpose of this republication is to correct applicant's Docket Number.

MC 151916 (Sub-1E), filed November 12, 1980, previously published in the **Federal Register** issue of December 10, 1980, republished this issue. Applicant: BARON TRANSPORT, INC., One Perimeter Way, Suite 455, Atlanta, GA 30339. Representative: Bill R. Davis, Suite 101, Emerson Center, Atlanta, GA 30339. Transporting *frozen bakery products,* between points in Carroll County, GA on the one hand, and, on the other, points in Rutherford County, TN.

MC 152056 (Sub-1E), filed December 8, 1980. Applicant: RHETT BUTLER TRUCKING, INC., Rt. 6, Box 83, Andalusia, AL 36420. Representative: Maurice F. Bishop, 603 Frank Nelson Bldg., Birmingham, AL 35203. Transporting (1) *food or kindred products* as described in Item 20 of the Standard Transportation Commodity Code and (2) *materials, supplies and ingredients,* between points in Morgan County, IL, on the one hand, and, on the other, points in AL, FL, GA, KY, MS, NC, SC, TN, LA and TX.

MC 152726 (Sub-1F), filed November 24, 1980, and noticed in the **Federal Register** issue of December 16, 1980, republished this issue. Applicant: CENTRAL VALLEY TRANSPORTATION, INC., P.O. Box 125, Howard, PA 16841. Representative: Andrew Lipman, 1776 F. St., NW., Washington, DC 20006. Transporting *coal,* from points in Centre and Clearfield Counties, PA, to points in NY.

Note.—The purpose of this republication is to correctly reflect the commodity description.

Volume No. OP4–187

Decided: January 7, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 70557 (Sub-42F), filed December 19, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 So. LaSalle St., Chicago, IL 60603. Transporting *general commodities* (except household goods as defined by this Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Union Camp Corporation.

MC 108587 (Sub-33E), filed December 16, 1980. Applicant: SCHUSTER EXPRESS, INC., 48 Norwich Ave., Colchester, CT 06415. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K St., N.W., Washington, DC 20005. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Springfield, MA, on the one hand, and, on the other, points in ME, NH, and VT within 110 miles of Boston, MA.

Note.—Applicant states it intends to tack this authority with its existing authority at Springfield, MA.

MC 143257 (Sub-2F), filed December 19, 1980. Applicant: CHAMBERS, LTD., 405 So. DeKalb St., Corydon, IA 50060. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting (1) *cosmetic body care products,* (2) *health food products,* and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between the facilities of Sasco Cosmetics, Inc., at or near Dallas, TX, on the one hand, and, on the other, points in the U.S.

MC 147547 (Sub-12F), filed December 16, 1980. Applicant: R & D TRUCKING COMPANY, INC., Church Rd., Lauderdale Industrial Park, Florence, AL 35630. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37217. Transporting (1) *pulp, paper, and allied products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of Champion International Corporation, at or near Courtland, AL, on the one hand, and, on the other, points in AZ, CA, NM, OR, UT, CO, and WA.

MC 151017 (Sub-2F), filed December 18, 1980. Applicant: DEATON, INC., 317 Ave. W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between points in the U.S., under continuing contract(s) with Weyerhaeuser Company, of Hot Springs, AR.

MC 153357F, filed December 30, 1980. Applicant: COX MOTOR TRANSPORT, INC., 622 No. Broadway, Muncie, IN 47303. Representative: Edward B. Sanderson (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S., under continuing contract(s) with Central Union Warehouses, Inc., of Indianapolis, IN.

Volume No. OP4–188

Decided: January 7, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 19917 (Sub-1F), filed December 16, 1980. Applicant: E. R. JARRELL TRUCKING CO., a corporation, 1422 Smallman St., Pittsburgh, PA 15222. Representative: John A. Pillar, 1500 Bank Tower, 307 4th Ave., Pittsburgh, PA 15222. Transporting *general commodities* (except household goods as defined by the Commission, commodities in bulk, and classes A and B explosives), between points in the U.S., under continuing contract(s) with Heinz U.S.A., Division of H. J. Heinz Company, of Pittsburgh, PA.

MC 46007 (Sub-1F), filed December 18, 1980. Applicant: J. W. BROWNETT, INCORPORATED, 70 Canal St., Jersey City, NJ 07302. Representative: Nicholas J. Peckio, (same address as applicant). Transporting (1) *petroleum and petroleum products*, between points in the U.S., under continuing contract(s) with Texaco, Incorporated, of Bayonne, NJ, and (2) *animal fat and vegetable oils*, between points in the U.S., under continuing contract(s) with Standard Tallow Corporation, of Newark, NJ.

MC 58637 (Sub-1F), filed December 30, 1980. Applicant: TEEPLE TRUCK LINES, INC., Box 310, Decatur, IN 46733. Representative: Walter F. Jones, Jr., 601 Chamber of Commerce Bldg., Indianapolis, IN 46204. Transporting *general commodities* (except those of unusual value, classes A and B explosives, and commodities in bulk), serving those points in OH on and west of Interstate Hwy 75, those in IN on and north of Interstate Hwy 74 and on and east of U.S. Hwy 31, those in and those in MI on and east of U.S. Hwy 131, and south of Interstate Hwy 94, as off-route points in connection with carrier's presently authorized regular route operations between Richmond and Fort Wayne, IN over U.S. Hwy 27.

MC 107757 (Sub-1F), filed December 30, 1980. Applicant: M.C. SLATER, INC., P.O. Box 369, Granite City, IL 62060. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Transporting (1) *iron and steel articles*, and (2) *commodities*, which because of size or weight, require special equipment, between St. Louis, MO, on the one hand, and, on the other, points in IL.

MC 123407 (Sub-657F), filed December 30, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: Sterling W. Hygema (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and distributors of building materials (except commodities in bulk), between points in the U.S., restricted to traffic originating at or destined to the facilities of Donn Corporation.

MC 136786 (Sub-238F), filed November 12, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd St., Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., 7400 Metro Blvd., Edina, MN 55435. Transporting (1) *such commodities* as are dealt in or used by department, hardware, drug and grocery and food business houses, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between points in U.S.

MC 143406 (Sub-2F), filed December 19, 1980. Applicant: MICHEL PROPERTIES, INC., Stenersen Lane, Cockeysville, MD 31030. Representative: Walter T. Evans, 7961 Eastern Ave., Silver Spring, MD 20910. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with The R. T. French Company, of Rochester, NY, Kal Kan Foods, Inc., of Vernon, CA, Airwick Industries, Inc., of Carlstadt, NJ, and Standard Brands, Incorporated, of New York, NY.

MC 147186 (Sub-2F), filed December 16, 1980. Applicant: TEUFEL BROTHERS, INC., Inman Ave., Avenel, NJ 07001. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Transporting *petroleum and petroleum products*, between points in the U.S., under continuing contract(s) with Amerada Hess Corporation, of Woodbridge, NJ.

MC 148737 (Sub-7F), filed December 19, 1980. Applicant: SUNSET EXPRESS CORP., P.O. Box 27043, Salt Lake City, UT 84125. Representative: Earl I. Sundeaus (same address as applicant). Transporting *chemicals* (except in bulk), from points in CT, MA, NJ, PA, and VA, to points in AZ, CA, IL, IN, OR, TN, TX, and WA.

MC 148737 (Sub-8F), filed December 19, 1980. Applicant: SUNSET EXPRESS CORPORATION, P.O. Box 27043, Salt Lake City, UT 84125. Representative: Earl I. Sundeaus (same address as applicant). Transporting *canned goods*, from points in CA, to points in CT, DE, IL, IN, MA, MD, ME, MI, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and DC.

MC 151716 (Sub-1F), filed December 18, 1980. Applicant: AMERICAN CARGO EXPRESS, INC., 747 Glasgow Ave., Inglewood, CA 90301. Representative: Miles L. Kavaller, 315 So. Beverly Dr., Suite 315, Beverly Hills, CA 90212. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in the U.S., under continuing contract(s) with Handy Dan Home Improvement Centers, of Los Angeles, CA.

MC 151766 (Sub-1F), filed December 19, 1980. Applicant: DIAMOND K TRUCKING CO., INC., 23 Terminal Rd., Lyndhurst, NJ 07071. Representative: Richard Kasten (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between New York, NY, on the one hand, and, on the other, points in NY, CT, RI, MA, PA, WV, VA, NC, and DC.

MC 152016 (Sub-1F), filed December 17, 1980. Applicant: CHICAGO AREA TRANSPORT, INC., 9517 South Merton, Oak Lawn, IL 60453. Representative: Roy Warner (same address as applicant). Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points in IL, WI, MN, IA, MO, IN, MI, and OH, restricted to traffic having a prior or subsequent movement by air, rail, or water.

Volume No. OP4–190

Decided: January 7, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

MC 133917 (Sub-10F), filed December 8, 1980. Applicant: CARTHAGE FREIGHT LINE, INC., P.O. Box 315, Carthage, TN 37030. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. Over regular routes, transporting *general commodities* (except classes A and B explosives), between Nashville, TN, and Valdosta, GA, from Nashville

over Interstate Hwy 24 to junction Interstate Hwy 75, then over Interstate Hwy 75 to Valdosta, and return over the same route, serving the intermediate point of Chattanooga, TN, and all intermediate and off-route points in GA.

Note.—Applicant intends to tack with its existing authority.

Volume No. OP5-98

Decided: December 29, 1980.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 5888 (Sub-55F), filed December 11, 1980. Applicant: MID-AMERICAN LINES, INC., 127 West Tenth St., Kansas City, MO 64105. Representative: Tom Zaun (same address as applicant). Transporting *metal products*, between Chicago, IL, on the one hand, and, on the other, points in AR and TX.

MC 35628 (Sub-439F), filed November 29, 1980. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, a corporation; 110 Ionia Ave. NW., P.O. Box 175, Grand Rapids, MI 49503. Representative: Michael P. Zell (same address as applicant). Over *regular* routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) (1) between the District of Columbia, and Savannah, GA, from the District of Columbia over Interstate Hwy 395 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 16, then over Interstate Hwy 16 to Savannah, and return over the same route, (2) between Canton, OH, and Charleston, SC, from Canton over Interstate Hwy 77 to junction West Virginia Turnpike (near Charleston, WV), then over West Virginia Turnpike to junction Interstate Hwy 77, then over Interstate Hwy 77 to junction Interstate Hwy 20, then over Interstate Hwy 20 to junction Interstate Hwy 26, then over Interstate Hwy 26 to Charleston, and return over the same route, (3) between Harrisburg, PA, and Amarillo, TX, from Harrisburg over U.S. Hwy 11 to junction Interstate Hwy 81, then over Interstate Hwy 81 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Amarillo, and return over the same route, (4) between Lexington, KY, and Norfolk, VA, (a) from Lexington over Interstate Hwy 64 to Norfolk, and return over the same route, and (b) from Lexington over U.S. Hwy 60 to Norfolk, and return over the same route, and (5) between Wheeling, WV and Parkersburg, WV, over WV Hwy 2, (6) between Washington, PA, and junction U.S. Hwy 19 and the West Virginia Turnpike (just west of Beckley, WV) from Washington over Interstate Hwy 79 to junction U.S. Hwy 19, then over U.S. Hwy 19, to its junction with the West Virginia Turnpike and return over the same route, (7) between Columbus, OH and junction U.S. Hwy 33 and Interstate Hwy 77 (near Ripley, WV) over U.S. Hwy 33, (8) between Columbus, OH and Waycross, GA, from Columbus over U.S. Hwy 23 to Asheville, NC, then over U.S. Hwy 25 to Augusta, GA, then over U.S. Hwy 1 to Waycross, and return over the same route, (9) between Cincinnati, OH and Huntington, WV, from Cincinnati over OH Hwy 125 to junction U.S. Hwy 52, then over U.S. Hwy 52 to Huntington, and return over the same route, (10) between junction Interstate Hwy 77 and Interstate Hwy 79 (near Charleston, WV) and the junction of Interstate Hwy 79 and U.S. Hwy 19, over Interstate Hwy 79, (11) between Petersburg, VA and San Antonio, TX, (a) from Petersburg over Interstate Hwy 85 to Montgomery, AL, then over Interstate Hwy 65 to junction Interstate Hwy 10, then over Interstate Hwy 10 to San Antonio, and return over the same route, and (b) from Petersburg over Interstate Hwy 85 to Montgomery, AL, then over Interstate Hwy 65 to junction Interstate Hwy 10, then over Interstate Hwy 10 to junction Interstate Hwy 12, then over Interstate Hwy 12 to junction Interstate Hwy 10, then over Interstate Hwy 10 to San Antonio and return over the same route, (12) between Knoxville, TN and Columbia, SC, from Knoxville over Interstate Hwy 40 to junction Interstate Hwy 26, then over Interstate Hwy 26 to junction Interstate Hwy 126, then over Interstate Hwy 126 to Columbia, and return over the same route, (13) between Lexington, KY and Moorehead City, NC, from Lexington over U.S. Hwy 60 to Winchester, then over KY Hwy 15 to junction U.S. Hwy 119, then over U.S. Hwy 119 to Jenkins, KY, then over U.S. Hwy 23 to Kingsport, TN, then over U.S. Hwy 11W to Bristol, TN, then over U.S. Hwy 421 to Greensboro, NC, then over U.S. Hwy 70 to Moorehead City, and return over the same route, (14) between Corbin, KY, and Newport, TN, over U.S. Hwy 25E, (15) between Columbia, SC and Fort Worth, TX, from Columbia over Interstate Hwy 126 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Fort Worth, and return over the same route, (16) between Amarillo, TX, and Savannah, GA, from Amarillo, TX, over U.S. Hwy 287 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Montgomery, AL, then over U.S. Hwy 80 to Macon, GA, then over Interstate Hwy 16 to Savannah, and return over the same route, (17) between Montgomery, AL and Dothan, AL, over U.S. Hwy 231, (18) between Atlanta, GA, and Valdosta, GA, over Interstate Hwy 75, (19) between Montgomery, AL and Jonesboro, AR, from Montgomery over Interstate Hwy 65 to Birmingham, then over U.S. Hwy 78 to Memphis, TN, then over U.S. Hwy 63 to Jonesboro, and return over the same route, (20) between Dothan, AL and junction Interstate Hwy 85 and Interstate Hwy 185, from Dothan over U.S. Hwy 431 to Phoenix City, then over U.S. Hwy 27 to junction Interstate Hwy 185, then over Interstate Hwy 185 to junction Interstate Hwy 85, and return over the same route, (21) between junction Interstate Hwy 20 and Interstate Hwy 77 (near Columbia, SC) and the junction of Interstate Hwy 20 and Interstate Hwy 95, over Interstate Hwy 20, (22) between junction U.S. Hwy 17 and Interstate Hwy 95 (near Rocataligo, SC) and Norfolk, VA, over U.S. Hwy 17, (23) between Memphis, TN, and New Orleans, LA, from Memphis, over Interstate Hwy 55 to junction Interstate Hwy 10, then over Interstate Hwy 10 to New Orleans, and return over the same route, (24) between Jackson, MS and Mobile, AL, from Jackson, over U.S. Hwy 49 to junction U.S. Hwy 98, then over U.S. Hwy 98 to Mobile, and return over the same route, (25) between Meridian, MS, and New Orleans, LA, from Meridian over Interstate Hwy 59 to junction Interstate Hwy 10, then over Interstate Hwy 10 to New Orleans, and return over the same route, (26) between Savannah, GA and Waco, TX, from Savannah over U.S. Hwy 17 to junction U.S. Hwy 82 then over U.S. Hwy 82 to Waycross, GA, then over U.S. Hwy 84 to Waco, and return over the same route, (27) between Evansville, IN, and Memphis, TN, from Evansville over U.S. Hwy 41 to junction U.S. Hwy 60, then over U.S. Hwy 60 to junction U.S. Hwy 641, then over U.S. Hwy 641 to junction Interstate Hwy 24, then over Interstate Hwy 24 to the junction of the Kentucky Purchase Parkway Toll Road, then over the Kentucky Purchase Parkway Toll Road to junction U.S. Hwy 51, then over U.S. Hwy 51 to Memphis, and return over the same route, (28) between Lexington, KY, and junction Interstate Hwy 24 and U.S. Hwy 641, from Lexington over U.S. Hwy 60 to the junction of the Kentucky Bluegrass Parkway, then over the Kentucky Bluegrass Parkway to the junction of the Western Kentucky Parkway, then over the Western Kentucky Parkway to junction Interstate Highway 24, then over Interstate Hwy 24 to junction U.S. Hwy 641 and return over the same route, (29) between Montgomery, AL and Meridian, MS,

over U.S. Hwy 80, (30) between San Antonio, TX and Tulsa, OK, (a) from San Antonio, TX over Interstate Hwy 35 to junction Interstate Hwy 35E, then over Interstate Hwy 35E to Dallas, then over U.S. Hwy 75 to Tulsa, OK and return over the same route, and (b) from San Antonio, TX over Interstate Hwy 35 to junction Interstate Hwy 35E, then over Interstate Hwy 35W to Fort Worth, TX, then over Interstate Hwy 20 to Dallas, TX, then over U.S. Hwy 75 to Tulsa, OK, and return over the same route, (31) between Houston, TX and Oklahoma City, OK, (a) from Houston over Interstate Hwy 45 to Dallas, TX, then over Interstate Hwy 35E to junction Interstate Hwy 35, then over Interstate Hwy 35 to Oklahoma City, and return over the same route, and (b) from Houston over Interstate Hwy 45 to Dallas TX, then over Interstate Hwy 20 to junction Interstate Hwy 35W, then over Interstate Hwy 35W to junction Interstate Hwy 35, then over Interstate Hwy 35 to Oklahoma City, and return over the same route, (32) between Little Rock, AR and Dallas, TX, over Interstate Hwy 30, (33) between Houston, TX and Texarkana, TX, over U.S. Hwy 59, (34) between Lake Charles, LA and Shreveport, LA, over U.S. Hwy 171, (35) between Baton Rouge, LA and Fayetteville, AR, from Baton Rouge over U.S. Hwy 190 to junction U.S. Hwy 71, then over U.S. Hwy 71 to Fayetteville, and return over the same route, (36) between Taxarkana, TX, and junction U.S. Hwy 79 and Interstate Hwy 35 (near Georgetown, TX), from Texarkana over U.S. Hwy 59 to Carthage, then over U.S. Hwy 79 to junction Interstate Hwy 35 and return over the same route, (37) between Houston, TX, and Waco, TX, from Houston over U.S. Hwy 290 to Giddings, then over U.S. Hwy 77 to Waco, and return over the same route, (38) between Fort Worth, TX and Henrietta, TX, over U.S. Hwy 287, (39) between Little Rock, AR, and Baton Rouge, LA, from Little Rock over U.S. Hwy 65 to Ferriday, then over U.S. Hwy 84 to junction U.S. Hwy 61, then over U.S. Hwy 61 to Baton Rouge, and return over the same route, (40) between Memphis, TN, and junction of U.S. Hwy 165 and Interstate Hwy 10, from Memphis over U.S. Hwy 61 to junction U.S. Hwy 82, then over U.S. Hwy 82 to junction U.S. Hwy 165, then over U.S. Hwy 165 to junction Interstate Hwy 90 and return over the same route, (41) between Amarillo, TX, and Denver, CO, over U.S. Hwy 87, (42) between Wilmington, NC and junction U.S. Hwy 220 and Interstate Hwy 81, from Wilmington over U.S. Hwy 74 to Rockingham, then over U.S. Hwy 220 to junction Interstate Hwy 81 and return over the same route, (43) between Norfolk, VA, and Middlesboro, KY, over U.S. Hwy 58, (44) between Oklahoma City, OK and Wichita Falls, TX, (a) from Oklahoma City, over U.S. Hwy 277 to Wichita Falls, and return over the same route, and (b) from Oklahoma City over the Oklahoma H. E. Bailey Turnpike to the OK–TX State line, then over U.S. Hwy 277 to Wichita Falls, and return over the same route, (45) between Bowie, TX, and Lawton, OK, from Bowie over U.S. Hwy 81 to junction Oklahoma Hwy 7, then over Oklahoma Hwy 7 to Lawton, and return over the same route, (46) between Beaumont, TX, and Denison, TX, over U.S. Hwy 69, (47) between Mobile, AL, and Tupelo, MS, from Mobile over U.S. Hwy 45 to junction Alternate U.S. Hwy 45, then over Alternate U.S. Hwy 45 to Tupelo, and return over the same route, (48) between Cincinnati, OH, and the District of Columbia, over U.S. Hwy 50, and (49) serving in routes (1) through (48) above all intermediate points, and points in AL, AR, GA, KY, LA, MS, NC, OK, SC, TN, TX, and VA, as off route points.

MC 72069 (Sub-32F), filed December 9, 1980. Applicant: BLUE HEN LINES, INC., P.O. Box 280, Milford, DE 19963. Representative: R. Emery Clark, 366 Executive Bldg., 1030 Fifteenth St. NW., Washington, DC 20005. Transporting (1) *foodstuffs* and (2) *materials, equipment, and supplies* used in the manufacture of foodstuffs between points in DE, and those points in MD and VA (except Salisbury, MD), located east of the Chesapeake Bay and South of the Chesapeake and Delaware Canal, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 98478 (Sub-9F), filed December 25, 1980. Applicant: ROBBINS TRUCK LINE, INC., Route #1, Hardinsburg, KY 40143. Representative: Rudy Yessin, 113 West Main Street, Frankfort, KY 40601. Over *regular* routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between junction KY Hwy 56 and U.S. Hwy 60 and Cincinnati, OH, from junction KY Hwy 56 and U.S. Hwy 60, over U.S. Hwy 60 to junction U.S. Hwy 31W, then over U.S. Hwy 31W to junction Interstate Hwy 65, then over Interstate Hwy 65 to Louisville, then over Interstate Hwy 71 to junction Interstate Hwy 75, then over Interstate Hwy 75 to Cincinnati, and return over the same route, serving points in Union, Webster, Henderson, McLean, Daviess, Hancock, Breckinridge, Meade, Hardin, Bullitt, Jefferson, Oldham, Trimble, Henry, Carroll, Gallatin, Boone, Kenton, and Campbell Counties, KY and Hamilton County, OH, as off-route points.

MC 99569 (Sub-7F), filed December 8, 1980. Applicant: STOTT & DAVIS MOTOR EXPRESS, INC., 18 Garfield St., Auburn, NY 13021. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), (1) between points in NY, PA, and NJ, and (2) between points in NJ, CT, MA, RI, and NY.

MC 120368 (Sub-2F), filed December 10, 1980. Applicant: DIXIE TRUCKING COMPANY, INC., 4901 Sunset Road, Charlotte, NC 28213. Representative: K. D. Shaver, Sr. (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Alamance, Anson, Beaufort, Bladen, Cabarrus, Catawba, Chowan, Cleveland, Columbus, Craven, Cumberland, Durham, Edgecombe, Forsyth, Gaston, Granville, Guilford, Halifax, Harnett, Hertford, Hoke, Lee, Mecklenburg, Montgomery, Moore, New Hanover, Pasquotank, Randolph, Richmond, Robeson, Rockingham, Scotland, Stanly, Union, Vance, Wake, Wayne, Wilson, Alexander, Brunswick, Caswell, Chatham, Davidson, Davie, Franklin, Iredell, Johnston, Lincoln, Nash, Orange, Person, Rowan, Warren, and Yadkin Counties, NC, and Cherokee, Chester, Chesterfield, Fairfield, Greenville, Kershaw, Lancaster, Laurens, Newberry, Richland, Spartanburg, Union and York Counties, SC.

Note.—Applicant seeks to convert its Certificate of Registration MC–120368.

MC 123048 (Sub-490F), filed December 10, 1980. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, Racine, WI 53406. Representative: Carl S. Pope (same address as applicant). Transporting *such commodities* as are dealt in or used by dealers and manufacturers of agricultural and industrial equipment, between points in the U.S.

MC 144678 (Sub-24F), filed December 8, 1980. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th St., Overland Park, KS 66210. Representative: Harold H. Clokey (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), serving

points in KY, as off-route points in connection with applicant's otherwise authorized regular-route operations.

MC 145018 (Sub-18F), filed December 8, 1980. Applicant: NORTHWEST DELIVERY, INC., P.O. Box 127, Taylor, PA 18517. Representative: Daniel W. Krane, Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17011. Over *regular* routes, transporting (1) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Cleveland, OH and Newark, NJ, from Cleveland over OH Hwy 84 to junction OH Hwy 46, then over OH Hwy 46 to Ashtabula, OH, then over U.S. 20 to junction NY Hwy 78, then over NY Hwy 78 to junction NY Hwy 33, then over NY Hwy 33 to Batavia, NY, then over NY Hwy 5 to Albany, NY, then over NY Hwy 9J to junction U.S. Hwy 9, then over U.S. Hwy 9 to Newark, NJ, and return over the same route, serving all intermediate points (2) *general commodities* (except those of unusual value, classes A and B explosives, and those requiring special equipment) between New York, NY and Atlantic City, NJ, from New York over U.S. Hwy 9 to junction NJ Hwy 34, then over NJ Hwy 34 to junction NJ Hwy 79, then over NJ Hwy 79 to junction U.S. Hwy 9, then over U.S. Hwy 9 to junction U.S. Hwy 40 at Pleasantville, NJ, then over U.S. Hwy 40 to Atlantic City, and return over the same route, serving all intermediate points and off-route points on and north of U.S. Hwy 40, and (3) as alternate routes for operating convenience only, (a) between Cleveland, OH, and Philadelphia, PA, from Cleveland over Interstate Hwy 77 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 76, then over Interstate Hwy 76 to Philadelphia and return over the same route, (b) between Cleveland, OH, and New York, NY, (i) from Cleveland over Interstate Hwy 77 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 280 at or near Troy Hills, NJ, then over Interstate Hwy 280 to Newark, NJ, then over U.S. Hwy 9 to New York, and return over the same route, (ii) from Cleveland over Interstate Hwy 77 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 95 at or near Palisades Park, NJ, then over Interstate Hwy 95 to New York, and return over the same route, (c) between Philadelphia, PA and New York, NY, over U.S. Hwy 1.

Note.—The purpose of this application is to remove restrictions against serving intermediate points on the routes in (1) and (2) above and to provide alternate routes for operating convenience only, in (3) above.

Volume No. OP5-99

Decided: December 30, 1980.

By the Commission, Review Board No. 3, Members. Parker, Fortier, and Hill. (Member Fortier not participating).

MC 488 (Sub-20F), filed December 8, 1980. Applicant BREMAN'S EXPRESS COMPANY, a Corporation, 318 Haymaker Road, Monroeville, PA 15146. Representative: Joseph E. Breman, 700 Fifth Avenue Bldg., Fifth Floor, Pittsburgh, PA 15219. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Pittsburgh, PA, on the one hand, and, on the other, points in Armstrong, Beaver, Butler, Cameron, Clearfield, Elk, Fayette, Greene, Indiana, Jefferson, Lawrence, Washington, and Westmoreland Counties, PA.

MC 31389 (Sub-316F), filed December 15, 1980. Applicant: McLEAN TRUCKING COMPANY, a corporation, 1920 West First Street, Winston-Salem, NC 27104. Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102. Over regular routes, transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between Kennewick, Pasco, and Spokane, WA, over U.S. Hwy 395, serving no intermediate points and serving Kennewick and Pasco, WA for purposes of joinder only.

Note.—Applicant intends to tack.

MC 113459 (Sub-142F), filed December 4, 1980. Applicant: H. J. JEFFRIES TRUCK LINES, INC., 4720 South Shields Blvd., Oklahoma City, OK 73143. Representative: J. Michael Alexander, 5801 Marvin D. Love Freeway, Suite 301, Dallas, TX 75237. Transporting (A) *commodites* which, because of their size or weight, require the use of special equipment, and *related parts* when their transportation is incidental to the transportation of commodities, which by reason of size and weight require the use of special equipment, and *parts* of size and weight commodities when transported as separate and unrestricted shipments; (B) *self-propelled articles*, each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection with them; and (C) *primary metal products*; including galvanized; except coating and other allied processing, fabricated metal products; except ordnance, *machinery* except electrical; and *transportation equipment*, in Items 33, 34, 35, and 37 respectively, as described in the Standard Transportation Commodity Code, between points in OK and TX, on the one hand, and, on the other, points in CA.

Note.—The sole purpose of this application is to substitute single-line of for joint-line service.

MC 119689 (Sub-33F), filed December 8, 1980. Applicant: PEERLESS TRANSPORT CORP., 2701 Railroad St., Pittsburgh, PA 15222. Representative: Robert T. Hefferin (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of American Cyanamid Company, its affiliates and subsidiaries.

MC 124328 (Sub-140), filed December 4, 1980. Applicant: BRINK'S INC., Thorndale Circle, P.O. Box 1225, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H Street, NW., QAH Washington, DC 20006. Transporting *coin, currency, securities, food stamps, and such commercial papers, documents and written instruments* for the account of banks, banking and financial institutions, between points in the U.S., under continuing contract(s) with South Carolina National Bank, of Columbia, SC, and the National Bank of South Carolina, of Columbia, SC.

MC 127739 (Sub-8F), filed November 24, 1980. Applicant: BOYCE BRUCE TRUCKING CO., INC., 517 N. Metts St., Louisville, MS 39339. Representative: Harold D. Miller, Jr., P.O. Box 22567, Jackson, MS 39205. Transporting (1) *lumber* from points in Choctaw and Oktibbeha Counties, MS, to points in AL, AR, FL, GA, IA, IL, IN, KS, KY, LA, MI, MN, MO, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, and WV, and (2) *poles, piling, lumber, cross-ties, cross-arms, and timbers* (a) from points in AL, FL, LA, and TN to points in Winston County, MS, and (b) from points in Winston County, MS, to points in AL, AR, FL, GA, IA, IL, IN, KS, KY, LA, MI, MN, MO, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, VA, WI, and WV.

MC 138469 (Sub-259F), filed December 9, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting *general commodities* (except commodities in bulk, household goods as defined by the Commission and classes A and B explosives), between points in AZ and Ca, on the one hand,

and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of The Price Company.

MC 144678 (Sub-23F), filed December 8, 1980. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th Street, Overland Park, KS 66210. Representative: Harold H. Clokey (same address as applicant). Over regular routes transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), serving points in TN as off-route points in connection with carrier's otherwise authorized regular route operations.

MC 147208 (Sub-1F), filed November 29, 1980. Applicant: BLUE RIDGE LINES, LTD., P.O. Box 5692, 33 Foxfire Drive, Asheville, MC 28813. Representative: Kingsland Hobein, Jr. (same address as applicant). Over *regular* routes, transporting *passengers and their baggage, express, mail and newspapers in the same vehicle with passengers*, (1) between Johnson City, TN, and Bristol, VA, (a) from Johnson City over TN Hwy 137 to Kingsport, then over U.S. Hwy 11W to Bristol, and return over the same routes, (b) from Johnson City over junction TN Hwy 137 and TN Hwy 93, over TN Hwy 93 to junction TN Hwy 93 and U.S. Hwy 11W, then over U.S. Hwy 93 to Bristol, and return over the same routes, (2) between Boone, NC, and junction U.S. Hwy 19 and U.S. Hwy 23, from Boone over NC Hwy 105 to Linville, then over U.S. Hwy 221 to junction U.S. Hwy 221 and NC Hwy 194, then over NC Hwy 194 to Ingalls, then over U.S. Hwy 19E to junction U.S. Hwy 19E and U.S. Hwy 19, then over U.S. Hwy 19 to junction U.S. 19 and U.S. Hwy 23, and return over the same routes, serving Banner Elk, NC as an off-route point, (3) between Johnson City, TN, and Elizabethton, TN, over U.S. Hwy 321, (4) between Johnson City, TN, and Bluff City, TN, over U.S. Hwy 19W, (5) between Asheville, NC, and Black Mountain, NC, (a) from Asheville over U.S. Hwy 70 to Black Mountain, and return over the same route, and (b) from Asheville over Interstate Hwy 240 to junction Interstate Hwy 240 and Interstate Hwy 40, then over Interstate Hwy 40 to Black Mountain and return over the same routes, (6) between Asheville, NC, and Greenville-Spartanburg Airport, SC, (a) from Asheville over Interstate Hwy 240 to junction Interstate Hwy 240 and Interstate Hwy 26, then over Interstate Hwy 26 to junction Interstate Hwy 26 and U.S. Hwy 64, then over U.S. Hwy 64 to Hendersonville, then over U.S. Hwy 176 to Landrum, SC, then over SC Hwy 14 to junction SC Hwy 14 and Interstate Hwy 85, then over Interstate Hwy 85 to junction Interstate Hwy 85 and Airport Access Road (Exit 57), then over Airport Access Road to Greenville-Spartanburg Airport, and return over the same routes, (b) from Asheville over Interstate Hwy 240 to junction Interstate Hwy 240 and Interstate Hwy 26, then over Interstate Hwy 26 to junction Interstate Hwy 26 and Interstate Hwy 85, then over Interstate Hwy 85 to junction Interstate Hwy 85 and Airport Access Road (Exit 57), then over Airport Access Road to Greenville-Spartanburg Airport, and return over the same routes, (7) between Hendersonville, NC, and Greenville-Spartanburg Airport, SC, from Hendersonville over U.S. Hwy 25 to junction U.S. Hwy 25 and SC Hwy 290, then over SC Hwy 290 to Greer, SC, then over SC Hwy 14 to junction SC Hwy 14 and Interstate Hwy 85, then over Interstate Hwy 85 to junction Interstate Hwy 85 and Airport Access Road (Exit 57), then over Airport Access Road to Greenville-Spartanburg Airport, and return over the same routes, (8) between junction U.S. Hwy 70 and NC Hwy 208, and Knoxville, TN, (a) from junction U.S. Hwy 70 and NC Hwy 208, then over U.S. Hwy 70 to junction U.S. Hwy 70 and Interstate Hwy 40, then over Interstate Hwy 40 to Knoxville, and return over the same routes (b) from junction U.S. Hwy 70 and NC Hwy 208, then over U.S. Hwy 70 to Newport, TN, then over U.S. Hwy 411 to junction U.S. Hwy 441, then over U.S. Hwy 441 to Knoxville, and return over the same routes, (9) serving in routes (1) through (8) above all intermediate points. Over *irregular* routes, transporting *passengers and their baggage*, in charter or special operations beginning and ending at points in Cook, Seviler, Knox, Carter, Washington, and Sullivan Counties, TN, Washington County, VA, Buncombe, Madison, Yancey, Avery, Watauga, Henderson, Polk, and Transylvania Counties NC, and Greenville and Spartanburg Counties, SC, and extending to points in the U.S. (including AK but excluding HI).

MC 147749 (Sub-3F), filed December 12, 1980. Applicant: WEST COAST TRUCK LINES, INC., 85647 Hwy. 99S., Eugene, OR 97405. Representative: John W. White, Jr. (same as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. under continuing contract(s) with Rulston Purina Company, of St. Louis, MO.

MC 151448 (Sub-2F), filed December 10, 1980. Applicant: BERNS TRANSPORTATION, INC., 4585 South Harding St., Indianapolis, IN 46217. Representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., 320 North Meridian St., Indianapolis, IN 46204. Transporting (1) *such commodities* as are dealt in by manufacturers of pharmaceutical, cosmetic, packaging, and agricultural products, and (2) *materials and supplies* used in the manufacture of the commodities in (1) between the facilities of Eli Lilly and Company and its suppliers at points in Vermillion, Marion, and Tippecanoe Counties, IN, on the one hand, and, on the other, points in Randolph County, MO, and points in GA.

MC 151599 (Sub-1), filed December 8, 1980. Applicant: J. L. McCOY, INC., P.O. Box 525, Ravenswood, WV 26164. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. (except HI), under continuing contract(s) with Volkswagen of America, Inc., of Warren, MI.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-1099 Filed 1-12-81; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal Advisory Council on Unemployment Insurance; Meeting

A meeting of the Federal Advisory Council on Unemployment Insurance will be held on February 5, 1981, from 9 a.m. to 5 p.m. and on February 6, from 8:30 a.m. to 12:30 p.m. The meeting will be held in Room S-4215 A&B, Frances Perkins Labor Building, which is located at 200 Constitution Avenue NW., Washington, D.C.

Major topics that will be considered by the Council are the comprehensive final report of the National Commission on Unemployment Compensation, to the President and the Congress, particularly those matters impacting on present Administration policy and plans, and current unemployment insurance legislative activity.

Members of the public are invited to attend the proceedings. Written data, views, or arguments pertaining to the business before the Council must be received by the Council's Coordinator prior to the meeting date. Twenty duplicate copies are needed for

distribution to the members and for inclusion in the meeting minutes.

Telephone inquiries and communications concerning this meeting should be directed to: Bob Johnston, Coordinator for the Federal Advisory Council on Unemployment Insurance, Room 7000, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213, telephone No. 202/376-7035.

Signed in Washington, D.C., this 7th day of January, 1981.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 81-1135 Filed 1-12-81; 8:45 am]

BILLING CODE 4510-30-M

Federal Committee on Apprenticeship; Reestablishment

Notice is given that after consultation with the General Services Administration, it has been determined tha the Federal Committee on Apprenticeship, whose charter expired January 5, 1981, is hereby reestablished for the period January 6, 1981, to July 1, 1982, this action is necessary and in the public interest.

The Committee will advise the Secretary of Labor on such matters as to be an effective and active advisory Committee which would be of considerable assistance to the Secretary of Labor and the Assistant Secretary for Employment and Training in carrying out their program responsibilities in the apprenticeship and journeyman training areas.

The Committee will consist of 10 representatives of employers, 10 representatives of organized labor, and 5 representatives of the public, including one or more educators.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the reestablishment of the Federal Committee on Apprenticeship. Such comments should be addressed to: Mrs. M. M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 601 D Street, N.W. (Room 5434), Washington, D.C. 20013.

Signed at Washington, D.C., this 8th day of January 1981.

Ernest G. Green,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 81-1136 Filed 1-12-81; 8:45 am]

BILLING CODE 4510-30-M

Office of the Secretary

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period December 29-31, 1980.

In order for an affirmative determination to be made and a certification of elgibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA-W-8080; Hanimex Manufacturing, Inc., Jackson, MI

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-8127; Inland Tool Mfg. Co., Inc., Detroit, MI

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-11,207; Metokote Corp., Rushville, IN

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-8338; Johnson Pattern and Model, Inc., Warren, MI

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-8329; Mechanical Services, Inc., Fraser, MI

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-11,428 & 11,429; CAM 2, Detroit, MI and Southfield, MI

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-8294; Kean Mfg. Corp., Dearborn Heights, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of pierce nuts are negligible.

TA-W-8067 & 8251; MTG Industries, Inc. and Mustang Clothing Co., Inc., Philadelphia, PA

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-10,881; E&R Welding and Press Repair, Inc., Lake Orion, MI

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-10,950; John Barnett, Inc., St. Clair, MI

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-8822; Red Kap Ind., Plant #1, Dickson, TN

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-8715; Baylock Manufacturing Corp., Leonard, MI

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–10,454: CBL Tool Corp., Detroit, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of tools and dies are negligible.

TA–W–11,058; Lamaco Motors, Inc., Portland, OR

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA–W–11,090; City Car Terminal, Inc., Melvindale, MI

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA–W–8707A–C & 10,301; American Safety Equipment Corp., Pacoima, CA, Fresno, CA, San Fernando, CA, and Palmyra, MO

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.

Affirmative Determinations

TA–W– 9654 and 9654A; Johnson Bronze Co., New Castle, PA and Summerville, SC

A certification was issued covering all workers of the New Castle Plant separated on or after July 16, 1979.

A certification was issued covering all workers of the Summerville Plant separated on or after March 16, 1980.

TA–W–7803; Zimmer Manufacturing Industries, Inc., Detroit, MI

A certification was issued covering all workers of the firm separated on or after April 2, 1979.

I hereby certify that the aforementioned determinations were issued during the period December 29–31, 1980. Copies of these determinations are available for inspection in Room S–5314, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, during normal working hours or will be mailed to persons who write to the above address.

Dated: January 6, 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81–1137 Filed 1–12–81; 8:45 am]

BILLING CODE 4510–28–M

[TA–W–7360]

New Haven Foundry, New Haven, Mich.; Negative Determination on Reconsideration

On July 9, 1980, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers producing automobile component parts at the New Haven Foundry, New Haven, Michigan.

In the petitioner's application for reconsideration he claimed that cylinder heads and engine blocks are cast in a foreign country and machined in the U.S. for one of their customers. The petitioner also claimed that imported automobiles are equipped with products which the New Haven Foundry manufactures.

The Department's review showed that workers at New Haven Foundry did not meet the "contributed importantly" test of the Trade Act of 1974. The Departmental survey showed that customers of New Haven Foundry do not purchase imported automobile component parts like or directly competitive with those purchased from the New Haven Foundry. Customers attributed the decline in purchases to the decline in the production of automobiles.

On reconsideration, the Department contacted additional customers representing nearly all of New Haven Foundry's 1979 sales. The results of this survey generally confirmed the earlier survey's results conducted by the Department. One customer imported cylinder head castings. In 1979, however, while it increased imports it also increased its own in-house production and its purchases from other domestic sources. In the first part of 1980 compared to the same period in 1979 it decreased its imports.

Further, increased auto imports cannot be used as a basis for certifying employees of independent auto component manufacturers producing automobile component parts. The Department has previously determined that component parts are not like or directly competitive with the finished article. This position has been supported by the courts.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers and former workers at the New Haven Foundry, New Haven, Michigan.

Signed at Washington, D.C., this 6th day of January 1981.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 81–1138 Filed 1–12–81; 8:45 am]

BILLING CODE 4510–28–M

[TA–W–7696]

Olympic Cedar Products, Inc., Amanda Park, Wash.; Revised Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

On December 16, 1980, the Department reopened an investigation on behalf of workers and former workers producing cedar shakes at Olympic Cedar Products, Inc., Amanda Park, Washington. The Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers of Olympic Cedar Products was published in the **Federal Register** on September 9, 1980. (45 FR 59452).

The Department's review of the original decision to deny certification of the workers producing cedar shakes was based on the finding that the "contributed importantly" test was not met. In reaching its determination, the Department took into account responses received in a survey of several of Olympic Cedar Products' customers.

In its reopened investigation the Department found that data regarding an important customer of Olympic Cedar Products which had been received in the original investigation had been incorrect. New information revealed that this customer's purchases of imports of cedar shakes had increased substantially while it had decreased its purchases from the subject firm.

Conclusion

It is, therefore, concluded that a significant number or proportion of the workers of Olympic Cedar Products, Inc., Amanda Park, Washington, were totally or partially separated from employment and that increaded imports of cedar shakes contributed importantly to their separations and to the declines in production. The determination, therefore, is revised to certify all workers at Olympic Cedar Products, Inc., Amanda Park, Washington.

The revised determination applicable to TA–W–7696 is hereby issued as follows:

All workers of Olympic Cedar Products, Inc., Amanda Park, Washington, who became totally or partially separated from employment on or after December 1, 1979, are

eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 5th day of January 1981.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 81-1139 Filed 1-12-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,138]

This 'n That Sportswear, Limited, New York, N.Y.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 29, 1980 in response to a worker petition received on July 7, 1980 which was filed by the International Ladies' Garment Workers' Union on behalf of workers at This 'n That Sportswear, Limited, New York, New York.

During the course of the investigation, it was established that all production workers of This 'n That Sportswear, Limited, were separated from employment in February 1979. Section 223(b) of the Trade Act of 1974 states that no certification under this section may apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than one year prior to the date of the petition.

The date of the petition in this case is June 30, 1980 and, thus, workers terminated prior to June 30, 1979 are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. Therefore, the investigation has been terminated.

Signed at Washington, D.C., this 6th day of January 1981.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 81-1140 Filed 1-12-81; 8:45 am]

BILLING CODE 4510-28-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 81-5; Exemption Application No. D-1780]

Exemption From the Prohibitions for Certain Transactions Involving the Carpenters Retirement Trust of Western Washington, Located in Seattle, Wash.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits: (1) the issuance of commitments by the Carpenters Retirement Trust of Western Washington (the Plan) to certain financial institutions obligating the Plan to purchase mortgage loans originated by such financial institutions when the loans are secured by industrial and commercial buildings constructed by persons who are contributing employers with respect to the Plan; and (2) the purchase of mortgage loans from financial institutions which are parties in interest or disqualified persons with respect to the Plan solely by reason of servicing mortgages which they previously have sold to the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Antsen of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 8, 1980, notice was published in the **Federal Register** (45 FR 52950) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (D) of the Code, for the above described transactions.

The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the reuested exemption to the Department. The applicant has represented that a copy of the notice was distributed to interested persons in accordance with the requirements set forth in the notice.

The Department received three comments to the notice of proposed exemption. All of the comments received supported the granting of the exemption request. In addition, the commentators offered their own views about certain aspects of mortgage investment by employee benefit plans which were unrelated to the proposed exemption. Accordingly, the Department has determined to grant the exemption as proposed.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason to section 4975(c)(1) (A) through (D) of the Code, shall not apply to the issuance by the Plan through its Investment Committee of commitments to certain financial institutions, in accordance with guidelines and procedures set forth in the application, obligating the Plan to purchase mortgage loans originated by such financial institutions, when the loans are secured by industrial and commercial buildings constructed by persons who, as contributing employers, are parties in interest or disqualified persons with respect to the Plan; and shall not apply to the purchase of mortgage loans, which meet the criteria of the guidelines and procedues set forth in the application, from financial institutions which are parties in interest or disqualified persons with respect to the Plan solely by reason of servicing mortgages which they have previously sold to the Plan. The foreoging exemption will be applicable only if the following conditions are met:

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the Plan than the terms generally available in arm's-length transactions between unrelated parties;

(b) The Plan maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the fiduciaries of the Plan, records are lost or destroyed prior to the end of the 6-year period, (2) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained, or not available for examination as required by paragraph (c) below;

(c) Notwithstanding any provisions of subsections (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any Trustee of the Plan or any duly authorized employee or representative of such Trustee;

(3) The Plan's investment manager(s) or any duly authorized employee or representative of such investment manager(s);

(4) Any employer of Plan participants;

(5) Any employee organization or duly authorized representative of such organization, whose members are covered by the Plan; and

(6) Any participant or beneficiary of the Plan or any duly authorized employee or representative of such participant or beneficiary.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 7th day of January 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-1101 Filed 1-12-81; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (81-4)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC) Informal Executive Subcommittee; Meeting

ACTION: Notice of meeting

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces the following meeting:

Name of committee: NAC AAC Informal Executive Subcommittee.

Date and time: February 6, 1981, 8:30 a.m. to 4:30 p.m.

Address: NASA Headquarters, 600 Independence Ave., Room 625, Washington, DC.

Type of meeting: Open.

Agenda: February 6, 1981.

8:30 a.m.—Chairperson's Remarks
9:00 a.m.—Discussion of June 16-17, 1980 Meeting
10:00 a.m.—Subcommittee Chairperson's Reports
12:30 p.m.—Report from ad hoc Subcommittee on Commuter Aircraft Transport Technology
1:30 p.m.—Discussion of potential ad hoc Program Plan Review Subcommittee
4:30 p.m.—Adjourn

FOR FURTHER INFORMATION CONTACT: Mr. C. Robert Nysmith, Executive Secretary of the Subcommittee, National Aeronautics and Space Administration, Code R, Washington, DC 20546 (202/755-3238).

SUPPLEMENTARY INFORMATION: The Informal Executive Subcommittee was established to provide overall guidance and direction to the discipline and vehicle class oriented activities of the Aeronautics Advisory Committee. The Subcommittee, chaired by Dr. Robert Loewy, is comprised of six members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the Subcommittee members and participants).

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

January 6, 1981.

[FR Doc. 81-1072 Filed 1-12-81; 8:45 am]

BILLING CODE 7510-01-M

[Notice (81-2)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC) and Space Systems and Technology Advisory Committee (SSTAC), Meeting

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces the following meeting.

Name of committee: NAC Joint AAC and SSTAC Informal Advisory Subcommittee on Research.

Date and time: February 5, 1981, 8:30 to 4:00 p.m.

Address: NASA Headquarters, 600 Independence Ave., Room 625, Washington, D.C.

Type of meeting: Open.

Agenda: February 5, 1981

8:30 a.m.—Introduction
8:45 a.m.—Discussion of Subcommittee Objectives
10:15 a.m.—Basic Research in OAST
1:00 p.m.—Identification and Discussion of Future Activities
4:00 p.m.—Adjourn

FOR FURTHER INFORMATION CONTACT: Dr. Ellis E. Whiting, Executive Secretary of the Subcommittee, National Aeronautics and Space Administration, Code RT-6, Washington, D.C. 20546 (202/755-3280).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Research was established to assess and strengthen the basic research elements of the NASA aeronautics and space technology programs in the Office of Aeronautics and Space Technology (OAST). The Subcommittee evaluates the adequacy of current and planned basic research activities in terms of scope, balance, quality, and in-house/out-of-house interactions and recommends program modifications to strengthen the total research program. The Subcommittee, chaired by Dr. Robert G. Loewy, is comprised of thirteen members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the Subcommittee members and participants).

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

January 6, 1981.

[FR Doc. 81-1071 Filed 1-12-81; 8:45 am]

BILLING CODE 7510-01-M

[Notice (81-3)]

NASA Advisory Council, Historical Advisory Committee; Meeting

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces the following meeting:

Name of committee: NASA Advisory Council, Historical Advisory Committee.

Date and time: February 6, 1981, 9:15 a.m.-12:00 noon.

Address: Yale University, Lewis Seminar Room, Calhoun College, 189 Elm Street, New Haven, CT 06520.

Type of meeting: Open—except for a closed session as noted in the agenda below.

Agenda: February 6, 1981

9:15 a.m. The history program in 1980.
10:15 a.m. History at Johnson Space Center.
10:45 a.m. Preparation of report.
11:30 a.m. Evaluation of proposals (closed session).
12:00 noon Adjourn.

FOR FURTHER INFORMATION CONTACT: Monte D. Wright, Director NASA History Office, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-3612).

SUPPLEMENTARY INFORMATION: The Committee was established to advise NASA through the NASA Advisory Council on the accomplishments and plans of the NASA History Program including review of historical archives, official NASA histories and historical reports, historical service to NASA and Government, and the program's relation to academic and public activities.

This meeting will be closed to the public from 11:30 a.m. to 12:00 noon on February 6 for the committee to consider and make recommendations on candidates for undertaking various NASA historical activities. The committee will also recommend individuals to fill an anticipated vacancy on the committee. The personal and professional qualifications of the candidates, who are not members of the committee, will be candidly discussed and appraised. Public discussion of these matters would invade the privacy of the committee session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the session will be closed to the public. The remainder of the meeting will be open to the public up to the seating capacity of the room, which is about 20 persons.

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

January 7, 1981

[FR Doc. 81-1072 Filed 1-12-81; 8:45 am]

BILLING CODE 7510-01-M

[Notice (81-1)]

NASA Advisory Council (NAC), Space and Terrestrial Applications Advisory Committee, Ad Hoc Informal Advisory Subcommittee on Agriculture Land Cover and Hydrology; Meeting

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces the following meeting:

Name of Committee: NAC Space and Terrestrial Applications Advisory Committee, Ad Hoc Informal Advisory Subcommittee on Agriculture, Land Cover and Hydrology.

Date and time: January 28-29, 1981, 8:30 a.m.-4:30 p.m.

Address: National Aeronautics and Space Administration, Room 226A, Federal Building 10B, 600 Independence Avenue SW, Washington, DC 20546.

Type of meeting: Open.

Agenda: January 28, 1981

8:30 a.m. Chairperson's remarks.
9:00 a.m. Status of committee recommedations.
10:30 a.m. Status of Fundamental Research Program.
12:30 p.m. Agriculture and resource Inventory Surveys Through Aerospace Remote Sensing (AgRISTARS) technical review summary.
2:30 p.m. Applications Pilot Test Program evaluation.
4:30 p.m. Adjourn.

January 29, 1981

8:30 a.m. Status of Renewable Resources Research Plan.
9:30 a.m. Status of Water resources Research Plan.
10:30 a.m. Status of Land Resources Research Plan.
12:30 p.m. Summary, conclusions, and recommendations.
3:00 p.m. Adjourn.

FOR FURTHER INFORMATION CONTACT: Dr. Howard Hogg, National Aeronautics and Space Administration, Code ERL-2, Washington, DC 20546 (202/755-4450).

SUPPLEMENTARY INFORMATION: This Sucommittee, comprised of eleven members of the NAC-STAAC, including the Chairperson, Dr. Robert Ragan, reviews status and plans of the NASA Renewable Resources Remote Sensing Program. Members of the public will be admitted to the meeting on a first-come, first-served basis and will be required to sign a visitor's register. The seating capacity of the room is 35 persons.

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

January 7, 1981.

[FR Doc. 81-1070 Filed 1-12-81; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Panel (AFI/Review); 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 Media Arts Panel (AFI/Review) to the National Council on the Arts will be held on January 29-30, 1981, from 9:00 a.m. to 5:30 p.m. at the William Morris Agency, 151 El Camino Drive, Beverly Hills, CA 90212.

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. 81-1113 Filed 1-12-81; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Panel (Painting Fellowships); Notice of 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 Visual Arts Panel (Painting Fellowships) to the National Council on the Arts will be held February 2–6, 1981, from 9:00 a.m. to 5:30 p.m., in room 1422, of the Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C. 20506.

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. 81-1114 Filed 1-12-81; 8:45 am]

BILLING CODE 7537-01-M

POSTAL RATE COMMISSION

[Order No. 366, Docket No. MC81-1]

Mail Classification Schedule—Second-Class Mail Eligibility Requirements, 1981; Order Instituting Proceeding and Designating Officer of the Commission

Issued January 8, 1981.

Before Commissioners: A. Lee Fritschler, Chairman; Simeon M. Bright, Vice-Chairman; James H. Duffy; Clyde S. DuPont; Janet D. Steiger

The Postal Rate Commission, pursuant to 39 U.S.C. 3623(b), hereby institutes a mail classification proceeding. The evidentiary record to be developed in this proceeding will provide the basis for a recommended decision on the desirability of upholding, modifying or abolishing the four times per year mailing requirement now in effect for second-class mail eligibility.[1]

I. Background

On July 7, 1980, Professor Mark S. Monmonier [2] filed a petition with the Commission, requesting that we institute a mail classification proceeding pursuant to section 3623(b) of the Postal Reorganization Act. The substance of Professor Monmonier's proposal is that second-class eligibility requirements should be modified in order to permit a publisher having one publication now qualifying for second-class rates, to obtain second-class qualification for other of his publications which would qualify for second-class except for the minimum four times per year publication requirement. Specifically, Monmonier proposes that an "associated publication" be permitted to be mailed at second-class rates if (i) it meets all requirements for second-class rates except for the four times per year requirement, (ii) it is mailed to all addressees receiving the more frequently issued publication, (iii) indicates that it is an associated publication of the primary publication, (iv) contains all of the statements required for the primary publication, and (v) is administered by the same office of publication as the primary publication.

Notice of Professor Monmonier's petition was published in the **Federal Register** on August 1, 1980.[3] The Officer of the Commission [4] (OOC), the editor-in-chief of Atlas and Map Publications of Rand McNally and Company, the associate publisher of the Mercury Group Publications, the editor of The American Cartographer the Associate Executive Director for Publishing of the American Library Association, the Executive Vice President of the National Association of College and University Business Officers and the President of the Council for the Advancement and Support of Education, all filed responses in favor of institution of a mail classification proceeding.

The United States Postal Service opposes the initiation of a mail classification proceeding for several reasons: (1) the proposal would undermine eligibility requirements for second-class mail, (2) that the proposal, as offered, would discriminate among users in that it would apply only to publications issued by an institution or society, (3) that revenue would be lost through diversion to second-class from first and third class, and (4) increased administrative costs would result because of the difficulty of verifying mail qualifying under the proposed new requirements.

On October 16, 1980, in an attempt to clarify certain aspects of Professor Monmonier's petition, the Commission issued a notice of inquiry requesting Professor Monmonier to provide specific answers to seven questions concerning his proposed changes. In brief, the questions involved the number of times of publication, segregation of material by topic, the numbering system to be utilized, the format of the title page, the need for the proposed change and whether mailing lists for each publication were identical.

On November 28, 1980, the Service responded to Monmonier's answers with continued opposition to the proposal on the grounds that two separate publications would, in fact, result and that processing and administrative problems, as well as diminished second-class mail revenues, would result. The Service has requested that the Commission not institute a proceeding in this matter.

Under the discretion granted to us by Section 3623(b) of the Act,[5] the Commission has determined to institute a proceeding to explore the mail classification issues raised by Mr. Monmonier's petition. As subsequently discussed in this order, we believe that Professor Monmonier's petition raises legitimate mail classification issues involving second-class eligibility requirements. Furthermore, we point out that this petition represents a case of first impression for the Commission insofar as the question of the appropriateness of the four times per year mail requirement for second-class

[1] Section 2000.0101 of the Domestic Mail Classification Schedule (DMCS) provides that "[s]econd-class matter must be regularly issued at stated intervals at least four times a year, bear a date of issue, and be numbered consecutively."

[2] Mr. Monmonier is a professor of geography at Syracuse University and Chairman of the Publication Committee of the American Congress on Surveying and Mapping (ACSM).

[3] 45 FR 51321.

[4] The Officer of the Commission is a Commission staff member designated to represent the interests of the general public in rate and classification proceedings before the Commission. 39 U.S.C. 3624(a) (1970).

[5] 39 U.S.C. 3623(b).

mail has not before been addressed by the Commission.

II. Issues To Be Addressed

From the outset, we wish to make clear that this proceeding will address only those questions involving strictly mail classification issues;[6] strictly operational aspects of second-class mailings will not be considered. Therefore, this proceeding will consider only those issues which bear upon the Domestic Mail Classification Schedule provisions which relate to second-class mail eligibility.[7] Accordingly, the scope of this proceeding will be limited to the following two issues:

1. Is the four times per year frequency of issue criterion an appropriate requirement for second-class eligibility.

2. Should an exception to the four times per year requirement be created in the case of an "associated publication."

Furthermore, we will address these two issues only in general terms, that is, as they pertain to all potential mailers, rather than to any individual mailer or specific class of mailers.[8]

III. Procedural Steps

In addition to Professor Monmonier, the OOC and the Postal Service, all persons who have filed written comments upon Mr. Monmonier's petition will be made participants in this docket. Participants have been listed in Appendix A. Other persons desiring to participate in this proceeding should file a petition to intervene or a request to be heard as a limited participator. Persons listed in Appendix A who do not desire to participate in this proceeding should file a written request to withdraw.

The Officer of the Commission (OOC) designated to represent the interest of the general public in this proceeding will be Stephen L. Sharfman. During this proceeding, the OOC will direct the activities of Commission personnel assigned to assist him, and neither he nor such personnel will participate in or advise as to any Commission decision in this case.[9] The OOC will supply, for the record, at the appropriate time the names of all Commission personnel assigned to assist him in this case. In this proceeding, the OOC shall be separately served with three copies of all filings in addition to, and simultaneously with, service on the Commission of the 25 copies required by § 10(c) of the rules of practice.[10]

At this juncture, we wish to point out that we find it necessary in this case to deviate somewhat from our usual practice of establishing at least a tentative hearing schedule. Accordingly, dates for a prehearing conference, hearings or other procedural matters will not be promulgated at this time. Simply, we are delaying moving forward in this proceeding because of the severe time constraints [11] imposed upon the Commission and its staff and resources by the pending general rate proceeding, Docket No. R80-1. Until our opinion and recommended decision in the rate proceeding issues, on or about February 20, 1981, the Commission will not be able to devote its full attention and energies to the present mail classification proceeding. Therefore, we shall hold in abeyance, until after our rate case opinion is issued, the establishment of a specific procedural schedule in this new docket.

However, the current state of the "pleadings" in this matter indicates that there is ample opportunity for informal attempts at agreements by the interested parties. For example, the filings to date indicate that there is a potential factual issue whether or not Professor Monmonier's proposal would result in greater administrative or mail processing costs for the Postal Service.[12] We believe that this and other issues of fact potentially arising in this proceeding ought to be explored by the parties with a view toward reaching a stipulation of facts to be presented to the Commission once formal hearing have commenced. We are actively encouraging parties to undertake a clarification of factual disputes for two primary reasons: (1) it will permit informal progress to be made in the docket during the period in which formal hearings are held in abeyance, and (2) it will permit the ultimate resolution of the issues to be accomplished more expeditiously after formal hearings commence.

Along these lines, we note, with approval, that the filings of the parties to date have evidenced a desire to effectuate a compromise of at least some of the areas which will be disputed in this proceeding.

The Commission Orders:

(A) The United States Postal Service and the Officer of the Commission are joined as parties to this docketed proceeding initiated pursuant to 39 U.S.C. 3623(b), and each of the persons identified in Appendix A to this order is hereby made an intervenor or a limited participator in this proceeding. Any person so designated in Appendix A not wishing to participate in this proceeding should file a request with the Secretary to withdraw.

(B) Petitions for leave to intervene by persons other than those listed in Appendix A must be filed with the Secretary, Postal Rate Commission, Washington, D.C. 20268, on or before January 27, 1981, and must be in accordance with section 20 of the Commission's rules of practice (39 CFR 3001.20). We direct specific attention to § 3001.20(b) which provides that petitions for leave to intervene shall affirmatively state whether or not petitioner request a hearing or, in lieu thereof, a conference; and further, whether or not petitioner intends to participate actively in the hearing. Alternatively, these persons may seek limited participation, if they do not wish to become parties any may do so, on or before January 27, 1981, by filing a written request for leave to be heard as a "limited participator," pursuant to § 19(a) of the Commission's rules of practice (39 CFR § 3001.19(a)). In addition, persons wishing to express their views informally and not desiring to become a party or limited participant, may file comments pursuant to § 19(b) of the Commission's rules (39 CFR 3001.19(b)).

(C) The participants shall serve copies of all documents, including prepared direct evidence, upon representatives of the Postal Service, the OOC, intervenors and limited participators. For purposes of such service, where service upon more than one representative has been requested in a petition to intervene or in a request for leave to be heard as a

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[6] 39 U.S.C. 3624, the Commission's jurisdiction pertains only to rates and fees and mail classification matters. Operational matters are strictly within the purview of the Postal Service. While Professor Monmonier's proposal is specifically addressed toward modification of the Domestic Mail Manual (DMM), which sets forth operational regulations governing domestic mail services, we are treating Monmonier's petition as relating to the Commission's jurisdiction over the DMCS. *See* 45 FR 51322 (August 1, 1980). Additionally, in comments filed on September 11, 1980, Professor Monmonier has indicated his awareness that the Commission's jurisdiction is limited to matters involving the DMCS.

[7] *See* Section 200 of the DMCS.

[8] Professor Monmonier's petition used the language "institution or society" in referring to an "associated publication." As pointed out earlier in the order, the Postal Service has taken exception to the discriminatory aspect of this language. However, Professor Monmonier subsequently indicated that he would be willing to have the "institution or society" language deleted from his petition.

[9] *See* 39 CFR 3001.8.

[10] *Id.*, § 3001.10(c).

[11] Under 39 U.S.C. 3624(c), the Commission must issue its opinion and recommended decision in a rate case not later than 10 months after receiving a request from the Postal Service. The rate case now pending before the Commission was filed on April 21, 1980, and, therefore, must be transmitted to the Governors not later than February 20, 1981.

[12] In a written follow-up, filed on December 15, 1980, to the Postal Service's response to his answers to the Commission's Notice of Inquiry, Mr. Monmonier apparently questions the Service's assertion of increased administrative expenses. Moreover, he alleged that any such increased cost would be offset by cost savings from less frequent mail pieces of subsidized mail.

limited participator, including those petitions and requests filed jointly and severally by two or more persons, only the first two named representatives in the petition need be served.

(D) Stephen L. Sharfman is hereby designated as the Officer of the Commission (OOC) to represent the general public in this proceeding. Service of documents upon the Commission shall not constitute service on the OOC, who shall separately be served three copies of all documents.

(E) A procedural schedule in this docket or the dates for a prehearing conference or formal hearings in this docket will not be established until after the Commission's Opinion and Recommended Decision in the general rate proceeding now pending before the Commission (Docket No. R80-1) has issued.

By the Commission.

David F. Harris,

Secretary.

Appendix A.—Service List

[Docket No. MC81-1]

Mail Classification Schedule—Second-Class Mail Eligibility Requirements, 1981

Name:

Mark S. Monmonier, Professor of Geography, Syracuse University and Chairman, ACSM Publication Committee, Syracuse, New York 13210. United States Postal Service.

Jon M. Leverenz, Editor-in-chief, Atlas and Map Publications, Rand McNally and Company, 8255 North Central Park Avenue, Skokie, Illinois 60076

Donald E. Stewart, Associate Executive Director for Publishing, American Library Association, 50 East Huron Street, Chicago, Illinois 60611.

Judy M. Olson, Editor, The American Cartographer, Department of Geography, Boston University, Boston, Massachusetts 02215.

John A. Kuett, Associate Publisher, Mercury Group Publications, 12230 Wilkins Avenue, Rockville, Maryland 20852.

Representative: Robert E. Michelson, Esq., U.S. Postal Service, 475 L'Enfant Plaza, West, SW., Washington, D.C. 20260.

Name:

D. F. Finn, Executive Vice President, National Association of College and University Business Officers (NACUBO), One Dupont Circle, Suite 510, Washington, D.C. 20036.

James L. Fisher, President, Council for the Advancement and Support of Education (CASE), One Dupont Circle, Suite 500, Washington, D.C. 20036.

Officer of the Commission, Postal Rate Commission, Stephen L. Sharfman, Esq.

Representative: Maynard H. Dixon, Jr., Attorney, Postal Rate Commission, 2000 L Street, NW., Suite 500, Washington, D.C. 20268.

[FR Doc. 81-1067 Filed 1-12-81; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-6263]

AAR Corp.; Application to Withdraw From Listing and Registration

January 6, 1981.

In the Matter of AAR Corp., Common Stock, $1 Par Value.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of AAR Corp. (the "Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on November 13, 1980, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE, and believes that dual listing would fragment the market for its common stock.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any intersted person may, on or before January 28, 1981, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1053 Filed 1-12-81; 8:45 am]

BILLING CODE 4010-01-M

[Release No. 11534, 812-4733]

Bullock Fund, Ltd., et al.; Application Filing

In the Matter of Bullock Fund, Ltd., Bullock Tax-Free Shares, Inc., Canadian Fund, Inc., Dividend Shares, Inc., High Income Shares, Inc., Money Shares, Inc., Monthly Income Shares, Inc., Nation-Wide Securities Company, Inc., and Calvin Bullock, Ltd., One Wall Street, New York, New York 10005.

January 5, 1981.

Notice is hereby given that Bullock Fund, Ltd., Canadian Fund, Inc., Dividend Shares, Inc., Monthly Income Shares, Inc., and Nation-Wide Securities Company, Inc. (collectively, the "Funds"), High Income Shares, Inc., ("High Income"), Bullock Tax-Free Shares, Inc. ("Tax-Free"), and Money Shares, Inc., ("Money Shares"), each registered as a diversified, open-end, management investment company under the Investment Company Act of 1940 ("Act"), and Calvin Bullock, Ltd. ("Bullock"), principal underwriter for the Funds, High Income, Tax-Free and Money Shares (the Funds, High Income, Tax-Free, Money Shares and Bullock are hereinafter referred to collectively as "Applicants"), filed an application on September 9, 1980, for an order: (1) pursuant to Section 11(a) of the Act, (a) to permit the Funds and Bullock to offer shares of the Funds in exchange for shares of High Income, on a basis other than their relative net asset values per share at the time of the exchange ("Relative Net Asset Value"), (b) to permit the Funds and Bullock to offer shares of the Funds in exchange for shares of Tax-Free on a basis other than Relative Net Asset Value, such shares of Tax-Free having been acquired in a prior exchange at Relative Net Asset Value, for shares of High Income, (c) to permit the Funds and Bullock to offer shares of the Funds in exchange for shares of Money Shares on a basis other than Relative Net Asset Value, such shares of Money Shares having been acquired in a prior exchange, at Relative Net Asset Value, for shares of High Income, (d) to permit the Funds and Bullock to offer shares of the Funds in exchange for shares of Money Shares on a basis other than Relative Net Asset Value, such shares of Money Shares having been acquired in a prior exchange, at Relative Net Asset Value, for shares of Tax-Free which in turn had been acquired in a prior exchange at Relative Net Asset Value, for shares of High Income, (e) to permit High Income and Bullock to offer shares of High Income in exchange for shares of Tax-Free, on a basis other than Relative Net

Asset Value, and (f) to permit High Income and Bullock to offer shares of High Income in exchange for shares of Money Shares (which had been acquired in a Prior exchange at Relative Net Asset Value for shares of Tax-Free) on a basis other than Relative Net Asset Value; and (2) pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Section 22(d) of the Act in connection with such exchanges. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that Bullock maintains a continuous public offering of shares of the Funds, High Income, Tax-Free and Money Shares, and that (i) shares of each of the Funds are offered to the public at their respective net asset values plus a sales load which varies from 8.50 percent of the offering price on purchases of less than $10,000, to 1.00 percent of the offering price on purchases of $1 million or more; (ii) shares of High Income are offered to the public at net asset value plus a sales load which varies from 7.25 percent of the offering price on purchases of less than $25,000, to 1.00 percent of the offering price on purchases of $1 million or more; and (iii) shares of Tax-Free are offered to the public at net asset value plus a sales load which varies from 4.75 percent of the offering price on purchases of less than $100,000 to 1.00 percent of the offering price on purchases of $1 million or more. According to the application, Bulock maintains a continuous public offering of shares of Money Shares at net asset value, without the imposition of a sales load.

Applicants represent that certian exchanges of shares at Relative Net Asset Values are permitted under Section 11(a) of the Act and are currently available to shareholders of the Funds, High Income, Tax-Free and Money Shares. In general, Applicants state that shares of each of the Funds, High Income and Tax-Free may be offered in exchange for shares of any of the other investment companies that have an equal or lower sales load. For purposes of subsequent Relative Net Asset Value exchanges, Applicants state that shares acquired in exchange for shares of a company having a higher sales load are treated as if they had been purchased at the higher load. Further, shares of the Funds, High Income, Tax-Free or Money Shares acquired through reinvestment of dividends and capital gains distributions may be exchanged for shares of any of the Funds, High Income, Tax-Free or Money Shares on the basis of Relative Net Asset Value. Applicants further state that shares of Money Shares purchased for cash may not be exchanged for shares of any of the Funds, High Income or Tax-Free, and that a shareholder of Money Shares wanting to exchange shares acquired for cash would be required to redeem such shares of Money Shares and purchase shares of one of the Funds, High Income or Tax-Free for cash at the current offering price described in the prospectus of such investment company. Applicants also state that shares of Money Shares acquired through a Relative Net Asset Value exchange of shares of the Funds, High Income or Tax-Free and shares obtained from reinvestment of dividends or capital gains distributions be thereon may be reexchanged as if they had been acquired by paying the load applicable to the shares for which the Money Shares shares were originally exchanged.

Applicants state that, pursuant to an order of the Commission (Investment Company Act Release No. 9676, March 14, 1977), shares of Tax-Free acquired otherwise than in exchange for shares of the Funds or through reinvestment of dividends or capital gains distributions may be exchanged for shares of any of the Funds at Relative Net Asset Value plus a sales load equal to the difference between the sales load described in the prospectus of each of the Funds and the sales load originally paid on the purchase of the Tax-Free shares being exchanged. Applicants further state that, pursuant to another order of the Commission (Investment Company Act Release No. 10724, June 11, 1979), the Funds and Bullock are permitted to offer shares of the Funds, on a basis other than Relative Net Asset Value, in exchange for shares of Money Shares which were acquired in exchange for shares of Tax-Free at Relative Net Asset Value.

According to the application, in the case of each of the exchanges described above and the proposed exchanges, (i) the shares being exchanged must have a net asset value of at least $500 or the minimum initial amount required for investment, whichever is greater, and (ii) a service charge of $5.00 is deducted by Bullock to cover its clerical and other expenses.

Applicants seek exemptive relief to permit the following offers of exchange, each of which involves the inclusion of shares of High Income at some level in the overall transaction: (1) shares of High Income may be exchanged for shares of any of the Funds at Relative Net Asset Values, plus a sales load equal to the difference between the sales load described in the Funds' prospectuses and that originally paid on the purchase of High Income; (2) shares of Tax-Free (which were acquired in exchange for shares of High Income) may be exchanged for shares of any of the Funds at Relative Net Asset Value, plus a sales load equal to the difference between the sales load described in the Funds' prospectuses and that originally paid on the purchase of High Income; (3) shares of Money Shares (which were acquired in exchange for shares of High Income) may be exchanged for shares of any of Funds at Relative Net Asset Value, plus a sales load equal to the difference between the sales load described in the Funds' prospectuses and that originally paid on the purchase of High Income; (4) shares of Money Shares (which were acquired in exchange for shares of Tax-Free which in turn were acquired in exchange for shares of High Income) may be exchanged for shares of any of the Funds at Relative Net Asset Value, plus a sales load equal to the difference between the sales load described in the Funds' prospectuses and that originally paid on the purchase of High Income; (5) shares of Tax-Free may be exchanged for shares of High Income at Relative Net Asset Value plus a sales load equal to the difference between the sales load described in the High Income prospectus and that originally paid on the purchase of Tax-Free; and (6) shares of Money Shares (which were acquired in exchange for shares of Tax-Free) may be exchanged for shares of High Income at Relative Net Asset Value plus a sales load equal to the difference between the sales load described in the High Income prospectus and that originally paid on the purchase of the Tax-Free shares. Applicants assert that the sales loads payable on the proposed exchanges will be received by Bullock as principal underwriter for the Funds and High Income, and a portion of such sales loads may be reallowed to dealers.

Applicants state that the exchanges they propose would be on a basis other than Relative Net Asset Value because a shareholder would be required to pay the difference in sales load between those imposed on purchases of High Income and Tax-Free and those imposed on purchases of shares of the Funds and High Income, respectively. Applicants further state that the sales loads described in the prospectuses of each of the Funds and High Income differ from the sales loads which would be

applicable to the proposed exchange offers.

Applicants state that in the event a shareholder desires to exchange for shares of High Income (i) shares of Tax-Free or Money Shares which were acquired in exchange for shares of any of the Funds or High Income or through reinvestment of dividends on any shares of Tax-Free or High Income however acquired, or (ii) shares of Tax-Free not acquired through an exchange of shares of Money Shares which were acquired in exchange for shares of Tax-Free, those shares which may be exchanged at Relative Net Asset Value without sales load will be exchanged first, and the remaining shares to be exchanged will be selected from those shares which are entitled to be exchanged upon payment of the lowest additional sales load.

Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end investment company or any principal underwriter for such company to make, or cause to be made, an offer to the holder of a security in the same or another such investment company to exchange that security for a security of the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issues by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, principal underwriter, or the issuer, except at a current public offering price described in the prospectus.

Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants request an order, pursuant to Section 11(a) of the Act, permitting the proposed offers of exchange on a basis other than Relative Net Asset Value, and pursuant to Section 6(c) of the Act, exempting such exchanges from the provisions of Section 22(d) of the Act to the extent necessary to permit the proposed exchanges.

Applicants state that the proposed exchange offers are designed to permit a shareholder of High Income, Tax-Free or Money Shares to satisfy his changing investment objectives by changing his investment to another investment company with different investment objectives without paying the full sales load otherwise applicable. Applicants submit that an exchange offer of one of the Funds to shareholders of High Income or of High Income to Tax-Free at the Relative Net Asset Value of the Funds or High Income, respectively, would inequitably benefit such shareholders who would have paid substantially less sales loads on their initial investments in shares of Tax-Free or High Income than similarly situated investors in High Income and the Funds, respectively.

Applicants submit that if shares of the Funds or of High Income could be acquired at net asset value in the proposed exchanges, such exchanges would be in violation of Section 22(d) of the Act and not within any of the exemptions therefrom provided in Rule 22d–1 under the Act since an investor would be able to purchase such shares of one of the Funds or of High Income at a sales load other than that described in its prospectus merely by purchasing shares in an investment company with a lower sales load and exchanging those shares for shares of an investment company with a higher sales load. Applicants further submit that (1) the proposed exchange offers are fair and equitable to shareholders of the Funds, High Income, Tax-Free and Money Shares, and give such shareholders flexibility in their financial planning, and (ii) that the granting of the order requested would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 30, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1050 Filed 1-12-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 6728; 18–78]

Ernst & Whinney Pension Plans; Application Filing

January 7, 1981.

Notice is hereby given that Ernst & Whinney ("Applicant" or "Firm"), 1300 Union Commerce Building, Cleveland, Ohio 44115 an Ohio partnership engaged in the practice of accountancy, has by letter dated May 27, 1980 applied for an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests or participations issued in connection with (a) Ernst & Whinney Partnership Pension Plan (Amended and Restated as of July 1, 1976), as amended by Amendments No. 1, 2 and 3 thereto, and Ernst & Whinney Pension Plan for former Partners of S. D. Leidesdorf & Co., as amended by Amendment No. 1 thereto, which constitutes a part of such Ernst & Whinney Partnership Pension Plan but is limited to former partners of S. D. Leidesdorf & Co., an accounting firm which was merged into Applicant on July 6, 1978 (the "Partners' Plan") and (b) Pension Plan for Employees of Ernst & Whinney (as Amended and Restated as of July 1, 1976), as amended by Amendments Nos. 1, 2 and 3 thereto and Ernst & Whinney Pension Plan for former employees of S. D. Leidesdorf & Co., as amended by Amendment No. 1

thereto, which constitutes a part of the Pension Plan for Employees of Applicant but is limited to former employees of S. D. Leidesdorf & Co. (the "Employees' Plan"). The Partners' Plan and the Employees' Plan are hereinafter collectively referred to as "Plan." All interested persons are referred to the application, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. Introduction

All Pensioners, terminated employees and qualifying Partners and employees may become participants in the Plan if they are at least 25 years of age and have completed one year of eligibility service with Ernst & Whinney with certain limitations. As of May 27, 1980, the Partners' Plan covered about 650 active partners with deferred vested benefits; the Employees' Plan covered approximately 4,130 active employees and 1,280 retired employees or terminated employees with rights to deferred vested benefits.

The Partners' Plan is a defined contribution plan of a type commonly referred to as a "Keogh" plan, which covers persons (in this case, the Firm's Partners and former Partners of S. D. Leidesdorf & Co.), who are "employees" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended ("Code"). The Employees' Plan is a defined benefit plan which covers persons (in this case, the Firm's principals who are individuals deemed qualified by education and experience but do not hold certificates or licenses), who are "employees" within the meaning of Section 401(c)(1) of the Code. Because of these features of the Plans and related Trusts, the exemption provided by Section 3(a)(2) of the Act would appear to be applicable to interests in the Plan.

In relevant part, Section 3(a)(2) provides that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description and Administration of the Plans

Applicant represents that the Partners' Plan became effective September 1, 1966, but was amended and restated as of July 1, 1976. Applicant further represents that the Employees' Plan became effective July 1, 1953, but was restated as of July 1, 1976. By letters dated January 31, 1980 and February 15, 1980, the Internal Revenue Service ("IRS") determined that the Partners' Plan and the Employees' Plan, as amended and restated, constitute qualified plans under Section 401 of the Code. Both are subject to the full reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 ("ERISA"). Also, both Plans are funded through trusts maintained under Agreements between the Firm and certain Partners of the Firm as Trustees. Voluntary employee contributions under the Plans will be held in a third Trust under which a large corporate fiduciary will be the Trustee.

Both Plans have mandatory Firm contribution features and voluntary participant contribution features, all based on a percentage of compensation. Under the Partner's Plan, the Firm contributes annually, subject to certain IRS requirements, 7.5% of each active Partner's earnings up to $100,000 for his benefit to the Partners' Trust, which amounts are held in a separate account which, subject to certain vesting requirements, will be paid to him on his retirement or other termination of his membership in the Firm or to his beneficiary on his death. With respect to the Employees' Plan, the Firm makes annual contributions to the Employees' Trust, in amounts determined by its actuary, which are required to fund the defined benefits provided by such Plan. In addition, each of the Plans permits voluntary employee contributions by participants in an amount equal to 10% of each Participant's compensation while he is or was a participant in such Plan subject to certain IRS requirements and limitations.

Applicant will exercise substantial administrative responsibilities with respect to the Plans. A committee of four of the Firm's Partners serves as Trustee under the Plans. The Partner-Trustees also compose the Pension Committee under each such Plan, which may establish several investment funds which could be an Annuity Fund, Fixed Income Fund, Equity Fund or Short-Term Investment Fund among others. Except to the extent that particular responsibilities are assigned or delegated to other fiduciaries pursuant to the Plans, the Pension Committee is responsible for administration of the Plans and for interpreting their provisions.

The assets of the Plans are presently invested through the two Trusts maintained under the Plans, the assets of which are in the custody of corporate fiduciaries and managed by Investment Managers. The Pension Committee presently intends to establish an Equity Fund and a Fixed Income or Annuity Fund. Until one or more of such Funds are established, voluntary employee contributions will be held in a common fund with other assets of each Trust. Afterwards, such contributions will be held in a third Trust as described above. Participants will have the right to select the investment fund or funds into which their voluntary employee contributions are to be placed and will have the opportunity to change investments from time to time pursuant to rules to be established by the Pension Committee. Actuarial matters relating to the Employees' Plan will continue to be subject to the advice of outside actuarial experts engaged by the Firm.

Applicant contends that were it a corporation rather than a partnership, interests or participations issued in connection with the Plan would be exempt from registration under Section 3(a)(2) of the Act, because no person who would be an "employee" within the meaning of Section 401(c)(1) of the Code would participate in the Plan. Applicant argues that the mere fact that it conducts its business as a partnership rather than as a corporation should not result in a requirement that interests in the Plan be registered under the Act.

Applicant also maintains that were the Firm's Partners not permitted to participate in the Plan, the interests or participations issued in connection with such Plan, would be exempt under Section 3(a)(2) since no other persons covered by such Plan would be "employees" within the meaning of Section 401(c)(1) of the Code. Applicant argues that there is no valid basis for a contrary result merely because the Plan also covers Partners in the Firm.

Applicant also states that it is engaged in furnishing services which involve finanacially sophisticated and complex matters, exercises administrative control over the Plan, and believes that it is able to represent adequately its own interests and those of its Partners and employees without the protection of the registration requirement of the Act. Applicant believes that the rigorous disclosure requirements of ERISA and the fiduciary standards and duties imposed thereunder are adequate to provide full protection to Plan participants.

Finally, Applicant argues that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers and that the legislative history of the relevant language in Section 3(a)(2); of the Act does not suggest any intent on the part of Congress that interests issued in connection with single-employer Keogh plans necessarily should be registered under the Act. Applicant argues that its Plan is distinguishable from multi-employer plans or uniform prototype plans designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons and that these latter plans are the type of plans Congress intended to exclude from the Section 3(a)(2) exemption. Applicant states that the Amended Plan will cover Partners and employees of a single firm and will not be a uniform prototype plan of a type designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons.

For all of the foregoing reasons, Applicant believes that the Commission should issue an order finding that an exemption from the provisions of Section 5 of the Act for interests or participations issued in connection with the Plan is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 2, 1981 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C., 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following February 2, 1981 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-1052 Filed 1-12-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17422; File No. SR-NSCC-80-36]

National Securities Clearing Corporation; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 14 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on December 29, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change makes permanent the procedures which describe how National Securities Clearing Corporation (NSCC) currently effects borrowing of securities to meet system needs and the formula which NSCC currently uses to determine the order in which it will borrow securities made available by participants.

The proposed rule change would make permanent, effective January 24, 1981, SR-NSCC-79-18 which had previously become effective on January 24, 1980 for a one year period of time, and SR-NSCC-80-6, which had previously become effective on March 3, 1980, which filing contained a "sunset provision" which by its own terms will terminate the rules on January 24, 1981.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change makes permanent the procedures and formula attendant to the automated borrowing of securities to meet system needs including borrowing for the Order Out Service (Section VI of the SCC Division Procedures) and CNS buy-ins (Section 7 of Rule 11 of the SCC Division).

The proposed rule change relates to NSCC's capacity to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible by providing specific procedures to be followed and the formula to be utilized in connection with NSCC borrowing securities, under existing authority, to meet the needs of the NSCC system for clearance and settlement.

No comments on the proposed rule change or the formula used have been received.

NSCC does not perceive that the proposed rule change would constitute a burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by February 3, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 7, 1981.

[FR Doc. 81-1051 Filed 1-12-81; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 1-A; Revision 9]

Line of Succession to the Administrator; Delegation of Authority

Delegation of Authority No. 1-A (Revision 8) (45 FR 43918) is hereby revised to read as follows:

I. Pursuant to authority vested in me by the Small Business Act, 72 Stat. 384, as amended, the Small Business Investment Act of 1958, 72 Stat. 689, as amended, authority is hereby

delegated to the following officials in the following order:

1. Assistant Administrator for Programs
2. Assistant Administrator for Support Services
3. Assistant Administrator for Policy, Planning and Budgeting
4. Associate Administrator for Minority Small Business and Capital Ownership Development
5. General Counsel

to perform, in the event of the absence or incapacity of the Administrator and the Deputy Administrator, any and all acts which the Administrator is authorized to perform, including but not limited to authority to issue, modify, or revoke delegations of authority and regulations, except exercising authority under Section 7(a)(6), 9(d) and 11 of the Small Business Act, as amended.

II. Officials designated as acting in one of the positions listed above will not be included in the line of succession.

III. This delegation is not in derogation of any authority residing in the above listed officials relating to the operations of their respective programs nor does it affect the validity of any delegations currently in force and effect and not specifically cited as revoked or revised herein.

Effective date: January 13, 1981.

Dated: January 5, 1981.

A. Vernon Weaver,

Administrator.

[FR Doc. 81-1047 Filed 1-12-81; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0184]

Grocers Capital Company, Inc.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Grocers Capital Company (Grocers) 2601 S. Eastern Avenue, Los Angeles, California 90040, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1980)) for approval of a conflict of interest transaction.

Grocers proposes to loan $100,000 to Wai Wu and Ken Louie d/b/a Cathay Market (Cathay), 9121 Bolsa Ave., Westminister, California 92683. The proceeds of the loan will be used to purchase restaurant equipment from Grocers Equipment Company (G.E.C.). All of Grocers' stock is owned by subsidiaries of Certified Grocers of California, Ltd. (Certified), a retailer-owned grocery cooperative. G.E.C., a subsidiary of Certified, is a 41 percent shareholder of Grocers and is defined as an Associate by § 107.3 of the SBA Rules and Regulations. As a result, Grocers financing of Cathay falls within the purview of § 107.1004(b) (5) of the SBA Regulations. Grocers loan to Cathay requires prior written approval of SBA.

Notice is hereby given that any person may not later than January 28, 1981, submit written comments to the Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW, Washington, D.C. 20416.

A similar Notice shall be published in a newspaper of general circulation in the Los Angeles, California area.

(Catalog of Federal Domestic Assistance Programs No. 95.001, Small Business Investment Companies)

Dated January 6, 1981.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 81-1044 Filed 1-12-81; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-5110]

NIA Corp.; Application for Transfer of Control of a Licensed Section 301(d) Licensee

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.701 of the Regulations governing small business investment companies (13 CFR Section 107.701 (1980)), for transfer of control of NIA Corporation (NIA), 2400 South Michigan Avenue, Chicago, Illinois 60606, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

NIA was licensed on February 12, 1976, with an initial private capital of $196,709. NIA is wholly owned by the National Insurance Association. It is proposed that ownership of the Licensee be acquired by:

Central Venture Capital Corporation (CVCC); 1739 St. Bernard Avenue, New Orleans, Louisiana 70116

CVCC is owned equally by Mr. Harold E. Doley, Jr. and Mr. Louis A. Gerdes, Jr. It is proposed to change the name of the Licensee to Central Venture Capital Corporation and move its office to 1739 St. Bernard Avenue, New Orleans, Louisiana 70116.

The proposed transfer of control is subject to the approval of SBA. If such approval is given, the officers and directors of the Licensee will be:

Louis A. Gerdes, Jr., 7230 Briarheath Drive, New Orleans, Louisiana 70127; President, Director

Harold E. Doley, Jr., 2419 General Taylor Street, New Orleans, Louisiana 70115; Vice President, Secretary, Treasurer, Director

Michael A. Starks, 4900 Nottingham Drive, New Orleans, Louisiana 70127; Director

There will be no significant changes in the operations of the Licensee.

Matters involved in SBA's consideration of the application include the general business reputation and character of management and shareholders, and the probability of successful operations of CVCC under their management, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than January 28, 1981, submit to SBA in writing, comments on the proposed transfer of control of this company. Any such comments should be addressed to: Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published by CVCC in a newspaper of general circulation in New Orleans, Louisiana.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: January 6, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 81-1045 Filed 1-12-81; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 10/10-0174]

Peoples Small Business Investment Corp.; Application for a License To Operate as a Small Business Invesment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (CFR 107.102(1980)), under the name of People Small Business Investment Corporation, 1414 Forth Avenue, Seattle, Washington 98171, for a license to operate as a small business investment company, under the provisions of the Small Business Investment Act of 1958, as amended (act) and the Rules and Regulations promulgated thereunder.

The Proposed officers, directors and stockholders are as follows:

Name and Title

J. G. Cairns, Jr., 7233 West Mercer Way, Mercer Island, Washington 98040; President and Director

E. M. Anderson, 5333 S.W. Manning Street, Seattle, Washington 98116; Executive Vice President, and Director
Charles Riley, 950 Federal Avenue East, Seattle, Washington 98102; Executive Vice President and Director
Donald Greenfield, 7245—29th Avenue N.E., Seattle, Washington 98115; Senior Vice President, and Director
L. M. Riley, 412—160th Avenue N.E., Bellevue, Washington 98004; Secretary-Treasurer, and Director
A. L. Tollefsen, 3108 N.W. 93rd Street, Seattle, Washington 98117; Assistant Secretary
Joshua Green III, 1932 Blenheim Drive East, Seattle, Washington 98112; Director

The Applicant which is a Washington Corporation, proposes to commerce operations with a capitalization of $1,000,000 derived from the sale of 10,000 shares of common stock to the Peoples National Bank of Washington (located at the same address as the proposed Licensee) for $100 per share.

The only direct record holders of more than ten percent of the Peoples Bank outstanding Common Stock are the estates of Joshua Green—Laura T. Green, 11.25 percent; and the Joshua Green Corporation, 10.67 percent.

All of the Licensee's officers and directors are also officers and in some cases Directors of the Applicant's parent.

The Applicant will conduct its operations principally in the State of Washington. However it is contemplated that business will be conducted in all eleven western states where it appears that the services of the Applicant are needed by deserving small concerns.

Matters involved in SBA's consideration of the application include the general business reputation of the owner and management, and the probability of successful operations of the new company, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than January 28, 1981, submit to SBA, in writing, relevant comments on the proposed licensing of this company. Any such communications should be addressed to: Associate Adminstrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 6, 1981.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 81-1046 Filed 1-12-81; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The Small Business Administration Region IV Advisory Council located in the geographical area of Birmingham, will hold a public meeting at 9:30 a.m., on Friday, February 27, 1981, at the South Twentieth Building, 908 South 20th Street, Room 202, (2nd Floor), Birmingham, Alabama, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 908 South 20th Street, Room 202, Birmingham, Alabama, telephone (205) 254-1341.

Dated: January 6, 1981.

Michael B. Kraft,

Director, Office of Advisory Councils.

[FR Doc. 81-1043 Filed 1-12-81; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0191]

Issuance of License; Servico Business Investment Corp.; West Palm Beach, FL

On June 19, 1980, a Notice was published in the **Federal Register** (45 FR 41561), stating that Servico Business Investment Corporation located at 2000 Palm Beach Lakes Blvd., West Palm Beach, Florida 33409 filed an application with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1980) for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended.

Interested persons were given until the close of business July 7, 1980, to submit their written comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information the SBA has issued License No. 04/04-0191 to Servico Business Investment Corporation on December 5, 1980.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: January 6, 1981.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 81-1023 Filed 1-12-81; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Public Debt Series—No. 40-80]

Treasury Bonds; Interest Rate on Bonds of 2001, January 7, 1981

The Secretary announced on January 6, 1981, that the interest rate on the bonds designated Bonds of 2001 described in Department Circular—Public Debt Series—No. 40-80 dated December 23, 1980, will be 11¾ percent. Interest on the bonds will be payable at the rate of 11¾ percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 81-1127 Filed 1-12-81; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., January 16, 1981.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Judicial matters.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–81–38 Filed 1–9–81; 10:45 am]

BILLING CODE 6351–01–M

2

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 2246, January 8, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Wednesday, January 14, 1981.

PLACE: 1700 G Street NW., board room, Sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6677).

CHANGES IN THE MEETING: The meeting previously scheduled for Wednesday, January 14, 1981 has been changed to Friday, January 16, 1981.

[S–81–40 Filed 1–9–81; 3:53 am]

BILLING CODE 6720–01–M

3

[NM–81–2]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Wednesday, January 21, 1981.

PLACE: NTSB board room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: The first five items on the agenda will be open to the public; the sixth item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report*—Air Pennsylvania 501, Piper PA–350, N5MS, Philadelphia, Pennsylvania, July 25, 1980.
2. *Aircraft Accident Report*—Scenic Air Lines, Inc., Cessna 404, N28635, near Grand Canyon National Park Airport, Tusayan, Arizona, July 21, 1980.
3. *Highway Accident Report*—Central Texas Bus lines, Inc., Charter Bus Run Off Roadway, Arkansas State Route 7, near Jasper, Arkansas, June 5, 1980.
4. *Safety Effectiveness Evaluation* of Rail Rapid Transit Safety.
5. *Recommendation* to the Federal Aviation Administration regarding Standards for Fuel Dispensing Systems at Public Use Airports not Certificated Under 14 CFR Part 139.
6. *Opinion and Order—Administrator v. Gossman, Modes, and Morgan, Dockets SE–4591, SE–4592, and SE–4593; disposition of respondents' appeals.*

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202–472–6022.

January 9, 1981.

[S–81–39 Filed 1–9–81; 10:45 am]

BILLING CODE 4910–58–M

4

SYNTHETIC FUELS CORPORATION.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Directors of the United States Synthetic Fuels Corporation to be held at the time, date, and place specified below. The Chairman of the Board may entertain a motion during the meeting to close a portion thereof insofar as it relates to matters specified in Section 116(f) (A through C) of the United States Synthetic Fuels Corporation Act of 1980, Pub. L. 96–294.

TIME AND DATE: 2 p.m. on January 23, 1981.

PLACE: Jefferson Ballroom-West, Washington Hilton Hotel, 1919 Connecticut Avenue, N.W., Washington, D.C. 20009.

PERSON TO CONTACT FOR MORE INFORMATION: Katherine McG. Sullivan, United States Synthetic Fuels Corporation, 1200 New Hampshire Avenue, N.W., Washington, D.C. 20586 (202) 653–4345.

January 8, 1981.

United States Synthetic Fuels Corporation.

John C. Sawhill,

Chairman of the Board.

[S–81–37 Filed 1–9–81; 8:45 am]

BILLING CODE 6450–01–M

federal register

Tuesday
January 13, 1981

Part II

Environmental Protection Agency

Coal Mining Point Source Category; Effluent Limitations Guidelines for Existing Sources, Standards of Performance for New Sources and Pretreatment Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 434

[WH-FRL 1642-5]

Coal Mining Point Source Category; Effluent Limitations Guidelines for Existing Sources, Standards of Performance for New Sources and Pretreatment Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Regulation.

SUMMARY: EPA proposes regulations to limit effluent discharges to waters of the United States from coal mining and coal preparation facilities. The purpose of this proposal is to provide effluent limitations guidelines based on "best practicable control technology currently available," "best available technology economically achievable," and "best conventional pollutant control technology," and to establish new source performance standards under the Clean Water Act. After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATES: Comments on this proposal must be submitted within 60 days from the date of availability of the technical development document. A Notice of Availability will be published in the Federal Register on or about February 2, 1981.

ADDRESS: Send comments to: Mr. William A. Telliard, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Attention: EGD Docket Clerk, Coal Mining. The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library). The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information and copies of technical documents may be obtained from Mr. William A. Telliard, at the address listed above, or call (202) 426-2724. The economic analysis document may be obtained from Mr. Harold Lester, Office of Analysis and Evaluation, (WH-586), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 426-2617.

SUPPLEMENTARY INFORMATION:

Overview

The Supplementary Information section of this preamble describes the legal authority and background, the technical and economic bases, and other aspects of the proposed regulations. The abbreviations, acronyms, and other terms used in the preamble are defined in Appendix A to this notice.

These proposed regulations are supported by three major documents available from EPA. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants.* EPA's technical conclusions are detailed in the *Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Coal Mining Point Source Category.* The Agency's economic analysis is found in *Economic Impact Analysis of Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Coal Mining Point Source Category.*

Organization of this Notice.

I. Legal Authority

The regulations described in this notice are proposed under authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217) (the "Act"). These regulations are also proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc. v. Train,* 8 ERC 2120 (D.D.C. 1976), modified March 9, 1979, 12 ERC 1833, 1841.

II. Background

(a) The Clean Water Act. The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," Section 101(a). By July 1, 1977, existing industrial dischargers were required to achieve "effluent limitations requiring the application of the best practicable control technology currently available," (BPT), Section 301(b)(1)(A); and by July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of the best available technology economically achievable . . . which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants," (BAT), Section 301(b)(2)(A). New industrial direct dischargers were required to comply with Section 306 new source performance standards (NSPS), based on best available demonstrated technology (BADT); and new and existing dischargers to publicly owned treatment works (POTW) were subject to pretreatment standards under Sections 307 (b) and (c) of the Act. While the requirements for direct

dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under Section 402 of the Act. pretreatment standards were made enforceable directly against dischargers to POTW (indirect dischargers).

Although Section 402(a)(1) of the 1972 act authorized the setting of requirements for direct dischargers on a case-by-case basis, Congress intended that, for the most part, control requirements would be based on regulations promulgated by the Administrator of EPA. Section 304(b) of the Act required the Administrator to promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT. Moreover, Sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and Sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, Section 307(a) of the Act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, Section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

EPA was unable to promulgate many of these regulations by the dates contained in the Act. In 1976, EPA was sued by several environmental groups and, in settlement of this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement" which was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgating for 21 major industries BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 "priority" pollutants and classes of pollutants. See *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified March 9, 1979, 12 ERC 1833, 1841.

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the federal water pollution control program, its most significant feature is its incorporation into the Act of several of the basic elements of the Settlement Agreement program for toxic pollution control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984, of effluent limitations requiring application of BAT for "toxic" pollutants, including the 65 classes of toxic pollutants (subsequently defined by the Agency as 129 specific "priority pollutants") which Congress declared "toxic" under Section 307(a) of the Act. Likewise, EPA's programs for new source performance standards and pretreatment standards are now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, Congress added Section 304(e) to the Act, authorizing the Administrator to prescribe "best management practices" (BMPs) to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

In keeping with its emphasis on toxic pollutants, the Clean Water Act of 1977 also revised the control program for nontoxic pollutants. Instead of BAT for "conventional" pollutants identified under Section 304(a)(4) (including biochemical oxygen demand, suspended solids, fecal coliform, oil and grease, and pH), the new Section 301(b)(2)(E) requires achievement by July 1, 1984, of "effluent limitations requiring the application of the best conventional pollutant control technology" (BCT). The factors considered in assessing BCT for an industry include a comparison of the costs of attaining conventional pollutant reduction and the effluent reduction benefits associated with the candidate technology to the costs and effluent reduction benefits from the treatment of effluents in a publicly owned treatment works (Section 304(b)(4)(B)). For non-toxic, non-conventional pollutants, Sections 301(b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of this rulemaking is to propose certain amendments to the existing BPT regulations and to propose revised effluent limitations guidelines for new and existing sources based upon application of BCT, BAT, and BADT (NSPS). Pretreatment standards are not proposed for the coal mining category since no known indirect dischargers exist nor are any known to be planned. Coal mines are located in rural areas, generally far from a POTW. EPA expects that the cost of pumping coal mine wastewater to a POTW would be prohibitive in most cases, and on-site treatment is more cost effective in virtually every instance.

(b) Prior EPA Regulations.

On October 17, 1975, EPA proposed regulations adding Part 434 to Title 40 of the Code of Federal Regulations (40 FR 48830). These regulations, with subsequent amendments, established effluent limitations guidelines based on the use of the best practicable control technology currently available (BPT) for existing sources in the coal mining point source category. These were followed, on April 26, 1977, by final BPT effluent limitations guidelines for this category (42 FR 21380).

On September 19, 1977, the Agency published proposed standards of performance for new sources (NSPS) within this industrial category based on application of the best available demonstrated control technology (42 FR 46932). On January 12, 1979, EPA promulgated final NSPS for this industry (44 FR 2586).

Both the BPT and NSPS regulations contained an exemption from otherwise applicable requirements during and immediately after catastrophic precipitation events. These storm exemptions were re-examined, subjected to further public comment and ultimately revised on December 28, 1979 (44 FR 76788).

Moreover, the NSPS regulations contained a definition of "new source coal mine" which was challenged by petitioners in *Pennsylvania Citizens Coalition et al.* vs. *EPA*. See 14 ERC 1545 (3rd Cir. 1980). In response to the Court's decision in that case, the Agency amended its definition of a "new source coal mine" on June 27, 1980 (45 FR 43413).

The effluent limitations guidelines being proposed today include amendments to the BPT requirements, effluent limitations guidelines based upon BCT and BAT, and new source performance standards.

(c) Overview of the Industry. The coal mining industry currently operates in 26 states in Appalachia, the Midwest, and the Mountain and Pacific regions. There were 6,075 mines in 1978, of which 2,566 exhibited acid mine drainage and 3,509 exhibited alkaline mine drainage. Of the total, 5, 976 mines were located in the eastern United States and 99 in the western United States. There are currently about 650 coal preparation plants using wet coal cleaning methods in the country.

Total coal production in the United States in 1978 was 656,100,000 short tons. It is projected to increase by 916,030,000 short tons by 1987.[1]

In the 1920's underground mining accounted for nearly 100 percent of all coal production, and surface mining

[1] Nielsen, George, ed., *1979 Keystone Coal Industry Manual*. McGraw-Hill, New York, New York, 1979.

accounted for virtually none. By 1978, underground mining accounted for only 36 percent of all domestic production, with surface mining accounting for the rest.[1] This rapid growth of surface mining was made possible by improved machinery and mining methods, the general geology of the coal fields, and the rapid expansion of the western, surface-mined, coal fields. The 6,075 mines in the United States are controlled by approximately 3,800 companies. The majority of these mines are small operations, with individual production less than 50,000 short tons per year.[2]

Water is not used in, and in fact interferes with, the mining of coal. The major sources of wastewater in the coal mining industry are: (1) surface runoff and groundwater discharged from the active mine area; (2) wastewater generated by the removal of impurities from raw coal in preparation plants; (3) precipitation-induced runoff in preparation plant associated areas; and (4) runoff generated from reclamation areas and discharges from underground mines after mining ceases. Coal mine wastewater flows range from zero to over 12,000,000 gallons per day, with an average discharge flow of approximately 1,000,000 gallons per day.

Process water used for coal cleaning can be correlated with production for any given preparation plant. However, most facilities commingle preparation plant wastewater with runoff from the associated areas, making correlation of wastewater flows with production infeasible for purposes of an effluent regulation.

Current technologies employed to achieve BPT limitations for wastewater treatment typically include:

Acid Mines.—Neutralization; aeration (where required); flocculation (where required); sedimentation.

Alkaline Mines.—Aeration (where required); flocculation (where required); sedimentation.

Preparation Plants and Associated Areas.—Neutralization (where required); flocculation (where required); sedimentation.

Neutralization is the addition of lime or another alkaline chemical to counteract the acidity. The resulting increase in pH (a measure of the acidity) causes the metal ions to chemically react and form a solid which can be settled from the wastewater. Aeration involves the turbulent introduction of air into the wastewater to cause a series of reactions that result in enhanced precipitation (formation of solids). Settling involves containing the wastewater in a tank or basin for a sufficient amount of time to allow the solids to sink to the bottom. Flocculation is the addition of a compound that enhances agglomeration of solids, thus increasing their settling rate.

III. Scope of This Rulemaking and Summary of Methodology

These proposed regulations reflect an expanded approach to the development of water pollution control requirements for the coal mining industry. In EPA's 1973–1976 round of rulemakings, emphasis was placed on the achievement of best practicable control technology currently available (BPT) by July 1, 1977. In general, this technology level represented the average of the best existing performances of well-known technologies for control of pollutants of traditional concern.

In this rulemaking, EPA's efforts are directed toward ensuring the achievement of limitations based upon the best available technology economically achievable (BAT) by July 1, 1984, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. As a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a list of toxic substances.

In the 1977 legislation, Congress recognized that it was dealing with areas of scientific uncertainty when it declared the 65 "priority" pollutants and classes of pollutants "toxic" under Section 307(a) of the Act. The "priority" pollutants have been relatively unknown outside of the scientific community, and those engaged in wastewater sampling and control have had little experience dealing with these pollutants. Additionally, these pollutants can often appear and can have toxic effects at concentrations which severely tax current analytical techniques. Even though Congress was aware of the state-of-the-art difficulties and expense of "toxics" control and detection, it directed EPA to act quickly and decisively to detect, measure, and regulate these substances.

EPA's implementation of the Act required a complex development program described in this section and succeeding sections of this notice. Initially, because in many cases no public or private agency had done so, EPA had to develop analytical methods for toxic pollutant detection and measurement, which are discussed in the next section. EPA then gathered technical and cost data about the industry, which are summarized below and discussed in the next section. These data formed the basis for development of the proposed regulations.

First, EPA studied the coal mining industry to determine whether differences in raw materials, final products, manufacturing processes, equipment, age and size of plants, water usage, wastewater constituents, or other factors required the development of separate effluent limitations and standards for different segments (termed "subcategories") of the industry. This study included the identification of raw waste and treated effluent characteristics, including: (1) the sources and volume of water used, the processes employed, and the sources of pollutants and wastewaters in the plant; and (2) the constituents of wastewaters, including toxic pollutants. EPA then identified the constituents of wastewaters which should be considered for effluent limitations guidelines and standards of performance.

Next, EPA identified several distinct control and treatment technologies, including both in-plant and end-of-process technologies, which are in use or capable of being used in the coal mining industry. The Agency compiled and analyzed historical data and newly generated data on the effluent quality resulting from the application of these technologies. The long-term performance and operational limitations of each of the treatment and control technologies were also identified. In addition, EPA considered the non-water quality environmental impacts of these technologies, including impacts on air quality, solid waste generation, and energy requirements.

The Agency then estimated the costs of each control and treatment technology from unit cost curves developed by standard engineering analysis as applied to coal mining wastewater characteristics. This was done by generating capital and annual costs of each of the candidate treatment systems (e.g., flocculant addition equipment) and components as a function of wastewater flow rates. This provided a uniform basis to compare the various candidate existing and new source treatment alternatives. The accuracy of the model plant treatment costs were then verified by developing site-specific costs for a number of active mine sites around the country. The Agency evaluated the industry-wide economic impacts of the costs to determine the economic achievability of each candidate technology. (Costs and

[1] Department of the Interior, Bureau of Mines, "Coal—Bituminous and Lignite in 1975," Washington, D.C., 1976.

economic impacts are discussed in detail in Section XVI of this notice.)

Based on these factors, EPA identified various control and treatment technologies as BCT, BAT, and BADT. The proposed regulations do not require the installation of any particular technology. Rather, they require achievement of effluent limitations representative of the proper design, construction, and operation of these technologies or equivalent technologies.

The effluent limitations for BPT, BAT, BCT, and NSPS are expressed as concentration limitations (mass per volume of wastewater). Mass-based limitations (*e.g.*, g/kg of product) are not feasible for purposes of applying a national regulation because mine water flows cannot be correlated with associated coal production.

IV. Data Gathering Program

(a) Analytical Methods. As Congress recognized in enacting the Clean Water Act of 1977, the state-of-the-art ability to monitor and detect toxic pollutants is limited. Most of the toxic pollutants were relatively unknown until only a few years ago, and only on rare occasions has EPA regulated or has industry monitored or even developed methods to monitor these pollutants.

Section 304(h) of the Act, however, requires the Administrator to promulgate guidelines establishing test procedures for the analysis of toxic pollutants. As a result, EPA scientists, including staff of the Environmental Research Laboratory in Athens, Georgia and staff of the Environmental Monitoring and Support Laboratory in Cincinnati, Ohio, conducted a literature search and initiated a laboratory program to develop analytical protocols. The analytical techniques used in this rulemaking were developed concurrently with the development of general sampling and analytical protocols and were incorporated into the protocols ultimately adopted for the study of other industrial categories. See *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*, revised April 1977.

Because Section 304(h) methods were available for most toxic metals, pesticides, cyanide, and phenol, the analytical effort focused on developing methods for sampling and analyses of organic toxic pollutants. The three basic analytical approaches considered by EPA were infra-red spectroscopy (IR), gas chromatography (GC) with multiple detectors, and gas chromatography/mass spectrometry (GC/MS). Evaluation of these alternatives led the Agency to propose analytical techniques for 113 toxic organic pollutants (see 44 FR, 69464, December 3, 1979, amended 44 FR 75028, December 18, 1979) based on: (1) GC with selected detectors, or high performance liquid chromatography (HPLC), depending on the particular pollutant; and (2) GC/MS. In selecting among these alternatives, EPA considered the sensitivity, laboratory availability, costs, applicability to diverse waste streams from numerous industries, and capability for implementation within the statutory and court-ordered time constraints of EPA's program. The rationale for selection of the proposed analytical protocols may be found in the December 3, 1979, Federal Register.

In EPA's judgement, the test procedures used in this rulemaking represent the best state-of-the-art methods for toxic pollutant analyses available when this study was begun.

EPA is aware of the continuing evolution of sampling and analytical procedures. Resource constraints, however, prevented the Agency from reworking completed sampling and analysis efforts to keep up with this constant evolution. As state-of-the-art technology progresses, future rulemakings to evaluate, and, if necessary, to incorporate these changes, will be initiated.

Before proceeding to analyze coal mining and coal preparation wastes, EPA concluded that definition of specific toxic pollutants and methods of analyses were required. The list of 65 pollutants and classes of pollutants potentially includes thousands of specific pollutants, and the expenditure of resources in government and private laboratories would be overwhelming if analyses were attempted for all of these pollutants. Therefore, in order to make the task more manageable, EPA selected 129 specific toxic pollutants for study in this rulemaking and other industry rulemakings. The criteria for selection of these 129 pollutants included frequency of occurrence in water, chemical stability and structure, amount of the chemical produced, availability of chemical standards for measurement, and other factors.

(b) Data Gathering Effort. The data gathering effort for the coal mining industry includes an extensive collection of information, as follows:

(1) screening and verification sampling and analysis programs
(2) engineering site visits
(3) supporting data from regional state offices
(4) preparation plant industry survey
(5) preparation plant sampling and analysis program
(6) acid mine drainage treatability studies
(7) 308 self-monitoring survey
(8) industry and government research programs.

A data collection effort was instituted during 1974 and 1975 for the development of BPT effluent standards. These data included results from a sampling and analysis program conducted by the Agency at 153 mines and 65 preparation plants and associated areas, as well as assimilation of a large amount of historical data supplied by the industry, the Bureau of Mines, and other sources. This information characterized wastewaters from coal mining operations, with the primary focus on acidity, alkalinity, total suspended solids, pH, sulfate, iron, and manganese. However, little information on other parameters such as toxic metals and organics was available from industry or government sources. Therefore, in 1977, the Agency began a second sampling and analysis program that was conducted in two phases (screening and verification). This sampling program established the quantities of toxic, conventional, and non-conventional pollutants in coal mine drainage and preparation plant effluents. Screening and verification sampling visits were made to 28 mines and 18 coal preparation plant and associated areas. The facilities were selected to be representative of the location and type of existing mine facilities, current BPT treatment technology used in this industry and the type of coal being extracted and processed.

The primary objective of the screening phase of sampling was to obtain samples of wastewater to determine presence, absence, and relative concentrations of toxic pollutants. Screening sampling consisted of 24-hour composites to determine the presence and level of concentration of toxic pollutants in the wastewater samples. The second phase of the program is known as verification sampling. In this phase, 24-hour composites were collected for three consecutive days to verify and quantify results from the screening sampling effort.

To augment these programs, the Agency conducted a number of additional sampling projects. Engineering site visits were carried out primarily to collect site specific cost and engineering data for verifying and supplementing model treatment costs developed for the coal mining industry. Wastewater samples were collected during each site visit to supplement the data base for wastewater characteristics and treatment. Fourteen mines, some with associated preparation plants, were contacted and visited in the fall of

1979. Grab samples of raw and treated effluents were collected for analysis of TSS, iron, manganese, pH, turbidity, alkalinity, settleable solids and the 13 toxic metals. The metals were analyzed by inductively coupled plasma-optical emission spectrometry (ICP) and atomic absorption spectrometry.

EPA Region 8 (Denver, Colorado) instituted a sampling effort to assess the water treatment configurations and effluent qualities characteristic of the western coal-producing region. Several mines were visited during the spring of 1979 to assess the effect of snowmelt and rainfall on treatment facility performance. However, an unusually mild winter and dry spring in the west hampered efforts to collect these kinds of samples; in fact, only two miles were found to have a discharge that could be sampled. Additionally, EPA Region 4 (Atlanta, Georgia) conducted sampling at one mine in southern Appalachia.

A preparation plant sampling and analysis program was instituted to further characterize preparation plant wastewaters. Another purpose was to compare wastewater generated in total recycle systems with wastewater discharged from partial recycle and "once-through" systems. Grab samples were collected at three preparation plants and associated areas. Site-specific cost and wastewater engineering data were collected simultaneously to augment present data and to permit further evaluation of the feasibility of achieving the BAT and NSPS options.

Pursuant to Section 308 of the Act, 12 mining companies are conducting a self-monitoring program at two sedimentation ponds per company. The purpose of this study, which began in October 1979 and will continue through October 1980, is to supplement the data base to develop effluent limitations for treatment of runoff from mining areas undergoing reclamation and alternate limitations during precipitation events. One sample per week of influent and effluent is collected to estblish base flow conditions, with additional samples taken during and after rainfall events. The results of these sample analyses, coupled with key design specifications submitted with the data for each pond, permit identification of the wastewater characteristics and treatment effectiveness of these ponds during dry weather and precipitation. The limitations contained in today's proposal for reclamation areas and storm provisions are based on seven of the eventual twelve months' data from this self-monitoring program. Upon completion of this sampling program, the remaining data will be analyzed to detrermine whether changes in today's proposal are appropriate.

A second major sampling program to characterize runoff from reclamation areas and storm provisions has been commissioned by EPA and the Office of Surface Mining Reclamation and Enforcement in the Department of the Interior. Approximately thirty-nine mine sites have been chosen from major coal-producing regions of the country for a survey of reclamation and sediment control techniques to establish the relationship of those techniques to effluent water quality. Detailed, daily information on the physical and chemical quality, flow, and sediment load of drainage from eight sites will also be collected during the study. Where possible, an hourly record will be taken during precipitation events to document drainage quality and sediment pond efficiency during runoff periods at these eight sites. This study is expected to be completed in early to mid-1981. These data will also be analyzed to determine if changes in today's proposal may be appropriate.

Other information was compiled from industry surveys. A preparation plant industry survey was conducted with the cooperation of the National Coal Association (NCA) to assess water usage and treatment in coal preparation plants. Eighty-eight member producer companies of the NCA which operate approximately 292 preparation plants were mailed a questionnaire requesting information on the following: facility profile information, water balance around the preparation facility, makeup water sources, discharge points and quantities, water treatment practices employed, water management procedures, information on the preparation plant associated areas and effluent quality data. One hundred fifty-two plants responded to the survey, representing about 24 percent of the coal preparation plants in the industry. The industry responses were used primarily to determine the number of plants operating a total recycle system and the requirements for modifying current treatment configurations to such a system, and to determine runoff treatment strategies for areas ancillary to the preparation plant.

Discharge monitoring reports (DMR) required under the NPDES program were collected from EPA regional offices located in the major United States coal-producing areas. DMRs contain data which help to identify the variation in flow and pollutant characteristics associated with mine drainage. This information was used to evaluate compliance with existing monthly average and daily maximum effluent limitations.

A number of treatability studies have been conducted by the Agency to determine the performance of advanced treatment technologies on coal mine wastewaters. An acid mine drainage treatability study evaluating flocculant addition was conducted at four separate Appalachian and Midwest mines during the summer of 1979. Jar and pilot-scale settling tests with various chemical and polymer dosages were performed on acid mine drainage. In some tests, solutions containing priority metals were added to the untreated acid drainage to elevate levels of these substances. This "spiking" procedure permitted the determination of treatment removal and effectiveness.

A second treatability study was instituted primarily to evaluate organics reduction technologies. This study was conducted near Morgantown, West Virginia, at the Crown Mine Drainage Treatability Site during 1978. Technologies examined for organics removal included neutralization, aeration, ozonation, carbon adsorption and sand filtration. Organic compounds were added to untreated mine water at various concentrations to assess the performance of the different technologies. Using BPT technology (aeration, neutralization, and settling), over 90 percent reduction of the spiked organic compounds was achieved. In no case was the final effluent concentration of any organic detected at levels greater than 39 μg/l. In most instances, reductions to below 10 μg/l were achieved. The remaining technologies evidenced highly variable removals (*i.e.*, 0 to over 99 percent). The study concluded that if such organics were present, BPT technology was effective in reducing them to values at or near their detection limit.

Dual granular media filtration technology was investigated at two acid mine drainage treatment plants located in Appalachia. The tests were performed in the spring of 1980 on effluent treated by neutralization, aeration, and settling. Eight-hour and longer test runs were attempted to determine filter performance and backwash requirements. The potential for gypsum fouling of the filtration system was investigated at one of the mine sites. This compound can form when lime is the chemical used to neutralize the acidity of mine drainage. This substance will deposit on surfaces throughout the treatment system including the filter media. Should this occur, the passage of wastewater through the filter can be

inhibited or stopped. Results from the treatability study show that some shortening of the normal filter test runs (from 20 to 30 percent) can be caused by gypsum deposition on the filter.

(c) Sample Analysis. In the sampling programs, analyses for toxic pollutants were performed. Organic toxic pollutants included volatile (purgeable), base-neutral and acid extractable pollutants, total phenols, and pesticides. Inorganic toxic pollutants included metals, cyanide, and asbestos.

The primary method used in screening and verification of the volatiles, base-neutral, and acid organics was gas chromatography (GC) with confirmation and quantification of all priority pollutants by gas chromatography/mass spectrometry (GC/MS). Total phenols were analyzed by the 4-AAP method. GC was employed for analysis of pesticides with limited MS confirmation. The Agency analyzed the toxic heavy metals by either atomic absorption spectrometry (AAS), with flame or graphite furnace atomization with appropriate emission spectrometry and appropriate digestion or by inductively coupled plasma optical emission spectrometry (ICP). Samples were analyzed for cyanides by a colorimetric method, with sulfide previously removed by distillation. Analysis for asbestos was accomplished by microscopy and fiber presence reported as chrysotile fiber count. Analyses for applicable conventional pollutants (TSS and pH) and non-conventional pollutants were accomplished using "Methods for Chemical Analysis of Water and Wastes," (EPA 625/6-74-003).

The high costs, slow pace, and limited laboratory capability for toxic pollutant analyses posed certain difficulties. This cost to analyze each sample for organic toxic pollutants ranges between $650 and $1,700, excluding sampling costs (based upon quotations recently obtained from a number of analytical laboratories). Even with unlimited funding, however, time and laboratory capability would have posed additional constraints. Although efficiency has been improving, when this study was initiated, a well trained technician using the most sophisticated equipment could perform only one complete organic analysis in an eight-hour workday. Moreover, when this rulemaking study began, there were only about 15 commercial laboratories in the United States with sufficient capability to perform these analyses. Currently, there are about 50 commercial laboratories known to EPA which have the capability to perform these analyses, and the number is increasing as the demand for such capability also increases.

In planning data generation for this rulemaking, EPA considered requiring dischargers to perform analyses for toxic pollutants pursuant to Section 308 of the Act. The Agency refrained from using this authority in developing these regulations, except for the self-monitoring program described above for areas under reclamation. It would have required substantial resources and time to train mine operators to conduct the required screening and verification programs and to properly analyze for the presence and quantities of organic compounds and metals. Further, few coal mines presently have the laboratory capability for toxic pollutant analyses. In contrast, the Agency already had such sampling and analytical capabilities.

By sampling and analyzing wastewater at representative facilities throughout the industry, the Agency has gained an accurate assessment of wastewater characteristics while avoiding the imposition of substantial additional burdens on the regulated community.

EPA will continue to seek new data and review these proposed regulations in light of additional data, as required by the Act, and make any necessary revisions.

V. Industry Subcategorization

Variations from plant-to-plant exist in all industries with respect to raw materials or other factors which can influence wastewater characteristics and choice of wastewater treatment technology. EPA has evaluated these differences in the coal mining industry to determine whether, and how, to subdivide it for purposes of today's regulations.

The Agency's previous BPT and NSPS regulations established effluent requirements for three subcategories: coal preparation plants and associated areas, mines exhibiting acid drainage, and mines exhibiting alkaline drainage. For acid and alkaine mine drainage, the effluent requirements were made applicable only to "active mining areas" as defined in the regulations, except when water from active mining areas is commingled with water from other areas. Thus, drainage from surface areas on which reclamation had begun or was completed, as well as drainage from underground mines where active mining operations had ceased, was not subject to the regulations if segregated from active mine drainage. The NSPS regulations established a separate subcategory for surface areas undergoing reclamation, but effluent limitations for that subcategory were reserved pending the collection of additional data.

The prior regulations also accorded special treatment to western coal mines; the BPT limitations did not apply to mines located in six specified states (e.g., 40 CFR 434.32 (a)), and the NSPS requirements created a subcategory for "Western Coal Mines," defined as mines located west of the 100-degree meridian (40 CFR 434.60). NSPS requirements for this subcategory, like those for surface areas under reclamation, were reserved.

On the basis of its review of data collected for today's proposed rules, the Agency has decided to modify the existing subcategorization scheme in several respects.

First, western mines will not comprise a separate subcategory. Data collected by EPA indicate that, although western mines discharge less frequently than facilities located in the midwest and east, the effluent characteristics of discharges considered for regulation from western mines are very similar to discharges from mines in other geographic regions. Therefore, today's proposal would apply to all coal mines wherever located in the United States. (It should be noted, however, that where western mines have been subject to more stringent requirements under NPDES permits, they may, under certain conditions, continue to be subject to those requirements under 40 CFR 122.62(1) and 40 CFR 123.7.

Second, the subcategorization of coal preparation plants and associated areas would be modified for new sources under today's proposal. Under previous regulations, coal preparation plants and their associated areas—e.g., raw materials, refuse disposal storage piles, adjacent haul roads and disturbed areas—were subject to the same effluent limitations, largely because it is common industry practice to combine wastewater from these two sources for treatment. However, as discussed elsewhere in this notice, the Agency has determined that new source—but not existing source—preparation plants should be required to achieve zero discharge of process wastewater pollutants, exclusive of associated area drainage. Consequently, today's proposed NSPS regulations address coal preparation plants and coal preparation plant associated areas separately. Requirements for existing sources, however, will remain unchanged from prior regulations.

Third, with respect to post-mining discharges, the Agency is creating a new subcategory for these discharges, which is further subdivided with respect to

surface and underground areas (see Section VII).

The Agency considered, but ultimately rejected, several other changes to the existing subcategories. Consideration was given to subdividing active mines as surface or underground. Many surface mines are more suited to mobile treatment systems that can be easily installed, operated, dismantled and moved as the mining front progresses. Conversely, at deep mines, fixed or permanent treatment facilities can be installed at the portal for treatment of underground mine drainage. However, this distinction has been rendered academic for purposes of this rulemaking because the levels of toxic metals which the Agency has found in BPT-treated effluents at both surface and deep mines are so low that no further treatment beyond BPT will be required. (It should be noted, however, that under today's proposal, discharges from surface areas will be treated differently than discharge from underground workings for purposes of the catastrophic storm exemption and treatment of post-mining discharges (see Section VIIII).)

The Agency also considered establishing a separate subcategory for anthracite mines. A thorough study was conducted to assess whether these mines exhibit any unique wastewater characteristics. The results indicate that a separate subcategory for anthracite mines is not warranted.

VI. Available Wastewater Control and Treatment Technology

(a) Status of In-Place Technology

BPT regulations for the coal mining industry have been in effect since 1977. The level of treatment required to meet these standards varies somewhat among the industry's subcategories.

(1) Acid Mine Drainage. Mines exhibiting raw acidic drainage generally employ wastewater treatment which includes: chemical precipitation/pH adjustment, aeration, and settling. Many facilities have raw water holding ponds which serve as "equalization basins." These basins reduce variations in flow and pollutant concentrations to provide a more uniform influent to the treatment system. Neutralization and chemical precipitation technology consists of the addition of an alkaline reagent to acid mine drainage to raise the pH to between 6 and 9. This pH change also causes the solubilities of positively charged metal ions to decrease and thus precipitate (leave solution as an insoluble compound). In general, three types of reactions occur as a result of pH adjustment: neutralization, oxidation, and precipitation. The precipitates are, in most cases, metal hydroxides. One of four reagents are commonly used to effect the above reactions: hydrated lime ($Ca(OH)_2$), calcined or quick lime (CaO), caustic soda (NaOH), or soda ash (Na_2CO_3).

Aeration is often accomplished by allowing the water to simply flow or cascade down a staircase-like trough or sluiceway. This causes turbulence that increases oxygen transfer and, therefore, the oxidation reaction. In other cases, the air or oxygen may be supplied by a mechanical type of aerator. The presence of dissolved oxygen supplied by the aerating technique oxidizes ferrous ions causing the formation of essentially insoluble ferric hydroxide ($Fe(OH)_3$). This compound is more easily settled than ferrous hydroxide ($Fe(OH_2$). Temperature, pH, flow, dissolved oxygen content, and initial concentration are all important performance parameters.

The process of sedimentation removes the suspended solids, which includes the insoluble precipitates. Sedimentation can be accomplished in a settling pond or clarifier (a settling tank). The settling pond can be created by excavating a depression. The extent of solids removal depends upon surface area, retention time, flow patterns, settling characteristics of influent suspended solids, climatology, and other operating parameters of a particular installation. A settling pond operates on the principle that, as the sediment-laden water passes through the pond, the particles will settle to the bottom instead of being discharged. Some of the factors affecting the settling velocity of a particle include water viscosity, temperature, and the density, size and shape of the particle. Clarifiers are mechanical settling devices which can be used where insufficient land exists for construction of a pond. Clarifiers operate on essentially the same principles as a sedimentation pond. The most significant advantage of a clarifier is that closer control of operating parameters such as retention time and sludge removal can be maintained, while problems such as runoff from precipitation and short-circuiting can be avoided.

(2) Alkaline Mine Drainage. Mines exhibiting raw alkaline drainage (which account for the majority of U.S. coal mines) have raw wastewaters which are at or above pH 6.0 and contain total iron levels of less than 10 mg/l. Alkaline mine drainage generally requires treatment only for suspended solids removal. Typical treatment may include settling ponds or clarifiers where adequate land is not available for sedimentation ponds. Many alkaline mines require no treatment at all to meet BPT limitations.

(3) Preparation Plants. Typical treatment for preparation plant wastewaters includes sedimentation in a settling pond or clarifier. In addition, many facilities recycle all or a portion of their clarified wastewater for reuse in the preparation plant.

(4) Preparation Plant Associated Areas. Associated areas include coal and refuse storage piles and other areas ancillary or adjacent to the preparation plant. Runoff from these areas can become acidic and often requires neutralization and settling prior to discharge. At many facilities, the preparation plant wastewater is combined with associated area runoff for treatment.

(5) Post-Mining Discharges. Studies performed in support of this rulemaking indicate that post-mining discharges from surface areas under reclamation exhibit levels of toxic metals (when present) very near or at their limit of analytical detection. Iron and manganese in reclamation area wastewaters were detected at levels only slightly above their detection limits. Total suspended solids levels are typically at higher levels than found in active acid or alkaline mine drainage, while pH was always found to be above 6.0 unless drainage is commingled with acidic wastewaters. Toxic organics are not present because no sources of such compounds exist in surface areas under reclamation. These wastewater characteristics suggest treatment by settling in a sedimentation structure. Installation of this technology is already required by OSM regulations (30 CFR 816.42). Data from the studies indicate that settleable solids are consistently reduced in a properly designed and operated pond, whereas wide variation exists in removal of total suspended solids.

Post-mining discharges from underground mines exhibit wastewater characteristics similar to those found in active mine drainage. Thus, current treatment technology for these wastewaters includes BPT technology to control acidity, iron, manganese (if necessary), and total suspended solids.

(b) Control Technologies Considered for Use in This Industry

EPA initially identified a variety of candidate technologies for control of the pollutants discharged by the coal mining industry. These included: flocculant addition, granular media filtration, activated carbon, ion exchange, reverse

osmosis, electrodialysis, ozonation, and sulfide precipitation. Of these additional technologies, only two were found to be potentially feasible and adaptable for this industry's wastewaters: flocculant addition and granular media filtration. Additionally, total recycle was also investigated as an in-process control for preparation plants. Because water is not intentionally introduced in the mining process and must be removed from the mine when encountered, recycle is not an appropriate control technology for mine drainage. A detailed discussion of the reasons for rejecting the other technologies as BAT, BCT or NSPS is presented in the technical Development Document.

(1) Flocculant Addition. This technology involves the addition of chemical coagulants prior to sedimentation ponds, clarifiers, or filter units, to enhance the efficiency of solids agglomeration. EPA has conducted treatability studies which indicate that flocculant addition effectively reduces certain toxic metals (if they are present in substantial concentrations) as well as suspended solids.

(2) Granular Media Filtration. Filtration is used as a suspended solids and metals removal technology. Filter systems are usually located downstream of primary gravity settlers, lime precipitation units, and polymer addition equipment. Filtration is accomplished by the passage of water through a physically restrictive medium with resulting entrapment of suspended particulate matter. Granular media filtration uses a variety of mechanisms including straining, interception, impaction, and adsorption for suspended solids removal. Filters are most often classified by flow direction and type of filter bed. Downflow, multimedia filters would probably find the widest application to both acid and alkaline coal mine wastewaters. In such a system, influent is piped to the top of the filter and by gravity or external pressure percolates through the bed before discharge or further treatment. This technology is proven in both industrial and municipal applications and is cost effective in relation to other technologies when reductions to 10 mg/l TSS or less are required.

(3) Zero Discharge. Recycle and reuse of preparation plant wastewaters is a demonstrated technology in this industry. Data from a survey conducted with the cooperation of the National Coal Association in early 1980 were used to establish the water treatment configurations presently used at coal preparation plants as discussed in Section IV. This procedure identified four general categoris of wastewater treatment practices.

The first category includes an estimated 42 facilities that are currently achieving zero discharge by recycling water from a clarifier and dewatering the thickened solids removed from the base of the clarifier by vacuum or pressure filtration. The filtrate from this process is recycled to the preparation plant.

The second category contains about 181 facilities that operate essentially on a total recycle basis. Because these facilities use sedimentation ponds for treatment, intermittent discharges occur during rainfall periods. Installation of ditching and diking around the ponds to divert storm runoff would be required to achieve total recycle.

The third category contains approximately 65 facilities. These plants use clarifiers and recycle the clean water to the preparation plant.

The fourth category includes approximately 362 facilities which currently discharge at least a portion of their wastewater. Many of these facilities, however, do recycle varying percentages of the treated wastewater for reuse in the plant. Therefore, requirements for achieving total recycle at these facilities vary widely from site-to-site.

Each of these categories includes facilities from a wide variety of geographical and topographical areas.

(c) Cost Development

The costs of applying these technologies were developed through compilation of cost data supplied by equipment manufacturers and by application of standard engineering data and cost estimation techniques.

None of the technologies studied in the development of these regulations is considered to be innovative. All of the in-plant controls described in this preamble and in greater detail in the technical Development Document have either been used or investigated for use in this industry and do not represent major process changes. The end-of-pipe treatment technologies have also been applied in this industry or other industries.

VII. Substantive Changes From Prior Regulations

The regulations proposed today contain several substantive changes with respect to both existing and new source coal mines.

(a) Western Mines. As discussed in Section V, western mines will not be placed in a separate subcategory.

(b) Storm Exemption. Today's proposal would significantly revise the nature and scope of the storm exemption. Under prior regulations, both surface and underground coal mines were exempt from all otherwise applicable requirements if: (1) the treatment facility was designed, constructed, and maintained to contain or treat the 10-year, 24-hour storm volume; and (2) the facility experienced an overflow, increase in volume of a discharge or discharge from a bypass system as a result of a precipitation event (*e.g.*, 40 CFR § 434.22(c)). If these prerequisites were met, then the operator could discharge without regard to effluent quality during the exemption period. The rationale for affording coal mines relief during precipitation events is set forth in detail in the Agency's preamble dated December 28, 1979 (44 FR 76788), and is summarized below.

A sediment pond operates on the principle that as sediment-laden water passes through the pond, the solid particles will settle to the bottom and be trapped. Generally, small particles will settle out more slowly than large solids; therefore, in order to meet a given effluent quality of total suspended solids (TSS), the sediment pond must be designed so that all particles requiring removal will be detained in the pond long enough to settle.

However, a number of site-specific factors make it extremely difficult to predict, on a generic basis, what TSS effluent concentrations can be expected from a sediment pond of a given size and design. The most significant factor is the variation in particle size distribution of the solids entering a sediment pond at different sites, and at the same site, during the course of a storm. A state-of-the-art computer simulation, discussed in the December 28, 1979 preamble, tended to confirm that TSS concentrations in the effluent from optimally designed sediment ponds will vary widely from site-to-site, and at the same site, during a given storm.

For these reasons, the Agency has always considered it appropriate to afford relief from the effluent requirements during storm conditions, provided that the treatment facility is properly designed and operated. However, since the Agency lacked data as to what effluent limitations were feasible during storms, the exemption permitted a discharge without regard to effluent quality.

The Agency has, however, engaged in a data collection effort with industry participation under Section 308 of the Act to characterize the effluent quality during and immediately after storm events from 22 sediment ponds across the country. The results compiled thus far confirm the conclusion of the

previous computer simulation—well designed and operated sediment ponds will achieve consistently low concentrations of settleable (*i.e.*, suspended particles that will settle to the bottom in one hour) solids, but the concentrations of total suspended solids vary widely and unpredictably during and after storms because of the continual variation in particle size distributions of the influent TSS. Accordingly, the Agency proposes to exempt surface area discharges from the TSS limitations during storms provided that the sediment pond is properly designed and maintained, but to require such ponds to achieve a settleable solids limitation during the precipitation event.

The data also demonstrate that concentrations of the toxic metals and iron and manganese in drainage from these areas are at or very near limits of analytical detection which makes national regulation unnecessary. Therefore, properly designed and operated ponds treating surface runoff will also be exempt from the limitations on iron and manganese under the storm exemption proposed today. However, results from the industry pond sampling program described above indicate that a pH within the range of 6 to 9 can be maintained at all times; accordingly, there will be no relief granted from the pH requirement under today's proposed storm exemption.

In contrast to the previous exemption, today's proposed exemption would not apply to discharges from the underground workings at underground coal mines. (The exemption will apply, however, to drainage from the surface area of underground mines.) This is because the flow of mine drainage from underground workings should not be affected by precipitation (in contrast to surface areas), and storm events, therefore, should not pose the potential of inundating properly designed facilities which treat only underground mine drainage.

It should also be noted that there will be no storm exemption granted for new source preparation plants, which will be required to meet zero discharge of process wastewater pollutants. The exemption will apply, however, to new source preparation plant associated areas, whose wastewater is comprised almost exclusively of storm water runoff.

Several technical changes have been made to the design criteria for sedimentation ponds which are prerequisite to obtaining the storm exemption. The prior regulation states that, to obtain an exemption, the facility must be designed to "contain or treat" the 10-year, 24-hour storm volume. The intention of this language was to require the pond to be built to a design capacity—the 10-year, 24-hour storm volume—and to be operated at maximum efficiency during storms. However, the use of the phrase "or treat" has caused unnecessary confusion. The phrase was intended to refer to those few facilities in the coal mining industry which utilized chemical flocculants to enhance settling of solids (as distinct from the common use of lime to neutralize acid drainage, which may also cause flocculation). However, the phrase did not specify to what effluent quality and under what circumstances mine drainage would have to be treated in order to qualify for the exemption. Furthermore, if the facility was required to treat to the effluent limitations under some storm conditions, then there would be no need for the exemption.

Questions have also been raised as to how one designs a flocculation system to treat a volume of water such as the 10-year, 24-hour storm. These systems are designed for a *flow rate* rather than a volume. And again, if the exemption were construed to require that the maximum flow from a 10-year, 24-hour storm be "treated" to the effluent limitations, then an exemption during storms of that magnitude and smaller would be unnecessary.

For these reasons, the phrase "or treat" has been removed from the storm exemption (*e.g.*, § 434.63(c)). The proposed regulations make clear the design criteria for obtaining an exemption: First, the facility must be designed, constructed and operated to *contain* the runoff from the 10-year, 24-hour storm. This is a design volume criterion. Second, the facility must be designed, constructed and operated to achieve the effluent limitations during base-flow (dry weather) conditions. Thus, if a facility has continuously or recurrently failed to achieve the effluent limitations during base-flow conditions due to a deficiency in design, construction or operation, it will not be entitled to an exemption when it rains. On the other hand, it is not intended that a single or occasional violation of the effluent limitations during base-flow conditions due, for example, to malfunctions will preclude an exemption during storm conditions. This requirement provides an effective check to ensure that relief during storms will be accorded only to those operators who optimize their wastewater treatment systems.

Third, the facility must maintain the pH in the effluent between 6 and 9 at all times. As discussed previously, the Agency believes that it is feasible to do so, and an operator who fails to meet this minimal requirement should not obtain the benefit of the storm exemption.

(c) Post-Mining Discharges. The issue of post-mining discharges has been the focus of substantial public comment and litigation in past rulemaking efforts. *Consolidation Coal Company* v. *Costle*, 13 ERC 1289 (4th Cir. 1979); *Commonwealth of Pennsylvania* v. *EPA* (3rd Cir. 1980). Post-mining discharges refer to the discharge of pollution-bearing wastewaters from a mining area after active mining operations cease. The concept applies to both surface an underground mines. A surface mining operation will move from one discrete area to another; as the next area is excavated and mined, the previously mined area will be restored to approximate original contour and reclaimed—that is, seeded, planted, and otherwise restored for suitable post-mining uses. If properly reclaimed, storm runoff from these inactive areas generally will be of acceptable quality; however, in the absence of proper reclamation, runoff from these post-mining areas can contain unacceptable levels of solids and metals, and be highly acidic, during reclamation and for years thereafter.

Historically, post-mining discharges from underground mines have contributed even more seriously than surface mines to water quality degradation. In the past, it was common practice for underground mine operators, particularly in Appalachia, simply to "walk away" from the mine after extracting all recoverable coal, without properly sealing and otherwise closing the mine. The results have been devastating; it has been estimated that 78 percent of all acid mine drainage in Appalachia is caused by post-mining discharges. *Commonwealth* v. *Barnes & Tucker*, 472 Pa. 115, 125, n. 10 (1978). According to a study prepared for EPA in connection with this rulemaking, even if all present and future mines were to incorporate extremely advanced treatment for their waste streams, the water quality of many watersheds would not be substantially improved because of the large contributions of acid drainage from abandoned mines. (Frontier Technical Associates, Inc., *Inventory of Anthracite Coal Mining Operations, Wastewater Treatment and Discharge Practices* (1980)).

As many studies have documented, and as many commenters have pointed out to EPA in prior rulemaking proceedings, successful control of post-mining water pollution is largely dependent on the pre-mining planning and active mining practices employed.

Thus, the mining process is increasingly viewed as integrated from planning to closure rather than as a series of unrelated, independent steps.

In order to address the environmental problems associated with coal mining in a comprehensive fashion, and in keeping with the notion that pre-mining planning and post-mining uses are interdependent, Congress enacted the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* ("SMCRA"). Title V of this statute gave the Office of Surface Mining Reclamation and Enforcement ("OSM") broad authority to regulate specific management practices before, during and after mining. Title IV of that statute addresses the problem of presently abandoned mines by authorizing and funding abandoned mine reclamation projects.

OSM has promulgated comprehensive regulations under Title V of SMCRA to control both surface coal mining and the surface effects of underground coal mining (30 CFR Parts 700 *et seq.*). Implementation of these requirements should lead to significant improvements in mining practices and should serve to adequately control post-mining discharges of water pollution.

On the other hand, it will necessarily be years before empirical data are collected regarding the effectiveness of OSM's program. Further, the establishment of effluent limitations for post-mining discharges will likely encourage coal mine operators to plan and conduct their mining activities in an environmentally sound manner: given the choice between incorporating such practices into the mining plan or incurring the costs of treating polluted mine drainage indefinitely, a rational operator would likely choose the former course.

Thus, effluent limitations guidelines for post-mining discharges should be coordinated with, and complement, the comprehensive regulatory scheme initiated by OSM under SMCRA. This is the clear intent of Congress as reflected in SMCRA, which requires EPA to cooperate "to the greatest extent practicable" with the Secretary of the Interior. 30 U.S.C. 1292(c). SMCRA's legislative history states Congress' view that "it is imperative that maximum coordination be required and that any risk of duplication or conflict be minimized." H.R. Rep. No. 45, 94th Cong., 1st Sess. 134 (1975). The United States Court of Appeals for the Fourth Circuit has held that EPA's regulation of post-mining discharges "must be consistent with the Secretary's enforcement and administration of SMCRA." *Consolidation Coal Company* v *Costle*, 13 ERC 1289, 1299 (4th Cir. 1979).

SMCRA requires coal mines to post bond securing their performance with the requirements of the Act. Under section 509 of SMCRA, liability under the bond remains for at least five years after the last year of augmented seeding, fertilizing, irrigation and other reclamation work (and for at least ten years after that time in those regions of the country where the average annual precipitation is twenty-six inches or less).

Under OSM's implementing regulations, liability under performance bonds continues for as long as necessary to achieve compliance with all requirements of SMCRA and the regulations. Under 30 CFR 816.42, runoff from the disturbed areas of a surface mine must be passed through a sedimentation pond or treatment facility until the disturbed area has been restored, revegetation requirements have been met and the quality of the drainage *without* treatment "meets the applicable State and Federal water quality standard requirements for the receiving stream." Thus, bond will not be fully released until all these conditions are met—that is, until the SMCRA regulatory authority is satisfied that the mine operator has successfully met all reclamation requirements and that the untreated drainage from the area meets Federal and State requirements.

OSM's requirements for underground mines are similar. Surface drainage from the disturbed area must be passed through a sedimentation pond or treatment facility for the same period as required for surface mines. However, drainage from the underground workings must be passed through a sediment pond or treatment facility until either the discharge continuously meets effluent limitations promulgated by OSM without treatment or until the discharge has permanently ceased. 30 CFR 817.42. Thus, bond liability with respect to underground mines will be released only when the SMCRA regulatory authority is satisfied that reclamation of the disturbed surface area is successful, and that the underground workings have been properly sealed and closed.

Given the regulatory scheme that is now being initiated by OSM and by states which have been delegated SMCRA programs by OSM, EPA believes that the goals of both SMCRA and the Clean Water Act are best harmonized at this time by applying effluent limitations until full release of the performance bond under OSM regulations. The release of bond by the appropriate SMCRA authority signifies that the coal mine operator has carried out its responsibilities under SMCRA, and that post-mining pollution problems are therefore abated and can be reasonably expected not to recur.

Present evidence indicates that the most serious potential for post-mining water pollution at surface mines occurs within the first two years after cessation of active mining operations—that is, during the period when reclamation activities may not be complete and the treatment of erosion remains high. This problem is largely resolved, however, by the fact that under SMCRA, liability under the performance bond cannot be released for at *least* five years (and at least ten years in western states) after completion of reclamation work. Thus, under today's proposal, effluent limitations will remain in effect during the period when post-mining water pollution problems are expected to occur at surface coal mines.

It should also be recognized that post-mining discharges at surface mines constitute point sources subject to effluent limitations guidelines primarily because OSM requires the collection of drainage from disturbed areas in sedimentation ponds or treatment facilities. 30 CFR 816.42. This drainage generally would otherwise diffuse non-point source runoff. Thus, once OSM authorizes removal of the sedimentation pond or treatment facility, and the performance bond is fully released, there generally will be no basis to apply EPA effluent limitations because there will generally be no point source.

The Agency recognizes that in isolated instances, runoff from inactive surface mine areas might constitute a point source discharge, even if it is not collected in a wastewater treatment facility. See *Sierra Club* v. *Abston Construction Co.* 14 ERC 1984 (5th Cir. 1980). It is also possible that drainage from surface mine areas once reclamation has been successfully completed may, in rare cases, be acidic or otherwise warrant treatment. However, there is no evidence that point source discharges from surface mines after SMCRA bond release will pose a pervasive or significant water pollution problem on a national scale sufficient to warrant effluent limitations guidelines. It should be emphasized that, in the rare instance where such a point source discharge occurs, the appropriate permitting authority may require treatment under section 402(a)(1) of the Clean Water Act, even in the absence of national guidelines. In such instances, the post-mining effluent limitations proposed today would be appropriate

from the standpoint of wastewater treatment methods and technology.

With respect to underground mines, point source discharges of pollution may occur years after mine closure and sealing, depending on site-specific factors (such as geology and hydrology). However, there is no way to ascertain at this stage how pervasive this problem is likely to be in the wake of SMCRA's requirements. The Commonwealth of Pennsylvania has reported that seals on twenty percent of all its deep mines closed since 1966 have subsequently failed. It is reasonable to anticipate that this figure would decrease as mine closure technology advances and as OSM requirements are implemented.

In short, EPA is aware that OSM requirements do not, and cannot, guarantee that pollution will never occur after bond release. It is impossible to achieve that goal with absolute certainty since, for example, technology does not exist to ensure that a discharge from an underground mine will cease forever. All that can be known at this time is that OSM requirements represent state-of-art management practices, and should reverse the legacy of abandoned mine acid drainage.

However, EPA is initiating a data collection effort which will help to assess systematically: (1) the likelihood and severity of pollution discharges at coal mines after release of SMCRA bond; and (2) the cost-effectiveness and economic impacts of establishing effluent limitations after release of bond. The investigation will have two parts. One part of this study will address the financial ability of currently active coal mines to prepare for the possibility of a catastrophic event involving the hydrological balance of the area. The data for this analysis will consist of responses to a questionnaire mailed to a simple random sample of mines startified by size of production and geographic region. The sample frame for this selection will be the most current MSHA listing of active mines. The questionnaire will be limited to these items: (1) current yearly production; (2) identification of market (contract or spot); (3) estimated remaining life of the mine; (4) estimated total capacity; (5) type and amount of the reclamation bond; (6) type of wastewater treatment technology currently in place; (7) age of the mine; (8) total operating costs; and (9) F.O.B. price per short ton of coal.

At the same time, EPA intends to evaluate the successfulness of SMCRA requirements in preventing post-mining discharges. In consultation with OSM, EPA will identify a set of mines engaged in reclamation activities under OSM regulations and those mines which have undergone reclamation procedures prior to the OSM regulations. The primary focus will be to measure the success of reclamation under OSM regulations in solving water pollution problems without resorting to pollution control technology. This evaluation will consist of an examination of the reclamation procedures used at the mine and whether a discharge occurred afterwards. This sample will be used to estimate the proportion and types of mines which could be expected to fail in attempts to prevent polluting discharges after mining ceases. This evaluation will also investigate monitoring data during and after reclamation and closure activities in order to quantify pollutant discharges. These mines will be administered a questionnaire similar to those described above.

It is expected that this survey will provide the Agency with a basis for assessing the appropriateness and feasibility of establishing national regulations applicable after bond release. This survey is now proceeding and is expected to be completed by July, 1981.

(d) Definition of "New Source Coal Mine". The NSPS regulations promulgated on January 12, 1979, defined a "new source coal mine" as a coal mine which:

(1) was not assigned the applicable Mining Safety and Health Administration (MSHA) identification number under 30 CFR Part 82 *prior to the promulgation date* of these new source performance standards and which, at such date, had no contractual obligation to purchase unique facilities or equipment as defined in Appendix A of 40 CFR Part 6, Guidance on Determining a New Source, or

(2) is determined by the Regional Administrator to constitute a "major alteration" in accordance with 40 CFR Part 6 Appendix A (even if the applicable MSHA identification number is assigned prior to the *promulgation date* of new source performance standards). In making this determination, the Regional Administrator shall take into account the occurrence of one or more of the following events, in connection with the mine for which the NPDES permit is being considered, *after the date of promulgation* of applicable new source performance standards:

(i) A mine operation initiates extraction of a coal seam not previously extracted by that mine;

(ii) a mine operation discharges into a drainage area not previously affected by wastewater discharges from the mine;

(iii) a mine operation causes extensive new surface disruption;

(iv) a mine operation initiates construction of a new shaft, slope, or drift;

(v) a mine operation makes significant capital investment in additional equipment or additional facilities;

(vi) such other factors as the Regional Administrator deems relevant (emphasis added).

Subsequently, in accordance with the Court's decision in *Pennsylvania Citizens Coalition et al.* v. *EPA*, 14 ERC 1545 (3rd Cir. 1980), the Agency amended the definition, changing the reference date for determining new source coal mines to the date of NSPS proposal, rather than the date of final NSPS promulgation. See 45 FR 43413 (June 27, 1980).

In addition, the first portion of the new source test was challenged in *Begay et al.* v. *Costle*, No. 79-1690 (10th Cir.). Petitioners in that case argued that the obtaining of a MSHA identification number bears no necessary relationship to the date of commencement of construction, which is the statutory test for determining new sources. This case was voluntarily dismissed by all parties. However, because reliance on the MSHA criteria has engendered substantial controversy in the past, the Agency believes it prudent not to rely on that test for the purpose of today's proposed new source performance standards. Instead, the first portion of the "new source" test tracks section 306(a)(2) of the statute, and defines a new source coal mine as one which commences construction after the date of publication of today's proposed regulations. Interested persons are referred to the Agency's consolidated permit regulations for elaboration as to when a new source commences construction, 45 FR at 33452, § 122.66(b)(3) (May 19, 1980).

The applicability of today's proposal and the prior new source regulations requires clarification. Generally, the NSPS regulations promulgated on January 12, 1979, apply to all new source coal mines as defined in those regulations (as amended on June 27, 1980) and today's proposed NSPS regulations apply to new sources as defined in this proposal. However, it is theoretically possible for a facility to qualify as a "new source" under both definitions. For example, if a facility did not have any contractual commitments and did not obtain a MSHA identification number before September 19, 1977, but obtained a MSHA number on September 1, 1980, it would fall within the definition of a new source coal mine under the prior NSPS regulations. However, if it did not enter into any construction within the

meaning of today's proposal until after today, then it would also be a new source within the meaning of today's definition. In this situations, the coal mine would be subject to today's proposed NSPS requirements, rather than those promulgated on January 12, 1979. By definition, the mine would qualify as a new source under today's proposal, and it will not suffer any prejudice by being subject to these NSPS requirementrs since it has not entered into any construction prior to today.

If a mine obtained a MSHA number prior to September 19, 1977, then under the prior NSPS regulation it qualified as an existing source; however, in the unlikely event that that mine had not commenced construction until after today, then it would qualify as a new source under today's definition. In this case, the facility will also be treated as a new source subject to today's proposed NSPS requirements, since, by definition, it will not suffer any prejudice as a result of the changed definition.

VIII. BAT Effluent Limitations

The factors considered in assessing best available technology economically achievable (BAT) include the age of equipment and facilities involved, the process employed, process changes, non-water quality environmental impacts (including energy requirements), and the costs of application of such technology (Section 304(b)(2)(B)). In general, the BAT technology level represents, at a minimum, the best economically achievable performance of plants of various ages, sizes, processes or other shared characteristics. Where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may include process changes or internal controls, even when not common industry practice.

The statutory assessment of BAT considers costs, but does not require a balancing of costs against effluent reduction benefits (see *Weyerhaeuser* v. *Costle, supra*). In developing the proposed BAT, however, EPA has given substantial weight to the reasonableness of costs. The Agency has considered the volume and nature of discharges before and after application of BAT, the general environmental effects of the pollutants, the technical feasibility of implementing the technology, and the costs and economic impacts of the candidate pollution control levels.

The Agency considered a number of options for regulation of existing sources subject to the BAT requirement and new sources subject to the NSPS requirement. The BAT options are detailed below. New source options are discussed in Section X.

(a) BAT Options Considered

(1) Option One—Require effluent limitations equivalent to those promulgated under BPT. For acid drainage mines and coal preparation plants and associated areas the limitations are based on the application of neutralization, aeration, and settling technologies. For alkaline mines and reclamation areas, limitations are based upon application of settling technology.

Post-mining discharge limitations and the modified storm exemption discussed in Section VII would also apply here.

(2) Option Two—Require compliance for active mine drainage and preparation plants and associated areas wastewater with effluent limitations based upon flocculant addition technology as an end-of-pipe treatment supplementing existing technology.

Post-mining discharge limitations and the modified storm exemption discussed in Section VII would also apply here.

(3) Option Three—Require effluent limitations based on the application of granular media filtration technology as an end-of-pipe treatment after BPT for active mining area and coal preparation plant wastewaters.

Post-mining discharge limitations and the modified storm exemption discussed in Section VII would also apply here.

(4) Option Four—Require no discharge of process wastewater pollutants from existing preparation plants, with one of the above options selected for mine drainage and coal preparation plant associated area runoff. Associated area drainage, which includes runoff from coal and refuse storage piles and other areas adjacent to the preparation plant, would be segregated from the preparation plant water circuit for separate treatment. Total recycle of preparation plant circuit water would be necessary, with ditching or diking installed around the treatment facilities to divert storm and other surface runoff. Associated area drainage would have to be neutralized and settled in a separate facility. The modified storm exemption discussed in Section VII would apply to the associated area drainage treatment system but not to the preparation plant water circuit.

(b) BAT Selection and Decision Criteria. EPA has selected Option One as the basis for proposed BAT effluent limitations. This conclusion is based on four factors: (1) the toxic metals were found at levels very near or at concentrations considered to be the detection limit by state-of-the-art analytical techniques; (2) treatability studies, pilot plant studies, and statistical analyses indicated very low, if any, additional reductions of toxic metals are achievable beyond BPT levels; (3) it is infeasible to implement the BAT candidate technologies throughout the industry based upon by technical and cost considerations (*e.g.*, providing power, access, and security for filtration water treatment of remote discharges in Appalachia); and (4) toxic organics that were detected in BPT—treated effluents occurred at levels too low to effectively treat, were uniquely related to only a few facilities or were attributable to sampling or analytical contamination.

In the sampling programs conducted, toxic metals appeared in BPT-treated effluent at concentrations of 0.2 mg/l and above in only 15 of 1,755 toxic metal analyses and at only nine of 74 facilities sampled. Furthermore, each metal was detected at these concentrations at very few mines, thus indicating that national regulations are unwarranted. It is recognized that a metal may occasionally be present in high concentrations. For example, zinc was detected 11 times at concentrations of 0.5 mg/l and above (all 11 times at one of the 74 facilities sampled). Concentrations might be relatively high in treated wastewaters from areas where zinc was deposited simultaneously with the plant organisms during coal formation or as a mineral in surrounding strata. In this event, permit writers have the authority to establish a specific limitation for the particular pollutant in question. The Development Document presents detailed information on the frequency of occurrence and concentrations of toxic pollutants in raw and treated wastewaters in this industry.

To assess the effectiveness of certain technologies in reducing toxic metal pollutants, the Agency instituted a number of treatability studies at various mine sites. Technologies investigated include flocculant addition, granular media filtration, carbon adsorption, ion exchange, and reverse osmosis. In general, these treatment options showed effective reductions of toxic metals concentrations when these species were introduced as soluble salts (e.g., $CuCl_2$ or $Zn(NO_3)_2$). This procedure is termed "spiking." Spiking was performed because it was not possible to find BPT-treated mine water with enough naturally occurring toxic metals in quantities sufficient to perform meaningful treatability studies. When BPT-treated wastewater was used as influent to the pilot treatment unit with no spiking solutions added, the metals reductions achieved were marginal and

could not be quantified with precision because the influent levels were so near the detection limits.

As a result of the above factors, the Agency has selected Option One as the appropriate alternative for the BAT regulations.

Option Four, for existing preparation plants, was not selected because of the high retrofit expenditures ($291 million capital, $52.6 million annual; 1980 dollars) and small additional pollutant removals achievable.

IX. BCT Effluent Limitations

The 1977 amendments added Section 301(b)(4)(E) to the Act, establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional polutants are those defined in Section 304(b)(4)—BOD, TSS, fecal coliform, and pH—and any additional pollutants defined by the Administrator as "conventional." On July 30, 1978, EPA designated oil and grease as a conventional pollutant (44 FR 44501).

BCT is not an addtional limitation; rather it replaces BAT for the control of conventional pollutants. BCT requires that limitations for conventional pollutants be assessed in light of a new "cost-reasonableness" test which involves a comparison of the cost and level of reduction of conventional pollutants from the discharge of publicly owned treatment works (POTW) to the cost and level of reduction of such pollutants from a class or category of industrial sources. As a part of its review of BAT for certain "secondary" industries, the Agency has promulgated a methodology for this cost test (44 FR 50732, August 29, 1979). The Agency compares the costs and levels of removal in a subcategory with those of an "average" POTW with a flow of 2 mgd. If the costs per pound of removal in the industrial subcategory are equal to or less than the cost per pound to the POTW ($1.51 per pound; 1979 dollars), then the costs are considered reasonable.

As discussed in Section VIII, the Agency has determined that BAT technology is equivalent to BPT for the coal mining industry. The technologies considered for treatement of conventional pollutants are the same as those considered for treatment of toxic pollutants. Accordingly, by definition, BCT for this industry meets the BCT cost test because there is no incremental cost to remove conventional pollutants beyond BPT.

X. New Source Performance Standards (NSPS)

Under Section 306 of the Act, new source performance standards (NSPS) are to be based on application of the best available demonstrated technology. New mining facilites have the opportunity to implement the best and most efficient coal mining processes and wastewater treatment technologies. Congress, therefore, directed EPA to consider the best demonstrated process changes and end-of-pipe treatment technologies capable of reducing pollution to the maixmum extent feasible.

(a) NSPS Options Considered. The Agency considered the following NSPS options: [3]

(1) Option One—Require NSPS in each subcategory to be based on BPT technology.

(2) Option Two—Require achievement of performance standards based on flocculant addition to supplement BPT treatment for mine drainage and preparation plant and associated area drainage.

(3) Option Three—Require achievement of performance standards based on granular media filtration as end-of-pipe treatment to existing technology for mine drainage and preparation plant and associated area drainage, as per BAT Option Three.

(4) Option Four—Require no discharge of process wastewater pollutants from new source preparation plants, with one of the above options selected for mine drainage and preparation plant associate areas. Associated area drainage would be segregated from the preparation plant process wastewater. Under this option, no storm exemption is provided for the coal preparation plant water circuit.

(b) NSPS Selection and Decision Criteria. EPA has selected Options One and Four as the basis for proposed new source performance standards. The rationale for selecting Option One is identical to that described in Section VIII, and the reader is referred there for additional detail. EPA has selected Option Four as the basis for NSPS in the preparation Plant subcategory because zero discharge is a demonstrated technology for these facilities. Many existing facilities are practicing total recycle of preparation plant wastewaters. Further, this option is feasible for new sources, which can plan wastewater treatment and management practices at the design stage, thereby avoiding costly retrofit which would be required by the majority of existing sources.

[3] Options One, Two, and Three include post-mining discharge limitations and the modified storm exemption as discussed in Section VIII.

XI. Best Management Practices

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" ("BMP's") to control "plant site runoff, spillage or leaks, sludge or waste disposal, and drainge from raw material storage." However, the Administrator may prescribe BMP's only where he finds that they are needed to prevent "significant amounts" of toxic or hazardous pollutants from entering navigable waters.

In contrast to this limited authority, Congress, through SMCRA, directed OSM to prescribe a range of management practices for coal mines. SMCRA and OSM's implementions regulations can be viewed as a BMP program tailored for coal mines, reflecting Congress' awareness that a comprehensive regulatory scheme is needed to remedy the host of environmental degradations caused by past mining practices.

Therefore, it is not EPA's intention at this time to propose BMP's for coal mining under the Clean Water Act. Rather, it is anticipated that today's proposed regulations governing point source discharges, coupled with OSM's program, will provide a coherent and complementary framework for the regulation of this industry. The two agencies have worked closely on this rulemaking and related rulemaking by OSM to ensure the duplication and conflict in federal regulation is minimized. If, in the future, it appears the BMP's under the Clean Water Act are necessary to supplement OSM's program, EPA will propose them as appropriate.

XII. Variances and Modifications

Both BAT and BCT effluent limitations are subject to EPA's "fundamentally different factors" variance. See *E. I. du Pont de Nemours and Co. v. Train* 430 U.S. 1112 (1977), *Weyerhaeuser Co.* v. *Costle, supra.* This variance recognizes factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973–1976 industry regulations, it will now be included only by reference in the coal mining and other industry regulations. See the final NPDES regulations, 40 CFR Part 125, Subpart D, 44 FR 32854, 32893 (June 7, 1979), for the text and explanation of the "fundamentally different factors" variance.

The BAT limitations in these regulations also are subject to EPA's "fundamentally different factors" variance. BAT limitations for nonconventional pollutants are subject to modifications under Sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. See 43 FR 40659 (Sept. 13, 1978).

New source performance standards are not subject to modification through EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *du Pont* v. *Train*, *supra*.

XIII. Upset and Bypass Provisions

An issue of recurrent concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "by pass." An upset, sometimes called an "excursion," is unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations guidelines is necessary because such upsets will inevitably occur due to limitations in even properly operated control equipment. Because technology-based limitations are to require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have divided on the question of whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion.

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance in emergency situations during which waste treatment facilities are circumvented. Bypass provisions have, in the past, been included in NPDES permits.

EPA has determined that both explicit upset and bypass provisions should be included in NPDES permits and has promulgated NPDES regulations which include upset and bypass permit provisions. See 45 FR 33448, § 122.60(g) and (h) (May 19, 1980). The upset provision establishes an upset as an affirmative defense to prosecution for violation of a technology-based effluent limitation. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage.

The Agency has received several inquiries concerning the relationship between the general upset and bypass provisions set forth in the consolidated permit regulations and the storm exemption contained in the BPT and NSPS regulations for coal mining. The storm exemption discussed in Section VII of this notice supersedes the generic upset and bypass provisions with respect to precipitation events; that is, an operator wishing to obtain relief from effluent requirements due to precipitation events must comply with the prerequisites of the rainfall exemption provision. However, the upset and bypass provisions are available to coal mines in all other applicable situations.

XIV. Pollutant Parameter Selection

The revised Settlement Agreement described in Sections I and II of this notice authorizes the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories. Data collected and received by EPA were used in making decisions not to regulate specific toxic pollutants. EPA has not selected any toxic pollutants for control by national regulation in discharges from the coal mining industry. Specific effluent limitations are being established for TSS, pH, iron, manganese, and settleable solids.

Paragraph 8(a)(iii) of the revised Settlement Agreement allows the Adminsitrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods. This provision includes pollutants not detected at levels above EPA's nominal detection limit (10 ug/1) for toxic organics and those pollutants whose presence is due to contamination during sampling, sample transport, and analysis. For coal mining, sixty-seven toxic organic pollutants were not detected. Ten toxic organic pollutants are believed to be present due to sampling or analytical contamination. Paragraph 8(a)(iii) also allows the Adminsitrator to exclude from regulation any pollutant detected in only a small number of sources within the category or subcategory and uniquely related to only those sources. Twenty-three toxic organics were detected in the effluent of only one or two mines and always below 10 ug/1.

Paragraph 8(a)(iii) allows for the exclusion of pollutants which were detected in amounts too small to be effectively reduced by technologies known to the Administrator. Fourteen of the toxic organics were detected in amounts too small to be effectively reduced. Of the thirteen toxic metals, five (antimony, beryllium, cadmium, silver and thallium) were detected in the effluents of two or more mines at concentrations virtually at the detectable limits. Therefore, technologies more advanced than BPT are not known to the Adminsitrator which effectively reduce the concentration of these pollutants in the effluent.

Paragraph 8(a)(iii) also provides for exclusion of pollutants if these pollutants are already effectively controlled by technologies upon which other effluent limitations and guidelines are based. Eight toxic metal pollutants (arsenic, chromium, copper, lead, mercury, nickel, selenium, and zinc) were excluded from BAT regulation under this criterion. As discussed in Section VIII, these metals are generally found in BPT-treated effluents at such low concentrations that BPT technology effectively controls these metals when present in wastewater.

Cyanide was detected in six treated effluents, although at or below the accepted level of analytical precision. Therefore, additional treatment for cyanide reduction cannot be evaluated. Chrysotile asbestos was detected at concentrations considered to be slightly above background levels. At the levels reported, the analytical method used to measure asbestos is imprecise. As the method continues to be refined, the Agency will, if necessary, re-examine the levels of chrysotile asbestos in coal mining wastewaters and determine whether regulation is necessary.

The 114 organic pollutants excluded from regulation are listed in Appendices B, C, D and E of this notice.

XV. Nonwater Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts (including energy requirements) of its regulations. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption.

While it is difficult to balance pollution problems against each other and against energy utilization and economic constraints, EPA is proposing regulations which it believes best serve competing national goals.

This proposal was circulated to and reviewed by EPA personnel responsible for nonwater quality environmental programs. The following are the nonwater quality environmental aspects

(including energy requirements) associated with the proposed regulations.

Air Pollution. Imposition of BAT, BCT, and NSPS standards will not create any additional air pollution problems.

Solid Waste. Some of the solid waste production associated with the coal mining industry is generated by current treatment systems installed primarily to treat wastewater. Imposition of BAT and NSPS standards will not measurably increase the solid waste production for the industry. BAT standards will add no additional solid waste since BAT limitations would be equivalent to the BPT requirement in all subcategories. The Agency is proposing requirements for areas under reclamation and for sites where mining has ceased; however, sediment control for these areas is already required by other federal regulations, and thus no additional solid waste would result.

The same is true for NSPS, with the exception of the coal preparation plant subcategory. The Agency is proposing that new source preparation plants will be required to achieve zero discharge of process wastewater pollutants. The additional solid waste production associated with implementation of zero discharge would be minimal. This is demonstrated by examining concentrations of suspended solids at different points in the preparation plant treatment system. The average concentration of total suspended solids in the raw wastewater is 34,100 mg/l. BPT technology reduces this to 35 mg/l or less. Therefore, the vast majority of solid waste would be generated from the BPT requirement, with relatively small additional amounts produced by the NSPS requirement.

On October 21, 1980, the President signed into law the Solid Waste Disposal Act Amendments of 1980 which amend the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 4901 *et seq.* Section 2(c) of this law transfers to the Secretary of the Interior exclusive responsibility for implementing the requirements of Subtitle C of RCRA with respect to coal mining wastes or overburden for which a surface coal mining and reclamation permit has been issued or approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Within 90 days after enactment of the amendments, the Administrator of EPA is directed to review regulations promulgated by the Secretary under SMRCA and to determine whether these regulations are adequate to implement Subtitle C of RCRA. The Secretary is directed to promulgate regulations which may be necessary to carry out this mandate, after obtaining the Administrator's concurrence. In addition, the amendments provide that any permit covering coal mine wastes or overburden under SMRCA shall be deemed a permit issued under section 3005 of RCRA with respect to the treatment, storage, or disposal of such wastes or overburden (Sec. 11). The amendments exempt coal mine wastes and overburden from regulations promulgated by the Administrator under Subtitle C of RCRA (Sec. 11).

As a result of these amendments, the coal mining industry will incur no costs under existing Subtitle C requirements with respect to the treatment, storage and disposal of coal mining wastes and overburden. Further, it is too early to know whether the requirements of SMRCA will be considered adequate to carry out the goals of RCRA, or whether it will be necessary for the Secretary to promulgate additional regulations. This is particularly the case since a determination as to whether these wastes are hazardous within the meaning of Subtitle C has not yet been made, and such determinations may vary from site to site. Consequently, the costs, if any, of complying with solid waste disposal requirements beyond those presently required under SMRCA are uncertain, and have not been included in the Agency's baseline economic analysis for this industry.

Energy Requirements. Achievement of BAT and NSPS effluent limitations will not result in a significant net increase in energy requirements because these standards are equivalent to BPT effluent limitations, with the exception of the NSPS requirement of zero discharge for coal preparation plants. The zero discharge standard may mandate installation of additional pump equipment and, in a few cases, chemical addition equipment to provide recycle water of adequate quality to be reused in the plant. However, the energy requirements for recycle pump operation, for instance, will be offset to a great extent by decreased fresh-water-makeup pump energy requirements. Thus, the incremental amount of energy associated with these techniques, beyond the BAT requirement, is insignificant.

XVI. Costs and Economic Impact

Executive Order 12044 requires EPA and other agencies to perform a Regulatory Analysis of certain regulations (43 FR 12661, March 23, 1978). EPA's proposed regulations for implementing Executive Order 12044 require a Regulatory Analysis for major significant regulations involving annual compliance costs of $100 million or meeting other specified criteria (43 FR 298891, July 11, 1978). Where these criteria are met, the proposed regulations require EPA to prepare a formal Regulatory Analysis, including an economic impact analysis and evaluation of regulatory alternatives. The proposed regulations for the coal mining industry do not meet the proposed criteria which require a formal Regulatory Analysis. Nonetheless, this proposed rulemaking satisfies the formal Regulatory Analysis requirements.

EPA's impact assessment entitled *Economic Impact Analysis of Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Coal Mining Point Source Category*, assesses the impact of compliance costs in terms of facility closures, production changes, price changes, employment changes, local community impacts, and balance of trade effects. Controls for new mines and preparation plants and existing mines and preparation plants were examined.

The estimated economic impact of the regulatory alternatives considered for this rulemaking were obtained through the simulation of supply and demand in the spot and contract coal markets in 1984. Regional supplies and costs are forecast for 1984 in the steam (spot and contract) and metallurgical coal markets, incorporating differentials in coal prices due to differing production, transportation and coal utilization costs. These estimates are used in the coal market simulation model to evaluate the economic impact of the alternatives in 1984. The impact is measured as the difference in levels of production, employment, wages and investment requirements for pollution control between the base case and alternative levels of treatment. The base case incorporates the compliance costs of the BPT limitations. The economic impacts associated with the promulgated BPT guidelines were analyzed previously (See 42 FR 21380) and are not discussed in the analysis.

Two alternative treatment levels were examined for further control at existing and new source mines: flocculant addition and granular media filtration. It is estimated that the maximum required investment in pollution control equipment with flocculant addition would be $95 million. However, the analysis indicates that there would not be any price changes in the spot or contract coal markets, nor would there be a decrease in production of coal. Thus, no mine closures, employment losses or community impacts are predicted for this option. The analysis

shows that the maximum required investment with granular media filtration will be $301 million. The direct effects of this control technology concentrate the negative impact of the filtration option in Northern Appalachia. Production is estimated to decline by 3 percent with concomitant employment losses of about 1,600 jobs result from 53 mine closures. The ultimate increase in the annual cost of energy would be $332 million (1978 dollars). The Agency has elected to propose limitations which require no additional treatment technology to that already required by BPT, and therefore no additional costs or impacts are projected to result from this regulation.

No additional costs or impacts are expected due to the post-mining discharge limitations for acid and alkaline mines under the amended BPT regulations, the BAT regulations and NSPS regulations. OSM already requires that when mine drainage occurs at an inactive mine it must be treated until the discharge ceases or meets OSM limitations. The OSM limitations are identical to EPA's proposed limitations. Therefore, any capital and operating costs resulting from compliance with the proposed EPA regulation are already incurred as a result of compliance with OSM regulations. There will not be any incremental impact for this extended coverage.

The BAT limitations proposed today for existing source coal preparation plants and associated areas do not require any additional treatment technology beyond that already needed to meet promulgated BPT standards. Therefore, no additional costs or impacts are projected to result from this proposal for these existing sources.

However, the requirement of no discharge for new source coal preparation plants is different than that currently required for existing sources. It is estimated that these requirements will potentially increase the cost of coal cleaning by up to 3.5 percent. No change is expected in the demand for coal preparation as a result of requiring zero discharge for new coal preparation plants. Further, even in the absence of the Clean Water Act, new source preparation plants generally would design total recycle systems for cost and management reasons. The zero discharge requirement is not expected to cause a decrease in the number of plants entering the industry in the near term.

XVII. Relationship to NPDES Permits

The BAT, BCT, and NSPS limitations in these regulations will be applied to individual coal mines and preparation plants through NPDES Permits issued by EPA or approved state agencies, under section 401 of the Act. Upon the promulgation of final regulations, the numerical effluent limitations must be applied in all federal NPDES permits thereafter issued to coal mining direct dischargers. Permits issued by states with NPDES authority may contain more stringent limitations than those proposed here.

On September 25, 1979, EPA and OSM Published a proposed Memorandum of Understanding ("MOU") to coordinate the issuance and enforcement of NPDES permits and permits issued under SMCRA (45 FR 55322). Public comments on the proposed MOU have been received and the agencies expect to sign a final MOU, and propose implementing regulations, in the future.

The previous section discussed the availability of variances and modifications from national limitations, but there are other issues relating to the interaction of these regulations and NPDES permits. One matter which has been subject to different judicial views is the scope of NPDES permit proceedings in the absence of effluent limitations guidelines and standards. Under currently applicable EPA regulations, states and EPA Regions issuing NPDES permits prior to promulgation of these regulations and before June 30, 1981, must include a "re-opener clause," providing for permits to be modified to incorporate "toxics" regulations when they are promulgated. See 40 CFR 122.62(c), 45 FR 33449 (May 19, 1980). At one time, EPA had a policy of issuing short-term permits, with a view toward issuing long-term permits only after promulgation of these and other BAT regulations. While EPA continues to encourage EPA and State permit writers to issue short-term permits to primary industry dischargers until June 30, 1981, EPA has changed its policy to allow more flexibility. See 40 CFR 122.62(c), 122.64, 45 FR 33340 (May 19, 1980). EPA permit writers may issue long-term permits to primary industries even if guidelines have not yet been promulgated provided the permits require BAT and BCT and contain re-opener clauses. The appropriate technology levels and limitations will be assessed by the permit issuer on a case-by-case basis, on consideration of the statutory factors. See *U.S. Steel Corp. v. Train*, 556 F. 2d 822, 844, 854 (7th Cir. 1977). In these situations, EPA documents and draft documents (including these proposed regulations and supporting documents) are relevant evidence, but not binding, in NPDES permit proceedings. See 45 FR 33290 (May 19, 1980).

The promulgation of these regulations does not restrict the power of any permit-issuing authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, the fact that these regulations do not control a particular pollutant does not preclude the permit issuer from limiting that pollutant on a case-by-case basis, when necessary to carry out the purposes of the Act. In addition, to the extent that state water quality standards or other provisions of state or federal law require limitation of pollutants not covered by these regulations (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

With respect to monitoring requirements, the Agency is considering establishing a regulation requiring permittees to conduct additional monitoring when they violate permit limitations. The provisions of such monitoring requirements will be specific for each permittee and may include analysis for some or all of the toxic pollutants and the use of biomonitoring techniques. The additional monitoring is designed to determine the cause of the violation, necessary corrective measures, and the identity and quantity of toxic pollutants discharged. Each violation will be evaluated on a case-by-case basis by the permitting authority. A more lengthy discussion of this requirement appears at 45 FR 33290 (May 19, 1980).

One additional topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing these regulations. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. EPA has exercised and intends to exercise that discretion in a manner which recognizes and promotes good faith compliance efforts and conserves enforcement resources for those who fail to make good faith efforts to comply with the Act.

XVIII. Solicitation of Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that any deficiencies in the record supporting this proposal be pointed to with specificity and that suggested revisions or corrections be supported by data or other relevant information.

For the purpose of clarity, the entire BPT regulation is being published as part of today's notice. However, a substantial portion of the BPT

requirements remain unaffected by today's proposal and are not being reproposed today; accordingly, comments addressed to these requirements are not appropriate to this rulemaking. EPA solicits comments only on those portions of BPT which change the prior BPT regulation—that is, the proposals covering post-mining discharges, the revised storm provision and the inclusion of western mines.

EPA is particularly interested in receiving comments and data on the following issues:

(1) Industry and other sources are invited to submit any data from pilot or commercial scale studies of the performance of flocculant addition or granular media filtration, particularly on the effectiveness of toxic metals removal. Although the Agency has undertaken a variety of treatability studies to address these technologies, EPA is aware of the possible variation of technology performance given the diverse characteristics of raw wastewaters extant in the coal mining industry.

(2) The Agency solicits comments on its proposal to establish national regulations until bond release, and on the appropriateness and necessity of establishing national regulations for existing and new mines beyond bond release.

(3) The Agency invites comments concerning the proposed requirements covering storm events.

XIX. Small Business Administration (SBA) Financial Assistance

There are two SBA programs that can be important sources of financing for the Coal Mining Point Source Category. They are the SBA's Economic Injury Loan Program and the Pollution Control Financing Bond Guarantees.

Section 8 of the Clean Water Act Amendments of 1977 amended section 7 of the Small Business Act, 5 U.S.C. 636, to authorize the SBA through its Economic Injury Loan Program to make loans to assist small business concerns in effecting additions to or alterations in equipment, facilities, or methods of operation in order to meet water pollution control requirements under the CWA if the concern is likely to suffer a substantial economic injury without such assistance. This program is open to small business firms as defined by the Small Business Administration. Loans can be made either directly by SBA or through a bank using an SBA guarantee. The interest on direct loans depends on the cost of money to the Federal Government and is currently set at 8¼ percent. Loan repayment periods, depending on the ability of the firm to repay the loan may extend up to thirty years but will not exceed the useful life of the equipment.

Firms in the Coal Mining Point Source Category may be eligible for direct or indirect SBA loans. For further details on this Federal loan program write or telephone any of the following individuals at EPA headquaters or in the ten EPA regional offices:

Headquarters—Ms. Frances Desselle, Office of Analysis and Evaluation (WH–586), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 426–7874.

Region I—Mr. Ted Landry, Enforcement Division, Environmental Protection Agency, J.F. Kennedy Federal Building, Boston, MA 02203, Telephone: (617) 223–5061.

Region II—Mr. Gerald DeGartano, Enforcement Division, Room 432, Environmental Protection Agency, 26 Federal Plaza, New York, NY 10007, Telephone: (212) 264–4711.

Region III—Mr. Bob Gunter, Environmental Protection Agency, Curtis Building, 3IR20, 6th and Walnut Streets, Philadelphia, PA 19106, Telephone: (215) 597–2564.

Region IV—Mr. John Hurlebaus, Grants Administrative Support Section, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, GA 30308, Telephone: (404) 881–4491.

Region V—Mr. Arnold Leder, Water and Hazardous Material, Enforcement Branch, Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60605, Telephone: (312) 353–2114.

Region VI—Ms. Jan Horn, Enforcement Division, Environmental Protection Agency, 1st International Building, 1201 Elm Street, Dallas, TX 75270, Telephone: (214) 729–2760.

Region VII—Mr. Paul Walker, Water Division, Environmental Protection Agency, 1735 Baltimore Avenue, Kansas City, MO 64108, Telephone: (816) 374–2725.

Region VIII—Mr. Gerald Burke, Office of Grants, Water Division, Environmental Protection Agency, 1860 Lincoln Street, Denver CO 80203, Telephone: (303) 327–4579.

Region IX—Ms. Linda Powell, Permits Branch, Enforcement Division (E–4), Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Telephone: (415) 556–3450.

Region X—Mr. Danforth Bodien, Enforcement Division, Environmental Protection Agency, 1200 6th Avenue, Seattle, WA 98101, Telephone: (206) 442–1352.

Interested person may also contact the Assistant Regional Administrators for Financial Assistance in the Small Business Administration Regional offices for more details on federal loan assistance programs. For further information, write or telephone any of the following individuals:

Region I—Mr. George H. Allen, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 60 Batterymarch, 10th Floor, Boston, MA 02110, Telephone: (617) 223–3891.

Region II—Mr. John Axiotakis, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 26 Federal Plaza, New York, NY 10007, Telephone: (212) 264–1452.

Region III—Mr. David Malone, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 231 St. Asaphs Road, West Lobby, Suite 646, Bala Cynwyd, PA 19004, Telephone: (215) 596–5906.

Region IV—Mr. Merritt Scoggins, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 1375 Peachtree Street N.E., Atlanta, GA 30367, Telephone: (404) 881–2009.

Region V—Mr. Howard Bondruska, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 219 South Dearborn Street, Chicago, IL 60604, Telephone: (312) 353–4534.

Region VI—Mr. Till Phillips, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 1720 Regal Row, Suite 230, Dallas, TX 75202, Telephone: (214) 767–7873.

Region VII—Mr. Richard Whitley, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 911 Walnut Street, 23rd Floor, Kansas City, MO 64016, Telephone: (816) 374–3210.

Region VIII—Mr. James Chuculate, Assistant Regional Administrator for Financial Assistance, Small Business Administration, 1405 Curtis Street, Executive Tower Building, 22nd Floor, Denver, CO 80202, Telephone: (303) 837–3686.

Region IX—Mr. Larry J. Wodarski, Deputy Assistant Regional Administrator for Financial Assistance, Small Business Administration, 450 Golden Gate Avenue, San Francisco, CA 94102, Telephone: (415) 556–7782.

Region X—Mr. Jack Welles, Regional Administrator, Small Business Administration, 710 2nd Avenue, Dextor Horton Bldg., 5th Floor, Seattle, WA 98104, Telephone: (206) 442–1455.

In addition to the Economic Injury Loan Program, the Small Business Investment Act, as amended by P.L. 94–305, authorizes SBA to guarantee the payments on qualified contracts entered into by eligible small businesses to acquire needed pollution facilities when the financing is provided through tax-exempt revenue or pollution control bonds. This program is open to all eligible small businesses as defined by the Small Business Administration. Bond financing with SBA's guarantee of the payments makes available long term (20–30 years), low interest (7 percent) financing to small businesses. For further details on this program write to the SBA, Pollution Control Financing Division, Office of Special Guarantees, 1815 North Lynn Street, Magazine Bldg., Rosslyn, VA 22209, (703) 235–2900.

Dated: December 31, 1980.

Douglas M. Costle,

Administrator.

Appendix A—Abbreviations, Acronyms and Units Used in This Notice

Act—The Clean Water Act.

Agency—The United States Environmental Protection Agency.

BADT—Best Available Demonstrated Technology under Sections 304(c) and 306 of the Act.

BAT (BATEA)—The Best Available Technology Economically Achievable, under Section 304(b)(2)(B) of the Act.

BCT (BCPCT)—The Best Conventional Pollutant Control Technology, under Section 304(b)(4) of the Act.

BMP—Best Management Practices under Section 304(e) of the Act.

BOD—Biochemical Oxygen Demand.

BPT (BPCTCA)—The Best Practicable Control Technology Currently Available, under Section 304(b)(1) of the Act.

CPE (BFR)—Catastrophic Precipitation Event.

CWA—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended by the Clean Water Act of 1977 (Pub. L. 95–217).

FWPCA—Federal Water Pollution Control Act.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

NSPS—New Source Performance Standards under Section 306 of the Act.

OSM—Department of Interior, Office of Surface Mining Reclamation and Enforcement.

POTW—Publicly Owned Treatment Works.

PSES—Pretreatment Standards for Existing Sources of indirect discharges, under Section 307(b) of the Clean Water Act.

PSNS—Pretreatment Standards for New Sources of indirect discharges, under Section 307(b) and (c) of the Clean Water Act.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94–580) of 1976, Amendments to Solid Waste Disposal Act.

SMCRA—Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*).

TSS—Total Suspended Solids.

UNITS g/kg—grams per kilogram; gpd—gallons per day; mgd—million gallons per day; mg/l—milligram(s) per liter; ug/l microgram(s) per liter; ml/l—milliliters per liter.

Appendix B—Priority Organics Not Detected in Treated Effluents of Screening and Verifcation Samples

1. acenaphthene
2. acrolein
3. acrylonitrile
4. benzidine
5. carbon tetrachloride (tetrachloromethane)
6. chlorobenzene
7. 1,2,4,-trichlorobenzene
8. hexachlorobenzene
9. 1,1-dichloroethane
10. 1,1,2-trichloroethane
11. chloroethane
12. bis(chlormethyl) ether
13. bis(2-chloroethyl) ether
14. 2-chloroethyl vinyl ether (mixed)
15. 2-chloronaphthalene
16. 2,4,6-trichlorophenol
17. parachlorometa cresol
18. 2-chlorophenol
19. 1,3-dichlorobenzene
20. 2,4-dichlorophenol
21. 1,2-dichloropropane
22. 1,2-dichloropropylene (1,3-dichloropropene)
23. 2,4-dimethylphenol
24. 2,4-dinitrotoluene
25. 2,6-dinitrotoluene
26. 1,2-diphenylhydrazine
27. bis(2-chloroisopropyl) ether
28. 4-chlorophenyl phenyl ether
29. 4-bromophenyl phenyl ether
30. methyl chloride (chloromethane)
31. methyl bromide (bromomethane)
32. bromoform (tribromomethane)
33. dichlorobromomethane
34. dichlorodifluoromethane
35. chlorodibromomethane
36. hexachlorobutadiene
37. hexachlorocyclopentadiene
38. isophorone
39. nitrobenzene
40. 2-nitrophenol
41. 4-nitrophenol
42. dimethyl phthalate
43. N-nitrosodimethylamine
44. N-nitrosodiphenylamine
45. N-nitrosodi-n-propylamine
46. benzo(a)pyrene
47. 3,4-benzofluoranthene
48. benzo(k)fluoranthane(11,12-benzofluoranthene)
49. acenaphthylene
50. vinyl chloride (chloroethylene)
51. dieldrin
52. chlordane (technical mixture and metabolites)
53. 4,4'-DDE (p,p'-DDX)
54. a-endosulfan-Alpha
55. b-endosulfan-Beta
56. endosulfan sulfate
57. endrin
58. endrin aldehyde
59. PCB 1242 (Arochlor 1242)
60. PCB 1254 (Arochlor 1254)
61. PCB 1221 (Arochlor 1221)
62. PCB 1232 (Arochlor 1232)
63. PCB 1248 (Arochlor 1248)
64. PCB 1260 (Arochlor 1260)
65. PCB 1016 (Arochlor 1016)
66. toxaphene
67. 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Appendix C—Priority Organics Detected in Treated Effluents at One or Two Mines Always at Levels Below 10 μg/l

1. 1,2-dichloroethane
2. hexachloroethane
3. 1,1,2,2-tetrachloroethane
4. 1,4-dichlorobenzene
5. 3,3'-dichlorobenzidine
6. fluoranthene
7. bis(2-chloroethoxy) methane
8. 2,4-dinitrophenol
9. 4,6-dinitro-o-cresol
10. pentachlorophenol
11. di-n-octyl phthalate
12. benzo(a)anthracene
13. chrysene
14. anthracene
15. fluorene
16. phenanthrene
17. pyrene
18. benzo(g,h,i)perylene
19. aldrin
20. 4,4'-DDT
21. 4,4'-DDD
22. heptachlor
23. heptachlor epoxide

Appendix D—Priority Organics Detected But Present Due to Contamination of Screening and Verification Samples by Sources Other Than Those Sampled

1. benzene
2. chloroform
3. methylene chloride
4. phenol
5. bis(2-ethylhexyl) phthalate
6. butyl benzyl phthalate
7. di-n-butyl phthalate
8. diethyl phthalate
9. toluene
10. tetrachloroethylene

Appendix E—Priority Organics Detected But Present in Amounts Too Small To Be Effectively Reduced

1. 1,1,1-trichloroethane
2. 1,1-dichloroethylene
3. 1,2-trans-dischloroethylene
4. ethylbenzene
5. trichlorofluoromethane
6. trichloroethylene
7. 1,2-dichlorobenzene
8. napthalene
9. dibenzo (a,h) anthracene
10. indeno (1,2,3-c,d) pyrene
11. BHC-Alpha
12. BHC-Beta
13. BHC-Gamma
14. BHC-Delta.

It is hereby proposed to revise Part 434 of Title 40 as follows:

PART 434—COAL MINING POINT SOURCE CATEGORY BPT, BAT, BCT, LIMITATIONS AND NEW SOURCE PERFORMANCE STANDARDS

Subpart A—General Provisions

Sec.

Subpart B—Coal Preparation Plants and Coal Preparation Plant Associated areas

Authority: Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977), (the "Act"); 33 United States. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

Subpart A—General Provisions

§ 434.10 Applicability.

This part applies to discharges from any coal mine at which the extraction of coal is taking place or is planned to be undertaken.

§ 434.11 General definitions.

(a) The term "acid or ferruginous mine drainage" means mine drainage which, before any treatment, either has a pH of less than 6.0 or a total iron concentration equal to or more than 10 mg/l.

(b) The term "active mining area" means the areas, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.

(c) The term "alkaline mine drainage" means mine drainage which, before any treatment, has a pH equal to or more than 6.0 and a total iron concentration of less than 10 mg/l.

(d) The term "bond release" means the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed.

(e) The term "coal preparation plant" means a facility where coal is crushed, screened, sized, cleaned, dried, or otherwise prepared and loaded for transit to a consuming facility.

(f) The term "coal preparation plant associated areas" means the coal preparation plant yards, immediate access roads, coal refuse piles, and coal storage piles and facilities.

(g) The term "coal preparation plant water circuit" means all pipes, channels, basins, tanks, and all other structures and equipment that convey, contain, treat, or process any water that is used in coal preparation processes within a coal preparation plant.

(h) The term "mine drainage" means any drainage, and any water pumped or siphoned, from an active mining area or a post-mining area.

(i) The abbreviation "ml/l" means milliliters per liter.

(j) The term "new source coal mine" means a coal mine (excluding coal preparation plants and coal preparation plant associated areas):

(1) The construction of which is commenced after January 13, 1981; or

(2) Which is determined by the EPA Regional Administrator to constitute a "major alteration." In making this determination, the Regional Administrator shall take into account the occurrence of one or more of the following events, in connection with the mine for which the NPDES permit is being considered, after the date of proposal of applicable new source performance standards:

(i) A mine operation initiates extraction of a coal seam not previously extracted by that mine;

(ii) A mine operation discharges into a drainage area not previously affected by wastewater discharges from the mine;

(iii) A mine operation causes extensive new surface disruption;

(iv) A mine operation initiates construction of a new shaft, slope, or drift;

(v) A mine operation acquires additional land or mineral rights;

(vi) A mine operation makes significant capital investment in additional equipment or additional facilities; and

(vii) Such other factors as the Regional Administrator deems relevant.

(k) The term "post-mining area" means: (1) a reclamation area or (2) the underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.

(l) The term "reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

(m) The term "settleable solids" is that matter measured by the volumetric method specified in the Appendix.

(n) The term "10-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in ten years as defined by the National Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, or equivalent regional or rainfall probability information developed therefrom.

(o) The terms "treatment facility" and "treatment system" means all structures which contain, convey, and as necessary, chemically treat coal mine drainage, coal preparation plant process wastewater, or drainage from coal preparation plant associated areas, which remove pollutants regulated by this Part from such waters. This includes all pipes, channels, ponds, basins, tanks and all other equipment serving such structures.

Subpart B—Coal Preparation Plants and Coal Preparation Plant Associated Areas

§ 434.20 Applicability.

The provisions of this subpart are applicable to discharges from coal preparation plants and coal preparation plant associated areas, as indicated, including discharges which are pumped, siphoned, or drained from the coal preparation plant water circuit and coal storage, refuse storage, and ancillary areas related to the cleaning or beneficiation of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

§ 434.21 [Reserved]

§ 434.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61, 434.62 and 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best practicable control technology currently available if discharges from such point sources normally exhibit a pH of less than 6.0 prior to treatment:

BPT Effluent Limitations

[Concentration in μg/1]

Pollutant of pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70	35
pH—Within the range of 6.0 to 9.0 at all times.		

(b) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and 434.63 of this part the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best practicable control technology currently available if discharges from such point sources normally exhibit a pH equal to or greater than 6.0 prior to treatment:

BPT Effluent Limitations

[Concentration in μg/1]

Pollutant of pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
TSS	70	35
pH—Within the range of 6.0 to 9.0 at all times.		

§ 434.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and 434.63 of this part the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best available technology economically achievable if discharges from such point sources normally exhibit a pH equal to or greater than 6.0 prior to treatment:

BPT Effluent Limitations

[Concentration in μg/1]

Pollutant of pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
Manganese, total	4.0	2.0

(b) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and 434.63 of this part the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best available technology economically achievable if discharges from such point sources normally exhibit a pH equal to or greater than 6.0 prior to treatment:

BPT Effluent Limitations

[Concentration in μg/1]

Pollutant of pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5

§ 434.24 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61, 434.62 (in the case of discharges normally exhibiting a pH of less than 6.0 prior to treatment), and § 434.63, the following limitations establish the concentration or quality of pollutants which may be discharged by any existing coal preparation plant and coal preparation plant associated areas subject to the provisions of this subpart after application of the best conventional pollutant control technology (BCT):

BPT Effluent Limitations

[Concentration in μg/1]

Pollutant of pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS	70	35
pH—Within the range 6.0 to 9.0 at all times.		

§ 434.25 New source performance standards (NSPS).

The following new source performance standards (NSPS) shall be achieved by any new source coal preparation plant and coal preparation plant associated areas, as indicated:

(a) For new source coal preparation plants, there shall be no discharge of process wastewater pollutants from the coal preparation plant water circuit to surface waters.

(b) Except as provided in §§ 434.61, 434.62 and 434.63 of this part, the following new sources performance standards shall apply for discharges from new source coal preparation plant associated areas:

NSPS Effluent Limitations

[Concentration in μg/1]

Pollutant of pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
Manganese	4.0	2.0
TSS	70	35
pH—Within the range 6.0 to 9.0 at all times.		

Subpart C—Acid or Ferruginous Mine Drainage

§ 434.30 Applicability; description of the acid or ferruginous mine drainage subcategroy.

The provisions of this subpart are applicable to acid or ferruginous mine drainage from an active mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

§ 434.31 [Reserved]

§ 434.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61, 434.62 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

BPT Effluent Limitations

[Concentration in μ/l]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70	35
pH—Within the range 6.0 to 9.0 at all times.		

§ 434.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology currently available (BAT).

(a) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61, 434.62 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

BAT Effluent Limitations

[Concentration in μg/l]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
Manganese, total	4.0	2.0

§ 434.34 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61, 434.62 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best conventional pollutant control technology (BCT):

BCT Effluent Limitations

[Concentration in μg/l]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS	70	35
pH—Within the range 6.0 to 9.0 at all times.		

§ 434.35 New source performance standards (NSPS).

(a) Except as provided in §§ 434.61, 434.62, and with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this part, the following new source performance standards shall be achieved for any discharge from a new source subject to this subpart:

NSPS Effluent Limitations

[Concentration in μg/l]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70	35
pH—Within the range 6.0 to 9.0 at all times.		

Subpart D—Alkaline Mine Drainage

§ 434.40 Applicability; description of the alkaline mine drainage subcategory.

The provisions of this subpart are applicable to alkaline mine drainage from an active mining area resulting from the mining of coal of any rank including, but not limited to, bituminous, lignite, and anthracite.

§ 434.41 [Reserved]

§ 434.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

BPT Effluent Limitations

[Concentration in μg/l]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
TSS	70	35
pH—Within the range 6.0 to 9.0 at all times.		

§ 434.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology currently available (BAT).

(a) Except as provided in 40 CFR 125.30–125.32, § 434.61 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

BAT Effluent Limitations

[Concentration in μg/l]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5

§ 434.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Except as provided in 40 CFR 125.30–125.32, § 434.61 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best conventional pollutant control technology (BCT):

BCT Effluent Limitations

[Concentration in μg/l]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS	70	35
pH—Within the range 6.0 to 9.0 at all times.		

§ 434.45 New source performance standards (NSPS).

(a) Except as provided in § 434.61 and, with respect to mine drainage from surface areas of a coal mine but not drainage from the underground workings of underground mines, § 434.63 of this part, the following new source performance standards shall be achieved for any discharge from a new source subject to this subpart:

BCT Effluent Limitations

[Concentration in μg/l]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
TSS	70	35
pH—Within the range 6.0 to 9.0 at all times.		

Subpart E—Post-Mining Areas

§ 434.50 Applicability.

The provisions of this subpart are applicable to discharges from post-mining areas.

§ 434.51 [Reserved]

§ 434.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) *Reclamation Areas.* The limitations in this subsection apply to discharges from reclamation areas until bond release.

(1) Except as provided in 40 CFR 125.30–125.32, and § 434.61 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subsection after application of the best practicable control technology available:

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Settleable solids	0.5 ml/l	
pH—Within the range 6.0 to 9.0 at all times.		

(2)(i) Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of the limitations set forth in paragraph (a)(1):

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH—Within the range 6.0 to 9.0 at all times.		

(ii) The alternate limitations provided in paragraph (a)(2)(i) shall apply only if:

(A) The treatment facility is designed, constructed, operated and maintained to contain the volume of water which would drain into the treatment facility during a 10-year, 24-hour or larger precipitation event (or snowmelt or equivalent volume);

(B) The treatment facility is designed, constructed, operated and maintained to achieve the effluent limitations set forth in paragraph (a)(1) at all times except during precipitation events greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume); and

(C) The pH in the final effluent remains in the range of 6.0 to 9.0 during the precipitation event (or snowmelt). The operator shall have the burden of proof that the preceding conditions have been met in order qualify for the alternate limitations in paragraph (a)(2)(i).

(b) *Underground Mine Drainage.* The limitations in this subsection apply to discharges from the underground workings of underground mines until bond release.

(1) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and 434.62 of this part, the following limitations establish the concentration or quality of pollutants in acid or ferruginous mine drainage subject to the provisions of this subsection after application of the best practicable control technology currently available:

BPT Effluent Limitations

[Concentration in μg/l]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70	35
pH—Within the range 6.0 to 9.0 at all times.		

(2) Except as provided in 40 CFR 125.30–125.32, and § 434.61 of this part, the following limitations establish the concentration or quality of pollutants in alkaline mine drainage subject to the provisions of this subsection after application of the best practicable control technology currently available:

BPT Effluent Limitations

[Concentration in μg/l]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
TSS	70	35
pH—Within the range 6.0 to 9.0 at all times.		

§ 434.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable (BAT).

(a) *Reclamation Areas.* The limitations of this subsection apply to discharges from reclamation areas until bond release.

(1) Except as provided in 40 CFR 125.30–125.32, and § 434.61 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subsection after application of the best available technology economically achievable:

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day (µl/l)	Average of daily values for 30 consecutive days
Settleable solids	0.5	
pH—Within the range 6.0 to 9.0 at all times.		

(2)(i) Any overflow, increase in volume of a discharge from a bypass system caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of the limitations set forth in paragraph (a)(1) of this section:

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH—Within the range 6.0 to 9.0 at all times.		

(ii) The alternate limitations provided in paragraph (a)(2)(i) shall apply only if:

(A) The treatment facility is designed, constructed, operated and maintained to contain the volume of water which would drain into the treatment facility during a 10-year, 24-hour or larger precipitation event (or snowmelt of equivalent volume);

(B) The treatment facility is designed, constructed, operated and maintained to achieve the effluent limitations set forth in paragraph (a)(1) at all times except during precipitation events greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume); and

(C) The pH in the final effluent remains in the range of 6.0 to 9.0 during the precipitation event (or snowmelt). The operator shall have the burden of proof that the preceding conditions have been met in order to qualify for the alternate limitations in (a)(2)(i).

(b) *Underground Mine Drainage.* The limitations in this subsection apply to discharges from the underground workings of underground mines until bond release.

(1) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and 434.62 of this part, the following limitations establish the concentration or quality of pollutants in acid or ferruginous mine drainage subject to the provisions of this subsection after application of the best available technology economically achievable:

BAT Effluent Limitations

[Concentration in µg/l]

Pollutant or pollutant property	Maximum for any 1 day	Average of ge a13ja2.030 daily values for 30 consecutive days
Iron, total	7.0	3.5
Manganese, total	4.0	2.0

(2) Except as provided in 40 CFR 125.30–125.32, and § 434.61 of this part, the following limitations establish the concentration or quality of pollutants in alkaline mine drainage subject to the provisions of this subsection after application of the best available technology economically achievable:

BAT Effluent Limitations

[Concentration in µg/l]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5

§ 434.54 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) *Reclamation Areas.* The limitations of this subsection apply to discharges from reclamation areas through bond release.

(1) Except as provided in 40 CFR 125.30–125.32, and § 434.61 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subsection after application of the best conventional pollutant control technology (BCT):

BCT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH—Within the range 6.0 to 9.0 at all times.		

(b) *Underground Mine Drainage.* The limitations of this subsection apply to discharges from the underground working of underground mines until bond release.

(1) Except as provided in 40 CFR 125.30–125.32, and §§ 434.61 and 434.62 of this part, the following limitations establish the concentration or quality of pollutants which may be discharged by a point source subject to the provisions of this subsection after application of the best conventional pollutant control technology:

BCT Effluent Limitations

Concentration in µg/1

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS	70.0	35.0
pH—Within the range 6.0 to 9.0 at all times.		

§ 434.55 New source performance standards (NSPS).

The following new source performance standards shall apply to the post-mining areas of all new source coal mines:

(a) *Reclamation Areas.* The standards of this subsection apply to discharges from reclamation areas at new source coal mines until bond release.

(1) Except as provided in § 434.61 of this part, the following new source performance standards shall be achieved for a discharge subject to the provisions of this subsection:

NSPS Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day (ml/l)	Average of daily values for 30 consecutive days
Settleable solids	0.5	
pH—Within the range 6.0 to 9.0 at all times.		

(2)(i) Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within a 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of the limitations set forth in paragraph (a)(1):

NSPS Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH—Within the range 6.0 to 9.0 at all times.		

(ii) The alternate limitations provided in paragraph (a)(2)(i) shall apply only if:

(A) The treatment facility is designed, constructed, operated and maintained to contain the volume of water which would drain into the treatment facility during a 10-year, 24-hour or larger precipitation event (or snowmelt of equivalent volume);

(B) The treatment facility is designed, constructed, operated and maintained to achieve the effluent limitations set forth in paragraph (a)(1) at all times except during precipitation events greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume); and

(C) The pH in the final effluent remains in the range of 6.0 to 9.0 during the precipitation event (or snowmelt).

The operator shall have the burden of proof that the preceding conditions have been met in order to qualify for the alternate limitations in paragraph (a)(2)(i).

(b) Underground Mine Drainage

The standards in this subsection apply to discharges from the underground workings of new source underground mines until bond release.

(1) Except as provided in §§ 434.61 and 434.62 of this part, the following new source performance standards shall be achieved for the discharge of any acid or ferruginous mine drainage subject to this subsection:

NSPS Effluent Limitations

Concentration in μg/1

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
TSS	70	35
pH—Within the range 6.0 to 9.0 at all times.		

(2) Except as provided in § 434.61 of this part, the following new source performance standards shall be achieved for the discharge of any alkaline mine drainage subject to this subsection:

NSPS Effluent Limitations

Concentration in μg/1

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Iron, total	7.0	3.5
TSS	70	35
pH—Within the range 6.0 to 9.0 at all times.		

Subpart F—Miscellaneous Provisions

§ 434.60 Applicability.

The provisions of this subpart F apply to this Part 434 as specified in subparts B, C, D and E.

§ 434.61 Commingling of waste streams.

Where waste streams from any facility covered by this Part are combined for treatment or discharge with waste streams from another facility, the concentration of each pollutant in the combined discharge may not exceed the most stringent limitations for that pollutant applicable to any component waste stream of the discharge.

§ 434.62 Alternate effluent limitation for pH.

Where the application of neutralization and sedimentation treatment technology results in inability to comply with the otherwise applicable manganese limitations, the permit issuer may allow the pH level in the final effluent to exceed 9.0 to a small extent in order that the manganese limitations can be achieved.

§ 434.63 Effluent limitations during precipitation events.

(a) Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of the otherwise applicable limitations:

Effluent Limitations During Precipitation

Pollutant or pollutant property	Maximum for any 1 day (ml/l)	Average of daily values for 30 consecutive days
Settleable solids	0.5	
pH—Within the range of 6.0 to 9.0 at all times.		

(b) Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of the otherwise applicable limitations:

Effluent Limitations During Precipitation

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH—Within the range of 6.0 to 9.0 at all times.		

(c) The alternate limitations provided in subsections (a) and (b) shall apply only if:

(1) The treatment facility is designed, constructed, operated and maintained to contain at a minimum the volume of water which would drain into the treatment facility during the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume);

(2) The treatment facility is designed, constructed, operated and maintained to consistently achieve the effluent limitations set forth in subsections (a) and (b) during periods of no precipitation (or snowmelt); and

(3) The pH in the final effluent remains in the range of 6.0 to 9.0 during the precipitation event (or snowmelt).

The operator shall have the burden of proof that the preceding conditions have been met in order to qualify for the alternate limitations in subsections (a) and (b).

Appendix—Determination of Settleable Solids

The following procedure is used to determine settleable solids:

Fill an Imhoff cone to the one-liter mark with a thoroughly mixed sample. Allow to settle undisturbed for 45 minutes. Gently stir along the inside surface of the cone with a stirring rod. Allow to settle undisturbed for 15 minutes longer. Record the volume of settled material in the cone as milliliters per liter. Where a separation of settleable and floating materials occurs, do not include the floating material in the reading.

[FR Doc. 81-1006 Filed 1-12-81; 8:45 am]

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Tuesday
January 13, 1981

Part III

Department of Commerce

Patent and Trademark Office

Reexamination and Inter Partes Protest Proceeding

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

Reexamination and Inter Partes Protest Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes to amend the rules of practice in patent cases to provide procedures for the reexamination of patents and also to provide for inter partes protest proceedings between patent applicants and members of the public. The proposed rules provide regulations for the reexamination procedure provided for in Public Law 96–517. The inter partes protest procedure is proposed in view of a need for such a procedure having become apparent from experience under the revised reissue rules. The proposed changes are intended to improve the quality of United States patents.

DATES: Comments must be submitted on or before April 16, 1981; public hearing, April 16, 1981, 9:30 am; requests to present oral testimony should be received on or before April 9, 1981.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. The hearing will he held in Room 11C24 of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 11E10 of Building 3, Crystal Plaza at 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. R. Franklin Burnett by telephone at (703) 557–3054 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: This proposed rule change relates to two, somewhat distinct, procedures for determining and improving the quality and reliability of United States patents. They are (1) a procedure for reexamination of patents as provided for in Public Law 96–517, section 1 of which relates to reexamination and becomes effective on July 1, 1981, and (2) a procedure providing for inter partes protest proceedings in a patent application between the patent applicant and a member (or members) of the public who has (have) access to the application file.

The two procedures permit a patent owner to choose between alternative routes for reconsideration of patented subject matter by the Patent and Trademark Office. If ex parte reconsideration on the basis of patents or printed publications is desired, in which any requestor may only reply to the patent owner's initial statement, then reexamination would be requested. If however, the patent owner desires an essentially inter partes procedure, with one or more protestors actively involved, the patent owner could file a reissue application in which all issues of patentability would be considered. The inter partes procedure would provide the patent owner's competitors or others with an opportunity to protest and seek participation via inter partes protest proceedings.

While a patent owner may choose either the reexamination or inter partes protest procedure, the only procedure open to a party other than the patent owner is to request reexamination. These alternative procedures should serve to significantly improve the quality and reliability of United States patents. Either alternative procedure would normally be less expensive than litigation in the Courts. Under the reexamination procedure, the patent owner, especially a small patent owner, could not be forced into the possibly more expensive inter partes protest proceedings in a reissue application in the Patent and Trademark Office.

Reexamination Procedure

The rules relating to reexamination proceedings are directed to the procedures set forth in Chapter 30 of Public Law 96–517, Title 35 of the United States Code (35 U.S.C. §§ 301–307). This Chapter provides for the citation of prior art in patents, filing of requests for reexamination, decisions on such requests, reexamination and appeal from reexamination decisions, and the issuance of a certificate at the termination of the reexamination proceedings.

Present rules 1.1, 1.5, 1.11, 1.21, 1.26, 1.33, 1.34, 1.36, 1.104, 1.107, 1.109, 1.111, 1.112, 1.113, 1.115, 1.116, 1.121, 1.191, 1.192, 1.231, 1.247, 1.248, 1.301, and 1.303 are proposed to be amended to provide for reexamination procedures. A new "Subpart D—Reexamination of Patents" is proposed which would include proposed new rules 1.501, 1.510, 1.515, 1.520, 1.525, 1.530, 1.535, 1.540, 1.550, 1.552, 1.555, 1.560, 1.565, and 1.570. Paragraph (b) of § 1.291, relating to prior art citations in patents, would be deleted, since provisions therefor would appear in proposed § 1.501.

Section 1.1, if amended as proposed, would provide for communications relating to reexamination proceedings to be marked "Box Reexam" to speed internal Office mail processing.

Section 1.5, if amended as proposed, would provide for all letters relating to reexamination proceedings to be identified by patent number and reexamination control number.

Section 1.11, if amended as proposed, would provide for all papers made of record in reexamination proceedings to be open to inspection and copying by the public.

Section 1.21, if amended as proposed, would provide a new paragraph (x) establishing a fee of $1,500.00 to be paid with any request for reexamination.

Section 1.26, if amended as proposed, would provide for a refund of $1,200.00, if the request for reexamination is refused.

Section 1.33, if amended as proposed, would have a new paragraph (c) relating to which address communications for the patent owner will be sent and who may sign papers filed.

Section 1.34, if amended as proposed, would provide for the appointment of an attorney or agent in a reexamination proceeding.

Section 1.36, if amended as proposed, would provide for the revocation and withdrawal of powers of attorney in a reexamination proceeding.

Section 1.104, if amended as proposed, broadens the present rule to also include reexamination.

Section 1.107, if amended as proposed, would provide for the citation of prior art by the examiner in a reexamination proceeding. The proposed rule would also refer to foreign published applications, as well as patents.

Section 1.109, if amended as proposed, would provide for the examiner to supply reasons for allowance in a reexamination proceeding if the examiner believes that the record does not make clear the reasons for allowing a claim or claims.

Section 1.111, if amended as proposed, would provide for replies by the patent owner in a reexamination proceeding.

Section 1.112, if amended as proposed, would provide for reexamination and reconsideration of the patent under reexamination after response by the patent owner.

Section 1.113, if amended as proposed, would provide for a final rejection or action in a reexamination proceeding.

Section 1.115, if amended as proposed, would provide for amendments by the patent owner in a reexamination proceeding.

Section 1.116, if amended as proposed, would provide for amendments after final action in a reexamination proceeding.

Section 1.121, if amended as proposed, would contain a new paragraph (f) which would require a complete copy of any new or amended claim when presented during reexamination proceedings.

Section 1.191, if amended as proposed, would provide for appeal to the Board of Appeals by the patent owner from any decision adverse to patentability, in accordance with 35 U.S.C. 306.

Section 1.192, if amended as proposed, would provide one month from the date of the Notice of Appeal for the patent owner to file an appeal brief in a reexamination proceeding.

Section 1.231(a)(1) if amended as proposed, would provide for a motion that a patent claim is unpatentable in an interference proceeding where reexamination thereof has also been requested.

Paragraph (b) of Section 1.247, if amended as proposed, would not contain any reference to proof of service since proof of service is included in the proposed amendments to § 1.248.

Section 1.248, if amended as proposed, would include a new paragraph (b) relating to methods of serving papers and proof of service.

Section 1.301, if amended as proposed, would provide for appeal by the owner of a patent in reexamination proceedings to the U.S. Court of Customs and Patent Appeals.

Section 1.303, if amended as proposed, would provide for remedy by civil action under 35 U.S.C. 145 for the owner of a patent in reexamination proceedings.

Proposed § 1.501 would provide a system for citation of information to the Patent and Trademark Office, for placement in the patent file by any person during the term of the patent in accordance with 35 U.S.C. 301.

Proposed § 1.510 would set forth procedures for any person to request reexamination in accordance with 35 U.S.C. 302.

Proposed paragraph (a) of § 1.510 would limit the period for such request to the period of enforceability of the patent for which the request is filed and require payment of the reexamination fee.

Proposed paragraph (b) of § 1.510 would require that each request for reexamination include the following:

(1) A statement pointing out what is considered to be a substantial new question of patentability.

(2) An explanation of the pertinency and manner of applying prior patents or printed publications to every patent claim for which reexamination is requested.

(3) A Copy of ever patent or printed publication referred to and an English translation of any necessary and pertinent portons thereof.

(4) A Copy of the entire specification (including claims) and drawings of the patent for which reexamination is requested in the form of cut-up copies of the original printed patent.

(5) A certification that a copy of the request, if not filed by the patent owner, has been served on the patent owner.

Proposed paragraph (c) of § 1.510 would indicate under which conditions a request for reexamination would be considered.

Proposed paragraph (d) of § 1.510 would indicate which date would be considered to be the date of the request for reexamination.

Proposed paragraph (e) of § 1.510 would cover amendments which a patent owner could propose. Such amendments could accompany a request for reexamination by the patent owner.

Proposed § 1.515 would relate to the determination as to whether the request has presented a substantial new queston of patentability under 35 U.S.C. 303.

Proposed paragraph (a) of § 1.515 would require that the determination be made within 3 months of the filing date of the request.

Proposed paragraph (c) of § 1.515 would provide for review by petition to the Commissioner of any decision refusing reexamination.

Proposed § 1.520 would provide for reexamination at the initiative of the Commissioner under the provisions of the last sentence of paragraph (a) of 35 U.S.C. 303.

Proposed § 1.525 would provide for ordering reexamination where a substantial new question of patentability has been found pursuant to §§ 1.515 or 1.520.

Proposed § 1.525 also would provide for publication of the notice of the order for reexamination in the Official Gazette if the order is returned to the Office undelivered. The proposed rules do not provide for publication of all orders for reexamination in the Official Gazette in view of the increased costs that would involve. However, the Office could undertake this service at some future date at additional expense if desired.

Proposed § 1.530 would relate to the statement and proposed amendments provided for in the second sentence of 35 U.S.C. 304. Amendments submitted by the patent owner cannot enlarge the scope of a claim in the patent. Amendments will not be effectively entered into the patent until the certificate under § 1.570 and 35 U.S.C. 307 is issued.

Proposed § 1.535 would provide for reply by the reexamination requestor to the statement under § 1.530 of the patent owner and for service on the patent owner of any such reply.

Proposed § 1.540 would relate to the consideration of statements under § 1.530 and replies under § 1.535.

Proposed § 1.550 would cover the basic items relating to the conduct of reexamination proceedings. These proceedings will basically follow the procedures used for examining patent applications. The patent owner will be required to serve the reexamination requestor with any response to the Office, in order to remove the necessity of the requestor having to continuously monitor the file wraper.

Proposed § 1.552 would cover the scope of reexamination in a reexamination proceeding. The Office intends that the reexamination in a reexamination proceeding be of a high quality. While it is not intended that the examiners will routinely completely research patents when conducting reexamination the examiners will be free to, and will, conduct additional searches and cite and apply additional prior patents and publicatons when it is appropriate and beneficial to do so. Insofar as the actual examination is concerned, the examination as to original patent claims would be on the basis of patents or printed publications. However, narrowed amended or new claims limited to the original disclosure would be examined for compliance with other ections of he statute (35 U.S.C. §§ 112 and 132) which are necessary in order to ensure that any amended or new claims are supported, valid, and do not introduce new matter.

Proposed § 1.552 would also provide that questions relating to matters other than those identified in paragraphs (a) and (b) of the section would merely be noted by the examiner as being an open question in the record. Patent owners could then file a reissue application if they wish such questions to be resolved.

Proposed § 1.555 would cover the duty of disclosure by a patent owner in a reexamination proceeding involving the owner's patent.

Proposed § 1.560 would relate to the conduct of interviews in reexamination proceedings.

Proposed § 1.565 would provide for the Commissioner to determine which, if any, proceedings should be stayed or suspended, if concurrent proceedings involving the patent under reexamination are instituted.

Proposed § 1.570 would concern the issuance of the reexamination certificate

under 35 U.S.C. 307 after conclusion of reexamination proceedings. The certificate would cancel any patent claims determined to be unpatentable, confirm any patent claims determined to be patentable, and incorporate into the patent any amended or new claim determined to be patentable.

Inter Partes Protest Proceedings

The rules relating to the proposed inter partes protest proceedings are set forth in the proposed amendments to § 1.1 (d) and (e), § 1.8(a)(xii), § 1.21 (y), (z) and (aa), § 1.26(d), § 1.56(e), and § 1.291. Proposed new §§ 1.360–1.380 are directed to the details of the inter partes proceedings. Section 1.292, directed to Public use proceedings, is proposed to be deleted since such proceedings may be conducted under the proposed inter partes protest procedure.

Section 1.1 if amended as proposed, would provide for communications relating to inter partes protest proceedings and reissue applications to be specially marked to speed internal Office processing.

Section 1.8, if amended as proposed, would contain a new paragraph (a)(xii) which would normally exclude the filing of papers in inter partes protest proceedings from the Certificate of Mailing Practice.

Proposed new paragraphs (y) and (z) to § 1.21 would provide the same fees for filing a notice of appeal (review), and for filing an appeal (review) brief by the protestor in an inter partes protest proceeding as currently required for patent applicants filing an appeal. Proposed paragraph (aa) would set the fee which is required to accompany a petition to have an inter partes protest proceeding declared a contested case.

If the petition to have an inter partes protest proceeding declared a contested case is not granted, section 1.26(d), if amended as proposed, would provide a refund of $400.

Proposed new paragraph (e) to § 1.56 would provide for a member of the public to file a petition to strike an application from the files in the Office pursuant to § 1.56(d).

Section 1.292 is proposed to be deleted since questions concerning public use or sale could be processed under the proposed inter partes protest procedure.

Proposed § 1.360 would provide for any member of the public filing a petition to have protest proceedings declared inter partes.

Proposed § 1.361 would provide for addition of parties to inter partes protest proceedings.

Proposed § 1.362 would provide for serving every paper filed in an inter partes protest proceeding on all the other parties involved in the proceeding.

Proposed § 1.363 would provide the various time periods for filing papers during inter partes protest proceedings.

Proposed § 1.364 would provide that all interviews in inter partes protest proceedings relating to matters of substance would normally be held only if applicant's representative is in attendance.

Proposed § 1.365 would provide for the Office to require parties to answer specific questions, to supply evidence, to supply information or documents material to the examination, or to explain evidence already of record.

Proposed § 1.366 would permit any party to file a petition to have an inter partes protest proceeding declared a contested case so that testimony may be taken. Any such petition must include the fee proposed in paragraph (aa) of § 1.21 and the items set forth in paragraphs (a) (2)–(8) of § 1.366. Other parties to the inter partes protest proceeding will be given 21 days to join or oppose the petition. After expiration of this time period, the Office will render its decision. In deciding to grant or deny a petition to have an inter partes protest proceeding declared a contested case the Office presently plans to take into consideration the burdens which would be placed upon the parties and the necessity for, or benefits from, a contested case proceeding. If it appears that the burden on one or more of the parties clearly outweighs any benefits which are likely to be obtained or there are alternatives (such as an examiner requirement for information) for obtaining necessary information or evidence to resolve issues, the petition would be denied.

Proposed § 1.367 would provide for the assignment of times for the taking of testimony if a petition under § 1.366 is granted.

Proposed § 1.368 would refer to §§ 1.271–1.286 for the procedure for taking testimony.

Proposed § 1.369 would provide for the filing of the certified transcript of the testimony, executed copies of affidavits, stipulated testimony or facts, and exhibits.

Proposed § 1.370 would provide for the filing of briefs after the close of the period for testimony.

Proposed § 1.371 would provide for requesting an oral hearing or interview following submission of briefs relating to the testimony.

Proposed § 1.372 would provide for the issuance of a notice indicating the final disposition of the claims and setting of the time for filing an appeal.

Proposed § 1.373 would provide for an appeal to the Board of Appeals by any party from the decision of the examinier in an inter partes protest proceeding.

Proposed § 1.374 would provide details of an appeal by the applicant to the Board of Appeals.

Proposed § 1.375 would provide details of an appeal by a party other than the applicant to the Board of Appeals.

Proposed § 1.376 would provide that the examiner will not ordinarily participate in any appeal since the issues would normally be fully covered in the briefs of the parties.

Proposed § 1.377 would provide for an oral hearing before the Board of Appeals upon request of any party.

Proposed § 1.378 would provide for the decision of the Board of Appeals.

Proposed § 1.379 would provide that any action following the Board of Appeals decision be in accordance with § 1.197.

Proposed § 1.380 would provide that any reopening after the Board of Appeals decision be in accordance with § 1.198.

Classification: Under the regulations of the Department of Commerce the proposed regulations are deemed to be significant for the purposes of Executive Order 12044.

Regulatory Analysis: The Patent and Trademark Office has determined that this rulemaking has no potential major economic consequences requiring the preparation of a regulatory analysis under Executive Order 12044.

Environmental Impact Statement: This regulation does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

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Notice is hereby given that, pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. §§ 6 and 41, the Patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations as set forth below.

In the text of the proposed amendments, additions are indicated by arrows and deletions are indicated by brackets.

It is proposed to amend 37 CFR, Chapter I, as follows:

1. Section 1.1 is proposed to be revised to read as follows:

§ 1.1 All communications to be addressed to Commissioner of Patents and Trademarks.

►(a)◄ All letters and other communications intended for the Patent and Trademark Office must be addressed to "Commissioner of Patents and Trademarks," Washington, D.C. 20231. When appropriate, a letter should also be marked for the attention of a particular officer or individual.

►(b)◄ Letters and other communications relating to international applications during the international stage and prior to the assignment of a national serial number should be additionally marked "Box PCT."

►(c) Letters and other communications relating to reexamination proceedings and requests for such reexamination should be marked "Box Reexam."

(d) Letters and other communications relating to inter partes protest proceedings should be marked "Box Protest."

(e) Letters and other communications filed after receipt of the serial number of a resissue application and relating thereto should be marked "Box Reissue."◄

2. Section 1.5 is proposed to be amended by adding a new paragraph (d) to read as follows:

§ 1.5 Identification of application, patent or registration.
* * * * *

►(d) A letter relating to a reexamination proceeding should identify it as such by patent number undergoing reexamination and the reexamination control number assigned to such proceeding.◄

3. Section 1.8 is proposed to be amended by adding a new paragraph (a)(xii) to to read as follows:

§ 1.8 Certificate of mailing.

(a) * * *

►(xii) The filing of papers in inter partes protest proceedings involving patent applications, unless the Commissioner specifically authorizes its use in the proceeding.◄

* * * * *

4. Section 1.11 is proposed to be amended by adding a new paragraph (c) to read as follows:

§ 1.11 Files open to the public.

* * * * *

►(c) All papers or copies thereof relating to a reexamination proceeding which have been entered of record in the patent or reexamination file are open to inspection by the general public, and copies may be furnished upon paying the fee therefor.◄

5. Section 1.21 is proposed to be amended by adding new paragraph (x), (y), (z), and (aa):

§ 1.21 Patent and miscellaneous fees and charges.

* * * * *

►(x) Reexamination—$1,500.00.

(y) For filing request for review under § 1.373 by inter partes protestor—$50.00

(z) For filing brief in support of review by inter partes protestor—$50.00

(aa) For filing petition to have an inter partes protest proceeding declared a contested case—$500.00.◄

6. Section 1.26 is proposed to be revised to read as follows:

§ 1.26 Refunds.

►(a)◄ Money paid by actual mistake or in excess, such as a payment not required by law, will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw his application or to withdraw an appeal, will not entitle a party to demand such a return. ►Amounts of fifty cents or less will not be returned unless specifically demanded within a reasonable time, nor will the payer be notified of such amount; amounts over fifty cents but less than one dollar may be returned in postage stamps, and other amounts by check or, if requested, by credit to a deposit account.◄

►(b)◄ Refund of a portion of any international search fee paid to the Patent and Trademark Office may be made where the prior art search made during the subsequent examination of a national application is wholly or partly based on the earlier international search made in the international application for which the search fee was paid. The amount of the refund will be as determined by the examiner according to the value of the prior international search made by the Patent and Trademark Office as an International Searching Authority, as 90 percent, 45 percent, or 0 percent of the international search fee. If the amount of the refund is not a multiple of $5, it will be rounded to the next higher multiple of $5. (Note § 1.446 for refund of the search fee in an international application.) [Amounts of ten cents or less will not be returned unless specifically demanded within a reasonable time, nor will the payer be notified of such amount; amounts over ten cents but less than $1 may be returned in postage stamps, and other amounts by check.]

►(c) If the Commissioner decides not to institute a reexamination proceeding, a refund of $1,200.00 will be made to the requestor of the proceeding. Reexamination requestors should indicate whether any refund should be made by check or by credit to a deposit account.

(d) If the Commissioner refuses to declare an inter partes protest proceeding a contested case pursuant to a petition filed under § 1.366, or refuses to permit the petitioner to join in a contested case, a refund of $400.00 will be made to the petitioner whose petition is denied. Petitioners should indicate whether any refund should be made by check or by credit to a deposit account.◄

7. Section 1.33 is proposed to be amended by revising the title and adding a new paragraph (c) to read as follows:

§ 1.33 Correspondence respecting patent applications►, reexamination proceedings,◄ and ►other◄ proceedings.

* * * * *

►(c) All notices, official letters, and other communications for the patent owner or owners in a reexamination proceeding will be directed to the attorney or agent of record in the patent file (see § 1.34(b)), or, if no attorney or agent is of record, to the patent owner or owners at the address or addresses of record in the patent file. Amendments and other papers filed in a reexamination proceeding on behalf of the patent owner must be signed by the patent owner, or if there is more than one owner by all the owners, or by an attorney or agent of record in the patent file, or by a registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a). Double correspondence with the patent owner or owners and the patent owner's attorney or agent, or with more than one attorney or agent, will not be undertaken. If more than one attorney or agent is of record and a correspondence address has not been specified, correspondence will be held with the last attorney or agent made of record.◄

8. Section 1.34 is proposed to be revised to read as follows:

§ 1.34 Recognition for representation.

(a) When a registered attorney or agent acting in a representative capacity appears in person or signs a paper in practice before the Patent and Trademark Office in a patent case, his ►or her◄ personal appearance or signature shall constitute a representation to the Patent and Trademark Office that under the provisions of this part and the law, he ►or she◄ is authorized to represent the particular party in whose behalf he ►or she◄ acts. In filing such a paper, the attorney or agent should specify his ►or her◄ registration number with his ►or her◄ signature. Further proof of authority to act in a representative capacity may be required.

(b) When an attorney or agent shall have filed his ►or her◄ power of attorney, or authorization, duly executed by the person or persons entitled to prosecute ►an◄ [the] application ►or a patent involved in a reexamination proceeding,◄ he ►or she◄ is a principal attorney of record in the case. A principal attorney or agent, so appointed, may appoint an associate attorney or agent who shall also then be of record.

9. Section 1.36 is proposed to be revised to read as follows:

§ 1.36 Revocation of power of attorney or authorization; withdrawal of attorney or agent.

A power of attorney or authorization of agent may be revoked at any stage in the proceedings of a case, and an attorney or agent may withdraw, upon application to and approval by the Commissioner. An attorney or agent, except an associate attorney or agent whose address is the same as that of the principal attorney or agent, will be notified of the revocation of his ►or her◄ power of attorney or authorization, and the applicant ►or patent owner◄ will be notified of the withdrawal of the attorney or agent. An assignment will not of itself operate as a revocation of a power or authorization previously given, but the assignee of the entire interest may revoke previous powers and be represented by an attorney or agent of his own selection.

10. Section 1.56 is proposed to be amended by adding a new paragraph (e) to read as follows:

§ 1.56 Duty of disclosure; striking of applications.

* * * * *

►(e) Any member of the public may seek to have an application stricken from the files pursuant to paragraph (d) of this section by filing a petition to strike the application from the files. Any such petition specifically identifying the application to which the petition is directed will be entered in the application file and, if timely submitted, will be considered. Any such petition and any accompanying papers must either (1) be served upon applicant in accordance with § 1.248; or (2) be filed with the Office in duplicate in the event service is not possible. Any such petition filed by an attorney or agent must be in compliance with § 1.346.◄

11. In 1.104 paragraphs (a) and (b) are proposed to be revised to read as follows:

§ 1.104 Nature of examination; examiner's action.

(a) On taking up an application for examination ►or a patent in a reexamination proceeding◄, the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the ►claimed◄ invention [sought to be patented]. The examination shall be complete with respect both to compliance of the application ►or patent under reexamination,◄ with the ►applicable◄ statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated.

(b) The applicant ►, or in the case of a reexamination proceeding, both the patent owner and the requestor,◄ will be notified of the examiner's action. The reasons for any adverse action or any objection or requirement will be stated and such information or references will be given as may be useful in aiding the applicant ►, or in the case of a reexamination proceeding, the patent owner◄ to judge [of] the propriety of continuing the prosecution [of his application].

* * * * *

12. Section 1.107 is proposed to be revised to read as follows:

§ 1.107 Citation of references.

►(a)◄ If domestic patents [be] ►are◄ cited ►by the examiner,◄ their numbers and dates, ►and◄ the names of the patentees, and the classes of inventions must be stated. If foreign ►published applications or◄ patents ►are◄ [be] cited, their nationality or country, numbers and dates, and the names of the patentees must be stated, and such other data must be furnished as may be necessary to enable the applicant ►, or in the case of a reexamination proceeding, the patent owner,◄ to identify the ►published applications or◄ patents cited. In citing foreign ►published applications or◄ patents, in case only ►a◄ part of the ►document is◄ [patent be] involved, the particular pages and sheets containing the parts relied upon must be identified. If printed publications ►are◄ [be] cited, the author (if any), title, date, pages or plates, and place of publication, or place where a copy can be found, shall be given.

►(b)◄ When a rejection ►in an application◄ is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

13. Section 1.109 is proposed to be revised to read as follows:

§ 1.109 Reasons for allowance.

If the examiner believes that the record of the prosecution as a whole does not make clear his ►or her◄ reasons for allowing a claim or claims, the examiner may set forth such reasoning. This shall be incorporated into an Office action rejecting other claims of the application ►or patent under reexamination◄ or be the subject of a separate communication to the applicant ►or patent owner◄. The applicant ►or patent owner◄ may file a statement commenting on the reasons for allowance within such time as may be specified by the examiner. Failure to file such a statement shall not give rise to any implication that the application ►or patent owner◄ agrees with or acquiesces in the reasoning of the examiner.

14. Section 1.111 is proposed to be revised to read as follows:

§ 1.111 Reply by applicant ►or patent owner◄.

(a) After the office action, if adverse in any respect, the applicant ►or patent owner◄, if he ►or she◄ persist ►s◄ in his ►or her◄ application for a patent ►or reexamination proceeding◄, must reply thereto and may request reexamination or reconsideration, with or without amendment.

(b) In order to be entitled to reexamination or reconsideration, the applicant ►or patent owner◄ must make request therefor in writing, and [he] must distinctly and specifically point out the supposed errors in the examiner's action; the applicant ►or patent owner◄ must respond to every ground of objection and rejection in the prior office action (except that request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated), and the applicant's ►or patent owner's◄ action must appear throughout to be a bona fide attempt to advance the case to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

(c) In amending [an application] in response to a rejection ►in an application or reexamination proceeding◄, the applicant ►or patent owner◄ must clearly point out the patentable novelty which he ►or she◄ thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. He ►or she◄ must also show how the amendments avoid such references or objections. (See §§ 1.135 and 1.136 for time for reply.)

15. Section 1.112 is proposed to be revised to read as follows:

§ 1.112 Re-examination and reconsideration.

After response by applicant ►or patent owner◄ (§ 1.111) the application ►or patent under re-examination◄ will be re-examined and reconsidered, and the applicant ►or patent owner◄ will be notified if claims are rejected, or objections or requirements made, in the same manner as after the first examination. Applicant ►or patent owner◄ may respond to such Office action, in the same manner provided in § 1.111, with or without amendment, but any amendments after the second Office action must ordinarily be restricted to the rejection or to the objections or requirements made, and the application will be again considered, and so on repeatedly, unless the examiner has indicated that the action is final.

16. Section 1.113 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.113 Final rejection or action.

(a) On the second or any subsequent examination or consideration the rejection or other action may be made final, whereupon applicant's ►or patent owner's◄ response is limited to appeal in the case of rejection of any claim

(§ 1.191), or to amendment as specified in § 1.116. Petition may be taken to the Commissioner in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Response to a final rejection or action must include cancellation of, or appeal from the rejection of, each claim so rejected and, if any claim stands allowed, compliance with any requirement or objection as to form.

* * * * *

17. Section 1.115 is proposed to be revised to read as follows:

§ 1.115 Amendment [by applicant].

The applicant may amend before or after the first examination and action and also after the second or subsequent examination or reconsideration as specified in § 1.112 or when and as specifically required by the examiner. ►The patent owner may amend in accordance with §§ 1.510(e) and 1.530(b), and after examination in accordance with §§ 1.112 and 1.116.◄

18. Section 1.116 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1.116 Amendments after final action.

(a) After final rejection or action (§ 1.113) amendments may be made cancelling claims or complying with any requirement of form which has been made, and amendments presenting rejected claims in better form for consideration on appeal may be admitted; but the admission of any such amendment or its refusal, and any proceedings relative thereto, shall not operate to relieve the application ►or patent under reexamination◄ from its condition as subject to appeal or to save [it] ►the application◄ from abandonment under § 1.135

(b) If amendments touching the merits of the application ►or patent under reexamination are◄ [be] presented after final rejection, or after appeal has been taken, or when such amendment might not otherwise be proper, they may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented.

* * * * *

19. Section 1.121 is proposed to be amended by adding a new paragraph (f) to read as follows:

§ 1.121 Manner of making amendments.

* * * * *

►(f) Proposed amendments presented in patents involved in reexamination proceedings must be presented in the form of a full copy of the text of each claim to be amended. Matter deleted from the patent claim shall be placed between brackets and matter added shall be underlined. Copies of the printed claims from the patent may be used with any additions being indicated by insert lines.◄

20. Section 1.191 is proposed to be revised to read as follows:

§ 1.191 Appeal to Board of Appeals.

(a) Every applicant for a patent or for reissue of a patent, ►or every owner of a patent under reexamination,◄ any of the claims of which have been twice rejected, or who has been given a final rejection (§ 1.113), may, upon the payment of the fee required by law, appeal from the decision of the [primary] examiner to the Board of Appeals within the time allowed for response.

(b) The appeal ►in an application◄ must identify the rejected claim or claims appealed, and must be signed by the applicant or [his] duly authorized attorney or agent. [(See § 3.41)] ►An appeal in a reexamination proceeding must identify the rejected claim or claims appealed, and must be signed by the patent owner or duly authorized attorney or agent.◄

(c) Except as otherwise provided by § 1.206, ►an◄ appeal when taken must be taken from the rejection of all claims under rejection which ►the◄ applicant ►or patent owner◄ proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered.

21. Section 1.192 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.192 Appellant's brief.

(a) The appellant shall, within 2 months from the date of the ►notice of◄ appeal ►under § 1.191 in an application or reissue application or within 1 month from the date of the notice of appeal under § 1.191 in a reexamination proceeding◄ or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate, accompanied by the requisite fee, of the authorities and arguments on which [he] ►the appellant◄ will rely to maintain [his] ►the◄ appeal, including a concise explanation of the invention which should refer to the drawing by reference characters, and a copy of the claims involved, at the same time indicating if [he desires] an oral hearing ►is desired◄. Upon a showing of sufficient cause, the Commissioner may grant extensions of time for filing the brief. The determination of such requests may be delegated by the Commissioner to appropriate Patent and Trademark Office officials. All requests for extensions must be filed prior to the expiration of the period sought to be extended. ►The filing of a request for extension of time does not stay any period unless and until granted.◄

* * * * *

22. Section 1.231 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 1.231 Motions before the primary examiner.

(a) Within the period set in the notice of interference for filing motions any party to an interference may file a motion seeking:

(1) To dissolve as to one or more counts, except that such motion based on facts sought to be established by affidavits, declarations or evidence outside of official records and printed publications will not normally be considered [, and when one of the parties to the interference is a patentee, no motion to dissolve on the ground that the subject matter of the count is unpatentable to all parties or is unpatentable to the patentee will be considered, except that a motion to dissolve as to the patentee may be brought which is limited to such matters as may be considered at final hearing (§ 1.258)]. ►When one of the parties is a patentee, a motion to dissolve will not be considered if it would necessarily result in the conclusion that the claims of the patent which correspond to the counts are unpatentable to the patentee on a ground which is not ancillary to priority, except that a motion to dissolve on the ground that such claims are unpatentable over patents or printed publications will be considered through reexamination if it complies with the requirements of § 1.510(b) and is accompanied by the reexamination fee set in § 1.21(x).

Where a motion to dissolve is based on prior art, service on opposing parties must include copies of such prior art. A motion to dissolve on the ground that there is no interference in fact will not be considered unless the interference involves a design or plant patent or application or unless it relates to a count which differs from the corresponding claim of an involved patent or of one or more of the involved applications as provided in §§ 1.203(a) and 1.205(a).

* * * * *

23. Section 1.247 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1.247 Service of papers.

* * * * *

(b) The specification in certain sections that a designated paper must be

served does not imply that other papers, not excepted above need not be served. However, the requirement for service of designated papers may be waived under particular circumstances and service may be required of other designated papers which need not ordinarily be served. [Proof of service must be made before the paper will be considered in the interference by the Office. A statement of the attorney, attached to or appearing in the original paper when filed, clearly stating the time and manner in which service was made will be accepted as prima facie proof of service.]

24. Section 1.248 is proposed to be revised to read as follows:

§ 1.248 Service of papers; manner of service ►; proof of service◄.

►(a)◄ Service of papers must be on the attorney or agent of the party if there be such or on the party if there is no attorney or agent, and may be made in ►any◄ [either] of the following ways:

►(1)◄ [(a)] By delivering a copy of the paper to the person served;

►(2)◄ [(b)] By leaving a copy at the usual place of business of the person served with someone in this employment;

►(3)◄ [(c)] When the person served has no usual place of business, by leaving a copy at his residence, with a member of his family over 14 years of age and of discretion;

►(4)◄ [(d)] Transmission by first class mail which may also be certified or registered. When service is by mail the date of mailing will be regarded as the date of service.

►(5)◄ Whenever it shall be satisfactorily shown to the Commissioner that none of the above modes of obtaining or serving the paper is practicable, service may be by notice published in the Official Gazette.

►(b) Papers filed in the Patent and Trademark Office which are required to be served shall contain proof of service. Proof of service may appear on or be affixed to papers filed. Proof of service shall include the date and manner of service. In the case of personal service, proof of service shall also include the name of any person served, certified by the person who made service. Proof of service may be made by (1) an acknowledgement of service by or on behalf of the person served or (2) a statement signed by the attorney or agent containing the information required by this section.◄

25. Section 1.291 is proposed to be amended by revising the title, removing paragraph (b) and revising paragraph (c) to read as follows:

§ 1.291 Protests [and prior art citations] by public.

* * * * *

[(b) Citations of prior art and any papers related thereto may be entered in the patent file after a patent has been granted, at the request of a member of the pubic or the patentee. Such citations and papers will be entered without comment by the Patent and Trademark Office.]

►(b)◄ [(c)] Protests [and prior art citations] by the public and any accompanying papers should either (1) reflect that a copy of the same has been served upon the applicant ►in accordance with § 1.248◄ [or patentee or upon his attorney or agent of record]: or (2) be filed with the Office in duplicate in the event service is not possible.

26. Section 1.292 is proposed to be removed.

[§ 1.292 Public use proceedings.

(a) When a petition for the institution of public use proceedings, supported by affidavits or declarations is filed by one having information of the pendency of an application and is found, on reference to the primary examiner, to make a prima facie showing that the invention involved in an interference or claimed in an application believed to be on file had been in public use or on sale one year before the filing of the application, or before the date alleged by an interfering party in his preliminary statement or the date of invention established by such party, a hearing may be had before the Commissioner to determine whether a public use proceeding should be instituted. If instituted, times may be set for taking testimony, which shall be taken as provided by §§ 1.271 to 1.286. The petitioner will be heard in the proceedings but after decision therein will not be heard further in the prosecution of the application for patent.

(b) The petition and accompanying papers should either (1) reflect that a copy of the same has been served upon the applicant or upon his attorney or agent of record; or (2) be filed with the Office in duplicate in the event service is not possible. The petition and accompanying papers, or a notice that such a petition has been filed, shall be entered in the application file.]

27. Section 1.301 is proposed to be revised to read as follows:

§ 1.301 Appeal to U.S. Court of Customs and Patent Appeals.

Any applicant ►or owner of a patent involved in a reexamination proceeding◄ dissatisfied with the decision of the Board of Appeals, and any party to an interference dissatisfied with the decision of the Board of Patent Interferences, may appeal to the U.S. Court of Customs and Patent Appeals. The appellant must take the following steps in such an appeal: (a) In the Patent and Trademark Office give notice to the Commissioner and file the reasons of appeal (see §§ 1.302 and 1.304); (b) in the court, file a petition of appeal and a certified transcript of the record within a specified time after filing the reasons of appeal, and pay the fee for appeal, as provided by the rules of the court. The transcript will be transmitted to the Court by the Patent and Trademark Office on order of and at the expense of the appellant. Such order should be filed with the notice of appeal, but in no case should it be filed later than 15 days thereafter.

28. Section 1.303 is proposed to be revised to read as follows:

§ 1.303 Civil action under 35 U.S.C. 145, 146.

(a) Any applicant ►or owner of a patent involved in a reexamination proceeding◄ dissatisfied with the decision of the Board of Appeals, and any party dissatisfied with the decision of the Board of Patent Interferences, may, instead of appealing to the U.S. Court of Customs and Patent Appeals (§ 1.301), have remedy by civil action under 35 U.S.C. 145 ►or◄ [and] 146 ►as appropriate◄ [respectively]. Such civil action must be commenced within the time specified in § 1.304.

(b) If an applicant in an ex parte case ►or an owner of a patent involved in a reexamination proceeding◄ has taken an appeal to the U.S. Court of Customs and Patent Appeals, he ►or she◄ thereby waives his ►or her◄ right to proceed under 35 U.S.C. 145.

(c) If a defeated party to an interference proceeding has taken an appeal to the U.S. Court of Customs and Patent Appeals, and any adverse party to the interference shall, within twenty days after the appellant shall have filed notice of the appeal to the court (§ 1.302), file notice with the Commissioner that he ►or she◄ elects to have all further proceedings conducted as provided in 35 U.S.C. 146, certified copies of such notices will be transmitted to the U.S. Court of Customs and Patent Appeals for such action as may be necessary. The notice of election must be served as provided in § 1.248.

29. A new section 1.360 is proposed to be added which reads as follows:

►§ 1.360 Petition for inter partes protest proceedings.

A petition to have protest proceedings declared inter partes may be filed by (a)

an applicant against whose application a petition has been filed under § 1.56(e) or a protest has been filed under § 1.291(a); or (b) any member of the public having or obtaining access to an application who submits a petition under § 1.56(e) or a protest in accordance with the second sentence of § 1.291(a). Normally a properly filed petition based on information material to the examination of the application as defined in § 1.56(a) will be granted and further proceedings will be conducted in accordance with §§ 1.361–1.380.◄

30. A new section 1.361 is proposed to be added which reads as follows:

►§ 1.361 Addition of parties to inter partes proceedings.

Any member of the public having or obtaining access to an application in which protest proceedings have been declared inter partes may file a timely petition to join in such proceedings. Such petition to join must be accompanied by a petition under § 1.56(e), or a protest in accordance with the second sentence of § 1.291(a), if not filed previously.◄

31. A new section 1.362 is proposed to be added which reads as follows:

►§ 1.362 Service of papers in inter partes protest protest proceedings.

(a) Every paper filed in an inter partes protest proceeding must be served upon the other parties in the manner provided in § 1.248. Proof of service must be made before the paper will be considered in the proceeding by the Office. A signed certificate of service attached to or appearing in the original paper when filed, clearly stating the time and manner in which service was made, will be accepted as prima facie proof of service.

(b) Correspondence from the Office will be mailed to all parties to the proceeding. The papers will be mailed to the attorney or agent of the party if there be such or to the party if there is no attorney or agent.◄

32. A new section 1.363 is proposed to be added which reads as follows:

►§ 1.363 Time for filing papers in inter partes protest proceedings.

(a) Unless notified otherwise by the Office, any response by applicant to a petition under § 1.56(e) or a protest under § 1.291(a) is due one month from the date of service.

(b) Unless notified otherwise by the Office, any comments or response to an Office communication by a protestor must be filed within the period set for any response by applicant.

(c) Unless notified otherwise by the Office, protestor will be permitted to comment on any response to an Office communication by applicant within twenty-one calendar days from the date of service of the response.

(d) Unless notified otherwise by the Office, applicant will be permitted to file a rebuttal to protestor's comments under paragraph (c) of this section within twenty-one calendar days from the date of service of protestor's comments.

(e) Except where prohibited by statute, the times set forth in this section may be extended by stipulation of the parties, subject to approval by the Office, or on request of a party showing sufficient cause for such extension. Any request for extension must reflect the results of an attempt to obtain a stipulation of the parties and must be filed on or before the day on which the paper is due.

(f) Unless otherwise directed by the Office, § 1.8 does not apply to papers filed in inter partes protest proceedings and the Office may require such papers to be filed in the appropriate location in the Office.

(g) Papers filed late or other than as expressly authorized above will normally be refused consideration except upon a showing, under oath or in the form of a declaration (§ 1.68), of sufficient cause as to why such paper was late or why it should be considered even though not expressly authorized. The parties should endeavor to make their first submission with regard to a specific issue as complete as possible in order to avoid the necessity to file multiple papers since papers subsequent to the first submission on an issue on behalf of a party may be refused consideration. The strict requirements on the filing of papers are intended to permit the rapid disposition of these proceedings and the Office intends to act upon applications in these proceedings normally within one month of the date of their availability for action.◄

33. A new section 1.364 is proposed to be added which reads as follows:

►§1.364 Interviews in inter partes protest proceedings.

After a protest proceeding has been declared inter partes all parties will have an equal opportunity to request an inter partes interview pursuant to § 1.133, but no such interview relating to matters of substance will be held without representation on behalf of applicant except in special circumstances as the Commissioner or the Commissioner's designee may direct. All interviews will be conducted in accordance with such guidelines as the Office may establish.◄

34. A new section 1.365 is proposed to be added which reads as follows:

►§1.365 Requirements for information.

(a) Any party to the inter partes protest proceeding may be required by the Office to answer specific questions, supply evidence, or information or documents material to the examination as defined in § 1.56(a), or to explain or supplement evidence already of record. If the applicant fails to respond fully and in a timely fashion, the application may be regarded as abandoned. If any party other than the applicant fails to respond fully or in a timely fashion, that party's further participation in the proceeding may be terminated or the matter in question may be decided adversely to such party.

(b) Any requirement for information must, to the extent possible, be answered by the person having direct knowledge of the facts. If the person having direct knowledge of the facts cannot respond, the person answering the requirement must provide the information requested and explains why the person having direct knowledge is not responding.

(c) Any answers or materials supplied by an attorney or agent authorized to practice before the Patent and Trademark Office in patent cases may be over the attorney or agent's signature as provided for in § 1.346. Any answers or materials supplied by persons other than an attorney or agent authorized to practice before the Patent and Trademark Office in patent cases must be in the form of an affidavit or a declaration.◄

35. A new section 1.366 is proposed to be added which reads as follows:

►§1.366 Petition to have inter partes protest proceeding declared a contested case for the purpose of taking testimony.

(a) Any party may petition to have the inter partes protest proceeding declared a contested case for the purposes of taking testimony. Any such petition must include:

(1) A fee as specified in § 1.21(aa).

(2) A specific identification of the issue(s) upon which the party seeks to take testimony.

(3) A showing that the information cannot be obtained or authenticated by the parties or the Office except through testimony and that the information sought by petitioner is, or is likely to be, material to the examination of the application as defined in § 1.56(a).

(4) A description of the nature and content of the expected testimony to the extent that such is then known to petitioner.

(5) An explanation of the relevance of the expected testimony to the issue(s) under consideration.

(6) The names and addresses of all persons whom petitioner intends to call as witnesses indicating the relationship of each person to the issue(s).

(7) An identification and listing of each document in the possession, custody, or control of petitioner upon which petitioner intends to rely together with an offer to serve on all other parties a copy of each such document.

(8) An identification and listing of each thing in petitioner's possession, custody, or control upon which petitioner intends to rely together with a proffer of reasonable access to such things.

(b) Unless notified otherwise by the Office, each party other than the petitioner under paragraph (a) of this section will have twenty-one calendar days from the date of service of the petition within which to join or oppose the petition. Any request to join the petition must likewise comply with paragraph (a) of this section and must particularly point out any additions to, or differences from, the initial petition. Any opposition to the petition must set forth the specific and complete reasons advanced in opposition thereto. If any request to join the petition is filed by a party other than applicant and contains additions to, or differences from, the initial petition, applicant will be permitted an additional twenty-one calendar days from the date of service of the request within which to join or oppose the petition. No other papers relating to the petition will be considered prior to decision thereon except as provided in § 1.363(g), unless expressly required by the Office.

(c) After expiration of the time periods set forth in paragraph (b) of this section the Office will render its decision on the petition. Oral hearings will not be held except when considered necessary by the Office. If an oral hearing on the petition is held it will be conducted in accordance with such guidelines as the Office may establish. Any party may request reconsideration within twenty-one calendar days of the mailing date of the decision on the petition. The parties will not be heard further on this matter, and no appeal will lie from the decision on reconsideration.

(d) Any petitions to have an inter partes protest proceeding declared a contested case filed subsequent to an Office decision denying a first such petition in an application will be dismissed as untimely except upon a showing, under oath or delcaration, of sufficient cause as to why such petition is necessary and was not earlier presented.◄

36. A new § 1.367 is proposed to be added which reads as follows:

►§ 1.367 Assignment of times for taking of testimony.

If the petition under § 1.366 is granted, the decision on petition will ordinarily require and set a period for service of any documents referred to in § 1.366(a), and will also set a period for access to things upon which a petitioner intends to rely. The decision will likewise set times for taking testimony and for filing and serving the copies required by § 1.369. The order in which the parties take testimony will ordinarily be set in the decision on petition. Where applicant is not a petitioner, petitioners in opposition to the grant of the patent will ordinarily complete their testimony in chief and applicant may then take rebuttal testimony. If applicant is a petitioner, applicant will ordinarily complete testimony in chief after which petitioners in opposition to the grant of the patent will take their testimony with applicant being permitted to take rebuttal testimony thereafter.◄

37. A new § 1.368 is proposed to be added which reads as follows:

►§ 1.368 Manner of taking testimony.

Testimony shall be taken as provided in §§ 1.271 to 1.288.◄

38. A new § 1.369 is proposed to be added which reads as follows:

►§ 1.369 Copies of the testimony.

(a) The certified transcript of the testimony (§§ 1.275 to 1.278) or executed copies of affidavits or stipulated testimony or facts (§ 1.272), and the exhibits, must be filed in the Office. One true copy must be served upon each of the other parties. If an inter partes oral hearing or interview is granted in accordance with § 1.371, or if any party appeals pursuant to § 1.373, two additional copies, without the exhibits, may be required by the Office.

(b) The copies of the testimony required in paragraph (a) of this section may be submitted either in printed form in accordance with § 1.253(e) or in typewritten form in accordance with § 1.253(f).

(c) The copies, whether printed or typewritten, must include the testimony presented by the party filing the same, an index of the names of the witnesses, giving the pages where their examination and cross-examination begin, and an index of the exhibits, briefly describing their nature and giving the pages at which they are identified and offered in evidence. The pages must be serially numbered throughout the entire record of testimony and the names of the witnesses must appear at the top of the pages over their testimony.

(d) The copies of the testimony for each party must be filed and served on all other parties by the date specified in the decision on petition pursuant to § 1.367 or such extensions thereof as may be granted.

(e) The testimony filed in the Office by each party must reflect service on all other parties and the testimony of any party failing to properly serve another party may be refused consideration by the Office.◄

39. A new section 1.370 is proposed to be added which reads as follows:

►§ 1.370 Briefs relating to the testimony.

Unless otherwise directed by the Office, a party in opposition to the grant of the patent may file a brief relating to the testimony within one month of the date on which the copies of the last testimony must be filed and served under § 1.369(d). Applicant's brief is due within two months of the date on which the copies of the last testimony must be filed and served under § 1.369(d), unless otherwise directed by the Office. No further reply briefs will be considered.◄

40. A new § 1.371 is proposed to be added which reads as follows:

►§1.371 Inter partes oral hearing or interview following submission of briefs relating to the testimony.

The brief, or a paper accompanying the brief, of any party may request an oral hearing or interview. If such an oral hearing or interview is granted all the parties will be offered an opportunity to be present and participate. No oral hearing or interview shall be granted as a matter of right.◄

41. A new § 1.372 is proposed to be added which reads as follows:

►§ 1.372 Final decision by the examiner.

The examiner will conclude consideration of an inter partes protest proceeding by the issuance of a notice to the parties indicating the final disposition of the claims and setting forth the time for filing an appeal by any of the parties.◄

42. A new § 1.373 is proposed to be added which reads as follows:

►§ 1.373 Appeal from the decision of the examiner in an inter partes protest proceeding.

Any party to an inter partes protest proceeding may appeal to the Board of Appeals from the examiner's final disposition of the claims within the time set by the examiner for such appeal. A party other than the applicant may appeal by the filing of a request for review by the Board of Appeals within the time set by the examiner.

Any appeal by the applicant must be accompanied by the fee required by law

and a request for review must be accompanied by the fee required by § 1.21(y).◄

43. A new § 1.374 is proposed to be added which reads as follows:

►§ 1.374 Appeal by applicant.

(a) If an appeal is filed by applicant, applicant shall, within two months from the date of the appeal, file a brief in triplicate, accompanied by the requisite fee, of the authorities and arguments on which applicant will rely to maintain the appeal, including a concise explanation of the invention which should refer to the drawing by reference characters, and a copy of the claims involved, at the same time indicating if applicant desires an oral hearing.

(b) Where applicant has filed an appeal and a brief, any party who wishes to participate in the appeal must file, within one month from the date of service of applicant's brief, a response to applicant's brief. If the party has filed a timely notice of a request for review by the Board of Appeals, the response to applicant's brief should also cover all matters for which review was requested and must be accompanied by the fee required by § 1.21(z). The response by any party must be filed in triplicate and must indicate if an oral hearing is desired.◄

44. A new § 1.375 is proposed to be added which reads as follows:

►§ 1.375 Request for review.

(a) If an appeal has been filed by a party other than the applicant and no appeal has been filed by the applicant, the brief in support of review, accompanied by the fee required by § 1.21(z), must be filed in triplicate within two months from the date of the appeal and must indicate if an oral hearing is desired.

(b) Any brief filed in support of review must include a copy of the claims upon which review is sought and must include the authorities and arguments on which the party will rely. If applicant has not filed a brief, the brief in support of review must also include a concise explanation of the invention, which should refer to the drawing by reference characters.

(c) Within one month from the latest date of service of briefs in support of review, applicant may file a rebuttal in triplicate.◄

45. A new § 1.376 is proposed to be added which reads as follows:

►§ 1.376 Examiner's participation in the appeal.

(a) The examiner will not ordinarily participate in the appeal since the issues will normally by adequately treated by the brief and responses of the parties. However, if the issues are determined not to be adequately treated by the brief and responses of the parties, the examiner may furnish, or be requested by the Board of Appeals to furnish, a written statement relating to the same.

(b) Any written statement furnished by the examiner may be responded to by any participating party within one month of the mailing date of the statement.◄

46. A new § 1.377 is proposed to be added which reads as follows:

►§ 1.377 Oral hearing before Board of Appeals.

The Board of Appeals will hold an oral hearing upon request of any party. The order in which the parties will be heard and the time for oral argument will be set by the Board prior to the hearing date. Any participating party other than the applicant who does not make a timely request to be heard may be present, but may not be heard unless permitted by the Board.◄

47. A new § 1.378 is proposed to be added which reads as follows:

►§ 1.378 Decision by the Board of Appeals in inter partes protest proceeding.

The decision by the Board of Appeals will treat each of the issues properly raised by the parties and will render a decision thereon. The decision of the Board will be made in accordance with § 1.196, except that its decision will extend to all issues properly raised by the parties.◄

48. A new § 1.379 is proposed to be added which reads as follows:

►§ 1.379 Action following decision by the Board of Appeals.

Action following the decision of the Board of Appeals will be in accordance with § 1.197.◄

49. A new § 1.380 is proposed to be added which reads as follows:

►§ 1.380 Reopening after decision by the Board of Appeals.

Reopening after decision by the Board of Appeals will be in accordance with § 1.198.◄

50. A new § 1.501 is proposed to be added which reads as follows:

►§ 1.501 Citation of information in patents.

(a) At any time during the period of enforceability of a patent, any person may cite in writing to the Patent and Trademark Office information, including patents or printed publications, which that person states to be pertinent and applicable to the patent and believes to have a bearing on the patentability of any claim of a particular patent. All such citations will be entered in the patent file. If the person making the citation wishes his or her identify to be excluded from the patent file and kept confidential, the citation papers must be submitted without any identification of the person making the submission.

(b) Citation of information by the public in patents should either (1) reflect that a copy of the same has been mailed to the patent owner as provided in § 1.33(c); or (2) be filed with the Office in duplicate in the event service is not possible.◄

51. A new § 1.510 is proposed to be added which reads as follows:

►§ 1.510 Request for reexamination.

(a) Any person may, at any time during the period of enforceability of a patent, file a request for reexamination by the Patent and Trademark Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501. The request must be accompanied by the reexamination fee set in § 1.21(x).

(b) Any request for reexamination must include the following parts:

(1) A statement pointing out each substantial new question of patentability based on prior patents and printed publications.

(2) An indentification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited prior art to every claim for which reexamination is requested. If appropriate the party requesting reexamination may also point out how claims distinguish over cited prior art.

(3) A copy of every patent or printed publication relied upon or referred to in paragraphs (1) or (2) of this subsection accompanied by an English language translation of all the necessary and pertinent parts of any non-English language patent or printed publication.

(4) The entire specification (including claims) and drawings of the patent for which reexamination is requested must be furnished in the form of cut-up copies of the original patent with only a single column of the printed patent securely mounted on one side of a separate paper. A copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent must also be included.

(5) A certification that a copy of the request filed by a person other than the patent owner has been served in its entirety on the patent owner at the address provided in § 1.33(c). The name and address of the party served must be indicated. If service was not possible, a duplicate copy must be supplied to the Office.

(c) If the request does not include the reexamination fee or all of the parts required by paragraph (b) of this section, the person identified as requesting reexamination will be so notified and given an opportunity to complete the request within a specified time. If the reexamination fee has been paid but the defect in the request is not corrected within the specified time, the determination whether to institute reexamination will be made on the request as it then exists. If the reexamination has not been paid, no determination will be made and the request will be placed in the patent file.

(d) The filing date of the request is: (1) the date on which the complete request including the reexamination fee and all of the parts required by paragraph (b) of this section is received in the Patent and Trademark Office; or (2) the date on which the last part completing or correcting such request is received; or (3) the date on which the response under paragraph (c) of this section is due.

(e) If the request is filed by the patent owner, a proposed amendment may be included, in accordance with § 1.121(f). Claims must not be renumbered and the numbering of the claims added for reexamination must follow the number of the highest numbered patent claim. No amendment may enlarge the scope of the claims of the patent. No new matter may be introduced into the patent.◄

52. A new § 1.515 is proposed to be added which reads as follows:

►§ 1.515 Determination of the request for reexamination.

(a) within three months following the filing date of a request for reexamination, a reexamination examiner will consider the request and determine whether a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art cited therein, with or without consideration of other patents or printed publications. The reexamination examiner's determination will become a part of the official file of the patent and will be given or mailed to the patent owner at the address provided in § 1.33(c) and to the person requesting reexamination.

(b) Where no substantial new question of patentability has been found, a refund of a portion of the reexamination fee will be made to the requestor in accordance with section 1.26(c).

(c) The requestor may seek review by a petition to the Commissioner under § 1.181(a)(3) within one month of the mailing date of the reexamination examiner's determination refusing reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition is that no substantial new question of patentability has been raised, the determination shall be final and nonappealable.◄

53. A new § 1.520 is proposed to be added which reads as follows:

►§ 1.520 Reexamination at the initiative of the Commissioner.

The Commissioner, at any time during the period of enforceability of a patent, may determine, or may designate other appropriate Patent and Trademark Office officials to determine, whether a substantial new question of patentability is raised by patents or printed publications which have been brought to the Commissioner's attention even though no request for reexamination has been filed in accordance with § 1.510. The Commissioner may initiate reexamination without a request for reexamination pursuant to § 1.510 or delegate such authority to appropriate Patent and Trademark Office officials. Normally requests from outside the Patent and Trademark Office that the Commissioner undertake reexamination on his own initiative will not be considered. Any determination to initiate reexamination under this section will become a part of the official file of the patent and will be given or mailed to the patent owner at the address provided in § 1.33(c).◄

54. A new § 1.525 is proposed to be added which reads as follows:

►§ 1.525 Order to reexamine.

(a) If a substantial new question of patentability is found pursuant to §§ 1.515 or 1.520, the determination will include an order for reexamination of the patent for resolution of the question. If the order for reexamination resulted from a petition pursuant to § 1.515(c), the reexamination will ordinarily be conducted by a reexamination examiner other than the reexamination examiner responsible for the initial determination under § 1.515(a).

(b) If the order for reexamination of the patent mailed to the patent owner at the address provided in § 1.33(c) is returned to the Office undelivered, notice of the order for reexamination shall be published in the Official Gazette.◄

55. A new § 1.530 is proposed to be added which reads as follows:

►§ 1.530 Statement and amendment by patent owner.

(a) No statement or other response by the patent owner shall be filed prior to the determinations made in accordance with §§ 1.515 or 1.520. If a premature statement or other response is filed by the patent owner it will not be acknowledged or considered in making the determination.

(b) The order for reexamination will set a period not less than two months from the date of the order within which the patent owner may file a statement on the new question of patentability including any proposed amendments the patent owner wishes to make. If publication of the order for reexamination in the Official Gazette is required pursuant to § 1.525(b) a period of not less than two months from the date of publication will be set within which the patent owner's statement may be filed.

(c) Any statement filed by the patent owner shall clearly point out why the subject matter as claimed is not anticipated or rendered obvious by the prior art patents or publications, either alone or in any reasonable combinations. Any statement filed must be served upon the reexamination requestor in accordance with § 1.248.

(d) The proposed amendments must be made in accordance with § 1.121(f). No amendment may enlarge the scope of the claims of the patent or introduce new matter. No amended or new claims may be proposed for entry in an expired patent. Moreover, no amended or new claims will be incorporated into the patent by certificate issued after the expiration of the patent.

(e) Although the Office actions will treat proposed amendments as though they have been entered, the proposed amendments will not be effective until the reexamination certificate is issued.◄

56. A new § 1.535 is proposed to be added which reads as follows:

►§ 1.535 Reply by requestor.

A reply to the patent owner's statement under § 1.530 may be filed by the reexamination requestor within two months from the date of service of the patent owner's statement. Any reply by the requestor must be served upon the patent owner in accordance with § 1.248.◄

57. A new § 1.540 is proposed to be added which reads as follows:

►§ 1.540 Consideration of responses.

The failure to timely file or serve the documents set forth in § 1.530 or in § 1.535 may result in their being refused consideration. No submissions other than the statement pursuant to § 1.530 and the reply by the requestor pursuant to § 1.535 will be considered prior to examination. If the patent owner does not file a statement under § 1.530, no

reply or other submission from the reexamination requestor will be considered.◄

58. A new § 1.550 is proposed to be added which reads as follows:

►§ 1.550 Conduct of reexamination proceedings.

(a) After issuance of the reexamination order and the time for submitting any responses thereto, the examination will be conducted in accordance with §§ 1.104–1.119 and will result in the issuance of a reexamination certificate under § 1.570.

(b) The patent owner will be given a period of not less than 30 days to respond to any Office action. Such response may include further statements in response to any rejections and/or proposed amendments or new claims to place the patent in a condition where all the claims, if amended as proposed, would be patentable.

(c) The time for reply set in paragraph (b) of this section will be extended only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the applicant is due, but in no case will the mere filing of the request effect any extension.

(d) If the patent owner fails to file a timely and appropriate response to any Office action, the reexamination proceeding will be terminated and the Commissioner will proceed to issue a certificate under § 1.570.

(e) The reexamination requestor will be sent copies of Office actions issued during the reexamination proceeding. Any document filed by the patent owner must be served on the requestor in the manner provided in § 1.248. The document must reflect service or the document may be refused consideration by the Office. The active participation of the reexamination requestor ends with the reply pursuant to § 1.535, and no further submissions on behalf of the reexamination requestor will be acknowledged or considered. Further, no submissions on behalf of any third parties will be acknowledged or considered unless such submissions are in accordance with § 1.510. Accordingly, such additional submissions should not be filed.◄

59. A new § 1.552 is proposed to be added which reads as follows:

►§ 1.552 Scope of reexamination in a reexamination proceeding.

(a) Original patent claims will be reexamined on the basis of patents or printed publications.

(b) Amended or new claims presented during a reexamination proceeding must not enlarge the scope of the claims of the patent and will be examined on the basis of patents or printed publications and also for compliance with the requirements of 35 U.S.C. 112 and the new matter prohibitions of 35 U.S.C. 132.

(c) Questions other than those indicated in paragraphs (a) and (b) of this section will not be resolved in a reexamination proceeding. If such questions are raised or discovered during a reexamination proceeding, the existence of such questions will be noted by the examiner in which case the patent owner may desire to consider the advisability of filing a reissue application to have such questions considered and resolved.◄

60. A new § 1.555 is proposed to be added which reads as follows:

►§ 1.555 Duty of disclosure in reexamination proceedings.

If the owner of a patent involved in a reexamination proceeding is aware, or becomes aware, of patents or printed publications material to the reexamination which have not been previously made of record in the patent file, the patent owner must bring such patents or printed publications to the attention of the Office by filing a prior art statement as provided in § 1.98 within two months of the date of the order for reexamination, or as soon thereafter as possible.◄

61. A new § 1.560 is proposed to be added which reads as follows:

►§ 1.560 Interviews in reexamination proceedings.

(a) Interviews in reexamination proceedings pending before the Office between examiners and the owners of such patents or their attorneys or agents of record must be had in the Office at such times, within office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Commissioner. Interviews for the discussion of the patentability of claims in patents involved in reexamination proceedings will not be had prior to the first official action thereon. Interviews should be arranged for in advance. Requests that reexamination requestors participate in interviews with examiners will not be granted.

(b) In every instance of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the patent owner. An interview does not remove the necessity for response to Office actions as specified in § 1.111.◄

62. A new § 1.565 is proposed to be added which reads as follows:

►§ 1.565 Concurrent Office proceedings.

(a) In any reexamination proceeding before the Office, the patent owner shall call the attention of the Office to any prior or concurrent proceedings in which the patent is or was involved such as interferences, reissue, reexaminations, or litigation and the results of such proceedings.

(b) If a patent in the process of reexamination becomes involved in interference proceedings or a reissue application is filed for the patent, or litigation is instituted, the Commissioner shall determine whether or not to stay the reexamination, reissue or interference proceeding. If reexamination is stayed for the conduct of a reissue proceeding, the reissue proceeding shall take into account prior art provided by the requestor for reexamination and the reexamination requestor will be granted at least the same degree of participation in the reissue proceeding which the requestor would have had in the reexamination proceeding. Any reexamination proceeding stayed for the conduct of a reissue proceeding shall be terminated by the grant of the reissued patent.◄

63. A new § 1.570 is proposed to be added which reads as follows:

►§ 1.570 Issuance of reexamination certificate after reexamination proceedings.

(a) Upon the conclusion of reexamination proceedings, the Commissioner will issue a certificate under 35 U.S.C. 307 indicating the results of the reexamination proceeding and the content of the patent following the reexamination proceeding.

(b) A certificate will be issued in each patent in which a reexamination proceeding has been ordered under § 1.525. Any statutory disclaimer filed by the patent owner will be made part of the certificate.

(c) The certificate will be mailed on the day of its date to the patent owner as provided in § 1.33(c). A copy of the certificate will also be mailed to the requestor of the reexamination proceeding.

(d) If a certificate has been issued which cancels all of the claims of the patent, no further Office proceedings will be conducted with regard to that patent or any reissue applications or reexamination requests relating thereto.

(e) If the reexamination proceeding is terminated by the grant of a reissued patent as provided in § 1.565(b), the reissued patent will constitute the reexamination certificate required by this section and 35 U.S.C. 307.

(f) A notice of the issuance of each certificate under this section will be

published in the Official Gazette on its date of issuance.◄

Dated: December 29, 1980.

Sidney A. Diamond,

Commissioner of Patents and Trademarks.

Dated: December 31, 1980.

Approved:

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 81-1013 Filed 1-12-81; 8:45 am]

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Tuesday
January 13, 1981

Part IV

Department of the Interior

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Listing of Hawaiian (Oahu) Tree Snails of the Genus Achatinella as Endangered Species

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing the Hawaiian (Oahu) Tree Snails of the Genus Achatinella, as Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines all species of the genus *Achatinella* to be Endangered. The Service was petitioned by Mr. Alan D. Hart to review the status of the genus. A review was published in the **Federal Register** (44 FR 54011) on September 17, 1979. The Service proposed Endangered status for all species of the genus *Achatinella* on June 26, 1980 (45 FR 43358–43360). The Oahu tree snails, genus *Achatinella*, occur only on Oahu in the State of Hawaii. This action is being taken because of the decline of the genus resulting from habitat destruction, excessive collecting, and predation by introduced animals. The rule provides protection to wild populations of this genus.

DATES: This rule becomes effective on February 12, 1982.

ADDRESSES: Questions concerning this action may be addressed to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials related to the rule are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1980, the Service published a proposed rule in the **Federal Register** (45 FR 43358–60) advising that sufficient evidence was on file that the Oahu tree snails, genus *Achatinella*, were Endangered species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). That proposal summarized the factors thought to be contributing to the likelihood that these snails are Endangered. *Achatinella* is highly vulnerable to human activities because the various species have (1) small geographical ranges, (2) a low reproductive rate, (3) virtually no defense mechanisms, and (4) a dependency on relatively intact native forest conditions. Owing to extensive deforestation and other human-induced alterations of Oahu's native environment, more than half of the species in the genus may be recently extinct.

The proposed rule also specified the prohibitions which would be applicable if such a determination were made, and solicited comments, suggestions, objections, and factual information from interested persons. Included in this proposal was a summary of comments in response to the notice of review as well as a summary of the status of these species.

A letter was sent to Governor Ariyoshi of the State of Hawaii on July 1, 1980 notifying him of the proposed Endangered status for the Oahu tree snails. On June 30, 1980, letters were sent to appropriate Federal agencies, local governments and other interested parties notifying them of the proposal and soliciting their comments and suggestions. Official comments were received from Governor Ariyoshi of Hawaii; the Department of the Army, Washington, D.C.; and Headquarters, United States Army Support Command, Hawaii.

Summary of Comments and Recommendations

Section 4(b)(1) of the Act requires that a summary of all comments and recommendations be published in the **Federal Register** prior to adding any species to the List of Endangered Wildlife and Plants. All interested parties were invited in the proposed rule to submit factual reports or information which might contribute to the formulation of a final rule.

All written public comments received during the period June 26, 1980 through September 24, 1980 were considered. These comments are summarized below along with comments offered by 9 individuals at a public meeting on the proposal held in Honolulu on August 19, 1980.

In addition to the comments received from Governor Ariyoshi and the Army, written comments were received from 13 individuals and representatives of various organizations.

Governor Ariyoshi commented that despite the lack of biological information on *Achatinella*, the genus should be accorded protective status.

The Department of the Army commented that further dramatic reductions in the native forests are unlikely because of the relative inaccessibility and ruggedness of the terrain where the remaining forest are found. The Army also stated that measures have been taken to minimize the threat of accidental forest fires caused by training activities to the native forest habitats of *Achatinella*. The Army concurred with the Service decision not to designate Critical Habitat for the genus because it would make these animals more vulnerable to collection. The Army stated that listing may contribute to the further decline of the genus by promoting collecting and that public education would provide greater protection for the species than listing. The Service notes that the existence of and threats to *Achatinella* have been widely discussed in popular periodicals (Hart, 1975, 1978) and newspapers (Whitten, 1980) and the further publicity that might accompany listing is unlikely to stimulate additional collecting. The Service acknowledges the great value of public education for the conservation of any species and notes that among the benefits of listing is the publication and distribution of educational materials on Endangered and Threatened species. For example, a series of educational leaflets on some listed Endangered and Threatened Hawaiian birds has been produced under a Service contract by the Cooperative Extension Service of the University of Hawaii (Leaflets 212 through 215). Similar materials may be developed for *Achatinella* as a result of listing of the genus.

All 13 of the written comments from individuals and organizations supported the listing of the genus *Achatinella* as Endangered. Most comments identified various forms of habitat destruction as major factors in the decline of the genus. Most comments cited various threats to the genus that the Service had previously identified in the proposed rule. These threats include taking, introduced predatory snails and rodents, and habitat destruction resulting from fires, introduced plants, and feral mammals.

Nine comments identified the exotic predatory snail *Euglandina rosea* as a threat to *Achatinella*. *Euglandina* was introduced into Hawaii for biological control of the giant African snail, an introduced pest. Some of the comments contained personal observations of *Euglandina rosea* predation on *Achatinella*, the extirpation of *Achatinella* populations corresponding with the arrival of *Euglandina rosea* in their habitat, and recent expansions in the range of *Euglandina rosea* that threaten remaining *Achatinella* populations.

Two comments suggested that the increase in *Euglandina rosea* may increase populations of the predatory

flatworm *Geoplana* sp. The increased numbers of these native flatworms could pose an additional threat to *Achatinella*.

Predation by rats, probably the roof rat (*Rattus rattus*), was cited in four comments as a threat to *Achatinella*.

The dependence of *Achatinella* on native forest plant species was cited in seven comments, although two of these comments noted that certain species of *Achatinella* may be found on a few introduced plants. The Service recognizes that the destruction of native vegetation by human activities and encroachment by introduced plants, notably *Clidemia hirta*, is a threat to *Achatinella*.

The destructive activities of feral mammals, mostly pigs and goats, was identified by four commentors as a threat to *Achatinella* forest habitat.

Six comments noted the scientific value of *Achatinella* and expressed a need for more research, especially on the biological requirements of these species. One of these comments expressed the concern that listing as Endangered might curtail needed research on the genus. The Service responds that, although listing as Endangered would protect *Achatinella* from collecting, the Service may grant special permits for scientific purposes or to enhance the propagation or survival of a species.

Comments from two scientific societies, two conservation organizations, and one private individual requested that Critical Habitat be designated for the genus *Achatinella*. They suggested that this Critical Habitat should be large enough and described in general enough terms, such as all forest areas above a certain elevation, that *Achatinella* localities are not pinpointed and thereby made vulnerable to collecting. Current criteria for designating Critical Habitat (50 CFR Part 424.12) do not provide for including areas outside of a species' range in Critical Habitat as a means of obscuring the exact location of populations. The Service believes that, given these restrictions on the area that may be designated Critical Habitat, it is best not to designate Critical Habitat for *Achatinella* for the reasons given below in the Critical Habitat section of this rule. Even though Critical Habitat is not being designated for *Achatinella*, these species still receive the full protection as Endangered species under the Endangered Species Act of 1973, as amended.

The Service notes that there is a widespread and erroneous belief that a Critical Habitat designation is somewhat akin to the establishment of a wildlife refuge. This is not the case. Critical Habitat applies only to Federal activities and is an official notification to the agencies that their responsibilities under Section 7 of the Endangered Species Act are applicable in a certain area.

Two comments stated that lack of Critical Habitat designation does not provide means for the elimination of such threats to *Achatinella* as introduced plants and animals. The Service notes that measures to eliminate these threats can be incorporated into a recovery plan for *Achatinella* whether or not Critical Habitat is designated.

One comment agreed with the Service's decision not to designate Critical Habitat because publication of maps would call the attention of collectors to the remaining populations.

One comment listed collecting as one of the continuing threats to *Achatinella*. Three comments stated that commercial taking no longer appears to be a factor in the continuing decline of the genus. The Service agrees that commercial activity in *Achatinella* is limited. The Service notes, however, that cash offers for *Achatinella* shells are still made (Hawaiian Shell News: June, 1980; page 11) and indicate a persistent demand by collectors.

The impacts of the recreational pursuits of hiking, camping, and hunting were discused in three comments. Two of these comments stated that the impacts of these activities on *Achatinella* and its habitats was minor, but a third comment stated that these impacts can be expected to increase. All three of these comments agreed that hunting would be of benefit to the Hawaiian tree snails and their habitat by controlling populations of introduced mammals, such as rats and feral pigs and goats, that are destructive to the snails or their habitat.

Three comments identifed the U.S. Department of Agriculture's proposed Tri-fly Eradication Program as a potential new threat to the Hawaiian tree snails. These comments expressed the fear that pesticides, especially malathion, will be applied to native forests without prior toxicity studies on native snails. The Service notes that any federally funded or authorized plan to apply pesticides on *Achatinella* habitat would require consultation with the Service.

One comment suggested that firebreaks be built around military firing areas and that manuevers using live ammunition be curtailed during droughts to protect remaining *Achatinella* habitat from accidental fires. These measures are among those that the Army has agreed to implement to protect native forests.

One comment identified the potential threat of placing powerline towers or helicopter pads on mountains ridgetops, where much of the remaining native forest habitat of *Achatinella* is found. The Service notes that such projects, if federally funded or authorized, would be subject to consultation with the Service to insure that they are not likely to jeopardize the continued existence of any species of *Achatinella*.

Among his comments supporting the listing of the genus *Achatinella* as Endangered, Yoshio Kondo of the Bernice P. Bishop Museum noted that the lists of Hawaiian tree snail species published in the **Federal Register** (42 FR 57492 and 43 FR 44806–44808) were modified from Kondo (1970). The Service recognizes and is grateful for Dr. Kondo's contributions to mollusk conservation and regrets the inadvertent omission of the citation of that work.

John K. Obata submitted comments describing findings from his field work on *Achatinella* and supporting their listing as Endangered. He estimates that the following nine species exist in numbers less than 20 individuals each: *Achatinella bellula, A. bulimoides, A. byronii, A. fulgens, A. leucorraphe, A. lorata, A. swiftii, A. taeniolata,* and *A. turgida*. Mr. Obata indicates that the remaining extant species are declining rapidly and suffer from collection by hikers. He estimates that there are less than 50 remaining individuals each of *A. concavospira* and *A. pulcherrima;* less than 100 remaining individuals of *A. pupukanioe* and *A. fuscobasis;* less than 200 remaining individuals each of *A. curta, A. decipiens,* and *A. lila;* and less than 400 remaining individuals each of *A. mustelina* and *A. sowerbyana*. Based on his observation of this genus over the last 20 years, Mr. Obata estimates that present population levels are only 5 to 10% of those existing in 1960 and that they continue to decline. He stated that predation by the introduced predatory snail *Euglandina rosea* is a factor in the decline of these species, especially of *A. sowerbyana*.

Dr. Michael G. Hadfield of the University of Hawaii summarized the results of a six-year study of a population of *A. mustelina*, in which he participated. The study involved the field tagging and measurement of individual snails in the Waianae Mountains. *Achatinella mustelina* grows at a rate of only a 2 mm increase in shell length per year and is estimated to reach sexual maturity in 6 to 7 years. *Achatinella mustelina* was abundant at the study site in 1974. *Euglandina rosea*, an introduced predatory snail, was found near the study site in 1978, by

August, 1979 shells of *Euglandina rosea* were abundant at the study site but no living individuals of *Achatinella* could be found. Dr. Hadfield concluded that, since *Achatinella mustelina* has a low growth rate and fecundity and matures late, populations are highly vulnerable to the removal of adults.

The public meeting held on the proposed Endangered status for the genus *Achatinella* was attended by Service representatives and eleven other individuals. Nine of these individuals presented comments on or asked questions about the proposal or the consequences of listing. These comments and questions are summarized below.

Three comments asked questions concerning the effect of listing *Achatinella* on research on the genus and how permits may be obtained for such research. The Service may grant special permits to individuals or organizations for scientific purposes or to enhance the propagation or survival of a species. Ongoing and new research that fits these criteria will be granted permits. A recovery team may make specific recommendations for further research. Federal funds for research on *Achatinella* could be made available through a future cooperative agreement with the State of Hawaii.

Several questions were asked concerning the meaning of Critical Habitat and why it was not designated for *Achatinella*. The reasons that the Service is not designating Critical Habitat for *Achatinella* are discussed below in the Critical Habitat section of this rule. If at some future time the Service determines that it would be prudent to designate Critical Habitat for *Achatinella*, such a designation would be made according to the requirements of the species as set forth in § 424.12 of Title 50 of the Code of Federal Regulations. Among the possibile requirements that may be included in Critical Habitat is space for individual and population growth. The Service notes that, even though Critical Habitat is not being determined at this time, *Achatinella* will still receive the full protection of Section 7 of the Act. Current distribution records can also be made available to the Army and other agencies so that their activities can be planned so that they are unlikely to jeopardize remaining *Achatinella* populations.

Two commentors were concerned about how the Tri-fly Eradication program might affect *Achatinella* and what protection is available for this genus under the Endangered Species Act. The Act requires Federal agencies to confer with the Service on any of their activities that are likely to jeopardize a species proposed for Endangered or Threatened status. The genus *Achatinella*, by being listed as Endangered, would recieve full protection of Section 7 as described below under "Effect of this Rule."

One comment asked what could be done about the threat to *Achatinella* by the introduced predatory snail *Euglandina rosea*. The Service responds that any Federal effort to expand the range of *Euglandina rosea* on Oahu would require consultation with the Service. Programs to limit or eliminate *Euglandina rosea* on Oahu may be considered in developing a recovery plan for *Achatinella*.

One individual asked who determines that a recovery team will be formed. The Service responds that recovery teams are appointed by the Director of the Service with input from the appropriate regional and area offices. These teams are appointed for listed species in the order of the species' recovery priority.

After a thorough review and consideration of all available information, the Director has determined that all existing species of the genus *Achatinella* are in danger of becoming extinct throughout all or a portion of their range due to one or more of the factors described in Section 4(a) of the Act. These factors and their application to *Achatinella* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Botanical literature and subfossil deposits indicate that native forests covered much of Oahu in the prehuman era. By 1978, approximately 85% of the original forest cover had been destroyed or radically altered. Most remaining native forest* occurs at an altitude above 1,200 feet at the heads of ravines and upper valleys and above 1,500 feet on most ridges of the Koolau and Waianae Mountain ranges. Widespread deforestation followed the arrival of non-native settlers during the 1800's. Most woodlands below 1,200 feet were cleared. The *Achatinella* in these forests disappeared.

The false staghorn fern (uluhe), *Dicranopteris linearis* is forming dense thickets in the Koolau range, smothering the native forest and impacting the snails. In healthy native wet forest ecosystems, uluhe is present but inconspicuous. The overgrowth of uluhe very likely stems from human disturbance. Fires have opened up lower ridge areas to the fern. In higher regions, feral mammals (especially pigs) have rooted up and opened up portions of understory, allowing invasion by exotics.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Excessive human collection of *Achatinella* snails for their beautiful, varied and often rare shells has contributed to the decline of these species. The most intense period of collecting was from 1830 to 1940. Since each shell is unique in shape, size, color and pattern, collectors took many of each variety. Probably millions of snails were collected for their shells. Two private collections made at the turn of the century contain more than 100,000 shells. Many private collections of *Achatinella* exist in Honolulu alone.

Some species of *Achatinella* (*A. papyracea, A. juncea, A. buddii*) were rare even in the 1930's while other species (*A. lehuiensis, A. thaanumi, A. spaldingi*) were extremely rare when discovered and became extinct soon afterwards. The days of *Achatinella's* widespread abundance are gone. It is now believed that only 19 of the 41 *Achatinella* species still exist. People are still collecting live *Achatinella* for shell leis and other non-scientific purposes. A limited number of hiking trails are accessible to the general public in Oahu's mountains. Remnant colonies of *Achatinella* exist near some of these trails. Since the popularity of hiking is increasing, so is *Achatinella's* exposure to more people and would-be collectors.

3. *Disease or predation.* Prior to man's arrival on Oahu, *Achatinella* had few predators among the native terrestrial fauna. Within the past 100 years, two types of human-introduced predators have become major threats to *Achatinella's* existence—rodents and the carnivorous land snail, *Euglandina rosea*.

Of the three species of introduced rats in Hawaii, the arboreal roof rat (*Rattus rattus*) poses the greatest problem. It is found throughout the dense wet forests. Many rat-killed shells are found throughout the Waianae range.

Euglandina rosea is a carnivorous snail that was imported to Oahu from Florida to control *Achatina fulica*, the giant African snail. The giant African snail had become an uncontrollable pest in the lowland regions shortly after its introduction by a private individual. *Euglandina* established itself, increased dramatically in numbers and migrated from the dry, lower elevations to the mountain forests where it has decimated a substantial portion of Oahu's native land snail fauna. In areas where *Euglandina* is long established, living *Achatinella* are usually very rare or absent.

4. *The inadequacy of existing regulatory mechanisms.* These species

occur within State Forest Reserves and Conservation Districts. The State's Department of Land and Natural Resources/Division of Forestry administers the regulations that apply to these lands.

Listing these species as Endangered pursuant to the Endangered Species Act may give them added protection. Private landowners whose lands occur within a conservation district may apply to the Department of Land and Natural Resources for a permit to change from current land use. If Endangered species are within the area under consideration, the Department of Land and Natural Resources should consider this point in reviewing these applications. This consideration could result in the snails' habitat remaining intact.

5. *Other natural or man-made factors affecting its continued existence.* Oahu's growing human population is causing problems for *Achatinella*. Approximately 80% of the State's population lives on Oahu. Increasing numbers of people will use the island's limited forest reserves which are managed using a multiple-use concept. Activities such as military exercises and artillery practice, hiking and hunting, as well as forestry will continue to exert pressure on remnant native ecosystems.

Critical Habitat

Section 4(a)(1) states "The Secretary shall by regulation determine whether any species is an endangered species or a threatened species . . . At the time any such regulation is proposed, the Secretary shall also by regulations, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat."

As previously stated in this proposed rule, collecting is one of the reasons for the decline and/or extinction of *Achatinella*. The highly variable colored shells of *Achatinella* have been and are prized by collectors. Publication of detailed location maps delineating Critical Habitat would make these species more vulnerable to taking. For this reason, a decision has been made that Critical Habitat determination for *Achatinella* would not be prudent, since it would further jeopardize these species.

Effect of This Rule

Endangered Species regulations published in Title 50 § 17.21 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species.

With respect to the genus *Achatinella*, all known living species of the genus have the same status and are subject to the protection of the Endangered Species Act of 1973, as amended. The available data indicate that each component species of this genus is either extinct or in danger of extinction. The species of this genus which are believed to be extinct are:

Achatinella abbreviata
A. buddii
A. caesia
A. casta
A. cestus
A. decora
A. dimorpha
A. elegans
A. juddii
A. juncea
A. lehuiensis
A. livida
A. papyracea
A. phaeozona
A. rosea
A. spaldingi
A. stewartii
A. thaanumi
A. valida
A. viridans
A. vittata
A. vulpina

The species thought to be in danger of extinction are:

Achatinella apexfulva
A. bellula
A. bulimoides
A. byronii
A. concavospira
A. curta
A. decipiens
A. fulgens
A. fuscobasis
A. leucorraphe
A. lila
A. lorata
A. mustelina
A. pulcherrima
A. pupukanioe
A. sowerbyana
A. swiftii
A. taeniolata
A. turgida

Since these snails' habitats are found in rugged, inaccessible terrain, it is possible that some individuals of those species thought to be extinct may still exist. If any individuals of these species are found alive, they would automatically be protected, since the entire genus is Endangered.

With respect to all species of the genus *Achatinella*, all prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.21, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate or foreign commerce in the course of a commercial activity, or sell or offer to sell those species in interstate or foreign commerce. It would also be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken, imported or exported. Certain exceptions would apply to agents of the Service and State conservation agencies for limited purposes.

Regulations published in the **Federal Register** of September 26, 1975, (40 FR 44412), codified at 50 CFR 17.22 and 17.23, provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Section 7(a) of the Act provides in part, that:

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act. (2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available. (3) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).

Provisions for Interagency Cooperation are codified at 50 CFR Part 402. This rule requires Federal agencies to insure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of *Achatinella*.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rule. It is on file at Suite 500, 1000 North Glebe Road, Arlington, Virginia, and

may be examined by appointment during regular business hours. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Dr. Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975).

Note.—The Service has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

References

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Regulation Promulgation

Accordingly, § 17.11 of Part 17 of Chapter 1 of Title 50 of the U.S. Code of Federal Regulations is amended as set forth below.

1. Section 17.11 is amended by adding, in alphabetical order under "SNAILS," the following to the list of Endangered and Threatened wildlife:

§ 17.11 Endangered and threatened wildlife.

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Achatinella all species	Snails: Snails, Oahu tree.	Hawaii	E	2-12-81	NA	NA

Dated: January 2, 1981.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 81-1116 Filed 1-12-81; 8:45 am]

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federal register

Tuesday
January 13, 1981

Part V

Department of the Interior

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; determination of Callirhoë scabriuscula to be an Endangered Species

DEPARTMENT OF THE INTERIOR

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Callirhoë Scabriuscula To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines a plant, *Callirhoë scabriuscula* (Texas poppy-mallow), to be an Endangered species under the authority contained in the Endangered Species Act. This plant occurs in Texas and is threatened by taking, trampling and possible sand mining within its habitat. This determination of *Callirhoë scabriuscula* to be an Endangered species implements the protection provided by the Endangered Species Act of 1973, as amended.

DATES: This rule becomes effective on February 12, 1981.

ADDRESSES: Questions concerning this action may be addressed to Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (703/235–2771).

SUPPLEMENTARY INFORMATION:

Callirhoë scabriuscula (Texas poppy-mallow) was first collected by Dr. Sutton Hayes in the late 1800's on the Colorado River of Texas. This member of the mallow family is an erect, simple or basally branched perennial herb which averages 2 to 4 feet in height. The five wine-purple petals form an erect partially open cup about 1½ inches in diameter, with a dark maroon red inside center ring. *Callirhoë scabriuscula* is limited in distribution to a small area of deep sandy soil blown from alluvial deposits along the Colorado River; this soil type is highly susceptible to wind erosion (Wiedenfeld *et al.* 1970). The continued existence of this plant and the fragile habitat in which it occurs are being threatened by taking, sand mining, grazing, and other factors. This rule determines *Callirhoë scabriuscula* to be Endangered and implements the protection provided by the Endangered Species Act of 1973, as amended. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of the action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Callirhoë scabriuscula* was included in the Smithsonian report, the 1975 notice of review, and the 1976 proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal, which expired November 10, 1980, along with four other proposals which had expired. A status report on this species was compiled on October 31, 1979 and then submitted to the Service in late 1979. This report was not received in time to be used before the November 10, 1980, expiration. Observations by Soil Conservation Service (USDA) personnel and Texas botanists in 1980 provided additional sufficient current biological and economic information. Based on this sufficient new information the Service reproposed *Callirhoë scabriuscula* (45 FR 41321) on June 18, 1980.

The regulations to protect Endangered and Threatened plant species appear at 50 CFR 17 and establish the prohibitions and a permit procedure to grant exceptions, under certain circumstances to the prohibitions.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Summary of Comments and Recommendations

In the June 18, 1980, **Federal Register** proposed rule (45 FR 41321) and associated notifications and press releases, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Letters were sent to the Governor of Texas, the Soil Conservation Service (USDA), and local governments notifying them of the proposed rule and soliciting their comments and suggestions. All comments received during the period from June 18, 1980, through September 16, 1980, were considered and these are discussed below.

The Governor of Texas commented on the possible effects and conflicts of listing *Callirhoë scabriuscula* as an Endangered species. The letter stated that no conflicts between protecting *Callirhoë scabriuscula* and the State's wildlife resources exist. The State also commented that the proposed Stacey Reservoir should not impact this plant or its habitat. The State also pointed out that maintaining the highway right-of-ways in this area is a State responsibility and not a Federal one as stated in the proposal. This has been corrected in this final rule. The Service has checked on these points and agrees that no conflicts are expected.

The Texas State Conservationist of the Soil Conservation Service (USDA), commented that the information presented in the June 18, 1980, proposal was consistent with their knowledge of *Callirhoë scabriuscula*. They noted recent farm activity in the area where the *Callirhoë scabriuscula* occurs and also an increased harvest of its seeds.

The Garden Club of America commented that they support the listing of *Callirhoë scabriuscula*. They noted that this conspicuously beautiful plant is one of the most beautiful wild flowers of Texas and cited past decline of the species. The Alamo Heights-Terrell Hills Garden Club and the Garden Club of Houston concur with the listing.

Conclusion

After a thorough review and consideration of all information available, the Director has determined that *Callirhoë scabriuscula* Robins (Texas poppymallow) is in danger of extinction throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Callirhoë scabriuscula* are as follows:

1. *Present or threatened destruction, modification, or curtailment of its habitat or range.* Much of the natural habitat of *Callirhoë scabriuscula* has been disturbed. The present range is limited to one Texas county, much of which is no longer suitable habitat for the plant. The actual area covered by the plant is very small. The range is dissected by a four-lane divided highway (Highway 67) and two frontage roads. All of the land on which the plants now occur is in private ownership. Cultivation, establishment of rural residences, and development of roads and a railway have reduced the range and the size of the populations. An imminent threat to all existing populations is commercial sand mining within the plant's habitat (Amos, 1979).

2. *Overutilization for commercial, sporting, scientific or educational purposes.* If exact localities were published, the plant's conspicuous and showy blooms could cause it to be threatened by amateur gardeners, wildflower enthusiasts, and commercial horticultural collecting. Since all the populations occur on privately owned land, taking of these attractive plants could not be prohibited.

3. *Disease or predation* (including grazing). Numbers of individuals in areas under grazing pressure observed during the past three seasons have been steadily declining and there has been a marked reduction in plant vigor. The erect habit and the single main stem of the plant make it particularly susceptible to trampling by grazing animals. Because of the short flowering and fruiting period of the species, the plants which are trampled do not recover in time to produce seeds in that season.

4. *The inadequacy of existing regulatory mechanisms.* The taxon is not protected under any current Texas state law. The Endangered Species Act would offer needed protection for the species.

5. *Other natural or man-made factors affecting its continued existence.* Restriction to a very specialized and localized soil type and total range which is geographically limited to a small area tend to intensify any adverse effects occurring in the habitat of this plant.

Critical Habitat

Section 4(a)(1) of the Endangered Species Act provides in part that: "At the time any such regulation (to determine whether a species is Endangered or Threatened) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat."

Callirhoë scabriuscula is threatened by taking, an activity not prohibited by the Endangered Species Act of 1973 with respect to plants. Publication of Critical Habitat maps would make this species more vulnerable. After recovery and protection plans have been developed for this plant, Critical Habitat may be beneficial and may be proposed in the future. However, it would not be prudent to determine Critical Habitat at this time.

Effects of the Rule

In addition to the effects discussed above, the effects of this rule will include, but will not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32373) set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered and Threatened plants, are found at Sections 17.61 and 17.71, of 50 CFR and are summarized below.

With respect to *Callirhoë scabriuscula* all prohibitions of Section 9(a)(2) of the Act, as implemented by Section 17.71 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR Section 17.71 also provide for the issuance of permits to carry out prohibited activities involving Endangered and Threatened species under certain circumstances. International and interstate commercial trade in *Callirhoë scabriuscula* does not exist at present. It is anticipated that few permits involving plants of wild origin would ever be issued, since this plant is not common in the wild or in cultivation. Additional paperwork and permits required for the public would be minimal in the case of *Callirhoë scabriuscula.*

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection will now accrue to *Callirhoë scabriuscula.* Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. These require Federal agencies not only to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the contained existence of *Callirhoë scabriuscula,* but also to insure that their actions are not likely to result in the destruction or adverse modification of any Critical Habitat which may be determined at some future date by the Director.

The known populations of *Callirhoë scabriuscula* occur on privately owned lands. The Soil Conservation Service Field Office in Ballinger, Texas is aware of the significance and location of this plant. No permits are required for sand mining and the SCS has no involvement in this activity. No other Federal involvement is foreseeable at this time.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined during regular business hours, by appointment. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Authors

This rule is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 844). The primary authors of this rule are Ms. E. LaVerne Smith and Mr. Tom Strekal, Washington Office of Endangered Species (703/235–1975).

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Amos, B. 1979. Determination of *Callirhoë scabriuscula* Robins, as an endangered species. Prepared for U.S. Fish and Wildlife Service. October 31, 1979.

Gould, F. S. 1975. Texas plants, a checklist and ecological summary. College Station, Texas: Texas A&M University System, The Texas Agricultural Experiment Station.

Wiedenfeld, C. C., L. J. Barnhill, and C. J. Novosad. 1970. Soil survey of Runnels County, Texas. Washington, D.C.: Soil Conservation Service.

Regulations Promulgation

Accordingly, § 17.12 of Part 17 of chapter I of Title 50 of the U.S. Code of Federal Regulations is amended, as set forth below.

1. Section 17.12 is amended by adding, in alphabetical order, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Malvaceae—Mallow family:						
Callirhoe scabriuscula	Texas poppy-mallow	U.S.A. (Texas)	E		NA	NA

Dated: January 2, 1981.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 81-1115 Filed 1-12-81; 8:45 am]

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federal register

Tuesday
January 13, 1981

Part VI

Department of the Interior

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for Astragalus montii (Heliotrope milk-vetch)

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for Astragalus montii (Heliotrope milk-vetch)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Astragalus montii* (Heliotrope milk-vetch) to be an Endangered species. Only one small population of this plant is known, about 400 plants in approximately 80 acres of alpine meadow. Grazing by sheep and recreational activity are adversely modifying the limited habitat of this milk-vetch. The Heliotrope milk-vetch occurs at an elevation of approximately 3350 meters on Heliotrope Mountain in Sanpete County, Utah, in the Manti-LaSal National Forest. Critical Habitat is included with the proposed rule. This proposal, if made final, would implement Federal protection provided by the Endangered Species Act of 1973, as amended.

DATES: Comments must be received by April 13, 1981. A public meeting on the proposal will be held on February 18, 1981.

ADDRESSES: Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Regional Director (SE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials relating to this proposal are available for public inspection by appointment during normal business hours at the Service's Regional Endangered Species Office, 134 Union, Fifth Floor, Lakewood, Colorado. The public meeting on this proposal will be held at the courtroom of the County Courthouse, 5 South Main Street, Nephi, Utah, being at 7 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Regional Botanist, Endangered Species Office, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, 303–234–2496.

SUPPLEMENTAL INFORMATION: *Astragalus montii* (Heliotrope milk-vetch) is a member of the pea family (Fabaceae). This family includes garden peas, alfalfa, locoweed, and some southwestern desert trees, and is the second largest plant family in the United States. *Astragalus montii* is a small perennial (about 5 cm tall) with pink-purple flowers tipped with white. The tiny plant is part of a meadow community at timberline on Heliotrope Mountain. Flowers bloom soon after snowmelt starting in early July and form fruit within 3 weeks, producing bladdery-inflated pods.

Managed by the U.S. Forest Service, the Heliotrope Mountain area is used for recreation and limited sheep grazing. Motorcyclists (off-road vehicles) have done some damage to the plant's habitat but trampling by sheep is the principal threat to the species (Mutz, 1980).

Background

Astragalus montii had not previously been reviewed or proposed for Endangered status, until it was included in a general notice of review in the December 15, 1980, **Federal Register** (45 FR 82490). The species was not discovered until 1976. It was first described and recommended for Endangered status in 1978 by S. L. Welsh (Welsh, 1978). The Utah Native Plant Society gave the Heliotrope milk-vetch its highest priority for listing at their December 1979 workshop.

Note.—The Department has determined that this proposed listing does not meet the criteria for significance in the Department regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Factors Affecting the Species

Section 4(a) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) states that the Secretary of Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in that section. This authority has been delegated to the Director. These factors and their application to *Astragalus montii* Welsh (Heliotrope milk-vetch) are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Limited sheep use of the Heliotrope Mountain area threatens to destroy the milk-vetch's habitat. Motorcycle tracks have been observed at the summit but frequency of use and degree of damage to the species by off-road vehicles has not been evaluated.

2. *Overutilization for commercial, sporting, scientific or educational purposes.* Not applicable to this species.

3. *Disease or predation* (including grazing). Heliotrope milk-vetch is adversely affected by trampling from grazing animals, but it is not actually eaten by sheep.

4. *The inadequacy of existing regulatory mechanisms.* There is some existing protection for this species because it is on the Forest Service's official "sensitive plants" list. This list regulates use of this species and its habitat. U.S. Forest Service policy (Title 2600 Chapter 2670.3(2)) is to:

Protect habitats of listed and sensitive species from adverse modifications or destruction, and protect individual organisms from harm or harassment as appropriate.

Heliotrope milk-vetch could also benefit from the additional conservation measures provided by the Endangered Species Act.

5. *Other natural or manmade factors affecting its continued existence.* Members of an alpine plant community are subjected to harsh environmental conditions. These species are characteristically slow growing and well adapted to such conditions, and highly intolerant of habitat disturbance. Damaged alpine areas are slow to recover. As a member of this high altitude association, *Astragalus montii* is probably very sensitive to minor habitat disturbances.

Critical Habitat

The Act defines "Critical Habitat" to include (i) areas within the geographical area occupied by the species at the time that species is listed which are essential to the conservation of the species, and which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Critical Habitat for *Astragalus montii* is proposed as follows: Utah. Sanpete County. T. 19 S., R. 4 E., parcel in southwest portion of Section 34; 80 acres of rocky snowdrift slopes around the south edge of the Big Flat meadow area, on the southermost portion of the top of Heliotrope Mountain, bounded by the 10,800-foot contour on the south.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or those Federal actions which may be impacted by such designation. Such activities are identified below for this species. It should be imphasized that Critical Habitat designation may not affect all of the activities mentioned below, as Critical Habitat designation only affects

Federal agency activities through Section 7 of the Act.

Since the habitat of *Astragalus montii* is relatively remote, few activities are likely to adversely modify it. Sheep grazing and recreation, particularly with off-road vehicles, are currently damaging the species' habitat. The proposed Critical Habitat of *Astragalus montii* is administered by the U.S. Forest Service. Forest Service management plans for grazing and recreation in the Heliotrope Mountain area may require modification. Consultation with the Fish and Wildlife Service under Section 7 of the Act should provide management alternatives to protect the species.

The Service is required by Section 4(b)(4) of the Act to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a draft impact analysis and believes at this time that economic and other impacts of this action are not significant for the foreseeable future. Grazing benefits derived from this small area are very low, less than 400 sheep days per year.

The Service has notified the Forest Service, the Federal agency that has jurisdiction over the land under consideration in this proposed action. This Federal agency and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed action (see below).

The Service will prepare a final impact analysis prior to the time of preparing a final rule, and will use that document as partial basis for its decision as to whether or not to exclude any area from Critical Habitat for the Heliotrope milk-vetch.

Effect of this Proposal

Subsection 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered. Agencies are required under Section 7(a)(3) to confer with the Service on any action that is likely to jeopardize this species or adversely modify its proposed Critical Habitat. If published as a final rule, this action would require Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Heliotrope milk-vetch, and also would require them to insure that their actions are not likely to result in the destruction or adverse modification of any Critical Habitat which had been designated by the Director. Provisions for Interagency Cooperation are codified at 50 CFR Part 402, and new proposed regulations to implement Section 7 amendments are in preparation. As the Federal land managing agency, the USDA Forest Service would be responsible for carrying out the intentions of the Endangered Species Act on this land, which is in keeping with their own policy for this "sensitive species."

The Act and implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32373–32381) set forth a series of general trade prohibitions and exceptions which apply to all Endangered plant species. The prohibitions are found at Section 17.61 of 50 CFR and are summarized below.

With respect to the Heliotrope milk-vetch, all prohibitions of Section 9(a)(2) of the Act, as implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import, export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered plant species, under certain circumstances. No such trade in this species is known. It is anticipated that few permits involving the species would ever be requested.

If this plant is listed as an Endangered species and its Critical Habitat designated, certain conservation authorities would become available and protective measures may be undertaken for it. These could include increased management of the species and its habitat, the provision of two-thirds Federal (and one-third State) funds for the species should Utah qualify for a cooperative agreement under Subsection 6(c)(2) of the Act, and the development of a recovery plan for the species as specified in Subsection 4(g).

If listed under the Act, the Service will review this species to determine whether it should be considered for the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere for placement upon its Annex, and whether it should be considered under other appropriate international agreements.

National Environmental Policy Act

A draft Environmental Assessment has been prepared in conjunction with this proposal. It is on file in the Service's Regional Endangered Species Office, 134 Union, Lakewood, Colorado. A decision will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR Parts 1500–1508).

Public Comments Solicited

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of each Endangered species.

Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

1. Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;
2. The location of any habitat of this species and the reasons why it should or should not be designated as Critical Habitat;
3. Additional information concerning the range and distribution of this species;
4. Current or planned activities in the subject area and the probable impact of such activities on the area designated as Critical Habitat; and
5. The foreseeable economic and other impacts of the Critical Habitat designation on Federally funded or authorized projects or Federal activities.

Final promulgation of the regulations on *Astragalus montii* will take into consideration any comments and additional information received by the Director, and such communications may lead him to adopt a final rule that differs from this proposal.

Public Meeting

The Service hereby announces that a public meeting will be held on this proposed rule. The public is invited to attend this meeting and to present opinions and information on the proposal. Specific information relating to the public meeting is set out below:

Place, Date, Time, and Subject

Courtroom, County Courthouse, 5 South Main Street, Naphi, Utah; February 18, 1981; 7:00 p.m.: Heliotrope milk-vetch

This proposal is published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, 87 Stat. 884, 92 Stat. 3751, 93 Stat. 1225). The primary authors of this proposed rule are Dr. James L. Miller, U.S. Fish and Wildlife Service, Denver, Colorado and Ms. Rosemary Carey, U.S. Fish and Wildlife Service,

Office of Endangered Species, Washington, D.C. Dr. Bruce MacBryde of the Service's Washington Office served as editor. Dr. Stanley L. Welsh and Mr. Robert Thompson prepared the status reports.

References Cited

Mutz, K. M. 1980. Draft Environmental Assessment. Proposed determination that *Astragalus montii* Welsh (Heliotrope milk-vetch) is an endanged species . . . U.S. Fish and Wildlife Service, Washington, D.C., Nov. 19, 1980

Welsh, S. L. 1978. Endangered and threatened plants of Utah: a reevaluation. Great Basin Natur. 38(1):11

Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations as set forth below.

1. Section 17.12 is proposed to be amended by adding, in alphabetical order, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
Astragalus montii	Heliotrope milk-vetch	U.S.A. (Utah)	E	NA	17.96(a)	NA

2. It is further proposed that § 17.96(a) be amended by adding Critical Habitat of *Astragalus montii* before that of Fabaceae (*Astragalus yoder-williamsii*) as follows:

§ 17.96(a) [Amended]

Fabaceae

Astragalus montii

Heliotrope milk-vetch

Utah, Sanpete County. T. 19S., R.4E., parcel in SW portion of Section 34. 80 acres of rocky snowdrift slopes on the southernmost portion of the top of Heliotrope Mountain, above the 10,800-foot contour line. It is believed that the factors critical to the continued survival of this plant are:

1. alpine conditions
2. snowdrift slopes where moisture is available
3. soil pockets.

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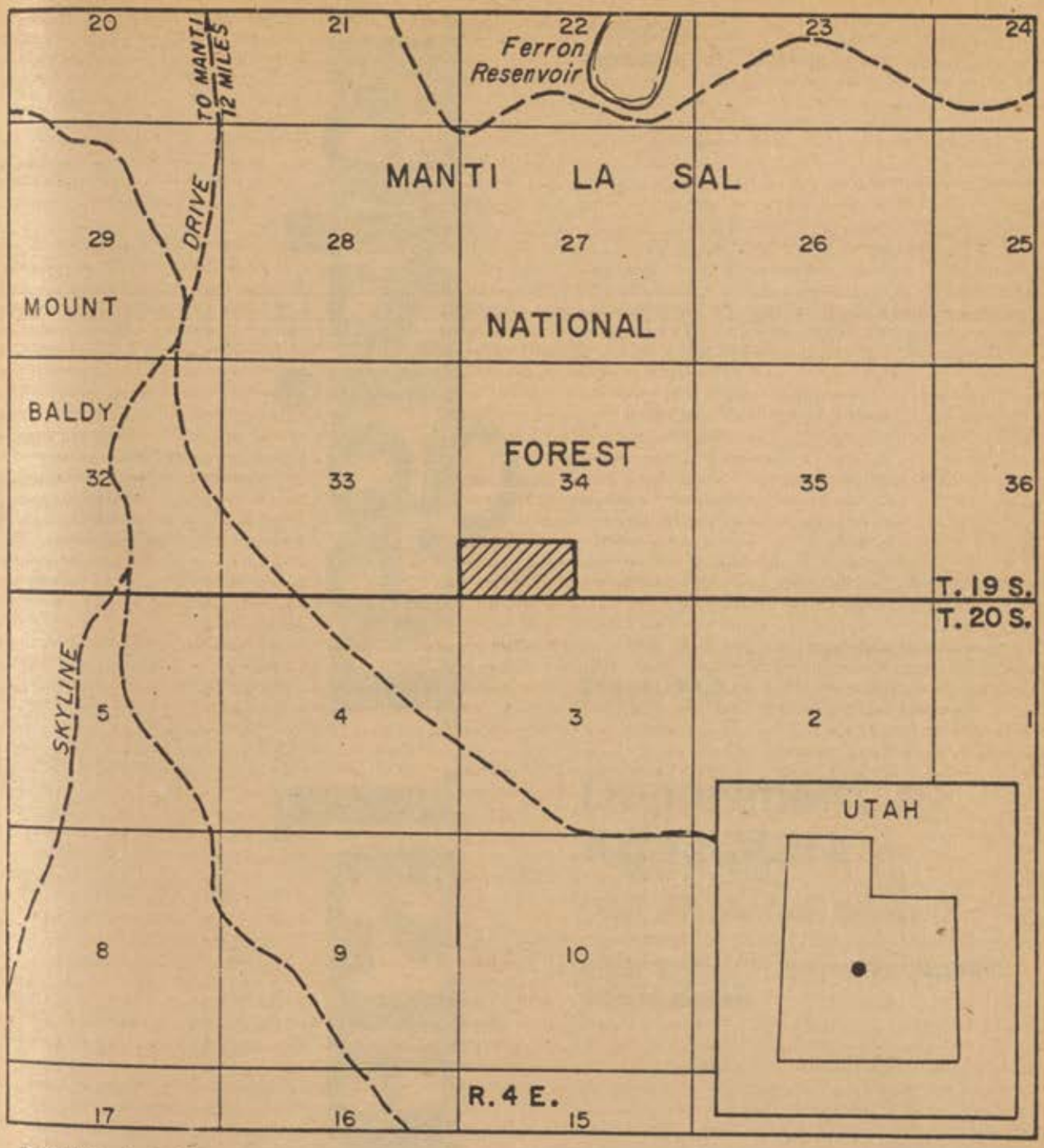

Dated: November 9, 1980.

Robert B. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 81-1164 Filed 1-12-81; 8:45 am]

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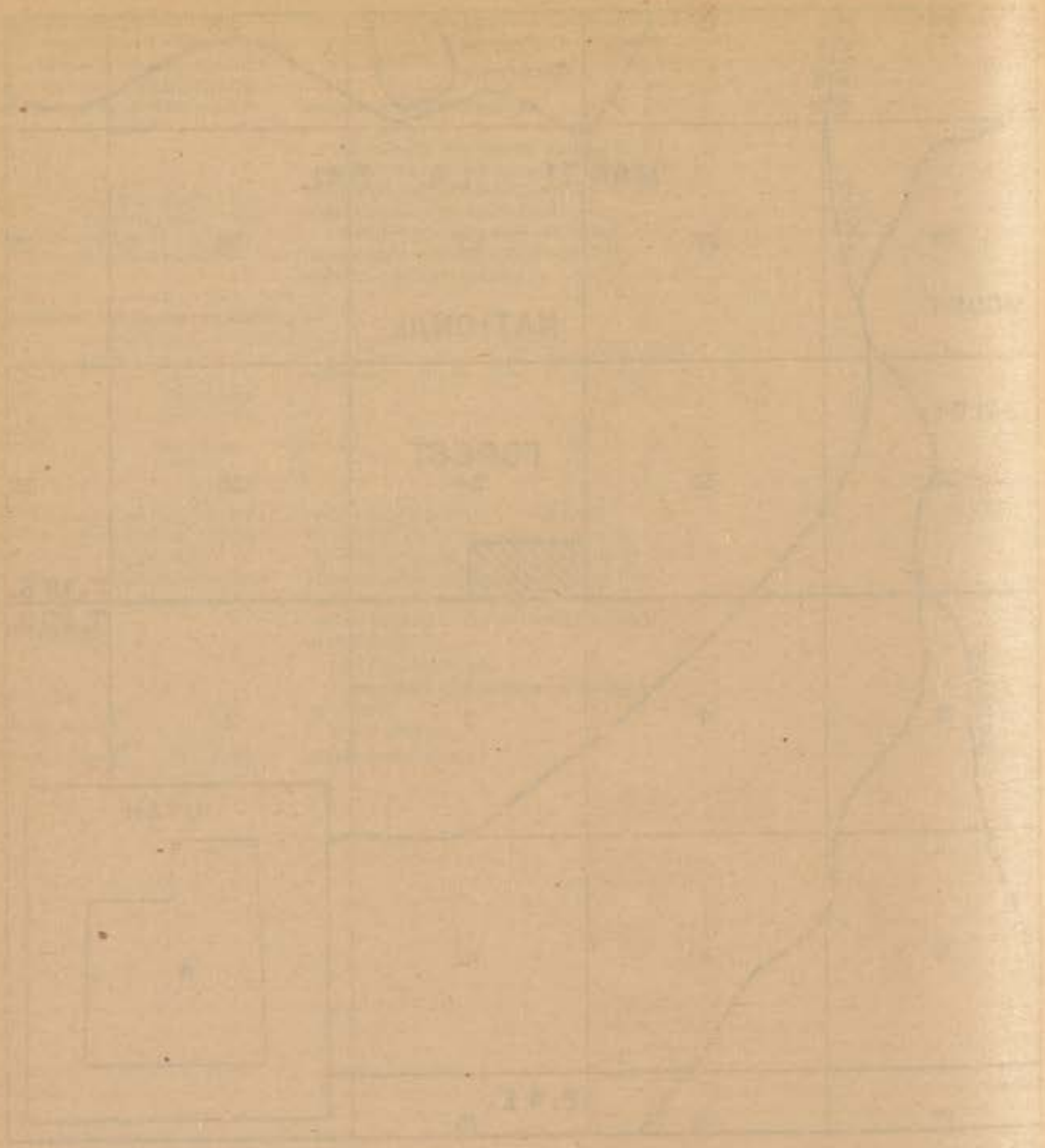

federal register

Tuesday
January 13, 1981

Part VII

Department of Agriculture

Food and Nutrition Service

Food Stamp Program Verification Requirements

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amendment No. 179]

Food Stamp Program Verification Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking implements amendments to the Food Stamp Program regulations published October 17, 1978 (43 FR 47846) concerning the requirement for verifying information in determining household eligibility for food stamp benefits. These amendments will increase State agencies' authority to verify information in a number of areas. Proposed regulations on these provisions were published on August 12, 1980 (45 FR 53792). The provisions in this final rule include amendments that resulted from the 1980 Food Stamp Amendments signed into law on May 26, 1980. The purpose of this final rule is to improve program integrity without creating barriers to households with a legitimate need of food assistance.

EFFECTIVE DATE: These rules are effective January 13, 1981.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, Chief, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, Washington D.C. 20250, Phone (202) 447-9075. The final impact statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Mr. Carnes.

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

This preamble articulates the basis and purpose behind major changes which have been made from the proposed rulemaking. The reasons supporting those provisions of the proposed rules which are unchanged by the final rules were carefully examined in light of the comments to determine the continued applicability of each justification. Unless otherwise stated, or unless inconsistent with the final rules or preamble, the rationale contained in the proposal (August 12, 1980, 45 FR 53792) should be regarded as a basis for the pertinent final rules. Thus, a thorough understanding of the grounds for the final rules may require reference to the proposed rulemaking.

The rulemaking sets forth procedures by which information may be verified in determining household eligibility for food stamp benefits as authorized by Section 116 of Pub. L. 96-24, 94 Stat. 357, May 26, 1980. The section amended the Food Stamp Act of 1977 (Title XIII of Pub. L. 95-113, 91 Stat. 958) to enable States to verify prior to certification, whether questionable or not, the size of any applicant household. The State may also verify any factors of eligibility involving households that fall within the State agency's error-prone household profiles. These profiles are developed by the State agency from the quality control program undertaken pursuant to section 16 of the Act and must be approved by the Secretary (94 Stat. 361).

This rulemaking also contains other revisions to the verification requirements which respond to concerns to strengthen program integrity. The rule provides State agencies more discretion in a number of areas in determining which eligibility factors to verify. A total of 126 comment letters were received on the proposed amendments to the verification requirement. There were 21 comment letters received from State agencies, 46 from public interest groups, 14 from local agencies, two from other government agencies, five from FNS regional offices, and 38 from the general public. There were several technical comments relating to regulation references, word changes, etc. These technical comments are not specifically addressed in this preamble.

Decision To Modify Verification Rules

Ninety-one letters commented on whether there was a need to revise verification procedures. One group of commentors, consisting of 33 public interest groups, 29 individuals, two State agencies, and one local agency, opposed any changes in current verification requirements not mandated by law. This group specifically opposed the proposals for expanded State options to verify certain eligibility factors. Those generally supporting the proposed changes consisted of eleven State agencies, eight local agencies, four individuals, two public interest groups and one regional office.

Those objecting to those aspects of the proposed rules that provide expanded State options generally stated that the primary reason for these proposals was an attempt to increase accountability and reduce error rates, but that in the absence of evidence linking increased verification with decreased error rates, the proposals were not supportable.

The Department has carefully considered the arguments raised by the commentors but has opted to proceed with the changes. The Department believes that State agencies should have more control over the manner in which cases are processed because their accountability for the quality of case actions has increased.

The increase in State agency accountability stems from Pub. L. 96-249 (94 Stat. 357; May 26, 1980) which expands a quality control based fiscal incentive system and establishes a quality control based fiscal sanction system. Since, as a result of this law, the amount of federal dollars allotted to State agencies for administrative purposes will be based directly on the quality of the State's administration of the Food Stamp Program, the Department believes it is important to give State agencies more administrative flexibility.

In addition, given the increasing cost of the Food Stamp Program, efforts to reduce losses due to error are particularly important. There is a considerable body of opinion among program administrators that expanded verification options may help in reducing errors.

The determination that verification requirements should be modified is, therefore, based on the State's increased accountability, on the need to incorporate the State options established by Pub. L. 96-249 (error-prone profiles and household size), and on the belief that these rules have the potential to contribute to reduced errors.

As a result, the final rules are substantially similar to the proposed rules. While some minor changes and clarifications have been made in response to comments, the basic aspects of the proposed rule remain unchanged.

Implementation

The proposed rules would have allowed States to implement the rules as soon as possible, but no later than 90 days after publication. Commentors raised two principal objections to this.

Some commentors objected that 90 days did not allow States enough time to implement the rules, and requested that more time be allowed. Other commentors were concerned because they believed that if States were permitted to implement the new rules in less than 90 days, some States might implement the rules without providing for adequate staff training at the local level, proper revisions of State manuals, and other necessary actions.

The Department never intended that State agencies be allowed to implement early regardless of whether or not staff had been trained, and certification materials had been revised. The Department wishes to clarify that State agencies are always required to accomplish the necessary training and revisions to written materials prior to implementation of any new rule. This is routine procedure.

In order to allow State agencies more time for implementation, however, the final rules establish that the new verification procedures mandated in sections 273.2 and 273.8 be implemented within 120 days following publication of the final rule.

The final rule allows State agencies to implement those options specified in Section 273.2(f)(3) at any time provided that certification manuals have been revised and FNS-approved, and staff have been adequately trained. In addition, if the State agency exercises an option at the project area level(s), and not Statewide, the State agency must first obtain FNS approval. This is explained later in the preamble.

Mandatory Verification

With regard to mandating verification of residency for those households processed under the regular application process, nine commentors were in favor while eight opposed the requirement. Nine commentors favored mandating verification of identity while four were opposed.

In general, those opposed felt that mandating verification of these two items was unnecessary since this information is normally captured as part of the regular verification process. Several commentors saw these requirements as barriers to participation and an opportunity for eligibility workers to request unnecessary verification. Those supporting the verification of residency and identity saw the proposed provisions as a needed and welcomed clarification.

As stated in the preamble to the proposed rule, the Department sees a need for specifically mandating verification of residency and identity in the regular application process, but regards this more as a clarification than as the imposition of a new requirement. This is not intended to result in a change in procedure or need for additional verification. Documents that are used to verify other factors of eligibility should normally suffice to confirm identity and residency. The proposed regulatory language has been revised, however, to accommodate those instances where it is impossible to accomplish verification in this fashion.

Commentors suggested the proposed language be modified to clarify that verification of residency can be done either through a collateral contact or readily available documentary evidence. This would be consistent with the expedited service rules for verifying residency. The Department has incorporated this suggestion. This change should alleviate the concerns of some commentors who felt that if documentary evidence had to be relied on as the principal means to verify residency, this could in some circumstances delay a household's certification.

In recognition of the fact that verification of residency may be impossible to obtain in some circumstances, the rules have been modified to allow flexibility in certain unique situations. Some commentors noted that some households, such as migrant farmworkers and persons newly arrived in an area, may find it impossible to provide documentary proof of residency. Such persons may be living at campsites or in cars. Some of these persons may have no person or organization that can be turned to as a reliable collateral contact. The Department believes that such circumstances arise only infrequently. However, the Department does not wish to deny these persons benefits if they are genuinely in need. In such instances, if the State agency and the applicant have made reasonable efforts to verify residence and it has proved impossible, these rules provide for the State agency to proceed with certification, and not to deny the household.

The final rule also establishes that no specific document may be required to verify residency. Any document establishing residency would be accepted in accordance with § 273.2(f)(4) and (5).

The provision on identity remains basically unchanged; that is, identity must be verified prior to certification. This is, of course, necessary to protect Program integrity. The final rule does clarify, however, that it is the identity of the person being interviewed that must be verified.

Optional Verification

General

The section on State agency options was supported by seven commentors, including five State agencies, and was opposed by 17 commentors, including ten public interest groups. Those supporting this section welcomed the authority and flexibility to determine when to verify eligibility factors other than those verified on a mandated basis or when questionable. One of the major concerns of the commentors opposed to this section was the provisions allowing project area variations in verification rules.

Primary among the reasons for opposing project area variations was the confusion such variations could cause among people who move from project area to project area and are confronted with different rules in each one. This, according to the commentors, could become a barrier to participation. A second objection was that project areas would attempt to implement unwarranted verification rules and that FNS would not have the resources to prevent it from occurring. This, again, could result in verification becoming a barrier to participation. Commentors were also concerned that both States and public interest groups would have difficulty monitoring local compliance with verification rules if the rules varied from project area to project area.

Project area variations were proposed because the Department realized that there could be wide differences among project areas within a State; differences which could result in different verification "needs". For instance, the characteristics of cases that are found in New York City may be very different from the cases found in Putnam County, New York. These differences could be such that the verification procedures appropriate for New York City would be inappropriate in Putnam County and vice versa. By allowing variations in verification policy within New York State, different verification"needs" can be accounted for.

Nevertheless, the Department believes that the commentors have raised some legitimate concerns. The Department did not intend for project area variations to be indiscriminately used, and the Department agrees that having a patchwork of varying verification procedures scattered across a State would be undesirable. The proposal was intended primarily to allow for expanded verification in major metropolitan areas, where error rates are generally higher, without requiring caseworkers and recipients all over the State to be subjected to unnecessary procedures. The proposal was also intended to provide for use of expanded verification in a project area only in response to an actual need for additional verification in that project area.

As a result, the final rulemaking retains the option for State agencies to implement verification rules on a project area basis, while restricting use of this option to situations where the State agency can demonstrate that there are

dollar losses in a project area resulting from problems which may be lessened by implementing verification rules specific to that project area. In this way, project areas that have legitimate needs for unique verification procedures will be able to utilize them. At the same time, by requiring State agencies to justify project area variations, FNS and State agencies will be better able to prevent the imposition of unwarranted and costly verification rules at the local level, and to limit intra-State variations to those cases where modification in the basic State verification rules have been shown to be appropriate.

In this same vein, the Social Security Administration (SSA) stated that it would not be practical for offices to be familiar with verification guidelines that could vary by county. This is of particular concern to SSA because Section 273.2(k) provides that households in which all members are SSI recipients can apply for food stamps at SSA offices. Language has been added to the final rule which excludes the application of State agency options to SSA offices. The State agency, however, may negotiate with the SSA offices to expand verification.

The preamble to the proposed rule clarified how the provision on State options is intended to work. The preamble noted that a State could establish its own standard for the use of verification, so long as its standard is at least as comprehensive as the Department's "questionable information" standard and does not allow discrimination. Comment on this clarification was generally favorable; some commentors asked that it be incorporated into the final rule. Accordingly, this statement is now part of the final rule.

Various commentors were opposed to allowing State agencies to adopt verification of both optional items and items identified through an error-prone profile. The general feeling of these commentors was that State agencies should only be allowed to verify those items identified through an error-prone profile as being statistically subject to high error rates. As stated in the preamble to the proposed rule, however, the true effectiveness of error-prone profiles cannot be determined at this early stage. The options are necessary as an interim measure until the results of the use of error-prone profiles are analyzed. Furthermore, some potential errors might be avoided or reduced through the exercise of a State agency verification option. Such potential errors might not show up on an error-prone profile that was contructed after the options had been implemented. To eliminate such verification options simply because the factors being verified were not shown on the error-prone profile to be associated with a high incidence of errors would not necessarily be a wise application of the profile. The lack of errors could reflect either the success of the expanded verification or the lack of "error proneness" in this particular area. Given these various uncertainties regarding error prone profiles, and the lack of extensive experience with these profiles, the Department has determined that both the provisions expanding State options and the provisions on error-prone profiles should be retained.

Resources

With regard to liquid resources, one commentor contended that some eligibility workers are requiring clients to empty their pockets and pocketbooks so as to ascertain the amount of "case on hand". The Department is not aware that this is occurring, but does wish to state that this practice should not be used. The practice is of no value for determining whether a household satisfies the resource test, and violates the basic principle of treating clients with dignity.

Continuing Shelter Charges

The proposed rule allowed, as an option, verification of shelter expenses (other than utilities) and dependent care costs only if allowing the expense would actually result in a deduction. Commentors pointed out that this option entails staff time for computing a household's budget to determine whether a claimed deduction could be verified. The final rule therefore revises these provisions to permit verification if allowing the expense could potentially result in a deduction. This revised language does not permit the verification of each and every shelter and dependent care cost; there must exist a strong indication that the expense could result in a deduction.

Utility Expenses

The provision allowing State agencies the option of determining when to verify that a household incurs a utility expense and is entitled to the utility standard has been revised in the final rule. Commentors noted this option was administratively complex (specifically the need to verify the existence of two utility expenses for State agencies with separate standards). The final rule allows State agencies with either a single standard or separate standards to verify the existence of one utility, preferably a major utility such as a heating or cooling utility. The State agency would only verify more than that one utility if the household's statement about incurring utility costs is questionable. For example, if the State agency determines that the utility expense it elected to verify actually was not incurred by the household, the other utiltity expenses claimed by the household may be deemed to be questionable.

Household Size

The provision for verifying household size received many requests for clarification. Commentors were unsure as to how household size and household composition differed. Several requested that the State agency be allowed to verify size and composition simultaneously.

Household size is not synonymous with household composition, as some commentors believed. Household size is the number of persons who live in the household. It may be verified through such means as school records, birth certificates, and the like. One commentor stated that verification in documentary form of household size may be difficult or impossible to obtain in some cases (e.g., migrants) and that trying to obtain such verification in documentary form may also delay benefits. The final rule is revised to specify that verification of household size may be accomplished through a collateral contact or readily available documentary evidence. The final rule also specifies that the State agency cannot require a household to produce one specific type of verification to verify household size. Any document or collateral contact establishing identity would be accepted in accordance with § 273.2(f)(4) and (5).

Household composition involves factors such as whether persons do or do not purchase food and prepare meals in common, or whether one or more persons pays compensation to others for meals. Household composition, basically, is verified through a household's statement, unless this is questionable. The House Committee Report on the 1977 Act (House Report No. 95–464, 95th Cong., 1st Session, p. 144) directs this type of verification: "If a group of persons sharing living quarters state they do purchase food and prepare meals together and do not pay compensation for the meals, they should be treated as a household (of if they state they do not meet all of these criteria, they should be treated as a separate household), without any significant burden of proof required, unless the case worker has good cause to believe the applicants are

misrepresenting the facts". The clear directive provided by the House Report reflects the considerable difficulty of verifying household composition. It is far more difficult to verify than household size. In addition, the issue of household composition arises far less frequently than the issue of household size, since questions regarding household composition are limited to those circumstances where persons residing in the same dwelling unit do not constitute a single food stamp household.

Error-Prone Profiles

The proposed provision on the use of error-prone profiles was supported by 15 commentors, consisting of seven State agencies, six local agencies, and two public interest groups. Six commentors, consisting of two public interest groups, three individuals, and one local agency, opposed the use of error-prone profiles.

Those opposed were concerned that verification based on error-prone profiles could result in inadvertent discrimination. As noted in the preamble to the proposed rule, the House Committee Report on the 1980 Amendments (House Rpt. No. 96–788, 96th Cong., 2nd Sess., p. 97) states: "Each State's profile would . . . have to be approved by the Secretary in order to prevent inadvertent discrimination. . . ." Language has been added to the final regulatory language to prevent any future misunderstanding.

Error-prone profiles are closely linked to the collection, analysis, and use of quality control data. Quality control data is gathered by the State on a regular basis from sample cases reviewed by the State's Food Stamp Quality Control Program. This review entails the verification of every eligibility factor so as to determine the accuracy of the State agency's determination of household eligibility and basis of issuance and to ensure that decisions to deny or terminate household participation are correct. State agencies may use quality control data to develop an error-prone profile which identifies the categories of households in which high rates of error occur and the types of eligibility factors that are most likely to result in error.

Because of the variations in resource availability, staff and data processing capabilities, error-prone profiles will vary from State to State. One State's error-prone profile may be very basic (e.g., it can only identify households with earned income and households with no earned income) while another may be more sophisticated (e.g., West Virginia's system is structured to establish selective case actions for each case). In States where an error-prone profile can only generate broad classifications, a more comprehensive analysis would have to be performed in order to better identify specific problem areas from which to develop verification guidelines. Due to the variation in States' capabilities to generate error-prone profile, FNS is developing a system which will generate error-prone profiles for all States from State-supplied food stamp quality control data. This system should be of considerable benefit to many States.

If a State agency opts to utilize the error-prone profile in the manner described by the final rule, the State agency's error-prone profile would have to be approved by FNS. Some commenters asked for the final rule to include standards for FNS approval of error-prone profiles. Because of the variation in State caseload characteristics, administrative requirements, and statistical capabilities, a variety of methods for generating error-prone profiles may be acceptable. The final rules provide that a State agency's error-prone profile must either meet the standard computer package developed by FNS, or an alternate method approved by FNS. The FNS computer package is presently being developed and will be available in 1981. FNS will provide assistance upon request to State agencies in developing the statistical methodology to construct an error-prone profile.

The final rules also provide that an approvable error-prone profile shall identify error concentrations with both statistical and practical significance. Given the variability of the quality control sample data, consideration needs to be given to the statistical significance of differences between groups which are identified by the profile. Corrective actions taken as a result of differences which have occurred purely as the result of random variations are not likely to be especially productive. Statistical significance alone, however, does not guarantee that something important or even meaningful has been found. Practical significance is also important. If an error-prone profile produces a statistically significant result, but the result identifies a group of recipients for whom it is not practicable to modify verification policies, little has been gained. Therefore, error-prone profiles must also be constructed to make distinctions with practical significance.

An error-prone profile should provide detailed classification of errors within error-prone groups. The nature of specific corrective actions will be dependent on the type of errors which occur most frequently within error-prone groups. The detail of errors will normally be limited to the information which is coded in the quality control review schedule (FNS–245) or other data collection. Examples of items captured on the FNS–245 include income, resources, and deductions.

An error-prone profile should also provide sufficient information to establish priority in addressing corrective actions to multiple error-prone groups. Primary factors when setting priorities may include, but are not limited to the dollar loss involved, the probability of error, the geographic extent of the deficiency, and the number of households involved.

An error-prone profile should identify concentrations of errors or household types with a propensity for large dollar losses as well as a large case error rate.

In addition to approving the error-prone profile, FNS will approve the application of profile results in establishing verification variances in States. FNS review and approval will follow the approach prescribed by the House Committee Report (Report No. 96–788) on the Food Stamp Amendments of 1980. The Committee Report directs that error-prone profiles be used to help effectuate the most efficient use of administrative resources in reducing error rates and ensuring that benefits are correctly issued to eligible households, while also directing that the Department may not approve "the creation of overly broad profiles casting the verification net so widely as to cover most eligibility factors affecting a majority of applicant households." The Report further states that "the error-prone profile concept is intended to be a selective tool for error control and not a trigger for universal verification." (H.R. Rep. 96–788, p. 97.)

Sources of Verification

Seven commenters recommended that the regulations prohibit the use of a collateral contact without the express written consent of the household. Section 273.2(f)(5)(ii) clearly states that the State agency must rely on the household to provide the name of a collateral contact. The Department believes this is sufficient, and has not adopted the recommendation that there must be a written release document. Requiring State agencies to obtain written authorization for each collateral contact could conceivably delay a household's certification since the local agency would need to obtain the household's written authorization before using a collateral contact not designated before. For example, if a State agency

could not reach a collateral contact needed to verify a household's eligibility item, certification could be delayed since the household would need to provide written authorization either by mail or in person.

The proposed rule granted State agencies the ability to use a collateral contact or home visit whenever documentary evidence is judged insufficient to make a firm determination of eligibility or benefits, as well as whenever documentary evidence cannot be obtained. Many comments received on home visits were opposed to any use of home visits at all except in rare instances, and opposed the language of the proposed rules. However, the Department believes that current rules regarding use of collateral contacts and home visits should be made somewhat more flexible, and has retained the language as proposed. The Department notes that this language does not abrogate a household's rights. Specifically, home visits would still need to be scheduled in advance, as directed by the House Committee Report (the House Report, H.R. Rep. 96–788, p. 98, cited a recent Federal court decision disallowing unannounced home visits without advance notice or arrangement for purposes of investigating welfare cases). Both parties (i.e., the local agency and the household), would need to agree on a specific date for which the home visit would be made. There is no evidence this approach has resulted in improper use or the imposition of excessive requirements on households.

Recertification

In the proposed rule, the section on recertification was revised basically for the sake of organization and clarification; no substantive changes were made.

Several commentors objected, however, to the provision that allows State agencies, at their option, to verify income, medical expenses or actual utility expenses which are unchanged or have changed by $25 or less. This provision was established in regulations published October 17, 1978 (43 FR 478476) in response to State agencies who requested more discretion as to what to verify at recertification. This provision was intended to aid States in helping to maintain program integrity and has, therefore, been retained.

Expedited Service

Section 273.2(i)(4)(i) was revised and restructured to clarify the verification requirements regarding expedited service. Some commentors believed that the proposed language would cause delays in household certification; others wanted to expand the proposed provisions so as to require verification of all eligibility factors prior to household certification. There was also confusion as to whether or not households could be certified at the initial interview or if the State agency was required to utilize the full two day timeframe to obtain verification. Several commentors also felt that verification of residency should not be required prior to certification under expedited rules.

The final rule clarifies that the State agency may certify households at the initial interview if it is unlikely that missing verification which is not mandated can be obtained within the two days. The Department wants to emphasize that certification cannot be delayed beyond the expedited timeframes if verification, except that which is mandated, is missing. Mandating verification of all eligibility factors would defeat the purpose of expedited service; that is, to provide prompt service to households in the greatest need of food assistance.

The proposed rules addressed the submission of work registration forms in expedited service cases. Some commentors believed, incorrectly, that the rule required the State agency to obtain completed work registration forms for all household members prior to certification and several State agencies objected to this.

The final rules clarify that the State agency must register the applicant, unless the applicant is either exempt or is the household's authorized representative. The State agency may attempt to register all nonexempt household members by having the applicant fill out forms for other nonexempt household members. However, benefits are not to be delayed if this cannot be accomplished. The provision that allows the applicant to fill out forms for other household members is addressed in detail in the Work Registration/Job Search Requirements rule that will be published in the near future. That rule allows the applicant or any household member to fill out the work registration forms for other persons provided the person completing the form is knowledgeable about the registrant's circumstances. This approach would enable many households to be processed without further inconveniences. Consequently, suggestions made by some commentors to prohibit such a practice were not incorporated.

Changes Resulting in Increased Benefits

The proposed rule allowed State agencies the option of verifying reported changes that would result in a benefit increase prior to effecting the change. Fourteen commentors, consisting of eight State agencies, four local agencies, and two regional offices, supported this provision. Twenty commentors, consisting of 15 public interest groups, two State agencies, two local agencies, and one individual, opposed the rule.

Those supporting the provision felt it strengthened and protected program integrity. The majority of those opposed felt that the 10-day timeframe would adversely affect households reporting changes at the end of the month.

For purposes of program integrity, the Department has chosen to retain this option. The Department, in response to commentors, wishes to clarify how the timeframe is supposed to work.

If a household provides the required verification within ten days after the change was reported to the State agency, the State would continue to meet current timeliness standards for reflecting the increased benefits in the household's allotment, as prescribed in § 273.12(c)(1). If the verification is provided in an untimely manner, the timeframes specified in § 273.12(c)(1) would begin with the date the verification was provided, rather than the date the change was reported.

The Department recognizes that for State agencies to comply with timeliness requirements for acting on changes, the number of supplemental ATP's may increase somewhat. For example, if a household reports a change on the 17th of May, currently the State agency would have ten days to effect the change so that it would be reflected in the household's June allotment. If the State agency chose to require verification and the household provided it, for example, on the 26th of May, the State agency may not be able to adjust the ATP normally issued for June benefits. A supplementary ATP would then have to be issued in order to increase the household's June allotment.

Additional Issues

In the preamble to the proposed verification rule, the Department requested comments on the feasibility of providing households in writing, at the conclusion of the interview, with information on what verification is needed to make an eligibility determination. The majority of the commentors reacted favorably; a number of State and local agencies reported that they are already providing such information.

The Department did not actually propose such a requirement, and is not formally mandating it at this time. However, the Department strongly encourages all State agencies to provide

such a list in a manner of their own choosing. The Department may propose to make this a requirement at a later date.

The Department had also requested comments on student verification requirements. These will be addressed in the final rulemaking on students to be published shortly.

For the reasons set out in the preamble, Parts 272 and 273 of Title 7, Code of Federal Regulations, are amended as set forth below.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, a new paragraph (22) is added to paragraph (g) as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(22) Amendment 179. State agencies shall implement those verification procedures mandated in § 273.2 and § 273.8 no later than the first of the month 120 days following publication of final regulations. State agencies may implement those provisions allowed at State agency option in § 273.2 and § 273.12, once the options have been approved by FNS and the State certification manuals have been revised to incorporate the options.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. In § 273.2:

a. New paragraphs (vi) and (vii) area added to paragraph (f)(1).

b. Paragraphs (f)(2) and (f)(2)(i) are revised and (f)(2)(iii) is removed.

c. Paragraph (f)(3) is revised and new paragraphs (i) through (vi) are added.

d. Paragraphs (f)(4)(i) is revised. Language is added to the end of paragraph (f)(4)(ii). Paragraphs (f)(4)(iii), (f)(5) and (f)(6) are revised.

e. Paragraph (f)(9)(i) is revised.

f. Paragraph (i)(4)(i) is revised.

The revisions are as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification* * * *

(1) *Mandatory verification* * * *

(vi) *Residency.* The residency requirements of § 273.3 shall be verified, except in unusual cases (such as some migrant farmworker households or households newly arrived in a project area) where verification of residency cannot reasonably be accomplished. Verification of residency should be accomplished to the extent possible in conjunction with the verification of other information such as, but not limited to, rent and mortgage payments, utility expenses, and identity. If verification cannot be accomplished in conjunction with the verification of other information, then the State agency shall use a collateral contact or other readily available documentary evidence. Documents used to verify other factors of eligibility should normally suffice to verify residency as well. Any documents or collateral contact which reasonably establish the applicant's residency must be accepted and no requirement for a specific type of verification may be imposed. No durational residency requirement shall be established.

(vii) *Identity.* The identity of the person making application shall be verified. Where an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified. Identity may be verified through readily available documentary evidence, or if this is unavailable, through a collateral contact. Examples of acceptable documentary evidence which the applicant may provide include, but are not limited to, a driver's license, a work or school ID, an ID for health benefits or for another assistance or social services program, a voter registration card, wage stubs, or a birth certificate. Any documents which reasonably establish the applicant's identity must be accepted, and no requirement for a specific type of document, such as a birth certificate, may be imposed.

(2) *Verification of questionable information.* With the exception of those items specified in paragraph (3) of this section which the State agency has opted to verify, State agencies shall verify all other factors of eligibility prior to certification only if they are questionable as indicated in this paragraph and affect a household's eligibility or benefit level. To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, inconsistent with other information on the application or previous applications, or inconsistent with information received by the State agency. When determining if information is questionable, the State agency shall base the decision on each household's individual circumstances. A household's report of expenses which exceed its income prior to deductions may be grounds for a determination that further verification is required. Additionally, a household reporting no income prior to deductions, while still managing its financial affairs, could, in some instances, justify the requirement for additional verification. However, these circumstances shall not, in and of themselves, be grounds for a denial. If warranted, the State agency shall, instead, explore with the household how it is managing its finances, whether the household receives excluded income or has resources, and how long the household has managed under these circumstances. Procedures described below shall apply when information concerning one of the following eligibility requirements is questionable.

(i) *Household composition.* State agencies shall verify factors affecting the composition of a household such as boarder status, if questionable. However, due to the difficulty involved in verifying whether or not a group of individuals customarily purchases and prepares meals together and, therefore, constitutes a household, State agencies shall generally accept the household's statement regarding food preparation and purchasing.

* * * * *

(3) *State agency options.* The State agency may elect to mandate verification of one or more of the following items within the State or a specific project area(s). However, if the State agency does not choose to mandate verification of a particular item, that item must be verified if it is questionable as defined in paragraph (2) of this section. If a State agency elects to verify any or all of these factors on a project area basis as opposed to Statewide, the State agency shall first obtain FNS approval. To obtain approval, the State agency must demonstrate that significant Program dollar loss in a particular project area(s) is attributable to the factor(s) for which the State agency proposes to use an option for expanded verification, and that the loss is likely to be decreased by expanded verification.

The State agency may establish its own standards for the use of verification, provided that the standard is at least as comprehensive as the standard prescribed under paragraph (f)(2) of this section (i.e., at a minimum, all questionable factors must be verified in accordance with paragraph (f)(2)) and that such standards do not allow for inadvertent discrimination. For example, no standard may be applied which prescribes variances in verification based on race, religion, ethnic background or national origin, nor may a State standard target groups such as migrant farmworkers or American Indians for more intensive verification than other households. The options specified in § 273.2(f)(3), including verification resulting from a State's error-prone profile, shall not

apply in those offices of the Social Security Administration (SSA) which, in accordance with paragraph (k) of this section, provide for the food stamp certification of households containing recipients of Supplemental Security Income (SSI) and social security benefits. The State agency, however, may negotiate with those SSA offices with regard to mandating verification of these options. If a State agency opts to verify a deductible expense and obtaining the verification may delay the household's certification, the State agency shall advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. This provision also applies to the allowance of medical expenses as specified in paragraph (f)(1)(iv) of this section. Shelter costs would be computed without including the unverified components. The standard utility allowance shall be used if the household is entitled to claim it and has not verified higher actual costs. If the expense cannot be verified within 30 days of the date of application, the State agency shall determine the households eligibility and benefit level without providing a deduction of the unverified expense. If the household subsequently provides the missing verification, the State agency shall redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in § 273.12 on reported changes. The household shall be entitled to the restoration of benefits retroactive to the month of application, as a result of the disallowance of the expense, only if the expense could not be verified within the 30-day processing standard because the State agency failed to allow the household sufficient time, as defined in paragraph (h)(1) of this subsection, to verify the expense. If the household would be ineligible unless the expense is allowed, the household's application shall be handled as provided in paragraph (h) of this section.

(i) *Liquid resources and loans.* The State agency may verify liquid resources and whether monies received by households are loans. When verifying whether income is exempt as a loan, a legally binding agreement is not required. A statement signed by both parties which indicates that the payment is a loan and must be repaid shall be sufficient verification. However, if the household receives payments on a recurrent or regular basis from the same source but claims the payments are loans, the State agency may also require that the provider of the loan sign a statement which states that repayments are being made or that payments will be made in accordance with an established repayment schedule.

(ii) *Continuing shelter charges.* The State agency may verify those shelter costs as specified in § 273.9(d)(5), other than utilities, if allowing the expense could potentially result in a deduction. For example, for those households subject to the ceiling of the shelter deduction, rent would not be verified if the household's child care expenses exceeded the limit on the combined dependent care/shelter deduction since the amount of the rent could not alter the amount of the deduction. This option is permitted on a one-time basis unless the household has moved, reported an increase in the amount of its individual shelter costs that would potentially affect the level of the deduction (in which case only those changed individual costs could be reverified), or unless questionable as defined in paragraph (f)(2) of this section.

(iii) *Utility expenses.* For those households entitled to claim either the single standard utility allowance or the separate standard utility allowances as specified in § 273.9(d)(6), the State agency may verify that the household actually incurs a utility expense, although there is no need for the State agency to verify the amount of the expense. The State agency may not verify more than one utility unless questionable in accordance with § 273.2(f)(2). This option is permitted on a one-time basis unless the household has moved or changed its utilities or unless questionable as defined in paragraph (f)(2) of this section.

(iv) *Dependent care costs.* For those households claiming dependent care cost as specified in § 273.9(d)(4), the State agency may verify that the household actually incurs the costs and the actual amount of the costs, if allowing the expense could potentially result in a deduction. This option is permitted on a one-time basis unless the provider has changed, the amount has changed and the change would potentially affect the level of the deduction, or unless questionable as defined in paragraph (f)(2) of this section.

(v) *Household size.* State agencies may verify household size. Factors involving household composition such as boarder status or whether or not a particular group of individuals customarily purchases and prepares meals together shall not be verified unless questionable in accordance with paragraph (f)(2) of this section or with prior FNS approval in accordance with paragraph (vi) of this section. Verification shall be accomplished through a collateral contact or readily available documentary evidence. Examples of acceptable documentary evidence which the applicant may provide include, but are not limited to, school records, draft cards, census records, marriage records, or those examples listed in paragraph (f)(1)(vii). Any documents which reasonably establish household size must be accepted and no requirement for a specific type of document, such as a birth certificate, may be imposed.

(vi) *Error-prone profiles.* The State agency may, with prior FNS approval, require additional verification of other eligibility factors as indicated by error-prone household profiles developed and based on statistically valid data derived from the State agency's quality control review, audits, or other special reviews in accordance with § 275.15(a)(2). These expanded verification requirements would be applied only to those particular eligibility factors and/or households identified as being error-prone, and would apply only on a uniform basis statewide or in one or more project areas. In addition, if the State agency's error-prone household profiles demonstrate that verification of particular eligibility factors (other than gross nonexempt income, declared alien status, and social security numbers) mandated under § 273.2(f)(1) is not needed for particular categories of households, the State agency may, with prior FNS approval, appropriately reduce mandatory verification. If error-prone profiles are used to alter verification requirements in one or more project areas (but not statewide), the data on which the modifications in verification requirements are based must be statistically valid for those particular project areas. (A) FNS must approve the statistical methodology by which a State's error-prone profile is constructed. To be approved the profile must: either meet the standard computer package developed by FNS or an alternate method approved by FNS; identify error concentrations with both statistical and practical significance; provide classification of errors within error-prone household categories; provide sufficient information to establish priorities in addressing corrective action to household categories prone to more than one type of error (primary factors in setting priorities should include such factors as the probability of error, the dollar losses, the number of households involved, and the geographic extent of the error); identify error concentrations

with significant dollar losses; and meet other standards that FNS may prescribe. (B) FNS must also approve the State agency's proposed use of the profile in determining where to apply more intensive (and/or less intensive) verification. To be approved, the State agency shall demonstrate that proposed modifications in verification changes are likely to be cost-effective, and meet other standards that FNS may prescribe. FNS shall not approve proposed verification policies that result in discrimination based on race, religion, ethnic group, or national origin. For example, an error-prone profile may not be used to target particular racial minorities, or groups such as migrant farmworkers or American Indians, to more intensive verification than other households. Error-prone profiles shall be used in a selective manner in modifying verification requirements.

(4) *Sources of Verification.*

(i) *Documentary evidence.* State agencies shall use documentary evidence as the primary source of verification for all items except residency and household size. These items may be verified either through readily available documentary evidence or through a collateral contact, without a requirement being imposed that documentary evidence must be the primary source of verification. Documentary evidence consists of a written confirmation of a household's circumstances. Examples of documentary evidence include wage stubs, rent receipts, and utility bills. Although documentary evidence shall be the primary source of verification, acceptable verification shall not be limited to any single type of document and may be obtained through the household or other source. Whenever documentary evidence cannot be obtained or is insufficient to make a firm determination of eligibility or benefit level, the eligibility worker may require collateral contacts or home visits. For example, documentary evidence may be considered insufficient when the household presents pay stubs which do not represent an accurate picture of the household's income (such as out-dated pay stubs) or identification papers that appear to be falsified.

(ii) *Collateral contacts.* * * *

Systems of records to which the State agency has routine access are not considered collateral contacts and, therefore, need not be designated by the household. Examples are the Beneficiary Data Exchange (BENDEX) and the State Data Exchange (SDX) and records of another agency where a routine access agreement exists (such as records from the State's unemployment compensation system).

(iii) *Home visits.* Home visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, and the home visit is scheduled in advance with the household.

* * * * *

(5) *Responsibility for obtaining verification.*

(i) The household has primary responsibility for providing documentary evidence to support its income statement and to resolve any questionable information. Households may supply documentary evidence in person, through the mail, or through an authorized representative. The State agency shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application. If it would be difficult or impossible for the household to obtain the documentary evidence in a timely manner or the household has presented insufficient documentation, the State agency shall either offer assistance to the household in obtaining the documentary evidence, except as otherwise stated in this section, or shall use a collateral contact or home visit. The State agency shall not require the household to present verification in person at the food stamp office.

(ii) Whenever documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, the State agency may require a collateral contact or a home visit. The State agency shall rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, the State agency shall either ask the household to designate another collateral contact or substitute a home visit. The State agency is responsible for obtaining verification from acceptable collateral contacts.

(6) *Documentation.* Case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination. Where verification was required to resolve questionable information, the State agency shall document why the information was considered questionable, or at a minimum indicate where in the casefile the inconsistency exists, and what documentation was used to resolve the questionable information. The State agency shall document (except where a collateral contact is used to verify residency or household size) the reason why an alternate source of verification, such as a collateral contact or home visit, was needed. The State agency shall also document the reason a collateral contact was rejected and an alternate requested.

* * * * *

(9) *Verification subsequent to initial certification.*

(i) *Recertification.* (A) At recertification the State agency shall verify a change in income, medical expenses, or actual utility expenses claimed by a household if the source has changed or the amount has changed by more than $25 since the last verification was accomplished. State agencies may verify income, medical expenses or actual utility expenses claimed by households which are unchanged or have changed by $25 or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (f)(2) of this section.

(B) Newly obtained social security numbers shall be verified at recertification in accordance with verification procedures outlined in §273.2(f)(1)(v).

(C) Unchanged information, other than income, medical expenses, and actual utility expenses shall not be verified at recertification unless the information is questionable as defined in paragraph (f)(2) of this section. Changes in items other than income, medical expenses or actual utility expenses shall be subject to the same verification procedures as at initial certification. For example, dependent care cost (unless questionable) may be reverified at State agency option only if the care provider has changed, or the amount has changed and the change could potentially affect the level of the deduction. Shelter costs other than utilities may (if not questionable) be reverified only if the household has moved, or has reported a change in the amount of individual shelter cost components and the change could potentially affect the level of the deduction. (If the household reports a change in the cost of particular shelter components, only those components that have changed may be reverified). A

household's eligibility to claim the standard utility allowance may be reverified (unless questionable) only if the household has moved or changed utilities.

* * * * *

(i) *Expedited Service.* * *

(4) *Special procedures for expediting service.*

(i) To expedite the certification process, the State agency shall postpone the verification required by § 273.2(f) except that (A) in all cases, the applicant's identity (i.e., the identity of the person making the application) and whenever possible, the household's residency shall be verified through a collateral contact or readily available documentary evidence as specified in paragraph (f)(1) of this section, and (B) all reasonable efforts shall be made to verify the household's income statement (including a statement that the household has no income) within the expedited processing standards, through collateral contacts or readily available documentary evidence. However, benefits shall not be delayed beyond the delivery standards prescribed in paragraph (i)(3) of this section, solely because income has not been verified. State agencies also may verify factors other than identity, residency, and income provided that verification can be accomplished within expedited processing standards. State agencies should attempt to obtain as much additional verification as possible during the interview, but should not delay the certification of households entitled to expedited service for the full timeframes specified in paragraph (i)(3) of this section when the State agency has determined it is unlikely that other verification can be obtained within these timeframes. Households entitled to expedited service may be asked to furnish or apply for a social security number, but shall not be required to do so until after they have received their first allotment. However, those households shall be required to furnish a SSN before their next issuance in accordance with subdivision (iii) of this paragraph. Those households unable to provide the required SSN's or who do not have one prior to their next issuance shall be allowed 90 days to obtain the SSN, in accordance with § 273.6(a)(2). With regard to the work registration requirements specified in § 273.7, the State agency shall, at a minimum, require the applicant to register (unless exempt or unless the household has designated an authorized representative to apply on its behalf in accordance with § 273.1(f)). The State agency may attempt to register other household members but shall postpone the registration of other household members if it cannot be accomplished within the expedited service timeframes. The State agency may attempt registration of other household members by requesting that the applicant complete the work registration forms for other household members to the best of his or her ability. The State agency may also attempt to accomplish work registration for other household members in a timely manner through other means, such as calling the household. The State agency may attempt to verify questionable work registration exemptions, but such verification shall be postponed if the expedited service timeframes cannot be met.

* * * * *

2. In § 273.8, a new sentence is added to the end of paragraph (g) and reads as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(g) *Fair market value of licensed vehicles.* * *

If a new vehicle is not yet listed in the blue book, the State agency shall determine the wholesale value through some other means (e.g., contacting a car dealer which sells that make of vehicle).

* * * * *

3. In § 273.12, paragraph (c)(1)(iii) is revised as follows:

§ 273.12 Reporting changes.

* * * * *

(c) *State agency action on changes.* * *

(1) *Increase in benefits.* * *

(iii) The State agency may elect to verify changes which result in an increase in a household's benefits in accordance with the verification requirements of § 273.2(f)(9)(ii), prior to taking action on these changes. If the State agency elects this option, it must allow the household 10 days from the date the change is reported to provide verification required by § 273.2(f)(9)(ii). If the household provides verification within this period, the State shall take action on the changes within the timeframes specified in paragraphs (i) and (ii) of this paragraph. The timeframes shall run from the date the change was reported, not from the date of verification. If, however, the household fails to provide the required verification within 10 days after the change is reported but does provide the verification at a later date, then the timeframes specified in paragraphs (i) and (ii) for taking action on changes shall run from the date verification is provided rather than from the date the change is reported. If the State agency does not elect this option, verification required by § 273.2(f)(9)(ii) must be obtained prior to the issuance of the second normal monthly allotment after the change is reported. If in these circumstances the household does not provide verification, the household's benefits will revert to the original benefit level. Whenever a State agency increases a household's benefits to reflect a reported change and subsequent verification shows that the household was actually eligible for fewer benefits, the State agency shall establish a claim for the overissuance in accordance with § 273.18. In cases where the State agency has determined that a household has refused to cooperate as defined in § 273.2(d), the State agency shall terminate the household's eligibility following the notice of adverse action.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2027))

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

Dated: January 8, 1981.

Carol Tucker Foreman,

Assistant Secretary.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

LABOR DEPARTMENT

Occupational Safety and Health Administration—

75618 11–14–81 / Guarding of low-pitched-roof perimeters during the performance of built-up roofing work.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**